

**LOCAL AGENCY FORMATION COMMISSION OF
SANTA CLARA COUNTY
MINUTES
WEDNESDAY, MAY 30, 2007**

1. ROLL CALL

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 30th day of May 2007 at 1:08 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California, with the following members present: Chairperson Blanca Alvarado, Commissioners Don Gage, John Howe and Susan Vicklund-Wilson. Commissioner Constant is absent. Alternate Commissioners Terry Trumbull and Roland Velasco arrive at 1:10 p.m.

The LAFCO staff in attendance includes Neelima Palacherla, LAFCO Executive Officer; Kathy Kretchmer, LAFCO Counsel; Dunia Noel, LAFCO Analyst; and, Ginny Millar, LAFCO Surveyor.

The meeting is called to order by Chairperson Alvarado and the following proceedings are had, to wit:

2. PUBLIC PRESENTATIONS

There are no public presentations.

3. APPROVE MINUTES OF APRIL 4, 2007 MEETING

On motion of Commissioner Gage, seconded by Commissioner Howe, it is unanimously ordered on a vote of 4-0, with Commissioner Constant absent, that the minutes of April 4, 2007 meeting be approved, as submitted.

4. CONSENT ITEMS

4.1* CUPERTINO SANITARY DISTRICT ANNEXATION: PROSPECT ROAD NO. 6.

On motion of Commissioner Gage, seconded by Commissioner Howe, it is unanimously ordered on a vote of 4-0, with Commissioner Constant absent, that Resolution No. 2007-03 be adopted approving the annexation to Cupertino Sanitary District of one parcel (APN 366-32-002) with a total area of about 1.14 acres located at 21781 Prospect Road outside the City of Saratoga, and that further protest proceedings be waived.

5. OUT OF AGENCY EXTENSION OF WATER SERVICE TO 2404 URIDIAS RANCH ROAD BY THE CITY OF MILPITAS

This being the time and place set to consider the application by the City of Milpitas for an out-of-agency contract for service (OACS) to 2404 Uridias Ranch Road in the unincorporated area outside the City of Milpitas, Chairperson Alvarado declares the public hearing open and requests the staff report.

Ms. Palacherla reports that the City of Milpitas is requesting LAFCO approval to extend water service to a single-family home in the unincorporated area within the City's sphere of influence (SOI) but outside its urban service area (USA) and urban growth boundary (UGB). The request is being made because the water produced by the onsite well is not sufficient for the needs of a single household and results in a health and safety risk.

Ms. Palacherla advises that LAFCO policies favor annexation to extension of service outside an agency's boundary, and if immediate annexation is not feasible, a city resolution expressing intention to annex is required. However, this area could not be annexed because it was removed from the city's USA in 2006 to comply with Measure Z, a 1998 voter-approved initiative that established the 20-year UGB boundary. In terms of the proposal's growth-inducing impact, she informs that the County General Plan designates the area as Hillsides (HS) and it has no further potential for subdivision. However, there is a potential that other existing homes in the vicinity may also request water service because of historical water supply issues in the area. In terms of health and safety, and public benefit issues, Ms. Palacherla advises that the onsite well does not meet the minimum supply requirement of the County Department of Environmental Health (DEH) is 2.5 gallons per minute over a 24-hour period. She informs that refurbishing the existing well or drilling a new well are not options because the water table is at least 500 feet deep in certain places, and according to DEH there is a high level of salt and total dissolved solids in the water, along with the presence of total coliform. Therefore, the water is considered non-potable and is a public health concern for those using the system. Spring Valley Heights Subdivision, located in the vicinity, had previously requested LAFCO approval for water service extension from Milpitas because of unreliable water supply in the area.

Ms. Palacherla advises this proposal meets the policies of the City for extending water service beyond its boundaries and the City has the ability to provide that service. She adds that the proposal does not impact agricultural and open space lands. She recommends approval of water service extension.

Chairperson Alvarado opens the public comment period for this item.

Karen Lipscomb, a resident in the area, expresses support for the proposal and requests the Commission to approve the application because this has been a long standing health and safety concern in the area.

Chairperson Alvarado determines that there are no other members of the public who wish to speak on the item and orders that the public hearing be closed.

On motion of Commissioner Gage, seconded by Commissioner Howe, it is unanimously ordered on a vote of 4-0, with Commissioner Constant absent, that Resolution No. 2007-02 be adopted approving the request for extension of water service by the City of Milpitas to a single-family residence located at 2404 Uridias Ranch Road in the unincorporated area, and approving the Categorical Exemption for this proposal under Class 3, Section 15303(d).

At this point, Chairperson Alvarado acknowledges the attendance of Alternate Commissioners Terry Trumbull and Roland Velasco.

