



**LAFCO MEETING AGENDA**  
**Wednesday, February 6, 2008**  
**1:15 p.m.**

**Board of Supervisors' Chambers**  
**70 West Hedding Street, First Floor**  
**San Jose, CA 95110**

**CHAIRPERSON: Pete Constant • VICE-CHAIRPERSON: Susan Vicklund-Wilson**  
**COMMISSIONERS: Blanca Alvarado, Don Gage and John Howe**  
**ALTERNATES: Sam Liccardo, Pete McHugh, Al Pinheiro and Terry Trumbull**

The items marked with an asterisk (\*) are included on the Consent Agenda and will be taken in one motion. At the beginning of the meeting, anyone who wants to discuss a consent item should make a request to remove that item from the Consent Agenda.

**Disclosure Requirements**

1. If you wish to participate in the following proceedings, you are prohibited from making a campaign contribution of more than \$250 to any commissioner or alternate. This prohibition begins on the date you begin to actively support or oppose an application before LAFCO and continues until three months after a final decision is rendered by LAFCO. No commissioner or alternate may solicit or accept a campaign contribution of more than \$250 from you or your agent during this period if the commissioner or alternate knows, or has reason to know, that you will participate in the proceedings.

If you or your agent have made a contribution of more than \$250 to any commissioner or alternate during the twelve (12) months preceding the decision, in the proceeding that commissioner or alternate must disqualify himself or herself from the decision. However, disqualification is not required if the commissioner or alternate returns the campaign contribution within thirty (30) days of learning both about the contribution and the fact that you are a participant in the proceedings.

2. Pursuant to Government Code Sections 56700.1 and 81000 et seq., any person or combination of persons who directly or indirectly contribute \$1,000 or more in support of or in opposition to a change of organization or reorganization that has been submitted to Santa Clara County LAFCO and will require an election must comply with the disclosure requirements of the Political Reform Act of 1974 which apply to local initiative measures. These requirements contain provisions for making disclosures of contributions and expenditures at specified intervals. Additional information about the requirements pertaining to the local initiative measures to be presented to the electorate can be obtained by calling the Fair Political Practices Commission at (916) 322-5660.

- 1. ROLL CALL**
- 2. NEW ALTERNATE COMMISSIONERS: SAM LICCARDO (SAN JOSE) AND AL PINHEIRO (CITIES)**
- 3. ADOPTION AND PRESENTATION OF RESOLUTION COMMENDING GINNY MILLAR FOR HER SERVICE TO LAFCO**

**4. PUBLIC PRESENTATIONS**

This portion of the meeting is reserved for persons desiring to address the Commission on any matter not on this agenda. Speakers are limited to THREE minutes. All statements that require a response will be referred to staff for reply in writing.

**5. APPROVE MINUTES OF OCTOBER 3, 2007 LAFCO MEETING**

**6. APPROVE MINUTES OF DECEMBER 5, 2007 LAFCO MEETING**

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**PUBLIC HEARING**

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**7. SAN JOSE URBAN SERVICE AREA AMENDMENT 2007 AND RIVERSIDE No. 52**

A request by the City of San Jose to extend its urban service area boundary to include approximately 3.2 acres of property (APN 678-09-013) located at 715 Piercy Road and to annex two parcels (APN 678-09-013 and 005) with an area of approximately 14.72 acres. (Riverside 52)

**Possible Action:** Consider the request for USA amendment and Riverside No. 52 reorganization, and staff recommendation.

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**ITEMS FOR COMMISSION DISCUSSION / ACTION**

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**8. CORRECTION TO POLICIES IMPLEMENTING ASSEMBLY BILL 745**

**Possible Action:** Adopt correction to policies adopted by the Commission on December 5, 2007 regarding disclosure of contributions and expenditures for political purposes related to LAFCO proposals.

**9. PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN**

**9.1 Presentation of the Draft Comprehensive Fiscal Analysis**

Information only.

**9.2 Initial Study/Negative Declaration and Alternative Boundary Discussion**

- a. Discuss comments on Initial Study/Negative Declaration
- b. Discuss boundary alternatives

**Possible Action:** Accept report and provide direction to staff on Initial Study/Negative Declaration and boundary alternatives.

**9.3 Invoices for LAFCO Staff Costs**

Information only.

**10. UPDATE ON PENDING LEGISLATION: SB 301 (VEHICLE LICENSE FEE LAW)**

**Possible Action:** Consider information and authorize letter of support.

**11. LAFCO BUDGET SUBCOMMITTEE FOR FISCAL YEAR (FY) 2008-2009**

**Possible Action:** Establish a LAFCO Budget Subcommittee for FY 2008-09.

**12. 2008 CALAFCO STAFF WORKSHOP IN SAN JOSE (APRIL 2-4, 2008)**

**Possible Action:** Authorize staff to attend the workshop and authorize expenses funded by the LAFCO budget.

**13. COMMISSIONERS' REPORTS**

**14. WRITTEN CORRESPONDENCE**

- The Sphere

**15. NEWSPAPER ARTICLES**

**16. ADJOURN**

Adjourn to the next regular meeting on Wednesday, April 16, 2008.

NOTE TO COMMISSIONERS:

Upon receipt of this agenda, please contact Emmanuel Abello, LAFCO Clerk, at (408) 299-6415, if you are **unable** to attend the LAFCO meeting.

In compliance with the Americans with Disabilities Act, those requiring accommodation for this meeting should notify the LAFCO Clerk 24 hours prior to the meeting at (408) 299-6415, or at TDD (408) 993-8272, indicating that message is for the LAFCO Clerk.

**LOCAL AGENCY FORMATION COMMISSION OF  
SANTA CLARA COUNTY  
MINUTES  
WEDNESDAY, OCTOBER 3, 2007**

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**1. ROLL CALL**

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 3rd day of October 2007 at 1:00 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, Vice Chairperson Pete Constant, and Commissioners Don Gage, John Howe and Susan Vicklund-Wilson. Alternate Commissioners Terry Trumbull and Roland Velasco are also present.

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. NEW ALTERNATE COMMISSIONER: KANSEN CHU, SAN JOSE REPRESENTATIVE**

Chairperson Alvarado announces that the City of San Jose has appointed Councilmember Kansen Chu as Alternate LAFCO Commissioner.

**3. SANTA CLARA LAFCO RECEIVES "MOST EFFECTIVE COMMISSION" AWARD FROM CALAFCO**

Chairperson Alvarado informs that Santa Clara LAFCO has received the Most Effective Commission Award from the California Association of LAFCOs (CALAFCO). She informs that the past year has been an extremely fruitful one for LAFCO, particularly with the successful completion of the Agricultural Mitigation Policies. These policies provide recommendations and guidance on how negative impacts to agricultural lands are mitigated. Last year, LAFCO also initiated the annexation of 54 unincorporated islands in eight cities, comprising of about 901 acres with approximately 2,841 residents. She notes that The Sphere, CALAFCO newsletter, has an article on annexations completed by the City of Fontana in San Bernardino County where 32 islands with 2,932 acres and a



population of 3,000 have been annexed, making Fontana the fourth largest city in that county. Chairperson Alvarado states that both the agricultural mitigation policies and the island annexations are very critical to LAFCO's ability to fulfill its mandate of discouraging urban sprawl, preserving open space and agricultural lands, ensuring efficient delivery of services, and encouraging orderly growth and development.

Chairperson Alvarado then invites commissioners, alternate commissioners and staff to a picture taking.

Commissioner Howe informs that Commissioner Wilson has consistently worked with CALAFCO and was elected Treasurer during the CALAFCO Conference. He then expresses appreciation to Commissioner Wilson for being a diligent representative of the Commission to CALAFCO. Chairperson Alvarado states that Commissioner Wilson has been involved in LAFCO for a very long time and has always been an excellent representative to CALAFCO. In response, Commissioner Wilson expresses appreciation to Chairperson Alvarado and Commissioner Howe for their comments, and to the Commission for her reappointment to another four-year term as a Public Member and for the opportunity to serve in CALAFCO.

#### **4. PUBLIC PRESENTATIONS**

Bruce Davis, Executive Director, Arts Council Silicon Valley, inquires whether the Arts Council would be considered an affected agency in the incorporation of San Martin even if it is neither a public agency nor based in that area. He states that if San Martin is incorporated, the County would lose a large amount of transit occupancy tax from the Cordevalle area. Since the County's support to the Arts Council is commensurate to tax revenues collected, the County's assistance to his organization may be substantially reduced as a result of the incorporation.

Chairperson Alvarado refers the inquiry to staff and directs that this be brought to the Office of the County Counsel for a legal opinion and to forward a response to Mr. Davis.

**5. APPROVE MINUTES OF AUGUST 1, 2007 MEETING**

On motion of Commissioner Howe, seconded by Commissioner Gage, it is unanimously ordered on a vote of 3-0, with Chairperson Alvarado and Commissioner Wilson abstaining, that the minutes of August 1, 2007 meeting be approved, as submitted.

**6. OUT OF AGENCY EXTENSION OF SEWER SERVICES BY THE TOWN OF LOS ALTOS HILLS (O'KEEFE)**

This being the time and place set to consider the request for an out-of-agency contract for services (OACS) relating to sewer service by the Town of Los Altos Hills, the Chairperson declares the public hearing open.

The Chairperson requests the staff report. Ms. Palacherla reports that the Town of Los Altos Hills is seeking LAFCO approval to extend sewer service to a 2.5 acre property located at 10885 West Loyola Road, outside of the Town's jurisdictional boundaries. The landowner has applied for a two-lot subdivision in the County and is proposing to build a new home on the second lot.

Ms. Palacherla informs that the subject parcel is included in the West Loyola Annexation that was approved by the Town Council on September 13, 2007. She directs attention to the map illustrating the West Loyola annexation and showing the subject parcel. She advises that the West Loyola annexation is conditioned on a roads improvement agreement that was approved by the Town Council on September 27, 2007 and which is on the agenda of the Board of Supervisors for October 16, 2007. Once the agreement is approved by the Board, the Town will be able to submit the paper work to LAFCO, and staff would then record the annexation. Once the annexation is effective, the subject property can be connected to the Town's sewer system without LAFCO approval.

Ms. Palacherla informs that the landowner has applied to the County to subdivide the subject property into a two-lot subdivision. The County General Plan requires that development within a city's urban service area (USA) must be consistent with the General Plan of that city. The Town has informed the County and property owner that the proposed subdivision is not consistent with the Town's General. Moreover, Ms. Palacherla advises that the Town's resolution seeking OACS approval does not endorse the extension

of sewer service to the subdivision because a subdivision is inconsistent with the Town's General Plan. She further informs that there is no immediate health and safety issue associated with the extension of the sewer service. She notes that the West Loyola annexation will become effective by the end of October 2007 and that annexation is the best way to provide services to this parcel. She recommends denial of the application because it is unnecessary.

In response to the inquiry by Commissioner Howe, Ms. Palacherla advises that the Town Council has approved a resolution requesting OACS approval for sewer connection and applicant has paid LAFCO \$8,151 as deposit toward LAFCO processing cost. In response to a follow-up inquiry by Commissioner Howe, Ms. Palacherla states that the applicant is aware that LAFCO OACS approval is unnecessary because the West Loyola annexation has already been approved.

David O'Keeffe, property owner, expresses appreciation to the Commission for hearing the application, stating that he and his family live on the property which they purchased in 2004 with a plan to expand. He indicates that the Town Engineer has approved his purchase of two sewer rights; however, he was unaware that OACS approval would be required. He adds that there is an existing sewer main line outside his property and engineers only need to hook up two laterals. He adds that while he supports the West Loyola annexation, he applied for OACS approval because his engineering plans are now complete; and it will take six months or more to install sewer mains in the West Loyola annexation area because funds would have to be raised by the landowners.

In response to the inquiry by Chairperson Alvarado, Ms. Palacherla explains that the Town has approved the West Loyola annexation contingent on a roads improvement agreement with the County. The agreement is on the agenda of the October 16, 2007 Board of Supervisors meeting and the County Roads and Airports Department indicates that there is no opposition to the roads agreement. Staff will then record the annexation and it becomes effective. Further, she informs that the subject parcel may apply for a connection with the Town as soon as the annexation is effective.

Mr. O'Keeffe states that it is a tough process because he could not connect to the sewer main just outside his property although he already paid for the sewer rights and fees to the Town and LAFCO. He states that residents who went through annexation have told him that it takes about six months after annexation before a property is connected to sewer.

Bob Fenwick, former mayor of Los Altos Hills, states that he spoke in favor of the O'Keeffe OACS connection at the Town Council meeting and is speaking at this hearing to request for OACS approval.

Toni Casey, resident of Los Altos Hills, requests the Commission to approve sewer services to the O'Keeffe property, stating that it took about six months before her property had been connected to sewer service after the San Antonio Hills annexation because the residents have to raise funds for it. She notes that it also took about that period of time before the Ravensbury area has been provided with sewer service.

Laura Salamanca, a resident of 10905 West Loyola Drive, neighbor to the subject property, states she is pleased to be part of the West Loyola Drive annexation. She expresses appreciation to the Commission for reading her letter, as well as to staff for the well-written staff report. She notes that the application violates the OACS policies because the Town Council has already approved the West Loyola annexation and roads agreement will be approved by the Board of Supervisors in two weeks. She states that the applicant himself indicated at the Town Council meeting that there is no safety and health issue associated with his application. She also notes that the applicant is seeking a last minute OACS approval before the West Loyola annexation is finalized because his proposed two-lot subdivision is inconsistent with the Town's General Plan. Finally, Ms. Salamanca states that the applicant has been told in writing by the Town and County planners, as well as LAFCO staff, that this application violates the policies of each of these agencies.

The Chairperson 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.

Commissioner Constant indicates for the record that he had met with Mr. O'Keeffe. In response to the inquiry by Commissioner Constant, Mr. O'Keeffe states that he was told

in March 2006 by the Town staff that the proposed subdivision is consistent with the Town's General Plan.

Commissioner Constant comments that since the property will eventually be annexed to the Town and be connected to sewer, he proposes that the out of agency application be approved now. He states that while the policies favor annexation, he notes that the applicants have applied to the Town and received Council resolution, and paid all the fees. He notes that it will be bureaucratic to deny the application and make the applicants wait until after annexation for sewer service. He adds that the property has infrastructure in place to connect to sewer main.

Chairperson Alvarado informs that the Commission has been working on annexations for a long time and West Loyola annexation is very important. She notes that the staff's preference for annexation over OACS is not arbitrary because OACS approval in this case is inconsistent with LAFCO's intent to encourage orderly growth. Chairperson Alvarado states that it is a matter of consistency with OACS policy rather than bureaucratic red tape.

Ms. Palacherla clarifies that the Town stated that the proposed two-lot subdivision was in conformance with its General Plan in March 2006; however, in August 2006, the Town corrected its mistake and stated that it is inconsistent with its General Plan. Hence, the Town resolution requesting OACS approval does not endorse a connection for a subdivision. She advises that LAFCO should not be involved with the subdivision issue and the applicant's development proposal with the County because the Town has already annexed the West Loyola area. The applicant has been informed that there is no need for OACS because his property has been annexed by the Town. The applicant, however, chose to move forward with the OACS application. Ms. Palacherla adds that regardless of whether the sewer service is being provided as a result of OACS approval or annexation, the property owner would have to go through the same connection process.

Commissioner Gage states for the record that he had met with the applicant. He informs that the Town approved the proposed subdivision in March 2006; however, it revised that decision in August 2006. Therefore, the County planning staff would

recommend to the Board of Supervisors to deny the proposed subdivision because it is inconsistent with the Town's General Plan, whether or not LAFCO approves the OACS application.

Commissioner Howe states for the record that he had likewise met with the applicant and expresses agreement with Commissioner Constant's proposal to approve the request for sewer connections and leave it for the Town and the Board of Supervisors to decide the subdivision issue.

Commissioner Wilson states that this is an issue between the landowner and the Town and is not a LAFCO issue. She indicates that staff has analyzed the application based on LAFCO's policies and finds that it does not meet the criteria; therefore, it should be denied. She expresses concern if one sewer connection is approved as an OACS because the application has nothing to do with LAFCO and it would not benefit anyone if LAFCO makes that decision at the meeting. Commissioner Wilson states for the record that she also talked with the applicant on the telephone.

Commissioner Wilson moves to approve the staff recommendation to deny the application. She notes that the cost of the application and waiting time for sewer service upon annexation should not be the basis for OACS approval. The Commission should not set a precedent because the Town is trying to have orderly growth within its boundary. Commissioner Wilson informs that if her motion to deny fails, she would make another motion to continue the item to the next meeting when a representative from the Town could attend. Chairperson Alvarado seconds the motion.

Commissioner Constant comments that this is an issue about sewer and not about land use, and the worst scenario would be to allow one sewer connection. He notes that the applicant should not be made to wait until the West Loyola annexation is completed because it would take months before sewer is connected. The applicant should have at least one sewer connection even if the two-lot subdivision is denied.

Mr. O'Keeffe requests to address the Commission. The Chairperson approves the request.

Mr. O'Keeffe states that the Town Council had unanimously voted that it is not against bringing the proposed subdivision to the Board of Supervisors and expresses desire to have his day in court. Chairperson Alvarado and Commissioner Gage assure Mr. O'Keeffe that the Board of Supervisors will be impartial when hearing his subdivision proposal.

Chairperson Alvarado enjoins the Commission to support Commissioner Wilson's motion to approve the staff recommendation to deny the OACS application because it is very simple and straightforward. LAFCO should not be involved in the land use policies, particularly since the annexation of West Loyola area annexation will settle this matter in the appropriate forum down the road. In response to the inquiry by Commissioner Gage, Chairperson Alvarado states that the property will be connected to sewer when the annexation to the Town is finalized. However, the subdivision would not be approved by the Board of Supervisors because it is inconsistent with the Town's General Plan.

Chairperson Alvarado calls the question.

It is ordered on a vote of 3-2, with Commissioners Constant and Howe opposed, Resolution No. 2007-07 be adopted denying the request by the Town of Los Altos Hills to extend sewer service to property located at 10885 West Loyola Road in the unincorporated area.

**7. OUT OF AGENCY EXTENSION OF SEWER SERVICES BY THE TOWN OF LOS ALTOS HILLS (VAUGHN)**

This being the time and place set to consider the request for an out of agency sewer service by the Town of Los Altos Hills, the Chairperson declares the public hearing open.

The Chairperson requests the staff report. Ms. Palacherla reports that the Town of Los Altos Hills is requesting LAFCO approval to provide sewer service to a property located at 10700 Mora Drive, outside the town's jurisdictional boundaries. The subject property is adjacent to the Mora Drive area where LAFCO approved OACS for 28 properties in 2001 upon the Town's assurance to annex the area once it is feasible. She directs attention to the map displayed on screen illustrating the Mora Drive area as adjacent to the West Loyola annexation, explaining that when that annexation is

completed, Mora Drive becomes contiguous with the Town's boundary. At that time, annexation of Mora Drive and the subject property will be feasible.

Ms. Palacherla advises that the applicant is seeking three sewer connections to a three-lot subdivision with a tentative map approved by the County. The Town has determined that the subdivision is consistent with its General Plan. She indicates that there is no immediate health and safety issue associated with this sewer service request. Annexation of the subject property is feasible and the landowner has waived his right to protest in the event that the property is annexed; the Town has expressed interest to annex the area and is now working with property owners. Staff recommends that the extension of a sewer service to this property be approved in anticipation of a future annexation. She recommends that this approval include a statement that LAFCO would not accept any further OACS applications from the Town until the Mora Drive area, which includes the 28 parcels, as well as the subject property, are annexed by Los Altos Hills.

Chairperson Alvarado reiterates that this will be the last OACS proposal from the Town of Los Altos Hills that will be approved by LAFCO until the Mora Drive area and the subject property are annexed.

Melvin Vaughn, property owner, expresses appreciation to the Commission and staff. He requests approval of the OACS application stating that the Board of Supervisors unanimously approved the three-lot subdivision and its final subdivision map and that the Town and neighbors support his application.

The Chairperson 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.

Commissioners Howe and Gage state for the record that they have separately met with the applicant. Commissioner Wilson likewise states for the record that she talked to the applicant on the telephone.

In response to the inquiry of Commissioner Wilson, Mr. Vaughn informs that there is a storm water issue on his property stating that it does not meet current County requirements for runoff water. He states that this will result in health and safety risk in the future because that is where the septic tank is located. In response to a follow-up inquiry



by Commissioner Wilson, Mr. Vaughn informs that he will not oppose future annexation of his property to the Town.

Chairperson Alvarado states that the Mora Drive issue has been going on for a long time. Ms. Palacherla advises that the Town Council has committed to annex the area, and since West Loyola will be annexed, Mora Drive area will become contiguous with the Town. Commissioner Constant states for the record that a staff member from his office had met the applicant.

On motion of Commissioner Constant, seconded by Commissioner Gage, it is unanimously ordered on a vote of 5-0 that Resolution No. 2007-04 be adopted approving the application by the Town of Los Altos Hills for an out of agency contract for sewer services to 10700 Mora Drive, and approving the Categorical Exemption for this proposal; and approving a statement that LAFCO will not accept any further OACS applications from the Town of Los Altos Hills until the Mora Drive area and subject parcel are annexed to the Town.

**8. FINAL REPORT FOR NORTHWEST SANTA CLARA COUNTY SERVICE REVIEWS AND SPHERE OF INFLUENCE UPDATES**

This being the time and place set to consider the Final Report for the Northwest Santa Clara County Service Reviews and Sphere of Influence (SOI) Updates, Chairperson Alvarado declares the public hearing open.

Commissioner Howe states for the record that his wife is employed by the El Camino Hospital District and recuses himself from consideration of this Final Report and SOI update. He clarifies that although he is recusing himself from participating in LAFCO's consideration of this item, his participation on the Technical Advisory Group did not favor El Camino Hospital District in any way because he did not participate in discussions relating to that special district.

*Commissioner Howe leaves the Board Chambers. Alternate Roland Velasco joins the Commission to participate in this matter.*

The Chairperson requests the staff report. Dunia Noel informs that the Northwest Santa Clara County Service Reviews and SOI Recommendations Final Report contains the required service reviews, service review determinations, SOI recommendations, and SOI

determinations for the cities of Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Mountain View, Palo Alto, Saratoga and Sunnyvale. It also includes SOI determinations for the Cupertino Sanitary District, El Camino Hospital District, Lake Canyon Community Services District, Midpeninsula Regional Open Space District, Rancho Rinconada Recreation and Park District, Santa Clara Valley Transportation Authority, Saratoga Cemetery District, West Bay Sanitary District, and West Valley Sanitation District (WVSD).

Ms. Noel advises that on August 1, 2007, LAFCO held a public hearing to consider the draft report and to accept further comments. Since then, staff has received some comments resulting in minor revisions to four sections of the report. A Notice of Availability of the Final Draft Report was sent to all the affected agencies and interested parties on September 12, 2007. The final report is available on the LAFCO website for downloading.

Ms. Noel recommends that the Commission reaffirm the SOI boundaries for all agencies, except for Palo Alto, Los Altos Hills, El Camino Hospital District, and West Valley Sanitation District. Palo Alto's SOI currently includes two residential areas that need to be moved from Palo Alto's SOI to that of Los Altos Hills. The El Camino Hospital District serves residents of Sunnyvale and Cupertino which area currently outside its boundary; therefore, staff recommends that LAFCO expand the District's SOI to include these two cities. WVSD currently serves two small areas located beyond its SOI, staff recommends expansion of the District's SOI to include these two areas. Ms. Noel reports that based on the comments received from Mountain View this week, staff recommends that the Commission amend the determination for that City's infrastructure needs and deficiencies, included as Attachment A of the staff report, to read "The library has operating and capacity challenges. A space reallocation plan is included in the City's CIP to address some space needs and to improve operating efficiency. Additional space needs, especially in the children's area, will be addressed at a later time." She indicates that Llyod Zola, the consultant for the project, is available to respond to any question of the Commission.

In the response to the inquiry by the Chairperson, Ms. Noel reports that staff has resolved the issue with Palo Alto. In response to another question by the Chairperson, Ms. Noel indicates that the Lake Canyon Community Services District serves an area near the Lexington Reservoir area.

Steven Wesoloski, Board Member, Rancho Rinconada Recreational and Park District, recommends to the Commission to hire local consultants for the service reviews so there will be no added costs for travel.

Jennifer Griffin, a homeowner in Rancho Rinconada area, states the residents are happy about the district's amenities and services. She urges the Commission to leave the Rancho Rinconada area as it is because it provides a vital service to the residents, the community is involved in running it and it adds value to the surrounding properties.

Chairperson Alvarado directs staff to take note of this comment.

Matt Freeman, Planning Manager, MROSD, states that the District is pleased with the final report. He informs, however, that there is a gap in open space services in Santa Clara County because there are some areas within the District SOI that are not within the District boundary. The District is currently conducting a master plan study of that area. He adds that MROSD will annex the area and requests the final report acknowledge that service gap so the District will be in a better position to initiate the annexation process. Mr. Freeman then submits a letter to the Commission.

Chairperson Alvarado states that public comments will be reflected in the minutes and added to the service review determinations and SOI recommendations as appropriate.

The Chairperson 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. Ms. Noel advises that the CEQA determinations be adopted first.

On motion of Commissioner Gage, seconded by Commissioner Constant, it is unanimously ordered on a vote of 5-0 vote, Alternate Commissioner Roland Velasco voting as the cities representative as Commissioner Howe has recused himself, in the absence of Commissioner Howe, that the Service Reviews and Sphere of Influence

Recommendations report for the Northwest Santa Clara County be categorically exempt from CEQA

In response to comment from Mr. Freeman, Ms. Palacherla, advises that the final report could acknowledge the service gap but the service review would not recommend annexation without further staff analysis.

On motion of Commissioner Gage, seconded by Commissioner Constant, it is unanimously ordered on a 5-0 vote, with Alternate Commissioner Roland Velasco voting as the cities' representative as Commissioner Howe has recused himself, that the Final Report on Northwest Santa Clara County Service Review and SOI Update be adopted with the necessary revisions; that Resolution No. 2007-05 be adopted making service review determinations for each of the cities and special districts; that the SOI be updated and Resolution No. 2007-06 be adopted making SOI determinations for each of the cities and special districts; and, that staff be directed to distribute the Final Report to all affected agencies.

**9. CLARIFICATION OF "AGRICULTURAL USE"**

*Commissioner Howe returns at 2:05 p.m. for Item No. 9.*

The Chairperson requests the staff report. Ms. Palacherla reports that the Commission unanimously approved the Agricultural Mitigation Policies at the April 4, 2007 hearing which includes a word-for-word definition of prime agricultural land as found in the Cortese-Knox-Hertzberg (CKH) Act. At the hearing, the Commission directed staff to provide clarification on the term "agricultural use" as mentioned in the CKH Act section defining prime agricultural land. A staff report had been prepared for the May 30, 2007 meeting; however, that staff report has been revised based on comments received to date. The CKH Act defines "prime agricultural land" as "an area of land, whether single parcel or contiguous parcels, that has not been developed for use other than an *agricultural use* and that meets any of the following qualifications..." The term "agricultural use" is not defined in the CKH Act. The Commission directed staff to clarify that term in the context of the CKH Act's definition of "prime agricultural lands." Ms. Palacherla adds that the term, when used by LAFCO as part of LAFCO's definition of "prime agricultural

land," refers to land uses that relate to producing crops, growing fruit/nut trees, grazing cattle, supporting an agricultural industry or other uses that would not exclude the use of land for agriculture and that would be compatible with agriculture, including land left undeveloped or fallow. She states that the staff report contains comment letters and staff response to those letters.

Jim Rowe, Planning Manager, City of Morgan Hill, requests that CKH Act that the term "agricultural use" be the defined using the definition of "agricultural lands." He states that this the Agricultural Mitigation Policies should first apply to lands that are determined as agricultural. If this change is not made, he notes, the mitigation policies apply to prime agricultural and include lands that have never been used for agriculture simply because of their soil classification or by being irrigatable. He states that the primary purpose of the mitigation policies is to preserve lands that are currently being used for agriculture.

Chairperson Alvarado informs that pages 3 and 4 of the staff report respond to the issue raised by Mr. Rowe as well as those raised by the other stakeholders.

Michele Beasley, Field Representative, Greenbelt Alliance, enjoins the Commission to support the staff report clarifying the term "agricultural uses" because the focus should be on the soil that could support agriculture even if the land is left fallow. She notes that the agricultural mitigation policies should not be weakened because it is LAFCO's responsibility to encourage orderly and city-centered growth.

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

Commissioner Wilson informs that she requested that this item be continued to this meeting because she could not be present at the August 1, 2007 meeting. She expresses concurrence with the staff recommendation, stating that having served the Commission for 12 years, it has been a long standing LAFCO policy that fallow lands as long as they are prime soil should be classified as prime agricultural land. She proposes that the Commission take into account the letter from the Friends of Coyote Valley Greenbelt (FROG) about the viability and importance to the local economy of small scale agriculture

at the urban edge. She adds that some people intentionally let their lands go fallow in order to develop them. Regardless of the reason, the irrecoverable loss of agricultural land has to be mitigated.

Commissioner Wilson moves for acceptance of clarification to the term "agricultural use" as mentioned in LAFCO's Agricultural Mitigation Policy No. 6. Chairperson Alvarado seconds the motion.

In response to the inquiry of Commissioner Gage, Ms. Kretchmer advises that the Agricultural Mitigation Policies are using the CKH Act definition word-for-word and the reason for this clarification is because that definition has a phrase "agricultural use." Commissioner Gage states that there are some areas where urban encroachments force farmers to leave the land fallow because surrounding residential or commercial developments prevent them from spraying. He adds that there are lands, whether prime or not, that will never be used for agriculture again because of encroaching development and specific circumstances.

Chairperson Alvarado calls for the question.

It is unanimously ordered on a vote of 5-0 that the staff recommendation be accepted relating to clarification of the term "agricultural use."

*The Chairperson, there being no objection, orders a recess for a fire drill at 2:13 p.m.*

*Alternate Commissioner Trumbull leaves at 2:13 p.m.*

*The Commission reconvenes at 2:41 p.m. The Chairperson confirms that there is a quorum.*

**10. SAN MARTIN INCORPORATION PROPOSAL: INVOICES FOR LAFCO STAFF COSTS**

The Chairperson requests the staff report. Ms. Palacherla advises that this is an information only item on staff time spent on the San Martin incorporation proposal. At the last meeting, the proponents requested that the invoices include a breakdown of the tasks performed and amount of time spent. She notes that the LAFCO Counsel has a new hourly rate to be included in the invoice starting in July 2007.

**11. UPDATE ON COYOTE VALLEY SPECIFIC PLAN DRAFT ENVIRONMENTAL IMPACT REPORT**

The Chairperson requests the staff report. Ms. Noel informs that staff will meet with City of San Jose planning staff next week to talk about the Coyote Valley Specific Plan (CVSP) Environmental Impact Report (EIR). LAFCO is the responsible agency for this project and staff has several concerns about the EIR. The EIR will be used by the Commission to evaluate USA amendment and annexation proposals by San Jose for CVSP. Among the items that will be discussed at the meeting next week are the draft EIR's consistency with LAFCO policies, impact on the loss of agricultural lands, clarification on CVSP implementation, and status of the General Plan triggers.

**12. CONSIDERATION OF CHANGE TO LAFCO MEETING TIMES**

The Chairperson announces a proposal to change the meeting time from 1:00 p.m. to 1:15 p.m. Commissioner Wilson moves for approval. Commissioner Howe seconds the motion. In response to an inquiry by Commissioner Howe, Ms. Palacherla advises that the proposal is being made because there is a conflict with Commissioner Gage's schedule.

It is unanimously ordered on a vote of 5-0 that meeting time be changed from 1:00 p.m. to 1:15 p.m.

**13. REPORT BACK ON THE CALAFCO ANNUAL CONFERENCE IN SACRAMENTO**

The Chairperson requests for the staff report. Ms. Noel reports that Vice Chairperson Constant, Commissioners Howe and Wilson, and LAFCO staff attended the 2007 CALAFCO Conference in Sacramento. During the Conference, Commissioner Wilson was reelected to another term on CALAFCO Board of Directors and the LAFCO of Santa Clara County was presented the award for the "Most Effective Commission in 2007." Commissioner Wilson was a panelist for the session entitled "Sustaining Agriculture: Exploring LAFCO's Role" where she presented LAFCO's Agricultural Mitigation Policies and discussed the process of developing these policies. Many LAFCOs are beginning to consider how they can strengthen their agricultural preservation policies and are interested in Santa Clara LAFCO's recent experience. Commissioner Wilson also moderated the panel entitled, "CEQA and LAFCO: Achieving the LAFCO Mission."

LAFCO staff participated in that mobile workshop that focused on efforts to preserve agricultural and open space lands in Yolo County. Ms. Noel also talked about the different panel discussions. Kathy Kretchmer participated in the Attorneys' Roundtable relating to agricultural mitigation policies, indemnification of LAFCOs, and new legislation affecting LAFCOs. The 2008 CALAFCO Conference will be held in early September 2008 in Studio City.

**14. COMMISSIONERS' REPORTS**

There are no Commissioners' reports.

**15. WRITTEN CORRESPONDENCE**

Chairperson Alvarado states that copies of The Sphere, a CALAFCO publication, have been distributed to the members of the Commission.

**16. NEWSPAPER ARTICLES**

There are no newspaper articles.

**17. PENDING APPLICATIONS / UPCOMING PROJECTS**

The Commission takes note of one pending district annexation, West Valley Sanitation District 2007-1.

**18. ADJOURN**

On the order of the Chairperson, there being no objection, the meeting is adjourned at 2:47 p.m.

The next regular LAFCO meeting is scheduled to be held on Wednesday, December 5, 2007 at 1:15 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California.

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Blanca Alvarado, Chairperson  
Local Agency Formation Commission

ATTEST:

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Emmanuel Abello, LAFCO Clerk



**LOCAL AGENCY FORMATION COMMISSION OF  
SANTA CLARA COUNTY  
MINUTES  
WEDNESDAY, DECEMBER 5, 2007**

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**1. ROLL CALL**

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 5th day of December 2007 at 1:18 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, Vice Chairperson Pete Constant, and Commissioners Don Gage, John Howe and Susan Vicklund-Wilson. Alternate Commissioner Terry Trumbull is also present.

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 PRESENTATION**

There is no public presentation.

**3. APPROVE MINUTES OF OCTOBER 3, 2007 MEETING**

On the request of Commissioner Howe, there being no objection, the Chairperson orders that approval of minutes of October 3, 2007 meeting be deferred to February 2, 2008.

**4. SPHERE OF INFLUENCE (SOI) UPDATES FOR FIRE DISTRICTS IN SANTA CLARA COUNTY**

This being the time and place set to consider the sphere of influence (SOI) updates for fire districts in Santa Clara County, the Chairperson declares the public hearing open.

The Chairperson requests the staff report. Ms. Noel states that the item is the adoption of the SOI reports and SOI determinations prepared by LAFCO staff for the Los Altos Hills County Fire Protection District (LAHCFPD), Santa Clara County Central Fire

Protection District (SCCCFPD), Saratoga Fire Protection District, and the South Santa Clara County Fire Protection District (SSCCFPD). She informs that after the packets had been sent out, SSCCFPD requested that Determination No. 3 be revised to read, "However, the District's infrastructure needs and operations management practices are determined by the Board of Commissioners and Board of Directors." She indicates that staff concurs with this revision.

Ms. Noel recommends that the Commission reaffirm the existing SOIs and adopt the SOI determinations for these fire districts. She informs that staff has determined that these actions are exempt from CEQA under CEQA §15061(b)(3) General Rule because reaffirming the current SOIs would not have any significant impact on the environment.

The Chairperson determines that there are no requests from the public to speak on the item.

On motion of Commissioner Constant, seconded by Commissioner Wilson, it is unanimously ordered on a vote of 5-0 that the public hearing be closed.

On motion of Commissioner Constant, seconded by Commissioner Howe, it is unanimously ordered on a 5-0 vote that the SOI update report for LAHCFD, SCCCFPD, Saratoga Fire Protection District, and SSCCFPD be determined as categorically exempt from CEQA under CEQA §15061(b)(3) General Rule; that SOIs be reaffirmed for LAHCFD, SCCCFPD, Saratoga Fire Protection District, and SSCCFPD; and, that Resolution No. 2007-08 be adopted, making SOI determinations for LAHCFD, SCCCFPD, Saratoga Fire Protection District, and SSCCFPD.

#### **5. SOI UPDATES FOR WATER AND RESOURCE CONSERVATION DISTRICTS IN SANTA CLARA COUNTY**

In response to an inquiry by the Chairperson, Ms. Noel informs that this item is a noticed public hearing and that staff has prepared a Negative Declaration and Initial Study for the San Martin County Water District (SMCWD).

On motion of Commissioner Gage, seconded by Commissioner Constant, it is unanimously ordered on a 5-0 vote that the public hearing be declared open.

The Chairperson requests the staff report. Ms. Noel informs that Dudek and Associates, under staff direction, prepared the SOI report and determinations for water

and resource conservation districts. With completion of this SOI update, LAFCO now meets the statutory requirement to update SOIs of all special districts by January 1, 2008. Staff recommends that SOIs be reaffirmed for Aldercroft Heights County Water District (AHCWD), Guadalupe-Coyote Resource Conservation District (GCRCDD), Loma Prieta Resource Conservation District (LPRCD) and the Santa Clara Valley Water District (SCVWD). The report also recommends that PHCWD's SOI be amended to include APNs 175-46-014 and 015, and 175-36-004 that are already receiving services from that district. The report also recommends that SMCWD's SOI be amended to include approximately 170 acres that are now receiving out-of-agency service from that district. Ms. Noel advises that each special district has reviewed the SOI determinations, and informs that all these actions, except those for SMCWD, are exempt from CEQA under §15061(b)(3) General Rule. The Initial Study and Negative Declaration prepared by Dudek and Associates have been circulated and no comments have been received. Finally, Ms. Noel indicates that staff has prepared the Negative Declaration for actions related to the SMCWD.

The Chairperson determines that there are no members of the public who wish to speak on the item. On motion of Commissioner Howe, seconded by Commissioner Gage, it is unanimously ordered on a 5-0 vote that the public hearing be closed.

On motion of Commissioner Gage, seconded by Commissioner Howe, it is unanimously ordered on a 5-0 vote that the SOI Reports, including the CEQA actions, be adopted for Aldercroft Heights County Water District, Guadalupe-Coyote Resource Conservation District, Loma Prieta Resource Conservation District, Purissima Hills County Water District, San Martin County Water District and Santa Clara Valley Water District; that Resolution No. 2007-09 be adopted, adopting the SOI determinations for Santa Clara Valley Water District, Aldercroft Heights County Water District, Purissima Hills County Water District, Guadalupe-Coyote Resource Conservation District, and Loma Prieta Resource Conservation District; and that Resolution No. 2007-10 be adopted, adopting SOI determinations for San Martin County Water District.

## **6. POLICIES IMPLEMENTING ASSEMBLY BILL 745**

This being the time and place set to consider the proposed policies implementing AB 745, the Chairperson declares the public hearing open.

The Chairperson requests the staff report. Ms. Palacherla informs that AB 745, which requires additional disclosures on expenditures relating to proposals submitted to LAFCO, will take effect on January 1, 2008. Currently, only expenditures for proposals submitted to LAFCO that have been placed on the ballot must be disclosed pursuant to rules of the Political Reform Act for local initiative measures. Under AB 745, contributions of \$100 or more must be reported once the proponents or opponents of a proposal to LAFCO spend \$1,000 or more. AB 745 also requires that the disclosures be reported to LAFCO instead of the Fair Political Practices Commission (FPPC). Ms. Palacherla indicates that the California Association of Local Agency Formation Commissions (CALAFCO) is working with the State legislature to transfer that responsibility from LAFCOs to FPPC by January 1, 2009. Until then, LAFCOs will adopt policies to implement AB 745 and accept the disclosures. She advises that a group of LAFCO attorneys developed a model policy that was adopted by the CALAFCO Board of Directors. Based on that model, staff has prepared lafco policies. The policies would require disclosure of expenditures for preparing environmental documents and financial feasibility documents; and FPPC forms will be used for filing the disclosures. Ms. Palacherla indicates that the policies and disclosure forms will be available on the LAFCO website by January 1, 2008.

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

Commissioner Wilson informs that CALAFCO is working with the State legislature to pass the responsibility of accepting disclosures from LAFCOs to FPPC by December 2008.

On motion of Commissioner Howe, seconded by Commissioner Constant, it is unanimously ordered on a vote of 5-0 that policies be adopted to implement AB 745 regarding disclosure of contribution and expenditures related to LAFCO proposals.

**7. INITIAL STUDY AND NEGATIVE DECLARATION FOR THE PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN**

This being the time and place set to receive public comments on the Initial Study and Negative Declaration for the proposed incorporation of the Town of San Martin, the Chairperson declares the public hearing open.

The Chairperson requests the staff report. Ms. Noel introduces Steven Jenkins, Director for Governmental Services, Michael Brandman Associates. Michael Brandman Associates is the consulting firm selected by LAFCO to prepare the Initial Study and Negative Declaration for the proposed incorporation. Mr. Jenkins provides an overview of Brandman and Associates' experience with environmental assessments relating to incorporation of new cities. He explains that, if approved, the incorporation of San Martin would transfer general governmental jurisdiction from the County to the new town. He informs that the proponents' stated objectives of incorporation are to create local accountability, obtain local control of land use, growth and planning policies, maintain the rural residential character and small scale agricultural activities that currently exist within the Town. The incorporation would result in no change to existing public services and service levels. He notes that these objectives are very important because these provide the information that the environmental document uses to determine the environmental impacts.

Mr. Jenkins then directs attention to the map showing the proposed boundaries, stating that the area is generally bounded by Masten Avenue, Watsonville Road, Maple Avenue, and New Avenue, and is located along Highway 101 between the cities of Morgan Hill and Gilroy. He notes that the proposed incorporation will cause no changes to existing government organization, city boundaries, city limits or jurisdictions. In addition, the proponents are not proposing any change in the type or level of existing services to the area, and that no new services are being proposed. He then directs attention to a map showing the boundaries of existing service providers.

Mr. Jenkins informs that if incorporation is approved, the County General Plan and County ordinances, including zoning ordinances, would transfer over to the new city. The transfer of ordinances is by law while transfer of County General Plan is traditional to all

incorporations in the State. He informs that a new city has 30 months by which to adopt its general plan. He notes that the incorporation proposal does not change General Plan land use and zoning designation, does not change the level of services, and no development is being proposed. With respect to Williamson Act contracts, State law provides that the new town would succeed to all current contracts and provide for administrative, legal and contractual requirements. He directs attention to a map indicating the General Plan land uses and the Williamson Act parcels.

Mr. Jenkins briefly walks through the CEQA process by stating that all responsible and trustee agencies have been consulted and informed that the initial study is being prepared. As part of CFA process, all service providers in the area have been requested to provide information regarding provision of services. On November 6, the Initial Study and Notice of Intent to Adopt Negative Declaration had been circulated, furnished to the State Clearinghouse, published in a newspaper, posted on a public bulletin board, sent to relevant agencies and jurisdictions throughout the County. He informs that the 30-day public comment period ends on December 5, 2007, at 5:00 p.m., and states that the purpose of today's meeting is to accept comment. He informs that there are no mitigation measures proposed because no significant environmental impact is found. The Initial Study, however, notes that there are existing status quo environmental problems, such as nitrate and water contamination, which the incorporation would not change. Finally, Mr. Jenkins informs that the purpose of the hearing is only to receive comment relating to adequacy of the Initial Study and proposed Negative Declaration.

The Chairperson opens the public comment period for this item.

Brian Schmidt, Committee for Green Foothills, expresses agreement with concerns raised in a letter from the City of Morgan Hill regarding the boundary of the new Town and its environmental impact. He suggests that further action on the Negative Declaration be held pending the final boundaries of the proposed town. He inquires how LAFCO's agricultural mitigation and USA policies are applied to the proposed incorporation.

Chairperson Alvarado reminds speakers that comments should only be about the adequacy of the Initial Study. The Chairperson indicates that some of the questions raised

by Mr. Schmidt will also come up later. She notes that more work needs to be done about the boundary. In response to an inquiry by the Chairperson, Ms. Palacherla advises that the boundary evaluated in the Initial Study is the boundary proposed by the proponents, any deletion would be covered by the CEQA document; however, additions would need additional CEQA evaluation.

At the request of the Chairperson, Mr. Schmidt comments that the environmental study would be more adequate after the boundaries are finalized. He adds that a smaller boundary would cause fewer environmental impacts.

Jim Foran, resident of Santa Clara County, states that LAFCO's responsibility to protect agricultural lands does not change whether the LAFCO action is incorporation or annexation. He comments that there is a significant environmental impact because by incorporating these lands, they would no longer be protected by the agricultural mitigation policies. He adds that this is a significant CEQA issue that would require an EIR.

Richard van't Rood, SMNA Spokesperson, expresses support for the Initial Study and Negative Declaration, stating that the consultant prepared a thorough report.

The Chairperson determines that there are no members of the public who wish to speak on the item. On motion of Commissioner Constant, seconded by Commissioner Howe, it is unanimously ordered on a vote of 5-0 that the hearing be closed.

In response to an inquiry by the Chairperson, Ms. Palacherla states that there is a difference between incorporation of a new city and annexation into a city for CEQA purposes. The difference is that the proposed incorporation does not intend to change land use; whereas, a USA amendment or annexation generally involves changes to land use and level of services. CEQA can only consider impacts known at the time and can not speculate on land use actions of the future town council. Actions of the future town council would be subject to CEQA.

On motion of Commissioner Gage, seconded by Commissioner Constant, it is unanimously ordered on a vote of 5-0 that public comment be accepted on the Initial Study and Negative Declaration.

**8. PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN**

**8.1 UPDATE ON THE INCORPORATION PROCESS**

The Chairperson requests the staff report. Ms. Palacherla informs that the administrative draft CFA is being circulated for a two-week review to the proponents and County staff in preparation for revenue neutrality negotiations. LAFCO will facilitate the negotiations and bring the Draft CFA to the Commission in February 2008.

**8.2 CONSIDERATION OF POTENTIAL MODIFICATIONS TO THE PROPOSED INCORPORATION BOUNDARIES OF THE TOWN OF SAN MARTIN**

The Chairperson requests the staff report. Ms. Palacherla directs attention to a map indicating the San Martin incorporation boundary as proposed by incorporation proponents. The boundary as proposed is bounded on the north by Maple Avenue along the SOI of Morgan Hill, on the south by Masten Avenue along the SOI of Gilroy; on the east by New Avenue; and, on the west by Watsonville Road. This boundary includes about 16.35 square miles which is about the size of Gilroy and approximately four or five square miles larger than Morgan Hill. LAFCO is required to consider alternative boundaries and is allowed to modify boundaries in its review of proposals in accordance to Government Code §56668 and 56375(a) and (l), and also per LAFCO's policies. As part of the review, LAFCO must consider whether the proposed incorporation boundaries are consistent with the State law, LAFCO policies and other local policies. Ms. Palacherla states that LAFCO can minimize or eliminate conflicts with CKH Act and LAFCO policies by modifying the incorporation boundary. State law requires that boundary issues be evaluated and directs the Executive Officer to present alternative boundaries for the Commission's consideration at the public hearing.

Ms. Palacherla walks the Commission through the report. She states that after incorporation the future town will adopt the County General Plan and zoning ordinance. However, there is no guarantee that the new town will continue to use the County's General Plan and zoning ordinance for the long term. Once these lands are within the town limits, LAFCO would have no authority over the conversion of agricultural lands.



She notes that LAFCO would be concerned about the development within the town that would impact the surrounding agricultural lands. In addition, County General Plan requires buffers as separators between the cities in the South County. The purpose of buffers is to maintain community identity, avoid encroachment into agricultural lands and minimize land use conflicts. She adds that Morgan Hill and Gilroy contain unincorporated areas within their SOIs that serve as urban buffers. The proposed San Martin boundaries go all the way up to the SOIs of Gilroy and Morgan Hill.

Ms. Palacherla continues by stating that there is a large amount of agricultural land within the proposed boundaries of San Martin; approximately 2,132 acres designated as prime farmland, 257 acres as unique Farmland, and 577 acres as farmland of statewide importance. There are also lands within the proposed boundaries designated in the County General Plan as Agricultural Medium Scale. In addition, there is approximately 2,200 acres of Williamson Act lands. Much of the Williamson Act contracts are in non-renewal, however, significant amount of lands in the southwest and northern areas of the proposed San Martin boundary will remain under the contract.

Ms. Palacherla advises that LAFCO take a look at the boundaries, consider each area and determine how to reduce the impact of including these into the boundaries of the new town. She then provides an explanation for each of the alternatives.

Area 1 is located in the east and is composed mainly of ranchlands and parklands. The parklands are part of the County's Coyote Lake Harvey Bear Ranch. County Parks and Recreation Department requested that these lands be excluded from the proposed San Martin boundary. LAFCO policies also require that proposed incorporations exclude open space lands. Staff recommends exclusion of these lands from the proposed boundary.

Area 2, located along California Avenue, is an unincorporated area within Morgan Hill's SOI. This area would become an island if the incorporation boundary is approved as proposed. Staff recommends removing this area from Morgan Hill's SOI and adding it to San Martin's proposed boundary. The City of Morgan Hill has indicated support for this alternative boundary. Staff will discuss this area further with Morgan Hill.