The Chairperson announces that, depending on time, the discussion on clarification of "agricultural use" (Item No. 10) may be deferred to the August 1, 2007 meeting. Additionally, at the request of Commissioner Howe, there being no objection, it is ordered on Commission consensus that the adoption of the final LAFCO budget (Item No. 6) be taken out of order because it may be impacted by discussions on incorporation policies (Item No. 7) and the proposed incorporation of San Martin (Item No. 8).

6. INCORPORATION POLICIES AND FILING REQUIREMENTS

This being the time and place set to consider and adopt the proposed incorporation policies and filing requirements for incorporation proposals, Chairperson Alvarado declares the public hearing open and requests the staff report.

At the request of the Chairperson, Roseanne Chamberlain, LAFCO consultant for developing the incorporation policies, reports that the draft policies were posted on the

LAFCO website in early May 2007 and have been provided to participants at the Community Workshop held in San Martin on May 17, 2007. Ms. Chamberlain states that the public has had the opportunity to review and evaluate the draft policies.

Chairperson Alvarado opens the public comment period for this item.

The Chairperson informs that the proponents for San Martin incorporation designate Richard Van't Rood, Chairperson of the Incorporation Committee, San Martin Neighborhood Alliance (SMNA), Inc., as their spokesperson.

Mr. Van't Rood states that some of the changes that SMNA proposed have not been included and, at the request of the Chairperson, summarizes them. On Policy No. 2, relating to processing fees, he notes that the County and other government agencies could fund the incorporation process because a more accountable government for San Martin is a public benefit to the residents, the neighboring cities and the County. He indicates that different LAFCOs have varying estimates on staff time cost; however, he proposes that \$100,000 be reduced because San Martin is a small area with a small population. He likewise suggests that instead of actual staff time costs, either a fixed fee be established or the fees be waived altogether. Chairperson Alvarado informs that this issue would be discussed under Item 8.3, noting that there may be alternate sources of revenues. He indicates objection to Policy No. 3, relating to the indemnification agreement, and states that two Southern California LAFCOs do not require this. He states that such an agreement would require the proponents to pay for LAFCO's legal costs even if the proponents themselves are suing LAFCO. He likewise requests that the terms "agricultural and open space lands" under Policy No. 4h be defined in line with SMNA's goal to create a rural residential community with small scale agriculture, and proposes that the County's zoning ordinance definitions be used. Additionally, Mr. Van't Rood requests that proponents be allowed free access to consult with the consultants because it is difficult to demonstrate fiscal feasibility if staff filters the information. On Policy No. 9, he notes that the current timeline is vague and suggests that LAFCO set a specific and enforceable schedule, indicating when the CFA and the Initial Study would be completed. Under Item 10g, Mr. Van't Rood also recommends that the two percent cap be removed from annual property tax revenue growth because it would limit the fiscal feasibility of the

projections. He concludes by stating that these issues must first be resolved before the policies are adopted.

Chairperson Alvarado determines that there are no other members of the public who wish to speak on the item and orders that the public hearing be closed.

The Chairperson comments that these policies have to be adopted immediately to start the incorporation process and deferral of this item would impact the timeline. Mr. Van't Rood responds that many items on the policies are not required by law, such as those relating to indemnification agreement and processing fees. He informs that the County of Santa Barbara had loaned money for the Goleta incorporation while Santa Barbara LAFCO charged a flat fee and waived other fees. He adds that the fiscal assumptions being established would render the incorporation infeasible.

At the request of the Chairperson, Ms. Palacherla explains that the policies are written in generic terms and not specifically for the San Martin incorporation. As for the timeline, she adds that the goal is to place the incorporation on the November 2008 ballot and complete the incorporation prior to the vehicle license fee (VLF) sunset, adding that the CEQA and CFA processes would have detailed timelines. At the request of the Chairperson, Ms. Chamberlain, advises that the policies are the Commission's direction to staff on how incorporation is processed and do not bind the Commission to decide in a particular way, nor restrict their authority to make determinations. In order to ensure that the Commission's decision will be the best possible decision, a certain amount of information is needed to determine the fiscal feasibility and viability of the new city. She notes that input from meetings and conference calls with the proponents has been seriously considered in drafting the policies. The State's Office of Planning and Research (OPR) guidelines and the current and past experiences with other incorporations have guided the development of the policies. Along these lines, Ms. Palacherla adds that the policies merely discourage, not prohibit, the inclusion of agricultural and open space lands. On Mr. Van't Rood's suggestion to use the County's agricultural and open space lands, Chairperson Alvarado informs that these policies are the framework by which the Commission directs staff on how to process the incorporation so these policies should be generic rather than exclusively designed for San Martin. In response to another comment

by Mr. Van't Rood, Chairperson Alvarado informs that while San Martin may be the only community that will ever incorporate, the Commission, by law, has to do due diligence to create generic policies and secure all information from the community and from other sources in order to make thoughtful and fully-informed decisions. Along this line, Commissioner Wilson reminds that the Commission is not the applicant, rather the filter of information for an independent and neutral analysis to determine the strengths and weaknesses of the proposed city, to decide whether or not to approve it, and to set conditions if approved. She notes that the Commission would support defensible decisions because of litigations on incorporations in other counties. She continues that as a Board member of the California Association of LAFCOs (CALAFCO), she talks to many LAFCOs about incorporations and is aware of serious fiscal issues in some cases. Relating to the proponents' request to have access to the CFA consultant, Commissioner Wilson clarifies that the LAFCO consultant has been hired to do an independent and neutral study. She notes that while there is a benefit from informal communications, everyone involved should have the same information from everybody. It is important that the consultants do not have separate conversations with or lobby the consultant. In addition, she notes that the consultants themselves have objective and professional standards to uphold because it is easy to have an appearance of compromise if they are influenced by third parties, including interest groups such as the proponents. Commissioner Wilson states that this ensures that everybody has the same information at every step of the process and no one is excluded.

In response to an inquiry by Commissioner Howe, Ms. Palacherla advises that staff would interface with CFA and CEQA consultants. In response to another inquiry by Commissioner Howe, Ms. Palacherla explains that the draft policies guide consultants, staff, proponents and the Commission in determining whether the proposed incorporation is feasible. The Commission may deviate from these policies if there is a compelling reason provided by staff, consultants, proponents or the public. Commissioner Wilson states that Policy No. 4h means that LAFCO will look at and identify agricultural lands where such lands exist within the proposed boundaries. Commissioner Gage informs that agricultural lands are zoned as such under the County zoning ordinance and suggests that this be used

to define agricultural and open space lands instead of creating a new definition. Ms. Palacherla advises that when the boundaries are drawn, it has to be determined how much agricultural lands are involved and whether those boundaries are necessary and logical for the new city. Commissioner Gage states that it would be more advantageous for San Martin to leave agricultural lands in its SOI instead of the city limits because these are sparsely populated areas that are difficult and expensive to provide services to.

Commissioner Wilson expresses agreement with Commissioner Gage stating that the Commission would make better boundary decisions when the agricultural lands in the area are excluded. Commissioner Gage proposes that the incorporation policies should be tailor-made for the San Martin incorporation because it will be the only incorporation in the County because VLF sunsets in July 2009. In response to this, Chairperson Alvarado notes that generic policies, unlike those tailored to San Martin, provide neutral parameters for staff and consultant to work because, in the end, the results of CFA and CEQA will determine whether or not voters will support the incorporation.

In response to Commissioner Howe's inquiry on the definition of agricultural land, Commissioner Wilson states that it is necessary to have a neutral definition. In response to the inquiry of Chairperson Alvarado, Commissioner Wilson states that boundary issues would come to the Commission and adds that the VLF sunset date may be extended as was the island annexation bill. In response to an inquiry by Commissioner Wilson, Ms. Palacherla states that there would be separate consultants for CFA and CEQA.

Commissioner Wilson moves for approval of the incorporation policies, with deferral of section on indemnification to the August 1, 2007. Chairperson Alvarado seconds the motion.

Commissioner Gage proposes that staff and proponents work to discuss and resolve the indemnification and fee issues, that staff provide a report and staff recommendations at the next meeting. Commissioner Gage indicates that staff's desire for analysis of agricultural lands in the proposed and alternative boundaries is important because, after incorporation, the city would have the ability to subdivide large tracts of agricultural lands. Commissioner Howe expresses agreement with Commissioner Gage. In response to the inquiry by the Chairperson, Commissioner Gage proposes to amend the

motion to include instruction to staff to resolve issues with the proponents and come up with policies. Commissioner Wilson and Chairperson Alvarado express agreement.

Chairperson Alvarado indicates that while the Commission is for open government LAFCO does not want undue influence by the proponents on the consultants. Mr. Van't Rood responds that LAFCO seems to have an "unwritten" policy barring proponents from interacting with the CFA consultant. He notes that OPR Guidelines require LAFCO to enable the public to understand the incorporation and not to put roadblocks on incorporation. Mr. Van'tRood continues by stating that the two issues regarding the definition of agricultural and open space, and the two percent limit on annual property tax revenues assumptions seem to set up the process for failure.

Commissioner Howe notes that property tax growth is not a very reliable factor to project the proposed town's future revenues because a sale of only one house can change the whole picture. In response to this, Mr. Van't Rood states that the consultant should be the one to determine whether or not to use property tax revenues to forecast future income. Commissioner Howe states that he would wait for staff and consultant to determine how much growth on property tax revenues is realistic.