Area 3, the Crouner Subdivision, is a small area between Monterey Road and the Railroad, and has sanitation and water issues. Since the proposed incorporation does not intend to provide urban services, Morgan Hill will be the closest service provider. Staff is proposing to remove this area from the proposed San Martin boundary and add it into Morgan Hill's SOI. Staff will discuss this area with Morgan Hill.

Area 4, an area north of Middle Avenue, is designated in the County General Plan as Medium Scale Agriculture. State law and LAFCO policies discourage inclusion of agricultural lands and require LAFCO to direct growth away from agricultural lands and minimize impact on adjacent agricultural lands. County policies support creation of urban buffers as separators between cities in South County.

In response to an inquiry of the Chairperson, Ms. Palacherla informs that this area has about 1,000 acres designated as Medium Scale Agriculture. Staff is proposing to exclude this from the proposed city limits but it could be included in the town's SOI.

Area 5, located in southwest portion of the proposed town, is composed of large parcels of agricultural lands. This area has portions designated as Medium Scale Agriculture by the County General Plan and as prime farmland designated by the State Department of Conservation, and has a high concentration of lands under Williamson Act contracts. Ms. Palacherla reiterates LAFCO policies discouraging inclusion of agricultural lands, reduction of impact to adjacent agricultural lands, and the County's policy on community separators. She recommends to removal of this area from the proposed town limits and include it in San Martin's SOI.

Area 6 is the open space conservation easement area of the Cordevalle Golf Course. Ms. Palacherla advises that since LAFCO policies discourage inclusion of open space in incorporation boundaries and since the easement is owned by the County, staff will determine the impact of including a portion of this area in the proposed boundaries of San Martin and excluding the open space portion. Staff will work with the South County Fire Protection District to discuss issues relating to wild land fire protection services for this area.

Area 7, an area west of Cordevalle, is designated by the County GP as Agriculture Medium Scale and has issues similar to areas 4 and 5. In response to an inquiry by the Chairperson, Ms. Palacherla advises that staff will determine the acreage of the area.

Ms. Palacherla indicates that these are preliminary recommendations regarding potential modifications to the proposed boundary and staff will work with the proponents and other agencies to further evaluate these alternatives.

In response to an inquiry by the Chairperson, Ms. Palacherla states that the CFA being prepared covers the boundaries as proposed; however, the consultant is also evaluating the fiscal impact of the alternatives. In response to a follow-up inquiry by the Chairperson, Ms. Palacherla indicates that the consultant would still be on schedule as the analysis of alternatives is part of the contract. In response to an inquiry by Commissioner Wilson, Ms. Palacherla indicates that additional environmental study for Area 2 will be needed.

Commissioner Gage expresses agreement with staff proposal to exclude Areas 1 and 3 from the proposed boundaries and to include Area 2. However, he expresses concerns with excluding Areas 4 and 5 because although Area 4 is zoned agricultural, its actual land use is rural-residential. He states that people living in these small parcels identify with San Martin and will be disenfranchised if they are unable to vote in San Martin. He proposes that staff reconsider Area 4. In addition, Commissioner Gage states that Area 5 is likewise rural residential, stating that the Board of Supervisors has recently approved a 19-lot subdivision on a 100-acre property. He reiterates that residents in the area identify themselves with San Martin and would be disenfranchised if they are excluded. The Chairperson indicates that these potential modifications are for further study. Commissioner Gage responds that he is expressing his concerns because these modifications need to be studied. He continues by stating that areas 6 and 7 should also be studied. The Chairperson restates Commissioner Gage's concern relating to disenfranchisement of residents excluded from San Martin. Commissioner Gage continues that urban buffers could become no man's land because residents cannot vote in San Martin and are subject to County policies. These areas become pockets that, in the future,

LAFCO would pressure San Martin to annex. He continues that urban buffers do not make a difference and states that there are already greenbelts in San Jose and Coyote Valley. He suggests that the San Martin boundary be drawn in a way to avoid potential problem in the future of being unable to annex some properties because of agricultural lands between these properties and the town's boundary.

At the request of the Chairperson, Ms. Palacherla clarifies the difference between islands and unincorporated areas. She explains that islands are developed unincorporated lands within a City's urban service area surrounded by cities. On the other hand, there is much unincorporated land around Morgan Hill, Gilroy and San Jose which are meant to remain in rural use.

In response to an inquiry by Commissioner Howe, Ms. Palacherla advises that according to preliminary staff analysis, Area 2 should be included in the proposed incorporation boundaries. Staff will work with Morgan Hill in order to evaluate environmental impacts of changing that city's SOI. She adds that the reason staff is recommending inclusion of this area is to avoid creating an island and also because this area better relates geographically with San Martin. In response to a follow-up inquiry by Commissioner Howe, Ms. Palacherla advises that the completed Initial Study and Negative Declaration does not include Area 2. After further analysis, if staff's final recommendation is to include Area 2, the appropriate CEQA analysis would be conducted.

The Chairperson opens the public comment period for this item.

Joe Rosa, resident of Masten Avenue, San Martin, expresses agreement with the comments made by Commissioner Gage. He requests that Area 5 be included in the proposed boundary because it will be fairly represented by San Martin. He informs that when he gathered voter signatures for incorporation petitions at least seven out of ten voters in the area are in favor of the incorporation. He adds that Area 5 should be part of the incorporation boundary because it sets a very clear boundary line. He states that it is more difficult to deal with the County and notes that the reduction of incorporation area will weaken San Martin's tax base.

Brian Schmidt, Committee for Green Foothills, expresses support for the staff proposal. He notes that inclusion of areas 4 and 5 could be controversial. Both areas are part of larger unincorporated areas. He proposes that further discussions take place relating to the impact to agriculture. The desire of residents to be part of San Martin is not a sufficient reason to include agricultural lands in the boundary. He inquires how the USA and agricultural mitigation policies would be implemented in the incorporation process because that would address the environmental questions. He cautions that EPS, the consultant for CFA, is the same company that came up with rosy fiscal projections for Coyote Valley.

Richard van't Rood, Spokesperson, San Martin Neighborhood Alliance, states that the initial boundaries had been discussed by proponents with staff before the petition was filed. The proponents wanted to include Area 2; however, it was not possible because it is in Morgan Hill's SOI. He concurs with excluding Area 3 because it is more associated with Morgan Hill than San Martin. That area was included in the proposed boundaries because of suggestion from staff. He likewise expresses concurrence with excluding Area 1 stating that this area was proposed to be included because of the way Morgan Hill's SOI boundary was drawn. He states that the ranchlands to south in Area 1 should be excluded because fire protection issues. He notes that Area 6 should likewise be excluded because of similar issues. He states that these are the recommendations that SMNA either made or concurred with. However, he objects to excluding areas 4 and 5 stating that he did not have the opportunity to work with staff on this issue. The proponents submitted a letter to LAFCO on October 5, 2007 expressing concerns with alternative boundaries. He informs that the Commission should have a copy of that letter. Most of the properties in areas 4 and 5 are already divided into rural residential lots and the agricultural designation is no longer consistent with the existing development and land use. The proponents and staff toured the area at an early stage in the process. He expresses concern that the timing and accuracy of the revenue neutrality negotiations maybe impacted because these two areas have roads that need to be maintained and they generate sales and property taxes. He notes that it may take a lot of work to redo the CFA and that could derail the

incorporation effort. He informs that the environmental report has recommended a Negative Declaration for incorporating the entire area and the only reason to take out areas 4 and 5 would be for a policy reason. He reiterates that these two areas are much more rural residential than agricultural because they have been cut up into small lots. The proponents objected to the incorporation policies, especially the vague definition of prime agricultural lands. He proposes that exclusions from the proposed boundaries should not be based on designation of land because the entire San Martin looks the same.

Michele Beasley, Greenbelt Alliance, states that the SMNA has the purest of intentions in incorporating to maintain their community's rural character. She notes that CEQA cannot speculate on what the future San Martin City Council would do although the city council would have to deal with significant development pressures because the town is located along CalTrain and Highway 101. Greenbelt Alliance is concerned that the inclusion of farmlands will lead to the premature conversion of the fertile and viable resource and supports staff proposal to exclude certain areas, especially parklands, ranchlands, and the agricultural lands. These provide separators between San Martin and the cities of Morgan Hill and Gilroy. Exclusion of these areas will be in keeping with the community's desire to preserve the rural character of the community, as well as LAFCO's policies. LAFCO has adopted the agricultural mitigation policies; however, the expansive boundaries drawn by the proponents would include hundreds of acres of farmlands that would not be mitigated. She proposes that the boundary lines be finalized before the environmental assessment is completed. She states that Greenbelt Alliance is supporting the staff modifications and is advocating for a tighter boundary.

The Chairperson notes that there are no more requests to speak from the public.

The Chairperson states that the intention of the proponents to preserve the rural characteristic of San Martin is a great service to Santa Clara County, especially in view of the plan to develop Coyote Valley. She expresses the desire to visit areas 4 and 5 because these are unique and special areas categorized by the State as prime farmland or farmland of statewide importance. The Commission is looking at these two areas from a policy perspective based on the policies for incorporation adopted two months ago. She informs

that it may not require two months for the Commission to study these two areas, and that staff has indicated that the consultant is able to conduct the financial analysis in a timely manner. The concern about the impact of these exclusions on the new town's ability to pay for services is valid; however, LAFCO's decision must be consistent with its policies. The future town council may have the strongest interest to preserve the rural character of San Martin; however, other things could transpire and there is no guarantee that the General Plan will not be changed. The Chairperson expresses the desire to know more about this incorporation proposal in order to make the best informed decision.

Commissioner Wilson expresses concurrence with the Chairperson's comments stating that the proponents and the Commission have different perspectives on the incorporation. She states that as a resident of Morgan Hill, she is familiar with areas 4 and 5. She proposes that these two areas be studied further in order to carve out rural residential portions from agricultural areas. She notes that this is just a study of the proposed boundaries and to make changes as appropriate. She expresses concurrence with the exclusion of areas 1 and 3, and the inclusion of Area 2; however, inclusion of areas 4, 5, 6 and 7 should be studied.

Commissioner Gage moves to exclude areas 1 and 3, include Area 2, include areas 4 and 5, subject to further study, and to study the inclusion of areas 6 and 7. Commissioner Howe seconds the motion.

At the request of the Chairperson, Commissioner Gage restates his motion. Commissioner Wilson states that she is unable to support the motion that includes areas 4 and 5 in the proposed boundaries. At the request of Commissioner Wilson, Commissioner Gage states that his motion is direction for staff to continue study of areas 4 and 5 because certain portions are not agricultural. He explains that the motion is to include areas 4 and 5 at this time, and to direct staff to study them further.

Commissioner Wilson proposes to amend the motion to treat areas 4, 5, 6 and 7 as the same and designate for further study. In response to an inquiry by Commissioner Gage, Commissioner Wilson clarifies that her amendment to the motion is to subject areas 4, 5, 6 and 7 to further study to determine whether they should be included or excluded

from the proposed boundary. Commissioner Gage states that he is amenable to the proposed amendment as long as areas 4, 5, 6 and 7 continue to be part of the proposed boundary until they are removed. At the request of Commissioner Gage, the Chairperson informs that these boundary modifications would not interfere with the CFA timeline. Commissioner Gage continues that the reason for including areas 4 and 5 at this time is to see what the CFA findings are with these areas included so that it would be known what the CFA findings would be if these areas are taken out .

In response to an inquiry by the Chairperson, Ms. Palacherla advises that State law requires the Commission to look at alternative boundaries, as well as the financial and environmental impacts of the alternative boundaries. She further advises that state law does not allow LAFCO to make decisions dictated by fiscal impacts. She adds that the CFA will have to look at the financial impacts of all alternative boundaries and the Commission would have the ability to decide what to do with the proposal. In response to a follow up inquiry by the Chairperson, Ms. Palacherla advises that the timeline for incorporation and the CFA has taken into account the evaluation of alternative boundaries as required by law.

In response to an inquiry by Commissioner Howe, Ms. Palacherla indicates that the timetable does not include the CEQA study for inclusion of Area 2; however, the incorporation schedule will not be affected. In response to an inquiry by the Chairperson, Ms. Palacherla states that timeline also takes into account the time needed to coordinate with the City of Morgan Hill.

The Chairperson states that under the law, the financial analysis should not be the driving force in determining whether or not to approve the incorporation. In the meantime, the Commission is required by law to look at alternative boundaries. At the request of the Chairperson, Commissioner Gage states that alternative boundaries may impact financial reports and there may not be enough time for that. Areas 4 and 5 are rural residential for the most part, and the future town council, like in any jurisdiction, can decide not to implement agricultural mitigation policies. He states that San Martin residents want to control development in the area instead of the County. Chairperson



Alvarado comments that signatories of the petition for incorporation who are also going to vote in the election have signed on the basis of a certain kind of town. Commissioner Gage notes that the future town cannot control development in areas 4 and 5 if these are outside its boundary. He states that San Martin is on septic system and has no facilities for services such as sewer system to support large urban development.

Chairperson Alvarado states that she is unable to support the motion because its impact is unclear. Commissioner Wilson states that the motion is confusing and suggests that areas 4 and 5 should be studied further so as to allow the Commission to perform its statutory mandate of reviewing alternative boundaries. In addition to its agricultural mitigation policies, the Commission must also look at the premature conversion of agricultural lands, and further study must be on agricultural lands being incorporated.

The Chairperson calls the question.

It is unanimously ordered on a vote of 5-0 that areas 1 and 3 be excluded from the proposed boundaries, Area 2 be included, and areas 4, 5, 6 and 7 be subject to further study.

*Commissioner Constant leaves at 2:50 p.m.*

## **8.2 INVOICES FOR LAFCO STAFF COSTS**

The Commission takes note of the invoices for LAFCO staff costs.

## **9. APPOINTMENT OF CHAIRPERSON AND VICE-CHAIRPERSON FOR 2008**

On motion of Commissioner Gage, seconded by Commissioner Howe, it is ordered on a vote of 3-0, with Commissioner Wilson abstaining and Commissioner Constant absent, that Commissioner Constant be appointed the Chairperson and Commissioner Wilson the Vice-Chairperson for 2008.

Commissioner Howe comments that he will be termed out before his turn as Chairperson. Commissioner Wilson expresses that she is willing to serve as Chairperson out of order in 2010 to enable Commissioner Howe to serve as Chairperson in 2009.

## **10. 2008 SCHEDULE OF LAFCO MEETINGS**

Commissioner Howe proposes to remove the July 2, 2007 meeting from the 2008 schedule of LAFCO meetings. Chairperson Alvarado and Commissioner Gage express

agreement. Commissioner Wilson suggested that since July 2 would not be acceptable, another meeting date must be set in July because of San Martin incorporation.

Commissioner Gage notes that it is better to hold the meeting on July 2 rather than later on that month. Ms. Palacherla advises that a meeting may be needed in order to bring the incorporation to the November 2008 elections. Chairperson Alvarado and Commissioner Gage suggest that the meeting be held on July 2 as proposed.

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 2008 schedule of LAFCO meeting be approved, as proposed.

**11. COMMISSIONERS' REPORTS**

There are no reports from the Commissioners.

**12. WRITTEN CORRESPONDENCE**

There is no written correspondence.

**13. NEWSPAPER ARTICLES**

The Chairperson takes note of the October 24, 2007 Metroactive article entitled, "What Grows Around, Comes Around," relating to cafeterias of local high tech companies like Google, eBay, HP and Yahoo using local farm produce. The Chairperson indicates she will inquire about the food service at the County jail. Commissioner Gage indicates that grocery chains like Raley's would not buy locally even as local produce, like corn, are superior. Commissioners Alvarado and Gage agree that fruits produced by LJB Farms in San Martin are better-quality.

**14. PENDING APPLICATIONS / UPCOMING PROJECTS**

The Commission takes note of two pending applications, namely, West Valley Sanitation District 2007-01 and San Jose Urban Service Area Amendment 2007.

15. **ADJOURN**

On the order of the Chairperson, there being no objection, the meeting is adjourned at 2:58 p.m.

The next regular LAFCO meeting is scheduled to be held on Wednesday, February 6, 2008 at 1:15 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California.

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Blanca Alvarado, Chairperson  
Local Agency Formation Commission

ATTEST:

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Emmanuel Abello, LAFCO Clerk

**LAFCO Meeting: February 6, 2008**

**TO:** LAFCO

**FROM:** Neelima Palacherla, Executive Officer  
Dunia Noel, LAFCO Analyst

**SUBJECT:** **SAN JOSE URBAN SERVICE AREA AMENDMENT (2007) &  
RIVERSIDE# 52 REORGANIZATION**

Agenda Item # 7

**STAFF RECOMMENDATION**

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**CEQA Action and Required Findings:**

As a Responsible Agency under CEQA, LAFCO must take the following actions regarding the Mitigated Negative Declaration for any project approved by the Commission:

1. Find that the *Initial Studies and Mitigated Negative Declarations* approved by the City of San Jose on June 2, 2006, and on April 25, 2007; and the *Addendum* approved by the City of San Jose on December 11, 2007 were completed in compliance with CEQA and are an adequate discussion of the environmental impacts of the project.
2. Find that prior to making a decision on this project, LAFCO reviewed and considered environmental effects of the project as outlined in the *Initial Studies and Mitigated Negative Declarations and Addendum*.
3. Find that monitoring programs were approved by the City of San Jose as Lead Agency and that the monitoring programs ensure compliance with the mitigation measures identified in the *Mitigated Negative Declarations and Addendum* that would mitigate or avoid significant impacts associated with the Urban Service Area Expansion and reorganization, over which LAFCO has responsibility.

**Project Action**

1. Approve San Jose's request for expansion of the urban service area boundary to include approximately 3.2 acres of land which is a portion of a parcel (APN 678-09-013) located at 715 Piercy Road.
2. Approve the proposed annexation (Riverside # 52 Reorganization) of the two parcels (APNs 678-09-013 and 005) located at 715 and 725 Piercy Road to the

City of San Jose and concurrent detachment from the Santa Clara County Fire Protection District and the County Library Service Area and further waive protest proceedings pursuant to Government Code Section 56663.

## **PROJECT DESCRIPTION AND BACKGROUND**

The City of San Jose proposes to expand its Urban Service Area (USA) boundary to include a portion of a parcel (APN 678-09-013) located at 715 Piercy Road. The proposed expansion includes approximately 3.2 acres of land located below the 15% slope line and within the City's urban growth boundary (UGB). The proposal also includes annexation of the entire parcel to the City in order to allow the City to maintain a permanent open space designation on the portion of the parcel that would remain outside the urban service area. Additionally, in order to avoid creating an island, the City proposes to annex an adjoining parcel (APN 678-09-005) located at 725 Piercy Road which is outside the City's USA and UGB. Since the City is proposing to annex areas outside the City's USA, the City must seek LAFCO approval.

The purpose of the USA expansion and annexation is to eventually allow the development of 41 single family homes on the portion of the property located within the USA and below the 15% slope line.

The larger parcel (715 Piercy Road), a portion of which is proposed for inclusion in the USA, is currently developed with equestrian facilities – a stable and a riding ring. The City of San Jose has applied a Medium Low Density Residential (8 dwelling units/acre) General Plan designation on the portion proposed for inclusion in the USA and has applied Private Open Space and Non-urban Hillside designations on the portion outside the USA. The Private Open Space area may be utilized for recreational uses for the benefit of the residents of the area and the remaining land will be maintained as permanent open space under the Non-Urban Hillside designation. The pre-zoning designation for the property is A (PD) Planned Development.

The smaller parcel (725 Piercy Road) is developed with a single family residence and accessory structures. The City has applied a Non-Urban Hillside General Plan designation and Open Space pre-zoning designation to the property.

Both the properties are designated Hillside under the County General Plan. Both parcels are adjacent to the City's current USA and City limits. A single family residential subdivision (Basking Ridge subdivision) exists to the southwest; vacant lands, rural residential uses and hillside grasslands exist to the north, west and east of the project site.

## **ENVIRONMENTAL ASSESSMENT**

The City of San Jose approved a Mitigated Negative Declaration on June 2, 2006 for the proposed Urban Service Area expansion. The City of San Jose also approved a Mitigated Negative Declaration on April 25, 2007 and an Addendum to the Mitigated Negative Declaration on December 11, 2007 for the Riverside No. 52 reorganization. The

reorganization involves the annexation of 14.27 acres to the City of San Jose and detachment of these acres from the Central Fire Protection District and the County Library Service Area. The City is requiring mitigation measures to reduce potential significant environmental effects to a less than significant level for air quality, biological resources, geology and soils, and hydrology and water quality. Mitigation Monitoring Programs consistent with the Mitigated Negative Declarations and Addendum were approved by the City of San Jose. The monitoring programs will ensure compliance with the mitigation measures that would mitigate or avoid significant impacts associated with the project, over which LAFCO has responsibility.

## **CONSISTENCY WITH SAN JOSE GENERAL PLAN**

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The City of San Jose adopted its Urban Growth Boundary (UGB) or Greenline in 1996. The UGB establishes the maximum extension of urban development and urban services - both intended and anticipated in the City's General Plan. The City's policies for its UGB state that no urban development should be allowed outside the UGB and that the UGB should contain lands suitable and appropriate for urban purposes including all USA lands and certain lands located below the 15% slope line and deemed potentially suitable for future development. To ensure integrity of the boundary, significant modifications to the boundary and its policies are strongly discouraged. Significant modifications may be considered only during a comprehensive review of the General Plan and only if the City Council makes certain findings regarding service capacities / impacts, fiscal impacts and public benefit considerations, among others. However, minor modifications to the UGB may be considered during the Annual Review of the General Plan if certain criteria are met such as the slope of the property, size of area affected and location of property relative to existing and planned urban uses and services among others. In June 2006, the San Jose City Council approved the General Plan amendment and a minor expansion of the City's urban growth boundary to include the proposal area.

## **CONSISTENCY WITH LAFCO POLICIES**

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### **Conversion of Prime Agricultural Lands and Open Space**

The two parcels are currently developed with a residence and accessory structures and a riding ring and stables. Inclusion of the area in the City's USA and annexation to the City will not result in the loss of agricultural or open space lands. A portion of the property is designated for permanent open space upon annexation.

### **Logical and Orderly Boundaries**

The proposal area is nearly surrounded by city lands. However the lands to the east and north of the property are not in the City's USA or its UGB as they are above the 15% slope line. While the proposal for USA includes only a portion of the parcel, annexation will include the entire parcel as well as the adjacent parcel. Annexation of the entire parcel would allow the City to apply the appropriate landuse and zoning designations to

the portion of the parcel outside the USA in order to ensure its open space status. LAFCO policies strongly discourage annexations of land outside a city's urban service area except in instances where such annexations would help promote preservation of agriculture, open space and/ or greenbelts. In this case, an additional 1.29 acres that is located outside the UGB and outside the proposed USA is below the 15% slope and is designated Private Open Space. The remaining portion of the parcel outside the proposed USA is above the 15% slope line; these are lands which the City has designated as Non-Urban Hillside.

The annexation proposal would allow for development and urban services only on the portion of the parcel below the 15% slope line and within the USA. Historically, LAFCO has allowed USAs in the east foothills to split lines of assessment to follow the 15% slope line where it is appropriate and where open space is protected.

Additionally, by annexing the adjacent parcel, the proposal avoids creating an island of unincorporated land surrounded by the City which is prohibited by LAFCO policies and the state law.

The annexation proposal boundaries are definite and certain. The proposal is contiguous to the current city boundary and does not create islands or areas difficult to provide services. The proposal also meets LAFCO street annexation policies.

### **Growth Inducing Impact**

Inclusion of the area within the city's USA and annexation to the City would allow the City to provide urban services to the property. It will not allow any further development on those properties or those portions of the property which are located outside the USA as the development is restricted by the hillside slopes.

### **Pre-zoning Designations**

The City has applied a pre-zoning designation of A(PD) Planned Development to the site. This designation would allow for the development of 41 single family homes and includes restrictions regarding use of the portion of property located outside the USA consistent with the goals of Non-Urban Hillside designation/ Open Space designations.

### **Five-Year supply of Vacant Land**

As per the City of San Jose's vacant land inventory submitted for this application, the City has 808 acres of vacant residential land within its urban service area. At its average absorption rate of 285 acres per year, this translates to about 2.8 years supply of vacant residential lands within its USA boundary. LAFCO policies allow up to 5 years supply of vacant land within a city's USA prior to expansion.

### **Ability of City to Provide Urban Services**

#### **Water and Sanitary Sewer Services**

The City of San Jose will provide sanitary sewer to the proposal area after annexation. The proposed residential development on the project site would require the construction of a new sanitary sewer main along Tenant Avenue. The San Jose/ Santa Clara Water Pollution Control Plant which would provide wastewater treatment for the project has the capacity to serve the proposed increase in population.

Water is currently provided to the property by the San Jose Water Company which will continue to provide water service after annexation. The City states that the San Jose Water Company has the capacity to provide this increased demand.

#### **Fire and Police Protection Services**

San Jose Fire Department would provide service to the area upon annexation. The nearest fire station is located approximately 1.6 miles from the site at San Ignacio Road. The City of San Jose Police Department will provide police services to the annexed area. As indicated by the City, no new facilities or personnel will be required by the police or the fire departments to adequately serve the two annexed parcels.

Currently the Santa Clara County Central Fire Protection District provides fire service to the area. Since San Jose has its own Fire Department, the area will be detached from the Fire District concurrent with the annexation to the City.

The City of San Jose Police Department will provide police protection services to the subject areas. The project site is located adjacent to existing residential sub division that is currently served by the Police Department. The City states that no new facilities or personnel are required to serve this increased demand.

#### **Library Service**

Similarly, the City has its own library service system which provides service to the City's residents. The area will be detached from the County Library Service Area, concurrent with annexation to the City.

#### **Waiver of Protest Proceedings from Affected Special Districts**

All owners of land have provided written consent to the change of organization and no subject agency has submitted written opposition to a waiver of protest proceedings pursuant to Government Code Section 56663(c) (2). Therefore LAFCO may waive protest proceedings.

#### **Ability of School District to Provide School Facilities**

The proposed development is located within the boundaries of the Oak Grove School District for elementary and middles schools and the East Side Union High School District for high schools. The development is expected to generate 15 new elementary school students and eight new high school students. The Districts have indicated that new students would be accommodated in existing facilities, but may need to hire additional



teachers. However this is offset by additional revenues as a result of increased enrollment. Overall, the proposed development would have a positive fiscal impact on both the affected school districts.

### **Fiscal Impacts Analysis**

The existing (one single family residence) and proposed new development (41 single family homes) proposed for the project site would generate a residential population of 136 persons. A fiscal impact analysis report containing a detailed analysis of impacts to the city, county and school district has been prepared for the project and indicates that overall, the proposed development would result in a very small, generally positive impact on the County and the City of San Jose.

Annexation of the area to San Jose will have a positive net impact of \$23,100 on the County General Fund during the base year of 2009 and a positive net impact of \$6,300 in 2014. In 2019, the proposed new development will generate a deficit of \$23,800. However, the proposed annexation would account for only 0.0021 percent of the County total projected deficit and therefore the fiscal impacts of the proposed annexation on the County are negligible.

The proposed annexation and development is expected to generate an annual General Fund surplus for the City of San Jose, generating a surplus of approximately \$49,000 in 2009, \$47,300 in 2014, and \$46,500 in 2019.

### **CONCLUSION**

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Staff recommends approval of the proposed USA expansion and annexation to the City of San Jose and concurrent detachment from the Santa Clara County Central Fire Protection District and the County Library Services Area.

The proposal does not impact open space or agricultural lands and is a logical boundary extension in that it is within the City's UGB and is contiguous to the existing USA and city limits. The City has established an appropriate pre-zoning designation to prohibit development on the properties and those portions of properties located outside of the USA. The City has indicated that it has the ability to provide services to the proposed new residential uses without detracting from the level of services that it currently provides its residents. Also, the City has indicated that it has a 2.8 supply of vacant residential land which is less than the 5 years supply that LAFCO policies allow within a city's USA.

### **ATTACHMENTS**

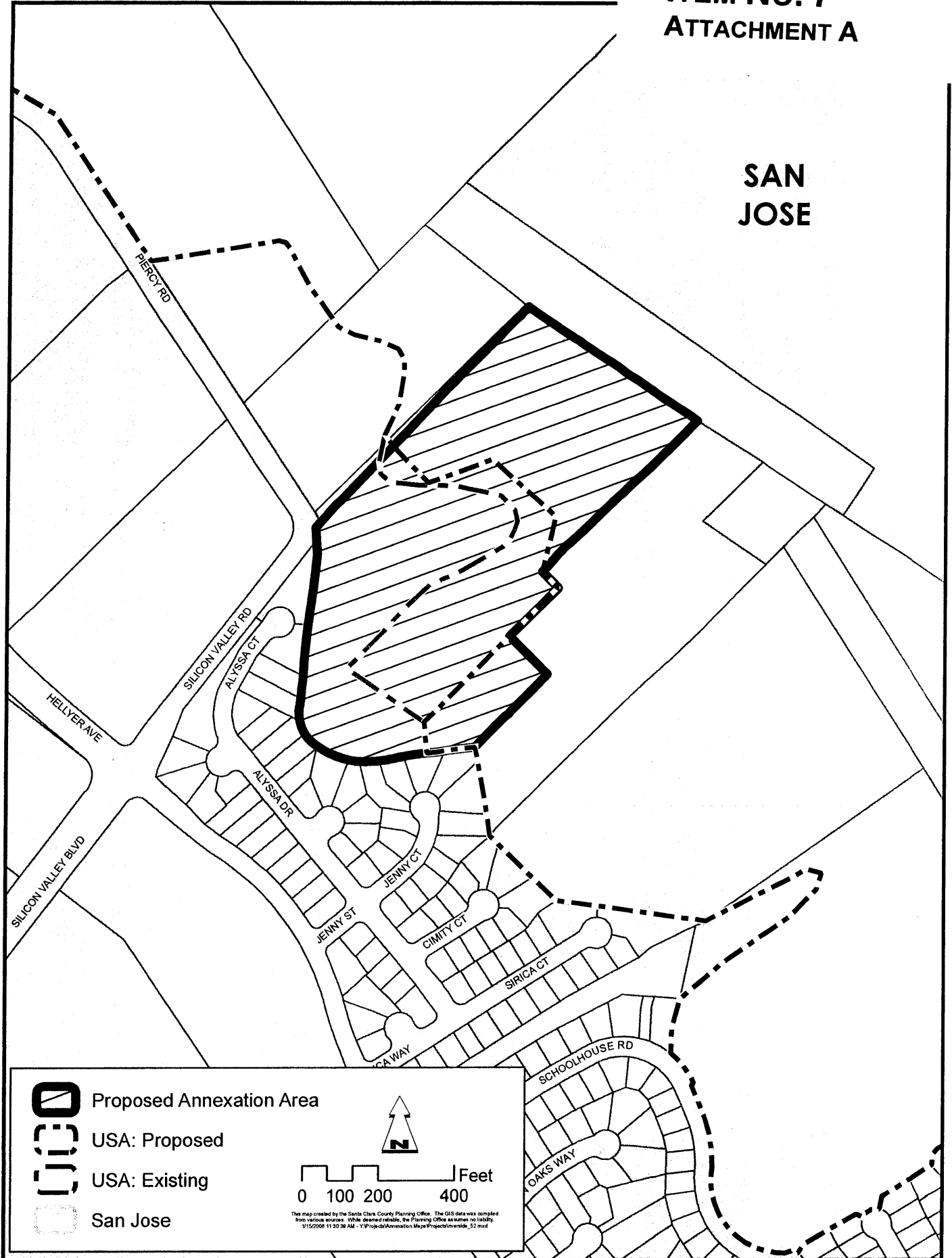
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Attachment A: Vicinity Map of the Proposed USA Expansion and Reorganization

Attachment B: Map and Legal Description of the Proposed USA Expansion

Attachment C: Map and Legal Description of Riverside #52 Reorganization

SAN  
JOSE



Proposed Annexation Area



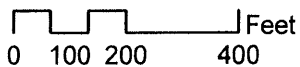
USA: Proposed



USA: Existing



San Jose



This map created by the Santa Clara County Planning Office. The GIS data was compiled from various sources. While deemed reliable, the Planning Office assumes no liability.  
11/15/2006 11:00:38 AM - Y:\Projects\Annexation\Mapa\Project\ri\_riverside\_52.mxd

**EXHIBIT "A"**  
**USA AMENDMENT**

REAL PROPERTY in the County of Santa Clara, State of California, being a portion of Parcel 1 as shown on that certain parcel map filed for record on August 27, 1971, in Book 289 of Maps, page 10, Santa Clara County Records, lying within the Rancho Yerba Buena Y Socayre, described as follows:

BEGINNING at an angle point in the general southeasterly line of said Parcel 1, being the southwesterly terminus of the course shown as North 45°07'21" East, 566.69 feet on said parcel map;

Thence along said general southeasterly line, the following four courses:

1. Thence South 45°16'37" East, 58.83 feet;
2. Thence South 44°49'08" West, 179.70 feet;
3. Thence South 44°37'12" West, 317.54 feet;
4. Thence South 07°58'12" East, 82.00 feet, to the centerline of Piercy Road as shown on that certain map of the A.J. Piercy Subdivision filed for record in Book "P" of Maps, page 52, Santa Clara County Records;

Thence along said centerline, the following four courses:

5. Thence South 82°01'48" West, 207.00 feet;
6. Thence North 66°33'12" West, 140.54 feet;
7. Thence North 02°35'48" East, 557.55 feet;
8. Thence North 33°51'52" West, 18.06 feet, to the northwesterly line of Lot 3 as shown on said map filed for record in Book "P" of Maps, page 52;

9. Thence along said northwesterly line, North 45°01'27" East, 313.87 feet;

10. Thence South 43°55'15" East, 77.19 feet;

11. Thence South 43°49'24" East, 46.85 feet;

12. Thence South 85°29'38" East, 115.59 feet;

13. Thence South 81°57'12" East, 27.78 feet;

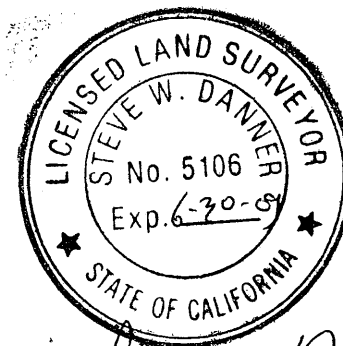
14. Thence South 80°02'25" East, 110.81 feet;

15. Thence South 44°09'57" East, 132.87 feet;

16. Thence South 30°53'51" West, 120.81 feet;

17. Thence South 45°27'53" East, 34.85 feet, to the POINT OF BEGINNING.

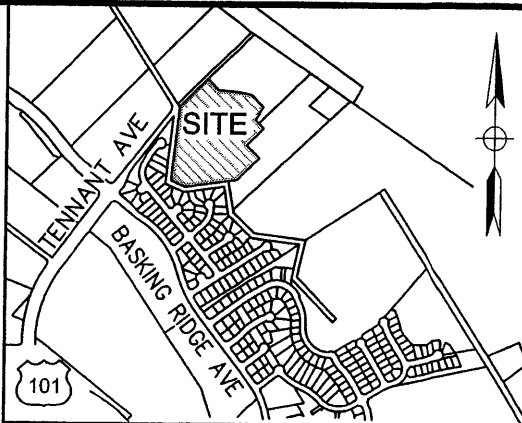
Containing 8.67 acres, more or less.



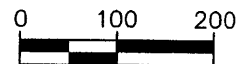
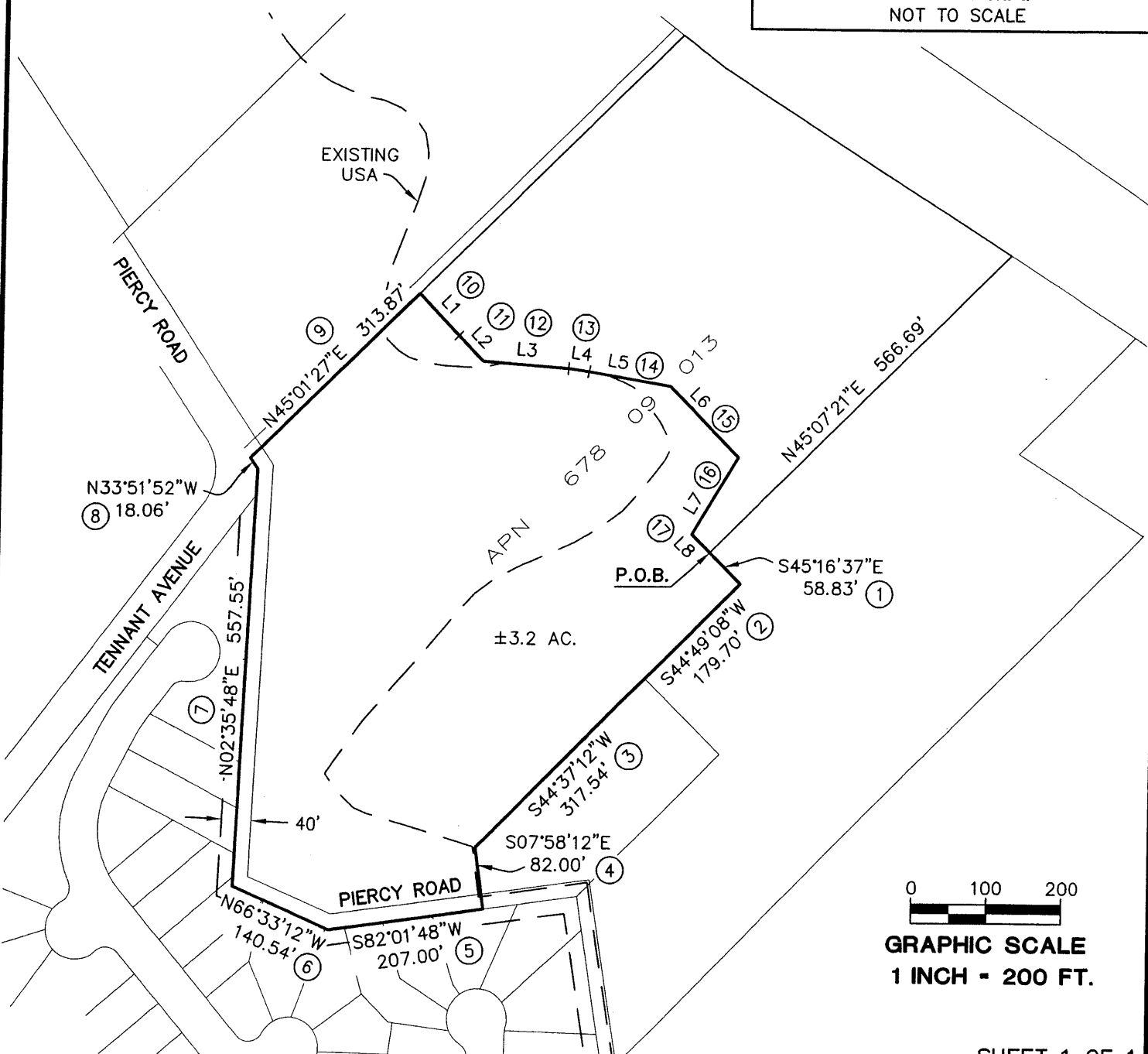
*Steve W. Danner*  
1-11-08



LINE TABLE		
No.	Bearing	Length
L1	S43°55'15"E	77.19'
L2	S43°49'24"E	46.85'
L3	S85°29'38"E	115.59'
L4	S81°57'12"E	27.78'
L5	S80°02'25"E	110.81'
L6	S44°09'57"E	132.87'
L7	S30°53'51"W	120.81'
L8	S45°27'53"E	34.85'



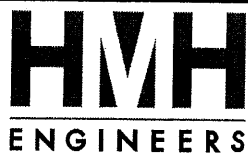
VICINITY MAP  
NOT TO SCALE



GRAPHIC SCALE  
1 INCH = 200 FT.

SHEET 1 OF 1

Date: 1-09-08  
 Scale: 1" = 200'  
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 Drawn: TG  
 Checked: SD  
 Proj. Engr.: -  
 3385PL08



San Jose  
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 Gilroy  
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 www.hmh-engineers.com

Plat to accompany description:  
USA AMENDMENT

SANTA CLARA COUNTY

CALIFORNIA

**EXHIBIT "A"**  
**ANNEXATION TO THE CITY OF SAN JOSE**  
**RIVERSIDE NO. 52**

REAL PROPERTY in the County of Santa Clara, State of California, being all of the 1.000 acre parcel of land as shown on that certain Record of Survey filed for record on January 3, 1958, in Book 89 of Maps, page 33, Santa Clara County Records; and a portion of Parcel 1 as shown on that certain parcel map filed for record on August 27, 1971, in Book 289 of Maps, page 10, Santa Clara County Records, lying within the Rancho Yerba Buena Y Socayre, more particularly described as follows:

BEGINNING at the most northerly corner of the City of San Jose's Annexation Riverside No. 47, also being the most easterly corner of said Parcel 1;

Thence along the general northwesterly City Limits Line of the City of San Jose as established by City's Annexation Riverside No. 47, also being the general southeasterly line of said Parcel 1, the following three courses:

1. Thence South 44°49'09" West, 566.69 feet;
2. Thence South 45°18'12" East, 58.82 feet;
3. Thence South 44°41'48" West, 180.00 feet, to the northeasterly line of said 1.000 acre parcel;

Thence along said said general northwesterly City Limits Line, also being the northeasterly and southeasterly lines of said 1.000 acre parcel, the following two courses:

4. Thence South 45°18'12" East, 142.56 feet;
5. Thence South 44°41'48" West, 241.61 feet, to the general northerly line of Piercy Road (40 feet wide);

Thence along said general northwesterly City Limits Line, also being said general northerly line of Piercy Road, the following four courses:

6. Thence North 09°08'12" West, 4.98 feet;
7. Thence South 82°01'48" West, 347.84 feet;
8. Thence North 66°33'12" West, 121.13 feet;
9. Thence North 02°35'48" East, 537.72 feet, to the southeasterly City Limits Line of the City of San Jose as established by City's Annexation Riverside No. 45;

Thence along said southeasterly City Limits Line, also being the southeasterly line of Tennant Avenue (40 feet wide),

10. North 37°02'16" East, 8.16 feet, to the northeasterly line of Piercy Road (40 feet wide);

Thence along the northeasterly City Limits Line of the City of San Jose as established by City's Annexation Riverside No. 45, also being the northeasterly line of Piercy Road (40 feet wide),

11. North 33°53'09" West, 18.55 feet, to the northwesterly line of Lot 3 as shown on the Map of the A.J. Piercy Subdivision, filed for record January 17, 1921, in Book P of Maps, page 52, Santa Clara County Records, also being the northwesterly line of said Parcel 1;

Thence along said northwesterly line,

12. North 43°38'55" East, 790.48 feet, to the northeasterly line of said Parcel 1;

Thence along said northeasterly line, the following two courses:

13. Thence South 53°03'12" East, 74.58 feet;

14. Thence South 57°11'59" East, 458.29 feet, to the POINT OF BEGINNING.

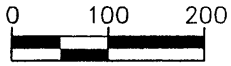
Containing 14.72 acres, more or less.



*Steve W. Danner*

LEGEND

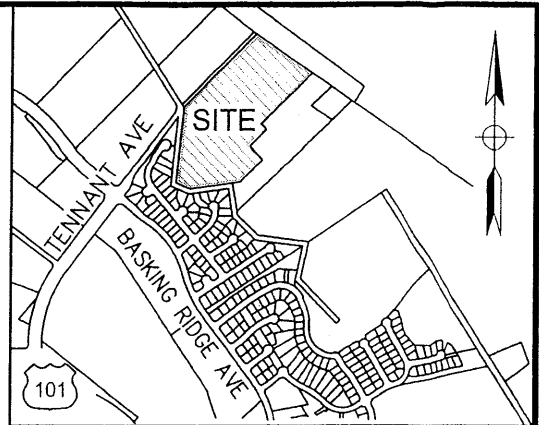
- PROPOSED ANNEXATION BOUNDARY LINE
- - - - - EXISTING SAN JOSE CITY LIMITS LINE



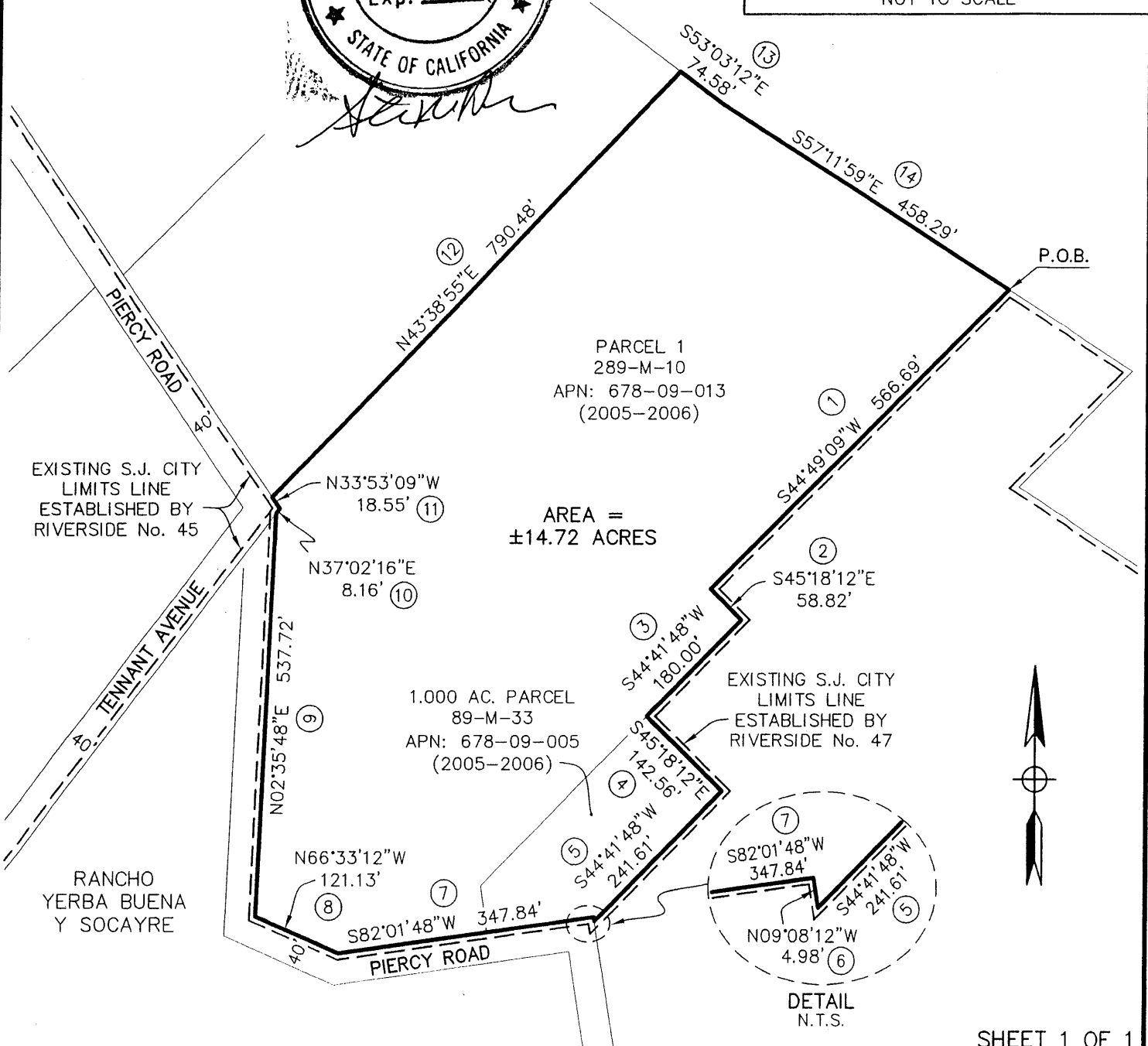
GRAPHIC SCALE  
1 INCH = 200 FT.



*Steve W. Danner*



VICINITY MAP  
NOT TO SCALE



Date: 11-08-07  
 Scale: 1" = 200'  
 Designed: —  
 Drawn: TG  
 Checked: SD  
 Proj. Engr.: —  
 3385PL06

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Plat to accompany description:  
 PROPOSED ANNEXATION TO THE CITY OF SAN JOSE  
 RIVERSIDE No. 52  
 SANTA CLARA COUNTY CALIFORNIA

**DRAFT  
MITIGATED NEGATIVE DECLARATION**

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

**NAME OF PROJECT:** 715 Piercy Road General Plan Amendment; Urban Service Area Expansion and Greenline/Urban Growth Boundary Modification.

**PROJECT FILE NUMBER:** GP 05-02-04 & UGB 05-001

**PROJECT DESCRIPTION:**

**GP 05-02-04:** General Plan amendment to change the Land Use/Transportation Diagram designation on a 14.3-acre parcel from Non-Urban Hillside to Medium Low Density Residential (8.0 DU/AC) on approximately 8.4-acres; Private Open Space on approximately 1.29-acre and inclusion of approximately 4.75-acres within the City's Urban Service Area (USA); and,

**UGB 05-001:** Modification to the Greenline/Urban Growth Boundary (UGB) to include an approximately 4.75-acre portion of a 14.3-acre parcel within the Greenline/Urban Growth Boundary. An approximately 5.5-acre portion of the subject parcel is already within and will remain within UGB and a 4.0-acre portion of the 14.3-acre parcel is to remain Non-Urban Hillside outside of the UGB. and subsequent permits

**PROJECT LOCATION & ASSESSORS PARCEL NO.:** Northeasterly corner of Piercy Road and Tennant Avenue; (Assessor's Parcel No. 678-09-013

**COUNCIL DISTRICT:** 2

**APPLICANT CONTACT INFORMATION:** Richard Denman, Aegis Land and Investment Company, 172 University Avenue, Palo, Alto CA, 94301.