Commission Wilson calls the question. It is unanimously ordered on a vote of 4-0, with Commissioner Constant absent, that the Incorporation Policies and Filing Requirements be adopted to be effective immediately.

7. PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

7.1 RFP FOR CONSULTANT TO PREPARE A CEQA INITIAL STUDY

Dunia Noel, LAFCO Analyst, reports that the California Environmental Quality Act (CEQA) requires environmental review for an incorporation project. LAFCO will be the lead agency for incorporation and the Initial Study must be prepared based on CEQA, LAFCO's incorporation policies, as well as LAFCO's procedures for processing environmental documents. If the Initial Study shows no substantial evidence that the project will create significant adverse negative environmental impact, LAFCO may adopt a negative declaration. However, if the study concludes that the project may have significant adverse negative environmental impacts, then the preparation of an environmental impact report will be required.

Ms. Noel adds that LAFCO proposes to hire a qualified consultant to prepare an independent and impartial Initial Study and directs attention to the draft request for proposals (RFP). If the Commission authorizes the issuance of the RFP, staff will mail the RFP to prospective consultants, and post it on LAFCO and CALAFCO websites. The deadline for proposals will be on June 18, 2007, interviews held by the end of June 2007, consultants selected soon after, and agreement executed by early July 2007. Additionally, Ms. Noel recommends that delegation of authority be approved for the Executive Officer to negotiate and execute agreement with the consultant, subject to review and approval of the LAFCO Counsel.

In response to the inquiry by Commissioner Wilson, Ms. Noel advises that the applicant will pay for the cost of the CEQA analysis.

The Chairperson opens the public comment period for this item.

Brian Schmidt, Committee for Green Foothills (CGF), states that the CGF has no position on San Martin, however, he requests that the Habitat Conservation Plan (HCP) be included in the incorporation process to ensure that HCP will also be implemented in San Martin. He notes that there are endangered species in Cordovalle and in the western hills.

In response to this, Commissioner Gage indicates that this may not be feasible since cities pay HCP fees and San Martin has neither the revenue nor the legislative body that could decide now; hence, it must first be incorporated before it can decide. Chairperson Alvarado suggests that HCP staff should be made aware of the incorporation proposal, and Commissioner Wilson states that this could be made a part of the environmental reports and analysis.

Mr. Schmidt continues by stating that it may be difficult to work programmatically, explaining that San Martin may not implement HCP if it is incorporated.

Chairperson Alvarado determines that there are no other members of the public who wish to speak on the item.

On motion of Commissioner Howe, seconded by Chairperson Alvarado, it is unanimously ordered on a vote of 4-0, with Commissioner Constant absent, that staff be authorized to issue the RFP for a consultant to prepare a CEQA Initial Study; and that the LAFCO Executive Officer be delegated authority to enter into an agreement with the most

qualified consultant in an amount not to exceed \$25,000 and to execute any necessary amendments subject to LAFCO Counsel review and approval.

7.2 INDEMNIFICATION AGREEMENT BETWEEN LAFCO AND THE PROPONENTS OF SAN MARTIN INCORPORATION

Chairperson Alvarado requests the staff report. Ms. Chamberlain reports that indemnification agreement provides that proponents participate in funding the cost of LAFCO's defense if sued. She informs that incorporation is a complex process, and over the last 15 years, most have been litigated. Ms. Chamberlain adds that indemnification agreements are very common among LAFCOs statewide and recommends that the Commission protect itself from financial disaster that may or may not have anything to do with the nature of its action. Ms. Kretchmer adds that the indemnification agreement excludes claims caused by the sole negligence and willful misconduct by LAFCO staff.

Commissioner Gage expresses concern on requiring the applicant to indemnify because it is the Commission that makes decisions, and therefore, the outcome of the application is the responsibility of the Commission and staff. Commissioner Wilson recalls that there may have been indemnification agreement between the Santa Clara and San Mateo LAFCOs with regard to the Midpeninsula Regional Open Space District. She notes that other LAFCOs require indemnification and it is due diligence to protect the Commission because LAFCO is funded by the County and the cities. In response to an inquiry by Commissioner Howe, Ms. Kretchmer advises that the Commission could not require the new city to indemnify. Ms. Palacherla adds that litigation generally happens after LAFCO takes action on the CFA, CEQA and the application. In response to a follow-up inquiry by Commissioner Howe, Ms. Kretchmer indicates that it is possible to condition approval on signing an indemnification agreement; however, it would have the same effect whether it is approved today or in the future, and approving it today gives enough time for proponents to prepare. Commissioner Gage expresses concern because proponents could lose their homes and properties if LAFCO is sued. In response to Commissioner Gage's comments that proponents are individuals without resources, unlike the cities, Ms. Kretchmer explains that the intent is make proponents defend the lawsuit because they are the real party of interest who caused the LAFCO action.

Commissioner Gage states that he is on governing boards and bodies because the County, cities, Valley Transportation Authority or other agencies defend him from lawsuits and indemnify him.

Chairperson Alvarado states that individuals named in the agreement are representing SMNA, Inc. She comments that the agreement is very important because out of the 6,000 population, 2,000 have signed the petition and there could be many players and interests who may not want San Martin incorporated. She proposes that the Commission take due diligence to protect itself by hiring legitimate, credible and licensed professionals to do the analyses. The Chairperson adds that while SMNA, Inc., and not the individuals would be responsible, the Commission should protect the interests of the County and the cities that provide its budget. In response to the inquiry of Commissioner Howe, Ms. Kretchmer advises that the statute defines proponent as the person(s) who signed the Notice of Intent to Circulate a Petition. At the request of the Chairperson, Ms. Palacherla informs that Sylvia Hamilton signed on behalf of SMNA, Inc.

Commissioner Gage maintains that the proponents should not be required to indemnify LAFCO because they have nothing to do with the Commission's action. To illustrate, when the proposed boundary is changed, landowners excluded from the city will sue because their land would have been more valuable if it was included. Commissioner Gage continues that the proponents have nothing to do with that decision, if LAFCO established the boundary.

Discussion ensues to determine whether the proponents individually or the SMNA, Inc., would indemnify LAFCO. Mr. Van't Rood informs that the SMNA is the statutory proponent. Ms. Kretchmer determines that SMNA would indemnify LAFCO under the proposed agreement. In response to another inquiry by Commissioner Howe, Ms. Kretchmer explains that the corporation would be liable and will defend the lawsuit with whatever it has, and suggests that SMNA may designate attorneys residing in the area to minimize the cost.

At the request of Commissioner Wilson, Ms. Chamberlain indicates that many LAFCOs have very similar indemnification agreements where proponents share in the cost of legal defense.

Commissioner Gage proposes to defer this item to the August 1, 2007 meeting to give more time to the Commission and because Commissioner Constant would be present at that time. Chairperson Alvarado states that the proposal may end up in a split vote; Commissioner Gage notes that if a vote is made today, it would still fail.

Commissioner Howe moves to defer the item to the August 1, 2007 meeting. Commissioner Gage seconds the motion.

In response to the inquiry by Commissioner Wilson, Ms. Kretchmer advises that the proponents are aware that they may or may not need to sign the agreement, and should plan accordingly if they need to sign.

Mr. Van't Rood informs the Commission that SMNA will not sign an indemnification agreement. He notes that Southern California LAFCOs have indicated that they do not require indemnification for incorporations because it is different from other applications to LAFCO. He adds that since it could be the proponents themselves who will sue LAFCO for making bad decisions, proponents could end up paying for the fees. He notes that proponents have sued LAFCOs on incorporation of Citrus Heights, El Dorado Hills, and Carmel Valley and reiterates his intention not to sign.

Chairperson Alvarado indicates that it would be difficult if the proponents refuse to sign the agreement because this incorporation is a difficult process and while proponents have legitimate and sincere desire to incorporate, many others have entirely different views. Based on experience of other LAFCOs, the Commission has to protect itself from other groups. The Chairperson notes while this agreement burdens proponents, they should be conscientious of the impact on LAFCO.

Commissioner Wilson comments that the Commission has responsibility to the County and the cities contributing to its budget. The agreement does not protect willful negligence; and, the proponents who caused the Commission's action must take the responsibility.

Discussion ensues as to when the lawsuit would most likely happen. Ms. Kretchmer advises that lawsuit could happen after the Commission takes action. If the indemnification agreement is signed, the proponents could either defend the lawsuit or

there would be a default judgment. Discussion ensues on the possible financial scenario for SMNA in case of litigation, along with the prospect of losing the election.

Mr. Van't Rood states that a lawsuit would come after all decisions have been made. He states that one possible lawsuit is when proponents feel no need for an EIR, similar to the case filed against Monterey LAFCO. He notes that LAFCO should be accountable because it directs the proponents every step of the way and the only recourse for the proponents is to sue. Chairperson Alvarado observes that Mr. Van't Rood does not favor the indemnification agreement; neither the fees, nor the EIR. She notes that these are obstacles that prevent the Commission from acting on the incorporation application in a timely fashion, considering the timeline involved.

In response to the inquiry by Commissioner Howe, Ms. Kretchmer proposes to go over the staff report and proposed indemnification agreement with Commissioner Constant. However, she states that Commissioner Constant must be present at the meeting to vote.