**FINDING**

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.



## MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

- I. **AESTHETICS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- II. **AGRICULTURE RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- III. **AIR QUALITY**

Mitigation Measure 3-1: The following controls shall be implemented during all construction phases of the project:

- Water all active construction sites at least twice daily, and more often during windy periods;
- Cover all trucks hauling soil, sand and other loose materials *or* require all trucks to maintain at least two feet of freeboard;
- Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites;
- Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;
- Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets;
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more);
- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) sufficient to prevent visible airborne dust;
- Limit traffic speeds on unpaved roads to 15 mph;
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways; and
- Replant vegetation in disturbed areas as quickly as possible.

- IV. **BIOLOGICAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- V. **CULTURAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- VI. **GEOLOGY AND SOILS** – The subject site is located within a City of San Jose Geological Hazard Zone. Future development will be subject to the Earthquake, and Soils and Geology Conditions policies listed in Chapter 4, Goals and Policies, of the City's General Plan. Less than significant impact.
- VII. **HAZARDS AND HAZARDOUS MATERIALS** – The project will not have a significant impact on this resource, therefore no mitigation is required.

### **VIII. HYDROLOGY AND WATER QUALITY**

The project shall comply with applicable provisions of the following City Policies – 1) Post-Construction Urban Runoff Management Policy (6-29), and 2) Post-Construction Hydromodification Management Policy (8-14). Less than significant impact.

- IX. LAND USE AND PLANNING** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- X. MINERAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XI. NOISE** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XII. POPULATION AND HOUSING** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XIII. PUBLIC SERVICES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XIV. RECREATION** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XV. TRANSPORTATION / TRAFFIC** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XVI. UTILITIES AND SERVICE SYSTEMS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XVII. MANDATORY FINDINGS OF SIGNIFICANCE** – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no additional mitigation is required.

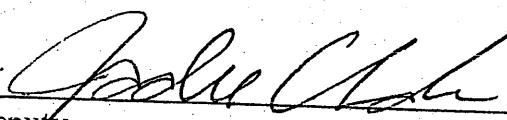
**PUBLIC REVIEW PERIOD**

Before 5:00 p.m. on June 1, 2006, any person may:


- (1) Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or
- (2) Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND; or
- (3) File a formal written protest of the determination that the project would not have a significant effect on the environment. This formal protest must be filed in the Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, San José CA 95113-1905 and include a \$100 filing fee. The written protest should make a "fair argument" based on substantial evidence that the project will have one or more significant effects on the environment. If a valid written protest is filed with the Director of Planning, Building & Code Enforcement within the noticed public review period, the Director may (1) adopt the Mitigated Negative Declaration and set a noticed public hearing on the protest before the Planning Commission, (2) require the project applicant to prepare an environmental impact report and refund the filing fee to the protestant, or (3) require the Draft MND to be revised and undergo additional noticed public review, and refund the filing fee to the protestant.

Joseph Horwedel, Acting Director  
Planning, Building and Code Enforcement

Circulated on: 5/3/06

  
Deputy

Adopted on: 6/2/06

  
Deputy

MND/JAC 8/26/05

## MITIGATED NEGATIVE DECLARATION

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

**NAME OF PROJECT:** PDC06-102

**PROJECT FILE NUMBER:** PDC06-102

**PROJECT DESCRIPTION:** Planned Development Rezoning from County to A(PD) Planned Development Zoning District, to allow up to 41 single-family detached residences on a 8.3-acre portion of a 14.27 gross acre site and subsequent permits

**PROJECT LOCATION & ASSESSORS PARCEL NO.:** located at the southeast corner of Piercy Road and Tennant Avenue (715 Piercy Road). APN: 678-09-013

**COUNCIL DISTRICT:** 2

**APPLICANT CONTACT INFORMATION:** Amie Ashton, HMH Engineers, (408) 487-2200

### FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

### MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

- I. **AESTHETICS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- II. **AGRICULTURE RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**III. AIR QUALITY** – Implementation of the following mitigation measures will reduce potential construction air quality impacts to less than significant levels.

- Water all active construction sites at least twice daily, and more often during windy periods;
- Cover all trucks hauling soil, sand and other loose materials *or* require all trucks to maintain at least two feet of freeboard;
- Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites;
- Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;
- Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets;
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more);
- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) sufficient to prevent visible airborne dust;
- Limit traffic speeds on unpaved roads to 15 mph;
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways; and
- Replant vegetation in disturbed areas as quickly as possible.

**IV. BIOLOGICAL RESOURCES** – Implementation of the following mitigation measures will reduce the potential impacts on biological resources to a less than significant level.

- At the development stage, prior to any land disturbance, a qualified ornithologist will conduct a pre-construction survey for tree-nesting raptors in all trees occurring within 250 feet of project building envelopes within 30 days of the onset of ground disturbance, if such disturbance will occur during the breeding season (1 February through 31 August). If nesting raptors are detected on the site during the survey, a construction buffer of 250 feet will be established around each active nest for the duration of the breeding season or until it has been confirmed that all chicks have fledged and are independent of their parents. Pre-construction surveys during non-breeding season are not necessary for tree-nesting raptors, as they are expected to abandon their roosts during construction.
- A qualified ornithologist will conduct pre-construction surveys for burrowing owls onsite within 30 days of ground disturbance. These surveys will be conducted in a manner consistent with the accepted burrowing owl survey protocols. If pre-construction surveys determine that burrowing owls occupy the site during the non-breeding season (1 September through 31 January), then a passive relocation effort (i.e. blocking the burrows with one-way doors and leaving them in place for a minimum of three days) may be necessary to ensure that the owl is not harmed or injured during construction. Once it has been determined that the owls have vacated the site, the burrows can be collapsed, and ground disturbance can proceed. If burrowing owls are detected on the site during the breeding season (1 February through 31 August), a construction buffer of 250 feet will be established around any active owl nests and remain in place for the duration of construction activities or through the end of the breeding season.
- A pre-construction survey for American badger dens will be performed using the same protocol as described above for burrowing owls: Any badger dens identified during the pre-construction

survey will be monitored by a qualified biologist to determine whether they are currently being utilized. If badgers are detected using burrows on site, then passive relocation efforts similar to those typically employed for the San Joaquin kit fox will be initiated to exclude badgers from the construction zone. Badgers will not be handled unless pre-approval is obtained from CDFG. Methods to relocate any badger will not occur if young occur in the den and a construction free buffer will be established around natal dens to ensure construction activities do not disrupt breeding activity.

**V. CULTURAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**VI. GEOLOGY AND SOILS** – Implementation of the following mitigation measures will reduce potential impacts on Geology and Soils to a less than significant level.

- All requirements and recommendations of the City's Geologist through the Geologic Hazard Clearance shall be incorporated into the project.

**VII. HAZARDS AND HAZARDOUS MATERIALS** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**VIII. HYDROLOGY AND WATER QUALITY** – Implementation of the following mitigation measures will reduce potential impacts on hydrology and water quality to a less than significant level.

- Future development will include public streets and building rooftops which would increase the amount of impervious surface on the site and ultimately increase pollutants resulting from nonpoint sources in stormwater runoff. At the development permit stage, specific site design treatment and source control measures will be incorporated into this proposed project to reduce runoff and associated pollutants in conformance with the specifications of the City Council Policy No. 6-29, Post Construction Urban Runoff Management Policy.

**IX. LAND USE AND PLANNING** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**X. MINERAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**XI. NOISE** – Implementation of the following mitigation measures will reduce potential impacts on noise to a less than significant level.

- A minimum 6 foot high, solid board rear yard fence shall be constructed at the western property line facing the 101 Freeway.
- STC 28 sound rated windows and exterior doors and door assemblies are required for all units. Dual-pane windows are required for windows on the rear facades along the row of homes closest to the 101 Freeway (western facing rear facades). Not all units will require sound rated windows, prior to issuance of occupancy permits a qualified acoustical engineer shall be

retained to review the final building plans and ensure that interior noise levels specified by the General Plan are met for all units.

- Because sound rated windows must be closed to provide protection from exterior noise, alternate means of providing outside air is required. This applies to all units within the project.
- Construction will be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific construction noise mitigation plan and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- The contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poor maintained engines or other components.
- Staging areas shall be located a minimum of 200 feet from noise sensitive receptors, such as residential uses.

**XII. POPULATION AND HOUSING** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**XIII. PUBLIC SERVICES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**XIV. RECREATION** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**XV. TRANSPORTATION / TRAFFIC** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**XVI. UTILITIES AND SERVICE SYSTEMS** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**XVII. MANDATORY FINDINGS OF SIGNIFICANCE** – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no additional mitigation is required.

## **PUBLIC REVIEW PERIOD**

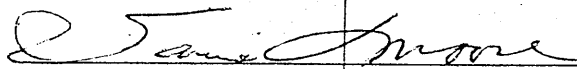
Before 5:00 p.m. on Monday, April 23, 2007, any person may:

- (1) Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or
- (2) Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND; or


- (3) File a formal written protest of the determination that the project would not have a significant effect on the environment. This formal protest must be filed in the Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, San José CA 95113-1905 and include a \$100 filing fee. The written protest should make a "fair argument" based on substantial evidence that the project will have one or more significant effects on the environment. If a valid written protest is filed with the Director of Planning, Building & Code Enforcement within the noticed public review period, the Director may (1) adopt the Mitigated Negative Declaration and set a noticed public hearing on the protest before the Planning Commission, (2) require the project applicant to prepare an environmental impact report and refund the filing fee to the protestant, or (3) require the Draft MND to be revised and undergo additional noticed public review, and refund the filing fee to the protestant.

Joseph Horwedel, Director  
Planning, Building and Code Enforcement

Circulated on: April 3, 2007

  
Deputy

Adopted on: April 25, 2007

  
Deputy

Revised 8/26/05 JAC



**ADDENDUM TO A MITIGATED NEGATIVE DECLARATION**

Pursuant to Section 15164 of the CEQA Guidelines, the City of San Jose has prepared an Addendum to a Mitigated Negative Declaration (ND) adopted for a previous project. Because minor changes made to the project described below do not raise important new issues about the effects on the environment, this project is adequately covered by this Addendum to the Mitigated Negative Declaration from the previous project.

**PROJECT DESCRIPTION AND LOCATION**

Riverside No. 52: Annexation of 14.27 acres from the County into the City of San Jose located at southeast corner of Piercy Road and Tennant Avenue in the A(PD) Planned Development and OS Open Space Zoning Districts.  
Council District 2. County Assessor's Parcel Number 678-09-005, -013

**CERTIFICATION**

The environmental impacts of this project were addressed by an Initial Study and documented by a Mitigated Negative Declaration for a Planned Development rezoning, File No.PDC06-102, and certified as final on April 23, 2007. Specifically, the following impacts were reviewed and found to be adequately considered by the ND:

- |   |   |   |
|---|---|---|
| <input checked="" type="checkbox"/> Traffic and Circulation | <input checked="" type="checkbox"/> Soils and Geology   | <input checked="" type="checkbox"/> Noise                       |
| <input checked="" type="checkbox"/> Cultural Resources      | <input checked="" type="checkbox"/> Hazardous Materials | <input checked="" type="checkbox"/> Land Use                    |
| <input checked="" type="checkbox"/> Urban Services          | <input checked="" type="checkbox"/> Biotics             | <input checked="" type="checkbox"/> Air Quality                 |
| <input checked="" type="checkbox"/> Aesthetics              | <input type="checkbox"/> Airport Considerations         | <input type="checkbox"/> Microclimate                           |
| <input type="checkbox"/> Energy                             | <input type="checkbox"/> Relocation Issues              | <input checked="" type="checkbox"/> Construction Period Impacts |
| <input checked="" type="checkbox"/> Transportation          | <input checked="" type="checkbox"/> Utilities           | <input type="checkbox"/> Facilities and Services                |
| <input checked="" type="checkbox"/> Water Quality           | <input checked="" type="checkbox"/> Flooding            | <input type="checkbox"/>  |

**ANALYSIS:**

The City of San Jose will make an application to the Local Agency Formation Commission (LAFCO) to allow the reorganization of territory designated as Riverside No. 52, which involves the annexation to the City of San Jose of approximately 15 gross acres of land, located southeast corner of Piercy Road and Tennant Avenue, and the detachment of the same from the Central Fire Protection District and the Santa Clara County Library Service Area. This annexation will include two properties, 715 Piercy Road (APN 678-09-013) and 725 Piercy Road (APN 678-09-005). The property at 725 Piercy Road has been rezoned Open Space (File No. C07-030). The property at 725 Piercy is rezoned A(PD) Planned Development (File No. PDC06-106). An Initial Study and MND was prepared for the rezoning of 725 Piercy Road. Now that the annexation of both properties is on file, staff has analyzed the proposal to determine if there will be any additional impacts related to this action that were not foreseen by the previous

environmental clearance. The Initial Study prepared for the Planned Development rezoning included the following statement:

“The project site is located within the unincorporated County area and will ultimately be annexed into the City of San Jose. An annexation application has not yet been filed for the site. Future annexation of the subject site would result in the isolation of an adjoining unincorporated one-acre parcel of land (APN 678-09-005). That parcel currently contains a detached residential structure, consistent with the County Agricultural zoning for the site. According to County and Local Agency Formation Commission (LAFCO) policies, the creation of remainder or “pocket” parcels is not allowed. To avoid the creation of such a pocket parcel, the adjacent site would require rezoning and annexation into the City of San Jose at the same time or prior to approval of the annexation of the subject site. Annexation of the adjoining parcel is not proposed as a part of the current project, however future annexation of that adjoining parcel is a foreseeable related activity. The annexation of the adjacent parcel is not anticipated to change the land use from that which currently exists, or would it be expected to result in any additional environmental impacts, in that the site is developed with a single-family house and can be anticipated to remain in that condition upon annexation.”

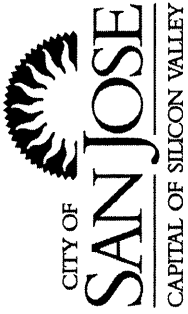
The property at 725 Piercy Road has been rezoned Open Space, which would allow the existing single family residence on the site to remain. The annexation would not result in an intensification or change in the current use, therefore no additional environmental impacts are foreseen due to this action.

Martina Davis  
Project Manager

Joseph Horwedel, Director  
Planning, Building and Code Enforcement

\_\_\_\_\_  
Date

\_\_\_\_\_  
Deputy



*Department of Planning, Building and Code Enforcement*

JOSEPH HORWEDEL, DIRECTOR

MITIGATION MONITORING AND REPORTING PROGRAM  
 For General Plan Amendment and UGB Expansion for 725 Piercy Road  
 (File no.: GP05-02-04 and UGB05-001)

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
Aesthetics				

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
Air Quality				

<p>The project would generate air pollutant emissions during construction. The project would result in short-term air quality impacts during construction, associated primarily with the increase in suspended particulates, or dust. Construction activities, including site clearing and soil disturbance, could generate dust emissions and locally elevated levels of particulates (i.e., PM10) downwind of construction activities.</p>	<ul style="list-style-type: none"> <li>▪ Water all active construction sites at least twice daily, and more often during windy periods;</li> <li>▪ Cover all trucks hauling soil, sand and other loose materials <i>or</i> require all trucks to maintain at least two feet of freeboard;</li> <li>▪ Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites;</li> <li>▪ Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;</li> <li>▪ Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets;</li> <li>▪ Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more);</li> <li>▪ Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) sufficient to prevent visible airborne dust;</li> <li>▪ Limit traffic speeds on unpaved roads to 15 mph;</li> <li>▪ Install sandbags or other erosion control measures to prevent silt runoff to public roadways; and</li> <li>▪ Replant vegetation in disturbed areas as quickly as possible.</li> </ul>	<p>Applicant: Oversight: City of San Jose Building Division and Department of Public Works</p>	<p>Applicant to comply with conditions of approval. Conduct routine inspections of grading activities (Public Works) and construction activities (Building Division)</p>	<p>Implement dust control measures during the entire construction period.</p>
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Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
<b>Biological Resources</b>				

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
<b>Cultural Resources</b>				

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
<b>Geology and Soils</b>				
The subject site is located within a City of San Jose Geological Hazard Zone.	Future development will be subject to the Earthquake, and Soils and Geology Conditions policies listed in Chapter 4, Goals and Policies, of the City's General Plan.	Applicant. Planning Division, Department of Public Works	Applicant shall apply for a Geologic Hazard Clearance.  Prior to the issuance of zoning or permits for a specific development for the site, the Department of Public Works must issue a Geologic Hazard Clearance.	Prior to the issuance of environmental clearance for a zoning and/or a development permit for development on the site.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
<b>Hazards and Hazardous Materials</b>				

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
<b>Hydrology and Water Quality</b>				
Construction activities on the project site may result in an increase in erosion affecting the quality of storm water runoff. Future development will include private or public streets and building rooftops which would increase the amount of impervious surface on the site and ultimately increase pollutants resulting from nonpoint sources in stormwater runoff. Implementation of the identified mitigation measures will reduce this impact to less-than-significant levels.	<ul style="list-style-type: none"> <li>The project shall comply with applicable provisions of the following City Policies – 1) Post-Construction Urban Runoff Management Policy (6-29), and 2) Post-Construction Hydromodification Management Policy (8-14).</li> </ul>	Applicant.  Oversight: Department of Planning, Building, and Code Enforcement; Department of Public Works; Environmental Services Department.	Prior to the issuance of a Planned Development Permit, Planning and Public Works will ensure that the project proposed stormwater treatment and control measures in compliance with Policy 6-29 and Policy 8-14. Applicant to comply with conditions of approval.  The Environmental Services Department will conduct regular inspections of stormwater treatment measures to ensure compliance with the approved stormwater control plan.	Implement water quality mitigation measures during project construction; maintain landscaping, drainage facilities, and stormwater treatment devices after project completion.

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
<b>Land Use and Planning</b>				

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<b>Environmental Impacts</b>	<b>Mitigation Measures</b>	<b>Responsibility for Compliance</b>	<b>Method of Compliance</b>	<b>Timing of Compliance</b>
<b>Noise</b>				

<b>Environmental Impacts</b>	<b>Mitigation Measures</b>	<b>Responsibility for Compliance</b>	<b>Method of Compliance</b>	<b>Timing of Compliance</b>
<b>Transportation and Traffic</b>				

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
<b>Aesthetics</b>				

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
<b>Air Quality</b>				

<p>The project would generate air pollutant emissions during construction. The project would result in short-term air quality impacts during construction, associated primarily with the increase in suspended particulates, or dust. Construction activities, including site clearing and soil disturbance, could generate dust emissions and locally elevated levels of particulates (i.e., PM10) downwind of construction activities.</p>	<p>In order to minimize PM10 emissions during construction, the project contractor shall implement the following dust control measures:</p> <ul style="list-style-type: none"> <li>▪ Water all active construction areas at least twice daily.</li> <li>▪ Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.</li> <li>▪ Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.</li> <li>▪ Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.</li> <li>▪ Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.</li> <li>▪ Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more);</li> <li>▪ Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) sufficient to prevent visible airborne dust;</li> <li>▪ Limit traffic speeds on unpaved roads to 15 mph;</li> <li>▪ Install sandbags or other erosion control measures to prevent silt runoff to public roadways; and</li> <li>▪ Replant vegetation in disturbed areas as quickly as possible.</li> </ul>	<p><b>Applicant:</b> Oversight: City of San Jose Building Division and Department of Public Works</p>	<p>Comply with conditions of approval Conduct routine inspections of grading activities (Public Works) and construction activities (Building Division)</p>	<p>Implement dust control measures during the entire construction period.</p>
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Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
<b>Biological Resources</b>				



<p>Results of the biological study indicate that the project site contains potential raptor, burrowing owl, and American badger habitat. The proposed project could result in impacts to raptors, burrowing owls, and American Badgers if they are present within or adjacent to the project area at the time of construction. With implementation of the following measures, potential impacts to raptors, burrowing owls, and badgers will be reduced to less-than-significant levels.</p>	<ul style="list-style-type: none"> <li>At the development stage, prior to any land disturbance, a qualified ornithologist will conduct a pre-construction survey for tree-nesting raptors in all trees occurring within 250 feet of project building envelopes within 30 days of the onset of ground disturbance, if such disturbance will occur during the breeding season (1 February through 31 August). If nesting raptors are detected on the site during the survey, a construction buffer of 250 feet will be established around each active nest for the duration of the breeding season or until it has been confirmed that all chicks have fledged and are independent of their parents. Pre-construction surveys during non-breeding season are not necessary for tree-nesting raptors, as they are expected to abandon their roosts during construction.</li> <li>A qualified ornithologist will conduct pre-construction surveys or burrowing owls onsite within 30 days of ground disturbance. These surveys for will be conducted in a manner consistent with the accepted burrowing owl survey protocols. If pre-construction surveys determine that burrowing owls occupy the site during the non-breeding season (1 September through 31 January), then a passive relocation effort (i.e. blocking the burrows with one-way doors and leaving them in place for a minimum of three days) may be necessary to ensure that the owl is not harmed or injured during construction. Once it has been determined that the owls have vacated the site, the burrows can be collapsed, and ground disturbance can proceed. If burrowing owls are detected on the site during the breeding season (1 February through 31 August), a construction buffer of 250 feet will be established around any active owl nests and remain in place for the duration of construction activities or through the end of the breeding season.</li> <li>A pre-construction survey for American badger dens will be performed using the same protocol</li> </ul>	<p>Applicant: Oversight: Department of Public Works and Planning Environmental Principal</p>	<p>The project proponent shall retain a qualified ornithologist and a biologist to conduct the surveys and monitoring and, if required, coordination with the California Department of Fish and Game. The results of the ornithologist's and biologist's survey/monitoring (and relocation plan if required) shall be documented and a report shall be submitted to the Environmental Principal Planner in the Department of Planning, Building and Code Enforcement.</p> <p>The Environmental Principal Planner in the Department of Planning, Building and Code Enforcement shall be notified immediately if raptors, burrowing owls, or American badgers are found during the survey.</p>	<p>Surveys and/or monitoring shall be conducted no more than 30 days prior to the onset of construction.</p> <p>Immediately notify the Environmental Principal Planner in the Department of Planning, Building and Code Enforcement if raptors, burrowing owls, or badgers are found during the survey.</p>
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	<p>as described above for burrowing owls: Any badger dens identified during the pre-construction survey will be monitored by a qualified biologist to determine whether they are currently being utilized. If badgers are detected using burrows on site, then passive relocation efforts similar to those typically employed for the San Joaquin kit fox will be initiated to exclude badgers from the construction zone. Badgers will not be handled unless pre-approval is obtained from CDFG. Methods to relocate any badger will not occur if young occur in the den and a construction free buffer will be established around natal dens to ensure construction activities do not disrupt breeding activity.</p>			
Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
<b>Cultural Resources</b>				

<p>The potential for archaeological materials on the project site is considered low. There are no recorded cultural resources located within a half-mile radius of the site, and surface reconnaissance conducted by a qualified archaeologist found no cultural, historic, or prehistoric materials. However, it is possible that construction of the project could potentially uncover buried archaeological resources. This represents a potentially significant impact that would be mitigated to a less-than-significant level with the identified measures.</p>	<ul style="list-style-type: none"> <li>▪ In the event that human remains and/or cultural materials are found during construction, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California.</li> <li>▪ In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.</li> <li>▪ A final report shall be submitted to the City's Environmental Principal Planner when mitigation is completed. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curator of the resources. The report shall verify completion of the mitigation program to the satisfaction of the City's Environmental Principal Planner.</li> </ul>	<p>Applicant Oversight: City of San Jose Planning Environmental Principal Planner</p>	<p>A final report shall be submitted to the City's Environmental Principal Planner when mitigation, if required, is completed.</p>	<p>The identified mitigation shall apply during all earth moving activities.  A final report shall be submitted to the City's Environmental Principal Planner when mitigation, if required, is completed.</p>
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Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
<b>Geology and Soils</b>				
<p>The site has potential geologic impacts related to rupture of a known earthquake fault, seismic-related ground failure, and landslides. A Geologic Hazard Clearance was reviewed and approved by the City Geologist to insure these impacts will be reduced to a less than significant level for the project.</p>	<ul style="list-style-type: none"> <li>All requirements and recommendations of the City's Geologist through the Geologic Hazard Clearance shall be incorporated into the project.</li> </ul>	<p>Applicant Oversight: City Geologist, Department of Public Works, Department of Planning, Building, and Code Enforcement</p>	<p>Planning Department Permit approval will comply with the recommendations of the Geologic Hazard Clearance. The Building Division will ensure compliance with the PD Permit and the Building Code Requirements, and will conduct routine inspections of the site during construction to ensure compliance.</p> <p>The grading activities will be monitored and inspected to comply with the Geologic Hazard Clearance (Department of Public Works).</p>	<p>The identified mitigation shall apply during the development permit review process, and during all earth moving and construction activities.</p>

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
<b>Hazards and Hazardous Materials</b>				

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
<p>Construction activities on the project site may result in an increase in erosion affecting the quality of storm water runoff. Future development will include private or public streets and building rooftops which would increase the amount of impervious surface on the site and ultimately increase pollutants resulting from nonpoint sources in stormwater runoff. Implementation of the identified mitigation measures will reduce this impact to less-than-significant levels.</p>	<p><b>Hydrology and Water Quality</b></p> <p>Future development will include public streets and building rooftops which would increase the amount of impervious surface on the site and ultimately increase pollutants resulting from nonpoint sources in stormwater runoff. At the development permit stage, specific site design treatment and source control measures will be incorporated into this proposed project to reduce runoff and associated pollutants in conformance with the specifications of the City Council Policy No. 6-29, Post Construction Urban Runoff Management Policy.</p>	<p>Applicant</p> <p>Oversight: Department of Planning, Building, and Code Enforcement; Department of Public Works; Environmental Services Department.</p>	<p>Prior to the issuance of a Planned Development Permit, Planning and Public Works will ensure that the project proposed stormwater treatment and control measures in compliance with Policy 6-29. Applicant to comply with conditions of approval</p> <p>The Environmental Services Department will conduct regular inspections of stormwater treatment measures to ensure compliance with the approved stormwater control plan.</p>	<p>Implement water quality mitigation measures during project construction; maintain landscaping, drainage facilities, and stormwater treatment devices after project completion.</p>

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
	<p><b>Land Use and Planning</b></p>			

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
<p>Construction of the proposed project would temporarily increase noise levels at residences in the project area. These residences are as close as about 30 feet from the project alignment. Construction noise represents a potentially significant impact that would be reduced to a less-than-significant level with implementation of the identified mitigation.</p>	<p style="text-align: center;"><b>Noise</b></p> <ul style="list-style-type: none"> <li>▪ A minimum 6 foot high, solid board rear yard fence shall be constructed at the western property line facing the 101 Freeway.</li> <li>▪ STC 28 sound rated windows and exterior doors and door assemblies are required for all units. Dual-pane windows are required for windows on the rear facades along the row of homes closest to the 101 Freeway (western facing rear facades). Not all units will require sound rated windows, prior to issuance of occupancy permits a qualified acoustical engineer shall be retained to review the final building plans and ensure that interior noise levels specified by the General Plan are met for all units.</li> <li>▪ Because sound rated windows must be closed to provide protection from exterior noise, alternate means of providing outside air is required. This applies to all units within the project.</li> <li>▪ Construction will be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific construction noise mitigation plan and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.</li> <li>▪ The contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poor maintained engines or other components.</li> <li>▪ Staging areas shall be located a minimum of 200 feet from noise sensitive receptors, such as</li> </ul>	<p>Applicant.</p> <p>Oversight: Department of Planning, Building, and Code Enforcement</p>	<p>Applicant to comply with approval</p> <p>Planning staff will ensure that all required noise measures are included in the project at the Planned Development Permit stage. The Building Division will ensure that the measures are included in the plans during the plan check phase, and will ensure compliance with the mitigation measures through routine inspections of the site during construction.</p>	<p>Implement noise control measures during the entire construction period.</p> <p>Ambient noise related mitigations measures will be present during the entire life of the project.</p>

	residential uses.				
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<b>Environmental Impacts</b>	<b>Mitigation Measures</b>	<b>Responsibility for Compliance</b>	<b>Method of Compliance</b>	<b>Timing of Compliance</b>
<b>Transportation and Traffic</b>				

**LAFCO**

**Meeting Date:** February 6, 2008

**TO:** LAFCO

**FROM:** Neelima Palacherla, Executive Officer  
Kathy Kretchmer, LAFCO Counsel

**SUBJECT:** **Correction to Policies Implementing AB 745 regarding Disclosure of Contributions and Expenditures related to LAFCO proposals**  
Agenda Item # 8

**STAFF RECOMMENDATION**

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1. Adopt correction to policies adopted on December 5, 2007 to implement AB 745 regarding disclosure of contributions and expenditures related to LAFCO proposals. See Attachment A for AB 745 and Attachment B for the corrected policies to implement AB 745.

**BACKGROUND**

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AB 745, effective January 1, 2008 builds on existing provisions in the CKH Act related to disclosure of political contributions and expenditures regarding LAFCO proceedings. These requirements took effect on January 1, 2008 and will apply to applications in process as of that date. At the December 5, 2007 LAFCO meeting, LAFCO adopted policies to implement AB 745 based on the model policy approved by the CALAFCO Board. The model policies and our adopted policies focused on contribution and expenditures for political purposes with respect to proposals before LAFCO initiated by petition. However, the statute is applicable to contributions and expenditures with respect to proposals no matter how initiated. The policies have been amended to correct this misstatement.

**ATTACHMENTS**

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Attachment A: AB 745

Attachment B: Amended Policy to implement AB 745: Disclosure of Contributions and Expenditures related to LAFCO Proposals



**Assembly Bill No. 745**

**CHAPTER 109**

An act to amend Sections 56100.1 and 56700.1 of, and to add Section 57009 to, the Government Code, relating to local agencies.

[Approved by Governor July 20, 2007. Filed with  
Secretary of State July 20, 2007.]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 745, Silva. Local agency formation commissions.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 requires specified procedures to be followed for the submission of a proposal for a change of organization or reorganization to the local agency formation commission. Existing law requires the disclosure of expenditures for political purposes related to a change of organization or reorganization proposal that has been submitted to a local agency formation commission, and contributions in support of or in opposition to those measures.

This bill would require expenditures for political purposes made in connection with a proposal that will be submitted to a local agency formation commission, and contributions in support of or in opposition to those proposals, and expenditures for political purposes made in connection to proceedings for a change of organization or reorganization, and contributions in support of or in opposition to those proceedings, to be disclosed and reported to the same extent and subject to the same requirements of the Political Reform Act of 1974 as provided for local initiative measures.

*The people of the State of California do enact as follows:*

SECTION 1. Section 56100.1 of the Government Code is amended to read:

56100.1. A commission may require, through the adoption of written policies and procedures, the disclosure of contributions, as defined in Section 82015, expenditures, as defined in Section 82025, and independent expenditures, as defined in Section 82031, made in support of or opposition to a proposal. Disclosure shall be made either to the commission's executive officer, in which case it shall be posted on the commission's Web site, if applicable, or to the board of supervisors of the county in which the commission is located, which may designate a county officer to receive the disclosure. Disclosure pursuant to a requirement under the authority provided in this section shall be in addition to any disclosure otherwise required by Section 56700.1, the Political Reform Act (Title 9 (commencing with Section 81000)), or local ordinance.

SEC. 2. Section 56700.1 of the Government Code is amended to read:

56700.1. Expenditures for political purposes related to a proposal for a change of organization or reorganization that will be submitted to a commission pursuant to this part, and, contributions in support of or in opposition to those proposals, shall be disclosed and reported to the commission to the same extent and subject to the same requirements of the Political Reform Act (Title 9 (commencing with Section 81000)) as provided for local initiative measures.

SEC. 3. Section 57009 is added to the Government Code, to read:

57009. Expenditures for political purposes related to proceedings for a change of organization or reorganization that will be conducted pursuant to this part, and contributions in support of, or in opposition to, those proceedings shall be disclosed and reported to the commission to the same extent and subject to the same requirements of the Political Reform Act (Title 9 (commencing with Section 81000)), as provided for local initiative measures.

**Disclosure of Political Expenditures Regarding  
LAFCO Proceedings**  
~~DRAFT November 28, 2009~~

Pursuant to Government Code Sections 56700.1 and 57009, effective January 1, 2008, expenditures for political purposes related to a proposal for a change of organization or reorganization ~~initiated by petition~~ and contributions in support of or in opposition to any proposal at the conducting authority stage of the LAFCO process are subject to the reporting and disclosure to the same extent as required for local initiative measures under the Political Reform Act, Government Code Section 81000 et seq., and the regulations of the Fair Political Practices Commission implementing that law.

LAFCO of Santa Clara County adopts the following reporting and disclosure requirements to implement Government Code Sections 56700.1 and 57009.

1. **Definitions**

- a. "Contribution" as used herein shall have the same definition as provided in Government Code Section 82015, as amended.
- b. "Expenditure" as used herein shall have the same definition as provided in Government Code Section 82025, as amended.
- c. "Independent expenditure" as used herein shall have the same definition as provided in Government Code Section 82031, as amended, except that the term "measure" as used in Section 82031 shall be replaced with the term "proposal for change of organization or reorganization."
- d. "Political Purposes" as used herein shall mean for the purpose(s) of:
  - (i) influencing public opinion; (ii) lobbying public officials;
  - (iii) influencing legislative or administrative action as defined in Government Code § 82032; and/or, (iv) complying with legal requirements and LAFCO rules for the processing of a proposal, including, but not limited to and by way of example only, preparation of a comprehensive fiscal analysis for an incorporation (Government Code Section 56800) or documents necessary to comply with the California Environmental Quality Act, Public Resources Code Section 21000 et seq., such as a mitigated negative declaration or environmental impact report.

2. Disclosure Requirements for Petitions for Proposals for Organization or Reorganization and for Conducting Authority Proceedings
  - a. Any person or combination of persons who directly or indirectly makes an expenditure or independent expenditure for political purposes of \$1,000 or more in support of, or in opposition to or related to:
    1. a change of organization or reorganization submitted to the commission to which Government Code Section 56700.1 applies,  
OR
    2. conducting authority proceedings for a change of organization or reorganization to which Government Code Section 57009 applies,  
shall comply with the reporting and disclosure requirements of the Political Reform Act (Government Code § 81000 et seq.), to the same extent and subject to the same requirements as for local initiative measures. Such reporting and disclosure requirements, except as otherwise excluded herein, extend to those required by the Fair Political Practices Commission Regulations regarding such disclosures and shall include disclosure of contributions, expenditures and independent expenditures.
  - b. Disclosures made pursuant to this Section shall be filed with the commission's Executive Officer as designated in Section below.
  - c. For purposes of determining the deadlines by which such reports and disclosures must be filed, the term "election" as used in the Political Reform Act for determining such deadlines shall mean the date of the originally scheduled commission hearing on a proposal for change of organization or reorganization or the originally scheduled conducting authority hearing if the expenditure is in regard to the conducting authority proceeding. If no hearing date has been scheduled at the time a person becomes subject to disclosure under this policy, he or she shall request that the executive officer establish a date to serve as the "election" date for this purpose. The executive officer shall establish a date, such as, but not limited to, the date which is 6 months after the first filing with the commission regarding the proposal, and inform the requestor of that date in writing.
  - d. In the event the originally scheduled hearing date for the proposal for organization or reorganization or for the conducting authority proceeding is rescheduled or continued to a later date, the obligation

to file continues and reports shall be filed on or before the 10<sup>th</sup> day of each month following the original hearing date with respect to contributions and expenditures received in the previous calendar month up to and including the third calendar month following final action by the commission on the proposal.

**3. Certain Reports and Disclosures Excluded**

This policy requires only that the persons subject to it disclose via reports to the commission's executive officer contributions, expenditures and independent expenditures with respect to expenditures for political purposes related to a petition to the commission for a proposal for an organization or reorganization and does not impose on such persons the regulations regarding the names of campaign committees, disclosures of the sources of mass mailings, and disclosures of the source of automated telephone calls under Government Code Sections 84501 et seq. and the regulations of the Fair Political Practices Commission implementing those sections.

**4. Where to File**

All reports and disclosures required hereunder shall be filed with the commission's Executive Officer.

**5. Reporting requirements are non-exclusive**

The disclosure and reporting requirements herein are in addition to any other requirements that may be otherwise applicable under provisions of the Political Reform Act or by local ordinance.

**6. Sunset provision**

This policy is intended to implement Government Code Sections 56700.1 and 57009 and shall be of no further force and effect upon the effective date of legislation repealing or amending those sections to transfer responsibility for enforcing disclosure of expenditures for political purposes affecting commission proceedings to the Fair Political Practices Commission or otherwise terminates the responsibility of this commission to adopt and implement this policies.

Adopted December 5, 2007

Revised February 6, 2008

**LAFCO Hearing: February 6, 2008**

**TO: LAFCO**

**FROM: Neelima Palacherla, Executive Officer  
Dunia Noel, Analyst**

**SUBJECT: Initial Study/Negative Declaration and Alternative  
Boundary Discussion**

**Agenda Item # 9.2a**

### **STAFF RECOMMENDATIONS**

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1. Direct staff to revise the Initial Study in order to:
  - a. Revise the project description to allow for the inclusion of Area 2 and an amendment of Morgan Hill's SOI boundary,
  - b. Address comments received from various stakeholders on the Initial Study and Proposed Negative Declaration, and
  - c. Include information on a preferred incorporation boundary, if provided by LAFCO.
2. Set April 16, 2008 as the date for a public hearing to accept comments on the revised Initial Study and the proposed CEQA recommendation

### **BACKGROUND**

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#### **Project Description**

The Project is the incorporation of a new city to be called the Town of San Martin located in southern Santa Clara County between the cities of Morgan Hill and Gilroy. The incorporation, if approved by LAFCO and supported by a majority vote of registered voters in the area, would transfer general governance and jurisdiction over service provision and land use decisions from the County of Santa Clara to the new town of San Martin. The project also involves the establishment of planning boundaries such as the urban service area and sphere of influence for the new Town of San Martin. No new development or new services are associated with the proposed project. The Project does not include

changes in land use, as the new Town upon incorporation will adopt the Santa Clara County Zoning Ordinance and General Plan.

### **December 5, 2007 LAFCO Public Hearing on Initial Study and Proposed Negative Declaration**

LAFCO held a public hearing on the Initial Study and Proposed Negative Declaration for the Proposed Incorporation of the Town of San Martin. Public testimony was provided by Brian Schmidt (Committee for Green Foothills), Jim Foran (resident of Santa Clara County), and Richard van'tRood (an incorporation proponent).

Mr. Schmidt concurred with the concerns raised in a letter (to be discussed later in this staff report) from the City Morgan Hill regarding the boundary of the new Town and its environmental impact. He requests that further action on the Negative Declaration be held pending a decision on the final boundaries of the proposed town. Furthermore, he states that a smaller boundary would cause fewer environmental impacts.

Mr. Foran stated that he believes LAFCO's responsibility to protect agricultural lands does not change whether the LAFCO action is an incorporation or annexation. He further commented that there is a significant environmental impact because by incorporating these lands, they would no longer be protected by LAFCO's agricultural mitigation policies and that he believes this is a significant CEQA issues that should require an EIR.

Mr. van'tRood expressed support for the Initial Study and Negative Declaration and noted that the document was prepared by LAFCO's consultant.

LAFCO staff noted that the public review period would close on December 5, 2007 at 5 PM. LAFCO directed staff to respond to comments and to make any necessary revisions to the Initial Study and Proposed Negative Declaration.

### **Additional Comments were Received by the Close of the Public Review Period**

Following LAFCO's December 5<sup>th</sup> public hearing, LAFCO staff received comment letters (Attachment A) from the City of Morgan Hill, County of Santa Clara Parks and Recreation Department, County of Santa Clara Planning and Development Department, California Department of Conservation, and Santa Clara Valley Transportation Authority.

## **City of Morgan Hill**

The City of Morgan Hill in their comment letter and memorandum stated that they believe that the proposed incorporation boundaries for San Martin are inconsistent with LAFCO, City and County Policies and noted that these inconsistencies are not addressed in the Initial Study/Negative Declaration (IS/ND) and that therefore the possible impacts have not been evaluated within the IS/ND. The City has requested that the IS/ND include information addressing whether the proposed incorporation boundaries are consistent with LAFCO, City, and County Policies and requested that LAFCO require the appropriate mitigation to address any inconsistencies. The City has also questioned why LAFCO's Agricultural Mitigation Policies are not being applied to the incorporation when LAFCO is including agricultural land within the proposed city limits and that agricultural land could be converted to more urban use in the future.

Morgan Hill stated that many of their concerns and questions may be resolved by the establishment of boundaries for the new town that include less land than is recommended by the incorporation proponents. Morgan Hill also stated that should the boundaries approved by LAFCO exclude agricultural lands and be located as to be consistent with LAFCO, County, and City Policies, Morgan Hill could support the adoption of the Negative Declaration. In their memorandum, Morgan Hill notes that they are particularly concerned with the areas north of Middle Avenue and north of California Avenue and state that the proposed incorporation boundaries are inconsistent with various LAFCO, City, and County policies which:

- Call for the establishment of greenbelts between the South County Cities,
- Call for the area proposed for incorporation to be compact,
- Call for the proposed incorporation boundaries to not create unincorporated islands,
- Discourage the inclusion of agricultural and open space lands within the boundaries of the proposed city,
- Encourage the use of sphere of influence boundaries to address concerns regarding land use and development standards, premature conversion of agriculture and open space lands and efficient provision of services, and
- Encourage the use of urban service area boundaries to encourage orderly city growth.



Morgan Hill requested that LAFCO not adopt the negative declaration until such as time as LAFCO determines the appropriate location for the sphere of influence, urban service area and city limits for the proposed town. Furthermore, Morgan Hill requested that LAFCO amend the environmental assessment to include analysis of the boundaries consistency with the various local policies once LAFCO determines the appropriate location of them.

### **County of Santa Clara Planning and Building Department**

County Planning has requested that the Initial Study reference and incorporate mitigation measures from the County General Plan Program EIR which address issues such as conversion of Prime Farmland and other categories (Noise, Hydrology) and noted that the County General Plan EIR has specific mitigation measures which address future development which is consistent with the County General Plan. County Planning also requested that greenhouse gas emissions/global warming also be considered within the CEQA document. The Department also requested other very minor corrections to the Initial Study.

### **County of Santa Clara Parks and Recreation Department**

County Parks has requested that the Initial Study(IS) clarify and include additional information concerning parks and recreation, particularly concerning the proposed new town's plans for providing local park and recreation services, and implementing the County's Trails Master Plan and the Coyote Lake-Harvey Bear Ranch County Park Master Plan and Natural Resources Management Plan. County Parks also requested that the IS also discuss how the incorporation would potentially affect future development at Coyote Lake-Harvey Bear Ranch County Park in accordance with the Board-approved planning policies. Additionally, County Parks requested that further clarification concerning the proposed new town's role in implementing the San Martin Cross Valley Sub-Regional Trail Route (S8) be provided.

### **Other Comment Letters: No Response Required**

The comment letters from the CA Department of Conservation and the Santa Clara Valley Transportation Authority do not require a response or a revision to the environmental documents.

## **REVISIONS TO THE PROPOSED INCORPORATION BOUNDARY THAT MAY AFFECT CEQA ANALYSIS AND RECOMMENDATION**

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### **Inclusion of Area 2 In Order to Avoid Creating an Unincorporated Island**

At the December 5, 2007 LAFCO Meeting, LAFCO staff recommended modifications to the incorporation boundary proposed by the proponents. All of the modifications except for one, involved excluding areas from the incorporation boundary proposed by the proponents. Since these other modifications involve areas currently within the proposed incorporation boundary, the Initial Study and Proposed Negative Declaration already includes an evaluation of these boundaries. Area 2 is the only area that would involve an addition to the incorporation boundary proposed by the proponents and analyzed in the Initial Study/Proposed Negative Declaration.

In order for LAFCO to consider including Area 2 in the incorporation boundary, the project description in the Initial Study must be revised to include this area. Furthermore, this area cannot be included in the proposed incorporation boundaries until it has been removed from Morgan Hill's Sphere of Influence Boundary. In order to accomplish this, LAFCO would need to amend Morgan Hill's Sphere of Influence boundary and this action would be subject to CEQA. Therefore, the current Initial Study must be revised to include this action as part of the project description and additional environmental analysis needs to be completed. The revised Initial Study and CEQA recommendation must also be circulated for public review and comment.

### **Other Potential Modifications to the Proposed Incorporation Boundary**

In order to address concerns raised by LAFCO staff and various stakeholders regarding the proposed incorporation boundary, LAFCO staff recommends that LAFCO provide further direction on the preferred incorporation boundary alignments at this time (Please see staff report for Item 9b). This information would then be included in the revised Initial Study and considered during the development of an environmental recommendation. At the December 5, 2007 LAFCO Meeting, LAFCO staff recommended that LAFCO adopt a Negative Declaration for the project. However, LAFCO staff cannot determine whether a Negative Declaration will remain appropriate until the Initial Study is revised and additional environmental analysis is completed.

## **ATTACHMENT**

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Attachment A: Comment Letters Received on the Initial Study and Proposed Incorporation



CITY OF MORGAN HILL

STEVE TATE  
Mayor

**ITEM No. 9.2A  
ATTACHMENT A**

[www.morganhill.ca.gov](http://www.morganhill.ca.gov)

*Kathy M.P.*

December 4, 2007

Blanca Alvarado, Chair  
Local Agency Formation Commission  
70 West Hedding Street  
11<sup>th</sup> Floor, East Wing  
San Jose, CA 95110

PLANNING DEPT.

DEC 04 2007

CITY OF MORGAN HILL

Subject: Item 8 of the December 5, 2007 LAFCO Meeting Agenda: Proposed  
Incorporation of the Town of San Martin

Dear Chairperson Alvarado and LAFCO Commissioners:

I am writing on behalf of the Morgan Hill City Council regarding the proposed boundaries for the possible incorporation of the Town of San Martin and the Negative Declaration prepared for that incorporation. It is important to note that Morgan Hill does not oppose incorporation of San Martin. Our questions and concerns address only the proposed boundaries for the Town and the sequencing of the determination of those boundaries and the environmental assessment for the proposed incorporation. The attached memorandum from Morgan Hill staff to the City Manager provides additional details regarding our questions and concerns.

The Negative Declaration for the proposed incorporation assumes that the sphere of influence, urban service area and city limits for the proposed town will be coterminous, including all the land between the Morgan Hill and Gilroy spheres of influence. The Negative Declaration also acknowledges that LAFCO may modify the proposed boundaries to be consistent with its policies and state mandate. If the boundaries are not modified, the proposal would be inconsistent with a number of LAFCO, City and County policies. These inconsistencies are not addressed in the Negative Declaration and the possible impacts not evaluated. Morgan Hill is unsure why these inconsistencies have not been addressed or, if it is the intent of LAFCO to modify the proposed boundaries, why the modified boundaries have not been identified and evaluated in the environmental document.

Earlier this year, LAFCO adopted Agricultural Mitigation Policies, indicating that those policies will be applied to all future city requests for expansion of urban service boundaries. As described in the Negative Declaration, the proposed incorporation of San Martin and establishment of an urban service area for it will include a significant amount of prime agricultural land. The Negative Declaration indicates that mitigation for the loss

Blanca Alvarado  
December 4, 2007  
Page 2 of 2

of agricultural land is not necessary because no change in zoning is anticipated by the incorporation proponents. However, that document also recognizes the possibility of future land use changes by the San Martin City Council. Morgan Hill is unsure why LAFCO would include agricultural land within the proposed city limits, knowing that it could be converted to more urban use in the future and not apply its Agricultural Mitigation Policies. While it may be that the Town of San Martin plans to retain agricultural zoning well into the future as its "greenbelt," this is not made clear by the project description and inclusion in the urban service area would seem unnecessary.

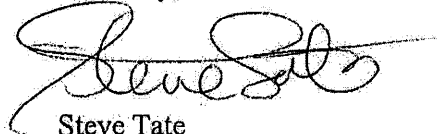
It is possible that some or all of Morgan Hill's concerns and questions may be resolved by the establishment of boundaries for the new town that include less land than is recommended by the incorporation proponents. Should the boundaries approved by LAFCO exclude agricultural lands and be located so as to be consistent with LAFCO Incorporation Policies and Boundary Location Policies, Morgan Hill could support adoption of the Negative Declaration. However, since the Negative Declaration assumes that all unincorporated land between the Morgan Hill and Gilroy spheres of influence will be incorporated, we feel it important to question the consistency of the proposed incorporation with LAFCO, Morgan Hill and County plans and policies.

Morgan Hill respectfully requests LAFCO not adopt the negative declaration until such time as it determines the appropriate location for the sphere of influence, urban service area and city limits for the proposed town. Once that determination is made, we request that the environmental assessment be amended to address the consistency of those boundaries with LAFCO and other agencies policies, and require appropriate mitigation.

If you have any questions about our questions and concerns, please feel free to contact me at 408/779-7259 or our Community Development Director, Kathy Molloy Previsich at 408/779-7247.

Thank you for your consideration of our comments.