The Chairperson calls the question. The motion to defer this item to August 1, 2007 meeting fails on a vote of 2-2-1, with Chairperson Alvarado and Commissioner Wilson opposed, and Commissioner Constant absent.

Chairperson Alvarado moves approval of the staff report and recommendation. Commissioner Wilson seconds the motion. Commissioner Wilson withdraws her second to the motion. The motion dies due to lack of second.

Finally, on the motion of Commissioner Wilson, seconded by Chairperson Alvarado, it is unanimously ordered on 4-0 vote, with Commissioner Constant absent, that this item be continued to the August 1, 2007 meeting.

7.3 REQUEST FOR FEE WAIVER AND/OR PAYMENT OPTIONS BY THE PROPONENTS OF SAN MARTIN INCORPORATION

Chairperson Alvarado requests the staff report. Ms. Palacherla reports that staff received a letter from Mr. Van't Rood, which does not object to consultant fees for CFA and CEQA Initial Study, and lays out four options for payment of fees for LAFCO staff time, including, (1) waiver of some or all fees for LAFCO staff time, (2) waiver of staff fees for environmental review, (3) advance from the County for the incorporation efforts, and

(4) deferral of billing for LAFCO staff time to ensure that there are no delays in the incorporation process and allow time for fundraising. Ms. Palacherla advises that the rationale offered by the proponents for waiving fees (Option 1) is that the project could have a substantial public benefit by having a more accountable government. She advises that there is no precedent for waiving fees and LAFCO tries to recoup the cost of processing applications. However, if the Commission chooses to waive the fees, the cost would be borne by the cities and County since they fund the LAFCO budget. CKH Act requires the Commission to make a finding that payment of fees will be detrimental to the public interest. Ms. Palacherla advises that Options 2 and 3 are not feasible options because LAFCO would have to hire a consultant to conduct the CEQA work and LAFCO does not have the authority to loan funds. She continues that for Option 4, the proponents are planning a major fundraising event in Spring 2008 and if the Commission takes this option, there should be a signed agreement that fees be paid prior to the LAFCO's first public hearing tentatively scheduled for May 2008. Staff would provide monthly invoices for staff time to the proponents and the Commission.

Commissioner Gage moves to accept Option 4, including direction to staff to stop further work if the fees have not been paid, and directing staff to enter into an agreement with the proponents. Chairperson Alvarado seconds the motion.

In response to the inquiry by Commissioner Wilson, Ms. Palacherla indicates that LAFCO budget will not be impacted with deferral of fees to May 2008. However, the succeeding year's budget would be impacted if the fees are not paid by the agreed time.

Chairperson Alvarado clarifies that the motion is deferral of the LAFCO staff cost only, and not the fees for CEQA and CFA consultants, and Commissioner Gage expresses agreement. Commissioner Wilson proposes to amend the motion to specify a due date on the agreement. Chairperson Alvarado and Commissioner Gage express agreement.

In response to the inquiry by Ms. Kretchmer, Commissioners Gage and Wilson clarify that "staff time" includes time of the LAFCO Counsel.

In response to an inquiry by Commissioner Howe, Commissioner Gage states that the Commission would not move forward if fees are not paid at the agreed time. Discussion ensues on the specific due date and a consensus is reached that the staff work

out a specific due date with the proponents, which should be on or as close as possible to May 1, 2008, and to provide the Commission with a report at the next meeting. Mr. Van't Rood expresses agreement. Commissioner Gage recommends that SMNA hold its fundraising at the end of April 2008, at the latest.

The Chairperson calls the question. It is unanimously ordered on a vote of 4-0, with Commissioner Constant absent, that the payment for staff time be deferred to the first week of May 2008, which should be prior to the first public hearing, that further action will be stopped if the fees are not paid on time, and that the LAFCO Executive Officer be delegated authority to enter into an agreement with the proponents, specifying the dates and other details of the payment scheme, and that a report will be provided to the Commission.

8. TAKEN OUT OF ORDER: FINAL LAFCO BUDGET FOR FISCAL YEAR 2007-2008

Ms. Palacherla advises the next Fiscal Year's budget may be impacted if fees for San Martin incorporation are not paid on time. Commissioner Gage indicates that the amount may be covered by the \$100,000 in reserve. Chairperson Alvarado and Commissioner Wilson express appreciation to Commissioners Howe and Gage for their work on the Budget Subcommittee.