Sincerely,



Steve Tate  
Mayor

C: Morgan Hill City Council  
Ed Tewes, City Manager  
The Honorable Al Pinheiro, City of Gilroy

Attachment: Memo to City Manager regarding Negative Declaration for San Martin Incorporation



## Memorandum

**Date:** November 28, 2007  
**To:** City Manager  
**From:** Community Development Department  
**Subject:** Draft Negative Declaration for San Martin Incorporation

LAFCO has referred to the City for review and comment a copy of the negative declaration proposed to be adopted for the possible incorporation. This memo provides an overview of the proposed incorporation, negative declaration, and policies relevant to that document. Overall it appears that adoption of a negative declaration for the incorporation is premature as the boundaries for the proposed city have not been established. Without knowing the location of those boundaries, it is not possible to determine the consistency of the incorporation with LAFCO, City and County land use policies and the environmental impacts that might result from those possible inconsistencies.

### INCORPORATION PROPOSAL

The proponents have identified their primary objectives of incorporation to include the following:

- a locally accountable governing body,
- local control of land use, planning and other governmental activities,
- maintenance of the rural residential character and small-scale agricultural activities of the area,
- maintenance of existing public services and service levels.

It is anticipated that most services to the new city would be provided under contract (potentially to Santa Clara County). There are several water districts serving portions of San Martin. The Lions Gate Community Services District provides sewer and water service to the Corde Valle development. The proposal for incorporation indicates that expansion of the area served by those providers is not anticipated.

The proponents have defined the boundaries of the proposed city to include all of the land on the valley floor that is not included within the spheres of influence of Gilroy or Morgan Hill. In addition, the boundaries would include much of the hillside lands on the west side of the valley extending to Watsonville Road. This hillside land includes Hayes Valley Estates, Corde Valle, Clos la Chance winery and other adjacent and nearby properties. The County General Plan and Zoning Ordinance are proposed to be adopted, at least initially, to govern land use matters in the new city. Most of the land proposed for incorporation is designated by the County General Plan for rural residential, agriculture, public and hillside uses.

The Negative Declaration indicates that the incorporation proposal includes the establishment of the sphere of influence and urban service area. It assumes that these boundaries will be coterminous with the city limits but recognizes LAFCO may identify alternative boundaries for consistency with its "mandate to encourage the orderly formation of local agencies, encourage the efficient provision of

services, discourage urban sprawl, and to preserve agricultural and open space resources.” LAFCO approval of the proposed incorporation, as drafted or in modified form, is required for the proposal is put before the voters of the area.

### **NEGATIVE DECLARATION**

The Santa Clara County LAFCO has prepared the environmental assessment for the proposed incorporation. That assessment is consistent with the proponents’ project description that would maintain the status quo for the area. The assessment recognizes that, upon incorporation, it is possible for legislative changes to be made by the new city council that would change the status quo and result in possible environmental impacts. However, the document indicates that it would be premature and speculative to try to predict future city council actions. As a result, the environmental assessment has found no significant impacts that would result from incorporation.

Staff recognizes and agrees that it would be speculative and premature to try to predict future actions of a new city council and that, for the most part, incorporation would have few immediate environmental effects. However, one of the environmental factors addressed in the negative declaration is reasonably foreseeable land use and whether the proposed incorporation would be consistent with applicable plans and policies. The negative declaration indicates that with adoption of the County General Plan and Zoning Ordinance by the new city, no land use impacts would result. The negative declaration does not address consistency with LAFCO policies. Staff believes the proposal is inconsistent with several City, County and LAFCO policies as identified below and that mitigation may be required in order to comply with those policies.

### **City and County General Plan Policies Relevant to the Proposed Incorporation**

The County General Plan policies recognize San Martin as a distinct area with rural characteristics (Policy R-LU 114). The General Plan defines the boundaries of the San Martin area to include all of the valley floor land between the Morgan Hill and Gilroy spheres of influence. The County General Plan does not include any of the hillside lands on the east or west sides of the valley within the San Martin area (Policy R-LU 113). As mentioned above, the proposed limits of incorporation include a significant area of hillside land to the west of the valley floor and are therefore inconsistent with this County policy.

The South County Joint Area Plan policies that were adopted by the County and Morgan Hill call for the establishment of a greenbelt between Morgan Hill and San Martin (Policy SC 17.9). This policy is also included in the Open Space and Conservation Element of the Morgan Hill General Plan (Policy 2b).. Whereas it may be possible to create a greenbelt within the incorporated limits of the new city, the incorporation also may allow for the provision of urban services some time in the future. Incorporation of the northern, agriculturally zoned portion of the San Martin area and the potential for the provision of urban services to it may be inconsistent with the goal to create a greenbelt between the two communities.

### LAFCO Policies Relevant to the Proposed Incorporation

LAFCO has adopted policies regarding incorporations, spheres of influence, urban service areas, and agricultural mitigation, all of which are relevant to the proposed incorporation. The proposed incorporation is consistent with most of those policies. However, the incorporation appears to be inconsistent with the three Incorporation policies and Agricultural Mitigation policies identified below. In addition, without knowing the location of the sphere of influence and urban service area it is not possible to determine consistency with LAFCO policies on these topics and the possible need for mitigation.

#### Incorporation Policies:

Policy 3.e. reads as follows: "An area proposed for incorporation must be compact and contiguous, and possess a community identity." The area proposed for incorporation includes all of the land between the Morgan Hill and Gilroy spheres of influence. This area likely has a "community identity" as it is all has a San Martin address. However, it does not appear to be a "compact" area.

Policy 3.f. reads as follows: "The proposal boundaries and alternatives shall not create islands or areas that would be difficult to serve." The proposed incorporation boundaries would create an unincorporated island bounded by Santa Teresa Blvd. on the west, California Ave. on the south and the city limits of Morgan Hill and San Martin on the north and east, respectively.

Policy 3.h. reads as follows: "Inclusion of agricultural and open space lands within the boundaries of a proposed city is discouraged." The portion of the proposed incorporation that is north of Middle Ave. is planned and zoned for agricultural use. In addition, the area proposed for incorporation that is located on both sides of Santa Teresa Blvd. south of Highland Ave. is in active agricultural use. Inclusion of these areas within the new city would appear to be inconsistent with this policy.

#### Boundary Location Policies:

The negative declaration indicates that the project includes the establishment of a sphere of influence and urban service area for the proposed city. In that document it is assumed the sphere of influence and urban service area will be coterminous with the city limits. The negative declaration recognizes that "LAFCO is required to consider alternative boundaries and is empowered to modify boundaries in its review of proposals." It is not known at this time whether alternative boundaries will be adopted by LAFCO.

Sphere of Influence Policy A.2.b. indicates that spheres of influences shall be used "to address concerns regarding land use and development standards, premature conversion of agriculture and open space lands and efficient provision of services." If the corporate limits of the proposed city remain at the Morgan Hill and Gilroy spheres of influence, the sphere of influence for the city would, of necessity, be coterminous with those new city limits. This situation would preempt LAFCO's ability to exercise its responsibilities under this policy.

Urban Service Area Policy A.1. indicates that "review and amendment of urban service area boundaries is the Commission's primary vehicle for encouraging orderly city growth." If the urban service area is coterminous with the proposed city limits (at the Morgan Hill and Gilroy spheres of influence) as indicated in the negative declaration, it would be difficult for LAFCO to exercise its responsibilities under this policy to encourage orderly city growth.

#### Agricultural Mitigation Policies:

Earlier this year, LAFCO adopted Agricultural Mitigation Policies. The preamble to those policies indicates that it is LAFCO's policy to "discourage premature conversion of agricultural lands, guide development away from existing agricultural lands and require the development of existing vacant lands within city boundaries prior to conversion of additional agricultural lands." General Policy 1 "recommends provision of agricultural mitigation as specified herein for all LAFCO applications that impact or result in a loss of prime agricultural lands..." The negative declaration presumes that the urban service area for the proposed city would be coterminous with the city limits and include all land between the Morgan Hill and Gilroy spheres of influence. If this is the case, significant amounts of prime agricultural land would be included within the urban service area. The negative declaration does not address the consistency of this potential location for the urban service area or the need for mitigation.

#### CONCLUSION

The negative declaration indicates that LAFCO will consider, as part of the incorporation request, alternative boundaries for the proposed city. Presumably this will occur some time after adoption of the negative declaration. Staff believes it is critical for the city limits, urban service area and sphere of influence boundaries to be established prior to completion of the environmental assessment and adoption of the negative declaration. Without knowing the location of these boundaries, it is not possible to determine the consistency of the proposal with LAFCO policies. In addition, it is not possible to make a finding of less than significant impacts for land use and agricultural lands in the environmental assessment.

The location of the sphere of influence, urban service area and city limits of the proposed city are critical. It is recognized that the proponents of incorporation have expressed intent to maintain the rural residential character and small-scale agricultural activities of the area. Should this be the case over the long term and County land use plans and zoning remain in effect, LAFCO's role in the area may be minimal and limited. However, as indicated in the negative declaration, it is not possible to predict future city council actions. Should San Martin incorporate and future councils promote urbanization of the area, it will be important for the new city's boundaries to have been established in locations that allow LAFCO to carry out its state mandates.

Staff recommends the Council request LAFCO to not adopt the negative declaration until such time as the sphere of influence, urban service area and city limits for the proposed city have been determined. Once those boundaries have been determined, the environmental assessment should be amended to address their consistency with LAFCO and other agency policies.



# County of Santa Clara

## Parks and Recreation Department

298 Garden Hill Drive  
Los Gatos, California 95032-7669  
(408) 355-2200 FAX 355-2290  
Reservations (408) 355-2201  
[www.parkhere.org](http://www.parkhere.org)



December 4, 2007

Local Agency Formation Commission of Santa Clara County (LAFCO)  
Attention: Neelima Palacherla, Executive Officer  
70 West Hedding Street  
11<sup>th</sup> Floor, East Wing  
San Jose, CA 95110

**SUBJECT: Proposed Incorporation of the Town of San Martin: Initial Study and Proposed Negative Declaration**

Dear Ms. Palacherla:

The County Parks and Recreation Department ("Parks Department") appreciates the opportunity to review and submit comments on the Initial Study and Negative Declaration (IS/ND) for the Proposed San Martin Incorporation project. The Parks Department submits the following comments for consideration by LAFCO.

**SECTION 2.0 PROJECT DESCRIPTION**  
**Proposed Boundaries of the Incorporation (Page 4)**

The current project boundaries, as proposed for the Town of San Martin's incorporation, includes lands located within the western portion of Coyote Lake-Harvey Bear Ranch County Park, which is inconsistent with LAFCO's Incorporation Policies (adopted May 30, 2007) that discourages inclusion of agricultural and open space lands within the boundaries of a proposed city. The 4,595-acre Coyote Lake-Harvey Bear Ranch County Park is owned and operated by the Parks Department, where lands including Coyote Lake and contiguous to the lake are also under the jurisdiction of the Santa Clara Valley Water District.

The Parks Department understands that LAFCO is required to consider alternative project boundaries and has the authority to modify boundaries as part of the LAFCO incorporation process. As previously discussed with LAFCO staff in July 2007, we recommended that LAFCO modify the proposed incorporation boundaries to exclude the proposed 253-acre portion of Coyote Lake-Harvey Bear Ranch County Park. The Parks Department would be available for agency consultation to assist with LAFCO staff's development of alternative boundary recommendations for the staff report to the Commission.

It should be noted that by submitting the following comments, the Parks Department does not endorse the applicant's current project boundaries. We recognize that the project's boundary issue is not considered an environmental effect of the proposed incorporation and that the IS/ND



discusses the San Martin Neighborhood Alliance, Inc.'s proposed project boundaries, as required by the LAFCO incorporation process and CEQA guidelines.

#### **TABLE 2.1 CURRENT AND PROPOSED SERVICE PROVIDERS TO SAN MARTIN**

Under Table 2.1, the City is identified as assuming responsibility for "Parks and Recreation," which would supplant the County's responsibilities for this area. However, this designation is inconsistent with the discussion under the Public Services section, where the IS/ND discusses the County's continual role and responsibility with the ownership and operation of Coyote Lake-Harvey Bear Ranch County Park. Additionally, there is minimal discussion related to the Town of San Martin's provision of local park and recreation services. Thus additional clarification is needed to support the City's responsibility in this area. The Parks Department also recommends that Table 2.1 be updated to be consistent with the IS/ND's discussions on parks and recreation services on page 61.

#### **LAND USE**

##### **Santa Clara County Land Use Designations (Page 53)**

Under the County general plan and planning policies discussions related to regional parks and trails, LAFCO should include a discussion related to the *Santa Clara County Countywide Trails Master Plan Update*, an element of the Parks and Recreation Section of the County General Plan, that the Board of Supervisors adopted on November 14, 1995. In addition, the Board approved the *Coyote Lake-Harvey Bear Ranch County Park Master Plan and Natural Resources Management Plan* on January 27, 2004, which outlines the future park development and resource management goals for the County park facility. These planning documents should be included as related planning policies for the Town of San Martin's consideration.

#### **PUBLIC SERVICES**

##### **Law Enforcement (Page 61)**

The Town of San Martin should consider the existing contractual agreements between the County Parks Department and the County Sheriff's Office for addressing law enforcement within the interface areas between Coyote Lake-Harvey Bear Ranch County Park and the residential areas located along Foothill Avenue, San Martin Avenue, and New Avenue.

##### **Parks and Recreation (Page 61)**

The Initial Study states, "[a]fter incorporation, it is expected that the new City will be responsible for park and recreation services." There is minimal discussion on the future needs and provisions for local parks and recreation services for the new City's residents. Therefore, there would be an expectation that the City residents would seek local park and recreation-serving facilities and programs within the adjacent Coyote Lake-Harvey Bear Ranch County Park.

Under impact discussion (c) on page 64, the IS/ND does not adequately discuss the potential environmental impacts to Coyote Lake-Harvey Bear Ranch County Park as related to the population of approximately 6,900 residents likely using the nearby park's trails, staging areas, interpretive and recreational programs and other facilities.



# County of Santa Clara

Department of Planning and Development  
Planning Office

County Government Center, East Wing, 7th Floor  
70 West Hedding Street  
San Jose, California 95110-1705  
(408) 299-5770 FAX (408) 288-9198  
www.sccplanning.org



December 5, 2007

Neelima Palacherla  
Local Agency Formation Commission of Santa Clara County (LAFCO)  
70 West Hedding Street  
11<sup>th</sup> Floor, East Wing  
San Jose, CA 95110

**Subject: Comments on the Negative Declaration for the San Martin Incorporation.**

Dear Mrs. Palacherla:

The Santa Clara County Planning Office has received and reviewed the aforementioned Negative Declaration and has the following comments.

**Reference and Incorporation of Mitigation Measures from the County General Plan EIR –**  
The Initial Study consistently references the County General Plan and Zoning Ordinance and states that the County's policies and land use regulations will be adopted by the Town upon incorporation. In evaluating potential environmental impacts (direct and reasonably foreseeable) which would result from Incorporation, reliance on existing the existing General Plan and Zoning Ordinance is a logical basis for concluding that the this action will not result in any reasonably foreseeable significant environmental impacts.

However, if the existing applicable General Plan policies and land use designations will be adopted by the Town as a result of the Incorporation, the Initial Study needs to better reference the County General Plan EIR for CEQA clearance. Specifically, the Initial Study should reference and incorporate mitigation measures from the General Plan Program EIR which address areas such as the conversion of Prime Farmland and other categories (Noise, Hydrology). The General Plan EIR has specific mitigation measures which address future development which is consistent with the General Plan.

**Greenhouse Gas Emissions / Global Warming –** Although this is not anticipated to be a significant impact, the CEQA document could benefit from a discussion of this topic. Pursuant to adoption of AB 32 and SB 97, this should be considered within CEQA documents.

**Hydrology -** Page 48 of the document references Appendix C. As this appendix does not exist within the County General Plan, please clarify.

**Hazards** - It should be noted that the new South County Airport Master Plan is in Draft form, and will not be formally adopted until at least early 2009

The County Planning Office appreciates the opportunity to review and comment on the CEQA document for the San Martin Incorporation. We look forward to receiving and reviewing any additional notices or CEQA documents with respect to this proposal.

Should you have any questions, please feel free to contact me at (408) 299-5792.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rob Eastwood', written over a horizontal line.

Rob Eastwood  
Senior Planner

Cc: Sylvia Gallegos, County Executive  
Val Alexeeff  
Bill Shoe



# DEPARTMENT OF CONSERVATION

## DIVISION OF LAND RESOURCE PROTECTION

801 K STREET • MS 18-01 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 324-0850 • FAX 916 / 327-3430 • TDD 916 / 324-2555 • WEB SITE [conservation.ca.gov](http://conservation.ca.gov)

TO: **VIA FACSIMILE (408) 295-1613**

Dunia Noel  
Santa Clara County LAFCO  
70 West Hedding Street  
11th Floor, East Wing  
San Jose, CA 95110

*DL*

FROM: Dennis J. O'Bryant, Program Manager  
Department of Conservation

DATE: December 4, 2007

SUBJECT: TOWN OF SAN MARTIN INCORPORATION NEGATIVE DECLARATION  
(SANTA CLARA COUNTY) **SCH# 2007112017**

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The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the Negative Declaration (ND) for the referenced project. The Division monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other agricultural land conservation programs.

### Project Description

The purpose of the project is the incorporation of a new city to be called the Town of San Martin. The project site is located in southern Santa Clara County (County), between the cities of Morgan Hill and Gilroy. Within the proposed incorporation boundaries, there are currently 187 properties (approximately 2,200 acres) under Williamson Act contracts. The County has filed and recorded notices of non-renewal on 126 of the 187 contracts (set to expire in 2016 – 2017), as these properties did not meet the minimum acreage requirement and/or the requirement for having a commercial agricultural operation on the property. The Town of San Martin will succeed to these contracts as well as the remaining 61 properties that will remain under contract. Assuming the incorporation is successful, the new city would administer the contracts under the existing county ordinance, unless and until it adopts its own Williamson Act ordinance. The ND has determined that the project will have no impacts on agricultural resources and a less than significant impact in regards to any changes in the existing

Under impact discussion (e) on page 64, the IS/ND does not address the residents' desires to use improved trail facilities within their City as a form of alternative transportation, which would result in an increased need for and use of the countywide trail system. The discussion should acknowledge the planned countywide trail network within the project area as future recreational opportunities for the City's implementation, operations and maintenance.

Although the discussion acknowledges the existing Coyote Lake-Harvey Bear Ranch County Park facility, the IS/ND does not acknowledge the future planned recreational uses that will be developed within the West Flat area of this County Park. As identified in the Board-approved Master Plan, the IS/ND should acknowledge the Parks Department's future goals for developing a golf course facility, events center, off-leash dog park, day use areas, staging areas and other programmed uses within the West Flat Area of the County Park. The IS/ND should discuss how this incorporation would potentially affect the future development of this County Park in accordance with the Board-approved planning policies.

A number of regional, sub-regional and connector trail routes identified in the *Countywide Trails Master Plan Update* (November, 1995) are located within the areas proposed for incorporation. Under the Park Setting discussion on page 63, two additional proposed trail routes, that are identified within road right-of-way and/or private property, should be included as part of the countywide trail system within the project area:

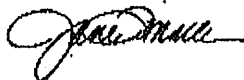
- **R1-A (bike)** - Juan Bautista de Anza National Historic Trail Northern Bicycle Retracement Route (Regional Trail Route)
- **S6** - West Valley Sub-Regional Trail Route

In addition, there should be additional clarification regarding the proposed **San Martin Cross Valley Sub-Regional Trail Route (S8)**. The IS/ND should distinguish segments of the proposed trail route that are located within private property and would be considered for dedication when the landowner is a willing participant versus segments of the proposed trail route that is located within road right-of-way. Future development potential for properties located adjacent to the proposed countywide trail routes should take into consideration trail dedication(s) as part of the new City's implementation of the *Countywide Trails Master Plan Update* policies.

The IS/ND should also include a discussion of related impacts associated with the new City's responsibilities for implementation of these countywide trail routes within the proposed incorporation area under Public Services (page 61).

If you have any questions, please contact me at (408) 355-2237 or at [jane.mark@prk.sccgov.org](mailto:jane.mark@prk.sccgov.org).

Sincerely,



Jane F. Mark, AICP  
Senior Planner

Attachment: County Parks Director's Letter to LAFCO (July 16, 2007)



C:

**Lisa Killough, Director**  
**Julie Mark, Deputy Director of Administration**  
**Jim O'Connor, Deputy Director of Operations and Maintenance**  
**Rachael Gibson, Policy Aide to Supervisor Don Gage,**  
**District One Office of Board of Supervisors**





December 4, 2007

LAFCO  
70 West Hedding Street, 11<sup>th</sup> floor  
San Jose, CA 95110

Attention: Neelima Palacherla

Subject: San Martin Incorporation

Dear Mr. Palacherla:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the Negative Declaration for incorporation of San Martin. We have no comments at this time.

Thank you for the opportunity to review this project. If you have any questions, please call me at (408) 321-5784.

Sincerely,

A handwritten signature in black ink, appearing to read "R Molseed", is written over the typed name.

Roy Molseed  
Senior Environmental Planner

RM:kh



**LAFCO**  
**Meeting Date: February 6, 2008**  
**TO: LAFCO**  
**FROM: Neelima Palacherla, Executive Officer**  
**Dunia Noel, LAFCO Analyst**  
**SUBJECT: Alternative Boundaries Discussion for the Proposed**  
**Incorporation of San Martin**  
Agenda Item # 9.2b

### **STAFF RECOMMENDATION**

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Identify the preferred alternative boundary for the proposed incorporation of San Martin to:

- Exclude Area 1
- Include Area 2
- Include Area 3
- Exclude Area 4
- Exclude Area 5
- Exclude Area 6
- Exclude Area 7

See **Attachment A** for map depicting the proposed boundary and the potential alternatives. Final action on the boundaries will take place at the LAFCO public hearing on the incorporation proposal, to be held tentatively in May 2008.

### **BACKGROUND**

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At the December 5, 2007 LAFCO Meeting, staff presented recommendations for alternate incorporation boundary alignments. LAFCO also received public testimony concerning LAFCO staff recommendation to exclude Areas 1, 3, 4, 5, 6, 7, and to include Area 2. LAFCO discussed the various recommendations and there was a consensus about including Area 2, excluding Area 1, and excluding Area 3 if the City of Morgan Hill was supportive of including this area within their Sphere of Influence. The Commission indicated that they would like to study Areas 4, 5, 6 and 7 further and also take a tour the proposed incorporation

boundaries. The Commissioners, staff, the proponents, and various stakeholders toured the San Martin Incorporation area on January 9, 2008.

Table 1 is a summary of the recommendations and preliminary direction provided by LAFCO at the December LAFCO meeting.

**Table 1: Summary of December 5, 2007 LAFCO Meeting on Boundaries**

Areas	12/5/2007 Staff Recommendation	LAFCO Direction
Area 1	Exclude	Exclude
Area 2	Include	Include
Area 3	Exclude	Exclude if Secure Morgan Hill's Support
Area 4	Exclude	Further Study
Area 5	Exclude	Further Study
Area 6	Exclude	Further Study
Area 7	Exclude	Further Study

See **Attachment B** for the December Staff Report on alternative boundaries. See **Attachment C** for the letter dated January 30, 2008 that the proponents have submitted regarding the incorporation boundaries.

## **FURTHER STUDY OF ALTERNATE INCORPORATION BOUNDARY ALIGNMENTS**

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### **Area 3: Morgan Hill Does Not Support Excluding Area 3**

At the December LAFCO Meeting, LAFCO staff recommended excluding Area 3 and including it in Morgan Hill's Sphere of Influence. However, the City of Morgan Hill has indicated that they do not support inclusion of the area within its sphere of influence. Therefore LAFCO staff is recommending that Area 3 remain in the proposed incorporation boundary.

### **Area 6: No Issues**

At the December LAFCO Meeting, LAFCO staff recommended excluding Area 6. One issue of concern for LAFCO related to LAFCO's policy about wholly including or excluding community based special districts from the incorporation area, unless there is an overriding benefit to doing so or if there is no negative impact from dividing the district. The Lion's Gate Community Service District would be split between the new town and the unincorporated County if Area 6 were excluded from the incorporation boundary; however, staff has not identified any negative issues with dividing the district. Another issue relates to the open space conservation easement that the County holds in the area that was

granted to the County as part of the Cordevalle Golf Course development. The easement provides that these lands are to remain in perpetual open space and the easement will remain with the County even if the area becomes part of the City. Therefore, the easement will not affect whether the area should be in the incorporation boundary. The proponents concur with this recommendation as the area would remain a State Responsibility Area (SRA) for fire protection purposes and would not require the new town to fund additional fire fighting equipment.

**Area 7: More Remote and Can Only Be Accessed from Watsonville Road**

At the December LAFCO Meeting, LAFCO staff recommended excluding Area 6 because most of the area contains Williamson Act Lands, is zoned Agriculture Medium Scale, consists of “Prime Farmland”, and is remote with access coming from Watsonville Road. Furthermore, the remoteness of this area in relation to the rest of the incorporation boundaries is not consistent with LAFCO’s policy that calls for the incorporation boundary to be compact.