On motion of Commissioner Wilson, seconded by Chairperson Alvarado, it is unanimously ordered on a vote of 4-0, with Commissioner Constant absent, that the Final LAFCO Budget for FY 2007-08 be adopted, find that the Final FY 08 Budget is expected to be adequate to allow the Commission to fulfill its statutory responsibilities, authorize staff to transmit the final budget adopted by the Commission, including the estimated agency costs, to each of the cities, County and the Cities Association, and direct the County Auditor-Controller to apportion LAFCO costs to the cities and County using the most recent edition of Cities Annual Report published by the Controller, and collect payments pursuant to Government Code §56381.

9. COMMITTEE FOR GREEN FOOTHILLS' LETTER DATED APRIL 25, 2007, REGARDING LAFCO'S ACTION ON MORGAN HILL 2006 USA EXPANSION

Chairperson Alvarado requests the staff report. Dunia Noel, LAFCO Analyst, informs the Commission that staff has received a letter from Paul Carroll, Counsel for Committee for Green Foothills, relating to Commission action on April 4, 2007 for Morgan Hill urban service area (USA) 2006 expansion. Mr. Carroll questions LAFCO's decision and CEQA action, and alleges that LAFCO should have assumed the role of lead agency for EIR or supplemental EIR because of the flawed negative declaration, and should have denied the project because of its inconsistencies with the LAFCO policies. The letter concludes that the Commission should reconsider its decision. In terms of the suggestion to reconsider the item, Ms. Noel advises that the Commission took action after considering the staff report and public testimony, and informs that staff did not receive a request for reconsideration during the 30-day reconsideration period.

To avoid this issue in the future with the CEQA process and analysis, such as the deferral of analysis of impacts to agricultural lands, use of LESA model, and the disregard of CKH Act's definition of prime agricultural land, Ms. Noel requests authorization from the Commission to send a letter to cities and special districts requesting them to include analysis of impacts to agricultural lands and identify feasible mitigation to minimize loss of agricultural land in the environmental documents when LAFCO is identified as responsible agency for the project.

The Chairperson opens the public comment period for this item.

Brian Schmidt, Committee for Green Foothills (CGF), informs that the CGF has seriously considered suing LAFCO for approving the Black Rock project even as LAFCO staff has indicated that the project is inconsistent with LAFCO policies. He proposes that the Commission withdraw approval or require additional documentation. Morgan Hill's lack of consultation gives LAFCO the authority to become the lead agency. He informs that Morgan Hill's staff also opposed the USA expansion but were overruled by their City Council on a split vote. Mr. Schmidt adds that, in addition to the 18 acres, there is a 10-acre farm across the Black Rock property that will soon be lost to sprawl because of this LAFCO decision. He informs that none of the assertions by the Black Rock attorney are

valid and recommends that the Commission reconsider its decision. He likewise expresses concerns over the conversion of over 3,000 acres in Coyote Valley where the mitigation ratio is still undetermined and that the vague and subjective LESA model may also be used.

Chairperson Alvarado comments that the Black Rock project should have been denied and adds that the Commission should be more conscientious with regard to the Coyote Valley.

Commissioner Gage moves for approval of the staff recommendation.
Commissioner Howe seconds the motion.

In response to the inquiry by Commissioner Wilson, Ms. Kretchmer advises that Roberts Rules of Order allows a motion for reconsideration at the very same meeting to be made by a member who voted in the majority. The CKH Act allows reconsideration within 30 days when new information is presented that was not known at the time of the hearing and after the reconsideration fee has been paid.

Commissioner Wilson expresses support for the motion for approval, however, she clarifies that she and Chairperson Alvarado did not support the project. Chairperson Alvarado declares she opposes the motion because a letter to cities and special districts will not correct the illegal action. She adds that some cities have failed to recognize that LAFCO policies are real, legitimate, and legal, adding that this is not the first time that LAFCO policies have been completely disregarded.

Chairperson Alvarado calls the question. It is ordered on a vote of 3-1-1, with Chairperson Alvarado opposed and Commissioner Constant absent, that staff report be accepted and staff be authorized to send a letter to cities and special districts requesting that complete analysis of impacts to agricultural lands as defined in LAFCO's policies, and identification of feasible mitigation measures be included in the environmental documents when LAFCO is identified as a responsible agency.

10. CLARIFICATION ON "AGRICULTURAL USE"

On commission consensus, there being no objection, it is ordered that this item be held to August 1, 2007.

11. AGREEMENT BETWEEN LAFCO AND COUNTY OF SANTA CLARA FOR LEGAL SERVICES FOR FISCAL YEAR 2008

Commissioner Gage moves for approval of the staff recommendation.

Commissioner Howe seconds the motion with direction to staff to issue a request for proposals for legal services, adding that there are individuals and groups providing legal services to LAFCOs.

Commissioner Howe indicates that the motion includes direction to staff to present options for legal services at the August 1, 2007 meeting, including the issuance of an RFP for legal services in the next Fiscal Year.

In response to the inquiry of the Chairperson, Commissioner Howe clarifies that this direction to staff is made part of the motion. Commissioner Gage expresses agreement. Commissioner Howe informs that the Office of the County Counsel is proposing a transition and LAFCO should do due diligence to obtain legal services outside of the County. In response to Chairperson Alvarado's concern that LAFCO issues are not easily understood, Commissioner Howe informs this is exactly the reason why LAFCO must find legal services with expertise on LAFCO issues outside, because if the County Counsel rotates attorneys, the Commission may not have the quality of representation it needs. In response to the inquiry of the Chairperson, Ms. Kretchmer indicates that as stated in the staff report and agreement, there is a new attorney who will transition to LAFCO and will be taking over the position from her. Commissioner Howe indicates that the Commission should have the correct person for the job, stating that there are attorneys in the private sector specializing on LAFCO issues, and while cost may increase, the quality of representation is more important. Commissioners Alvarado and Gage express agreement.

The Chairperson calls the question. It is unanimously ordered that the Agreement be approved between the County of Santa Clara and LAFCO for legal services for the period of July 1, 2007 to June 30, 2008, and staff be directed to provide the Commission at the August 1, 2007 meeting with options for outside legal services, including the issuance of an RFP for legal services for the next fiscal year.

Chairperson Alvarado leaves at 3:19 p.m. Commissioner Gage presides at the meeting.

12. UPDATE ON COYOTE VALLEY SPECIFIC PLAN

Acting-Chairperson Gage requests the staff report. Dunia Noel, LAFCO Analyst, informs that the City of San Jose has released a draft environmental report (EIR) for the Coyote Valley Specific Plan (CVSP). Staff is reviewing the EIR and will submit comments to the City before the June 29, 2007 deadline. She notes that the CVSP includes unincorporated agricultural lands currently located outside San Jose's USA boundary. LAFCO will have to approve San Jose's USA expansion before these lands could be annexed and CVSP is implemented. Since 2004, LAFCO staff submitted three comment letters to CVSP on issues that LAFCO will consider. This comment letter will relate to the adequacy of the EIR when the USA amendment and annexation proposals come to LAFCO.

Commissioner Wilson recommends that staff include in the letter the issue raised by Brian Schmidt, Committee for Green Foothills, relating to the use of the LESA model.

On motion of Commissioner Howe, seconded by Commissioner Gage, it is unanimously ordered on a vote of 3-0, with Chairperson Alvarado and Commissioner Constant absent, that the staff report be accepted and that comments on the Draft CVSP EIR would include information that LESA Model is not the model used by LAFCO, and to provide copies of the comment letter to the Commission.

13. EXECUTIVE OFFICER'S REPORT

13.1 CALAFCO ANNUAL CONFERENCE IN SACRAMENTO ON AUGUST 28-31, 2007

On motion of Commissioner Howe, seconded by Commissioner Wilson, it is unanimously ordered on a vote of 3-0, with Commissioners Alvarado and Constant absent, that commissioners and staff be authorized to attend the 2007 CALAFCO Annual Conference and travel expenses be authorized to be funded by the LAFCO budget.

13.2 NOMINATIONS FOR CALAFCO EXECUTIVE BOARD

On motion of Commissioner Howe, seconded by Commissioner Gage, it is unanimously ordered on a vote of 3-0, with Chairperson Alvarado and Commissioner Constant absent, that Commissioner Wilson be nominated to the CALAFCO Board of Directors.

13.3 REPORT ON THE CALAFCO STAFF WORKSHOP HELD IN NEWPORT BEACH IN APRIL 2007

Ms. Palacherla reports that LAFCO staff attended the CALAFCO staff workshop. It included presentations on various topics including multi-county agencies, LAFCOs going independent, LAFCO's interaction with private and mutual water companies, LAFCO ethics, facilitation skills and organization, among others. Emmanuel Abello, LAFCO Clerk, made a presentation on LAFCO website content and management.

14. COMMISSIONER'S REPORTS

There are no Commissioner's reports.

Commissioner Alvarado returns at 3:28 p.m.

15. WRITTEN CORRESPONDENCE

There is no written correspondence.

16. NEWSPAPER ARTICLES

There are no newspaper articles.

17. PENDING APPLICATIONS / UPCOMING PROJECTS

There are no pending applications.

18. ADJOURN

On the order of the Chairperson, there being no objection, the meeting is adjourned at 3:31 p.m.

The next regular LAFCO meeting is scheduled to be held on Wednesday, August 1, 2007 at 1:00 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California.

Blanca Alvarado, Chairperson
Local Agency Formation Commission

ATTEST:

Emmanuel Abello, LAFCO Clerk