**Area 4 and Area 5:**

At the December LAFCO meeting, staff recommended excluding Areas 4 and 5. The proponents raised several issues with exclusion of the area. The following are staff responses to issues that the proponents have raised with regard to excluding Areas 4 and 5 from the incorporation boundaries:

**A. Excluding Areas 4 and 5 will not create islands of unincorporated areas and will not disenfranchise the residents in those areas**

The proponents have raised the concern that excluding Areas 4 and 5 will create unincorporated islands and will disenfranchise the residents of those areas. Both Areas 4 and 5 are adjacent to thousands of acres of unincorporated lands and would not be considered unincorporated islands. Both Morgan Hill and Gilroy contain similar unincorporated areas within their respective spheres of influence. The unincorporated residents, not within a city are represented by the County government.

**B. The County General Plan Calls for Buffers between Cities**

The proponents have stated that the County General Plan does not require buffers between cities. See **Attachment D** for local General Plan policies relating to establishment of buffers between cities in South County. The County General Plan, Morgan Hill General Plan, and Gilroy General Plan all include policies which call for the creation/maintenance of buffers between cities in the South County. Additionally, LAFCO has received comment letters from both the cities noting these policies and their significance. The City of Gilroy’s letter (see **Attachment E**) expresses

concerns specifically about the southern incorporation boundary. The City of Morgan Hill also raised similar concerns about the northern incorporation boundaries.

**C. Areas 4 and 5 are geographically / demographically different from the other areas remaining in the incorporation boundaries.**

**Table 2: Land Use and Development in Areas 4, 5 and Remaining Area**

	<b>Area 4</b>	<b>Area 5</b>	<b>Boundary without Areas Recommended for Exclusion</b>
General Plan Designation	Agriculture Medium Scale	Rural Residential, Agriculture Medium Scale, Roadside Services, Major Public Facilities, Other Public Lands	Rural Residential, Hillside
Zoning Designation	"A" (Exclusive Agriculture, Medium Scale, 20 acres minimum lot size)	"RR" (Rural Residential, 5 to 20 acres minimum lot size based on slope, 1 acre minimum for cluster subdivisions) "A" (Exclusive Agriculture, Medium Scale, 20 acres minimum lot size) "RS" (Roadside Services)	"RR" (Rural Residential, 5 to 20 acres minimum lot size based on slope, 1 acre minimum for cluster subdivisions) "HS" (Hillside, 20 to 160 acres minimum lot size based on slope, 2 acres minimum for cluster subdivisions)
Total Acreage	701 acres	1,401 acres	6418 acres
Undeveloped Lands	219 acres (31% of total)	572 acres (41% of total)	1743 acres (27% of total)
Williamson Act Lands	113 acres (16% of total)	345 acres (25% of total)	1301 acres (20% of total)

The proponents have stated that Areas 4 and 5 are not geographically/demographically different from the other areas remaining in the incorporation boundaries. However Table 3 demonstrates that there are differences in terms of general plan and zoning designations, percent of undeveloped land, and percent of Williamson Act lands. Approximately

31% of land in Area 4 is undeveloped and 41% of land in Area 5 is undeveloped. That's a total of 791 acres which is equal to over half of the undeveloped land in the remaining area.

Additionally, based on the State Department of Conservation's Important Farmland Map, the majority of lands in Area 5 and a significant amount of lands in Area 4 are considered "prime farmland" or "farmland of statewide importance". (See **Attachment F** for the Important Farmlands Map)

**D. Fiscal impacts of excluding Areas 4 and 5 will be determined by the CFA**

The Comprehensive Fiscal Analysis (CFA) is required to include information on the fiscal impacts of alternative boundary alignments. LAFCO staff and its consultant are in the processing of finalizing the draft CFA which will be discussed at the February 6<sup>th</sup> LAFCO Meeting. The Draft CFA will include information concerning the fiscal impacts of excluding Areas 4 and 5.

## **RESPONSE TO OTHER BOUNDARY RELATED ISSUES RAISED BY PROPONENTS**

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### **Urban Service Area and Sphere of Influence are Necessary**

The incorporation proponents have requested that the new town not have an Urban Service Area because it is not required or a Sphere of Influence because it will encourage growth within the city limits. The establishment of an Urban Service Area and Sphere of Influence will provide a framework for long range planning.

It is the establishment of a city limit that commits the city to provide services and not the establishment of an Urban Service Area boundary. Furthermore, the city council will determine if and how a city grows. The types and levels of service provided in the city limits are determined by the city's plans and policies. In the early 1970s LAFCO, the County, and the 15 Cities all adopted Joint "Urban Development Policies" that implement the concept of staged urban development and managed growth and development in the County. While it is currently the intent of the proponents to maintain the current rural character of San Martin, a future city council may implement a different vision.

LAFCO staff has recommended that Areas 4 and 5 remain unincorporated, but located within the new city's Sphere of Influence. This is consistent with the pattern of neighboring cities such as Morgan Hill, Gilroy and San Jose.

## **Perimeter Roads Should be Included in Incorporation Boundary**

The incorporation proponents have requested that the perimeter roads (i.e. Watsonville Road, Masten/Fitzgerald and Maple Avenue) not be included in the incorporation boundary because these roads carry traffic that is mostly unrelated to San Martin and will reduce the town's road maintenance costs. LAFCO staff has recommended that these perimeter roads remain in the incorporation boundary (except Watsonville Road, which is excluded) because LAFCO's Road Annexation Policies require that an annexing city also annex adjacent unincorporated roads and these roads are directly adjacent to the lands proposed for incorporation and are used to access lands proposed for the incorporation. Furthermore, Masten/Fitzgerald and Maple Avenue are located outside of both Morgan Hill's and Gilroy's Sphere of Influence. Excluding these roads from the incorporation boundary would mean that LAFCO would have to amend both Morgan Hill's and Gilroy's Sphere of Influence in order to include these roads in those cities' Sphere of Influence.

## **CONCLUSION**

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The incorporation boundary proposed by the proponents is not consistent with local / LAFCO policies that call for city boundaries to be compact, not to include agricultural lands and open space lands, that buffers/greenbelts between South County Cities should be maintained/established, and that discourage the premature conversion of agricultural and open space lands and efficient provision of services.

The proponents have stated that the intent of the incorporation is to maintain the current rural character of the community. However, once the city is formed, the new City council will have land use authority over lands within the city limits.

**Table 3: Comparison of Land Use and Development**

	<b>Staff Recommended Boundary</b>	<b>Proponents Recommended Boundary</b>
Total Acreage	6,418 acres	8,659 acres (26% more than staff recommended boundary)
Undeveloped Lands	1,743 acres	2,552 acres (29% more than staff recommended boundary)
Williamson Act Lands	1,301 acres	1,863 acres (43% more than staff recommended boundary)

The staff recommended incorporation boundary would reduce the amount of undeveloped land within the city limits by nearly 30%, reduce the amount of Williamson Act lands by over 40% and keep out a majority of the “prime” and “important” farmlands from the incorporation boundary. In addition, the staff recommended boundary would establish separators between the new city and the vast majority of unincorporated lands located north of Maple Avenue and south of Masten Avenue that are in active agriculture or are undeveloped which will help reduce conflicts with the continued agricultural use of these lands and prevent their premature conversion.

## **ATTACHMENTS**

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- Attachment A: Map depicting the proposed incorporation boundary and the potential alternative areas
- Attachment B: December 5, 2007 LAFCO Staff Report on “Consideration of Potential Modifications to the Proposed Incorporation Boundaries of the Town of San Martin”
- Attachment C: January 30, 2008 Letter from San Martin Incorporation Proponents regarding incorporation boundaries
- Attachment D: Local General Plan Policies relating to establishment of buffers in South County.
- Attachment E: January 10, 2008 Letter from the City of Gilroy relating to San Martin incorporation boundaries
- Attachment F: 2006 Important Farmland Map for the San Martin Area

**LAFCO**

**Meeting Date:** December 5, 2007

**TO:** LAFCO

**FROM:** Neelima Palacherla, Executive Officer  
Dunia Noel, LAFCO Analyst

**SUBJECT:** **Consideration of Potential Modifications to the  
Proposed Incorporation Boundaries of the Town of San  
Martin**

Agenda Item # 8.2

**STAFF RECOMMENDATION**

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Accept report and provide direction as necessary.

**BACKGROUND**

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**Project is the Proposed Incorporation of the Town of San Martin**

LAFCO is processing an incorporation proposal for the Town of San Martin which is located in southern Santa Clara County between the cities of Morgan Hill and Gilroy. The incorporation, if approved by LAFCO and supported by a majority vote of registered voters in the area, would transfer general governance and jurisdiction over service provision and land use decisions from the County of Santa Clara to the new Town of San Martin. The project also involves the establishment of planning boundaries such as an urban service area and a sphere of influence for the new Town of San Martin. No new development or new services or change in the level of services is associated with the proposed project.

As indicated by the project proponents (San Martin Neighborhood Alliance), one of the intents of the incorporation is to maintain the current rural residential character and small-scale agricultural activities of the community.

**Proposed Incorporation Boundary for the New Town of San Martin**

The proposed incorporation boundary of the Town of San Martin, as submitted by the proponents, roughly encompasses a 10,473-acre (16.36 square miles) area bounded by Maple Avenue on the north, New Avenue on the east, Masten Avenue on the south, and Watsonville Road on the west. The northern portion of the proposed incorporation boundaries is coterminous with the City of Morgan Hill's Sphere of Influence Boundary (SOI) and the southern portion of the proposed incorporation boundaries is coterminous with the City of Gilroy's Sphere of Influence Boundary (SOI). The western and eastern portion of the



boundary includes lands up to the foothills. (see **Attachment A** for a map of the proposed incorporation boundaries)

In comparison, the neighboring cities of Morgan Hill (34,000 population) and Gilroy (43,000 population) encompass approximately an area of 11.67 square miles and 16.53 square miles respectively.

## **Other LAFCO Boundaries for the New Town of San Martin**

### **Urban Service Area Boundary (USA)**

The USA is an area in which a city (with LAFCO approval) designates where and when urban development should occur based on the concept that cities should plan for the provision of urban services and facilities within a 5-year time span and annex the area within a 5-year time span.

The proponents have requested that the proposed new Town not have an USA boundary, because the intent of the incorporation is to retain the rural character and to not provide urban services. There is no requirement that an incorporating city must establish an USA boundary at the time of incorporation. However, each city in Santa Clara County has an urban service area boundary. Under LAFCO Policies, a city without an USA boundary would not be able to annex additional lands.

Therefore, LAFCO staff believes that an USA should be established that is coterminous with the city limits. Such a boundary would not create any expectations with regard to the provision of urban services. The provision of urban services within such USA/city limits will be determined by the city.

### **Sphere of Influence Boundary (SOI)**

In Santa Clara County, a SOI boundary for a city serves multiple purposes including:

- A long-range planning tool to help LAFCO evaluate USA boundary changes and annexation requests,
- The area designated as a city's planning area or area covered by a city's General Plan,
- Areas that will not necessarily be annexed by a city or will not necessarily receive services from the city, but are areas in which the County and a city may have shared interest in preserving non-urban levels of land use,
- Areas where a city and a county have significant interaction, and
- Areas that contain social or economic communities of interest to a city.

State law defines the SOI as the probable physical boundaries and service areas of a local agency. In Santa Clara County, the USA functions in the same manner as SOIs. When evaluating proposed urban expansions, LAFCO utilizes the city's existing USA as a more important factor than the city's existing SOI, because the USA is a shorter-term growth boundary that is directly linked to the city's ability to provide services.

LAFCO may either approve a SOI for a new city at the time of LAFCO's hearing on the proposed incorporation or postpone consideration of the SOI for up to one year (Government Code Section 56426.5) after voter approval.

### **LAFCO Must Also Consider Alternate Incorporation Boundary Alignments**

LAFCO is required to consider alternative boundaries and is empowered to modify boundaries in its review of proposals in accordance with Government Code 56668 and 56375(a) and (l) and LAFCO Policies. As part of LAFCO's review of the proposed incorporation, LAFCO must consider whether the proposed incorporation boundaries are consistent with State law, LAFCO Policies, and Santa Clara County General Plan Policies. Modifying boundaries is one means by which LAFCO can eliminate conflicts with LAFCO Policies and the CKH Act. The LAFCO Executive Officer must evaluate boundary issues and present a recommended boundary for the Commission's consideration.

Although the new Town will adopt the Santa Clara County General Plan and Zoning Ordinance after incorporation, there is no guarantee that the Town will continue to use this General Plan and Zoning Ordinance long term. LAFCO has no authority over lands located in a city. Therefore, LAFCO would be concerned about how the Town's decisions could impact agricultural lands that are included in the city's boundaries as well as adjacent agricultural lands. The Santa Clara County General Plan contains policies that support urban buffers and or greenbelt concepts between the South County cities and San Martin in order to maintain community identity, avoid encroachment into agricultural lands and to minimize land use conflicts. Both the Cities of Morgan Hill and Gilroy contain unincorporated lands within their respective SOI boundaries that serve as an urban buffer/greenbelt .

The proposed incorporation boundaries include:

- Approximately 2,132 acres of Prime Farmland, 257 acres of Unique Farmland, and 577 acres of Farmland of Statewide Importance
- Approximately 1,004 acres of land designated Agricultural Medium Scale

- 187 properties that are under the Williamson Act totaling 2,200 acres. However, 126 of 187 are under non-renewal and set to expire in years 2016 or 2017. The remaining 61 properties are primarily located within the southwestern and northern parts of the proposed boundaries for San Martin.

Lastly, the majority of the adjacent lands just north and south of the proposed incorporation boundary are designated by the California Department of Conservation as “prime farmland” and “farmland of statewide importance.” These lands also meet LAFCO’s definition of “prime farmland.”

### **POTENTIAL MODIFICATIONS TO PROPOSED INCORPORATION BOUNDARY**

LAFCO should consider modifying the proposed incorporation boundaries in order to address these issues and to specifically:

- Encourage compact orderly growth and development
- Avoid creating islands and areas difficult to serve
- Guide development away from open space and agricultural lands
- Avoid negatively impacting adjacent agricultural lands
- Maintain urban buffers, greenbelts, and community separators consisting of land outside of a city

LAFCO staff has developed the following potential modifications to the proposed incorporation boundaries of the new Town of San Martin (see **Attachment B** for Map of these Areas 1 through 7):

#### **AREA 1: Exclude the County of Santa Clara’s Parklands and lands designated “Ranchlands” in the Santa Clara County General Plan.**

The proposed incorporation boundaries include 253 acres of parklands (i.e. the County of Santa Clara’s Coyote Lake Harvey Bear Ranch County Park) and 356 acres of lands designated “Ranchlands” in the County General Plan. LAFCO Policies discourage the inclusion of open space lands in the incorporation boundary. Therefore, including County parklands and lands designated “Ranchlands” in the city limits is not appropriate.

#### **AREA 2: Include area along California Avenue.**

Including this area would ensure that the incorporation boundaries do not create an island. An island is an unincorporated area that is substantially surrounded by a city or cities. LAFCO is prohibited from creating islands because islands are inefficient to serve and create illogical boundaries. This area is currently in

Morgan Hill's SOI and outside of Morgan Hill's USA. However, this area is topographically and geographically better suited to be within San Martin. This modification of the proposed boundary will require LAFCO to amend Morgan Hill's SOI and to remove this area from Morgan Hill's SOI. The City of Morgan Hill has indicated that they, on a preliminary basis, support this alternative.

**AREA 3: Exclude the Crouner Subdivision.**

The Crouner Subdivision and surrounding area along Monterey Road is substantially developed to urban densities. The 25 homes in the area rely on individual septic systems and share a water system that relies on a few wells that are located within the subdivision. At least one well has been taken off-line in the past to address bacterial contamination issues. This area may require urban services in the future in order to address a public health and safety issue. As the intent of the proposed incorporation is not to provide urban services or to change the level of existing services that the area receives, LAFCO staff believes it is not appropriate to include this area in the incorporation boundaries.

Staff will discuss this with the City of Morgan Hill and obtain their support for placing this area within Morgan Hill's SOI since the City is the nearest urban service provider. Including the area within Morgan Hill's SOI will not commit Morgan Hill to provide the area with urban services. The City of Morgan Hill can determine if and when to request inclusion of the area within its USA boundary and eventually annex the area. Once annexed, the City can provide the area with urban services.

**AREA 4: Exclude area north of Middle Avenue designated "Agriculture Medium Scale" under the Santa Clara County General Plan**

This area and the lands directly north of it make up a large agricultural area. State law and LAFCO Policies discourage the inclusion of agricultural lands in a city and require LAFCO to consider such factors as the proposal's effects on adjacent lands and effects on the economic integrity of agricultural lands. Similarly, various policies of the Santa Clara County General Plan call for the use of urban buffers, greenbelts, and community separators between cities in South County in order to maintain community identity, avoid encroachment into agricultural lands, and to minimize land use conflicts. Therefore, including the area in the city limits is not appropriate.

However, LAFCO could consider including the area within the Town's SOI boundary, but outside of the city limits. This would allow the Town to include this area in its General Plan, facilitate joint planning with the County for this

area, and allow the Town to participate in the County's development review process for this area through the informal County/City referral process.

**AREA 5: Exclude areas in southwest**

This area includes some lands that are located west of Turlock Avenue that are designated "Agriculture Medium Scale" in the County General Plan and are adjacent to lands with the same designation as well as lands designated "Open Space Reserve." In addition, the area also consists of larger size parcels relative to the other areas within the proposed incorporation boundaries. This area also includes lands identified as "prime agricultural lands" by the California Department of Conservation. This area also has a high concentration of lands that hold a Williamson Act contract.

State law and LAFCO Policies discourage the inclusion of agricultural lands in a city and require LAFCO to consider such factors as the proposal's effects on adjacent lands and effects on the economic integrity of agricultural lands. Similarly, various policies of the Santa Clara County General Plan call for the use of urban buffers, greenbelts, and community separators between cities in South County in order to maintain community identity, avoid encroachment into agricultural lands, and to minimize land use conflicts. Therefore, including this area in the city limits is not appropriate.

However, LAFCO could consider including the area within the Town's SOI boundary, but outside of the city limits. This would allow the Town to include this area in its General Plan, facilitate joint planning with the County for this area, and allow the Town to participate in the County's development review process for this area through the informal County/City referral process.

**AREA 6 (For Further Study): Lands under an Open Space Conservation Easement in the Southwest section of the CordeValle Development**

This area is being identified at this time for further study by LAFCO and includes unincorporated lands that are under an open space conservation easement that is held by the County of Santa Clara. LAFCO Policies discourage the inclusion of open space lands in the incorporation boundary. Therefore, including these lands in the city limits may not be appropriate. LAFCO staff is studying the ramifications of including these lands in the proposed incorporation boundaries. The proponents of the incorporation have also indicated that it may be appropriate to exclude this area from the proposed incorporation boundaries due to concerns about the adequacy of wildland fire protection services to this Area. LAFCO staff is conducting further research on this issue.

**AREA 7 (For Further Study): Lands Designated “Agricultural Medium Scale” in the Santa Clara County General Plan, specifically located on the west side of the Proposed Incorporation Boundary**

This area is being identified at this time for further study by LAFCO. This area and the lands directly west of it make up a medium size agricultural area and are designated “Agricultural Medium Scale” in the Santa Clara County General Plan. State law and LAFCO Policies discourage the inclusion of agricultural lands in a city and require LAFCO to consider such factors as the proposal’s effects on adjacent lands and effects on the economic integrity of agricultural lands. Therefore, including these lands in the city limits may not be appropriate.

However, LAFCO could consider including the area within the Town’s SOI boundary, but outside of the city limits. This would allow the Town to include this area in its General Plan, facilitate joint planning with the County for this area, and allow the Town to participate in the County’s development review process for this area through the informal County/City referral process.

**NEXT STEPS**

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These are LAFCO staff’s preliminary recommendations regarding potential modifications to the proposed incorporation boundaries of the Town of San Martin. LAFCO staff will work with the Comprehensive Fiscal Analysis (CFA) consultant to determine the financial and service impacts of these potential modifications. LAFCO staff will also consider whether any of the potential boundary modifications affect the proposed CEQA analysis.

**ATTACHMENTS**

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- Attachment A:** Map of Proposed San Martin Incorporation Boundary
- Attachment B:** Map of Potential Modifications to the Proposed San Martin Incorporation Boundary



## **San Martin Neighborhood Alliance**

**“Together We Make A Difference”**

January 30, 2008

Local Agency Formation Commissioners of Santa Clara County  
Neelima Palacherla, Executive Officer  
70 West Hedding Avenue  
11th Floor, East Wing  
San Jose, California 95110

RE: San Martin Incorporation Boundaries

Dear Santa Clara County LAFCO Commissioners and Ms. Palacherla:

The proponents offer the following regarding the proposed boundary alternatives.

The proponents urge the Commission to make a decision on the proposed San Martin incorporation boundaries at the February 6, 2008 LAFCO Board meeting in order to allow for effective revenue neutrality negotiations. It is difficult to determine revenue neutrality without knowing the areas to be included.

The proponent urges the Commission to adopt the boundary proposed by the proponents with the following changes.

### **Area 1 – Exclude the County of Santa Clara’s Parklands and lands designated “Ranchlands” in the Santa Clara County General Plan.**

The proponents agree that Area 1 should be excluded.

### **Area 2 – Include area along California Avenue**

The proponents agree that Area 2 should be included as it identifies with San Martin.

### **Area 3 – Exclude the Crowner Subdivision**

The proponents agree that Area 3, including the Crowner subdivision, should be added to the Morgan Hill Sphere of Influence because the area appears to identify more with Morgan Hill. Also, the Morgan Hill city limits border this area on the north.

### **Area 6 – (For Further Study): Lands under an Open Space Conservation Easement in the Southwest section of the CordeValle Development**

The proponents agree that Area 6 should be excluded so the area remains the State’s responsibility area for fire control.

Neelima Palacherla

1/31/08

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**Area 4 – Exclude area north of Middle Avenue designated “Agriculture Medium Scale” under the Santa Clara County General Plan**

**Area 5 – Exclude areas in the southwest**

**Area 7 – (For Further Study): Lands Designated “Agricultural Medium Scale” in the Santa Clara County General Plan, specifically located on the west side of the Proposed Incorporation Boundary**

Areas 4, 5 and 7 should remain in the incorporation boundaries for the reasons stated below.

As the Commission observed during the tour of San Martin, Areas 4, 5, and 7 that LAFCO staff has proposed to remove from the incorporation boundaries have essentially the same demographic and physical appearance as the other areas remaining in the incorporation boundaries. Area 4, zoned “Medium Scale Agricultural” is primarily in rural residential use. According to LACO staff, 70 percent of Area 4 has already been developed as residential. There is an insignificant percent of productive agriculture in Area 4.

Area 5 is zoned “Rural Residential” and is slated to be divided into rural residential uses. Currently, 60 percent of Area 5 is divided into rural residential uses. While there is more agricultural use in Area 5 than in Area 4, under the current general plan and zoning, this area is destined to be used for rural residential purposes. This is underscored by the recent approval of a 19-lot subdivision on the last large parcel in Area 5 by the County Board of Supervisors. Nevertheless, if any part of Area 5 is to be excluded, the area west of Santa Teresa Blvd and south of Corde Valle may be considered because most of that part is zoned agricultural.

Area 7 is also zoned in part agricultural. However, there is only horse property in this area. There does not appear to be any active agricultural use in Area 7. The residents in Area 7 have expressed a desire to be part of San Martin.

As stated in our January 15, 2008 letter, there is no reason based on policy or law to remove Areas 4, 5, and 7 from the incorporation to create “buffers.” There are no provisions in the South County Joint Area Plan Policies (SCJAPP) to create “buffers between cities.” The only language related to “buffers” is found in Section 14 related to agriculture. Under the SCJAPP, the County and the Cities should plan for further urban growth to occur in areas without encroachment into those agricultural lands with the greatest long-term potential to remain economically viable. SC 14.7. The purpose of the policies is to preserve agricultural lands that are economically viable. SC 14.11 provides:

To be consistent with these policies, the city is required to maintain a compatible use between any urban expansion areas and economically viable agricultural lands. "Rural Residential" is a compatible use. The SCJAPP require that the new city general plan be rural residential in all its outlying areas that are near viable agricultural areas.

Based on the SCJAPP, there is no reason based on the County General Plan that Areas 4, 5 or 7 be omitted as "buffer zones."



Neelima Palacherla  
1/31/08  
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Morgan Hill's comments to the initial study mention SC 17.9 (b) related to "greenbelts." This provision states, "new land uses should be consistent with programs which the three jurisdictions develop to maintain greenbelts between Morgan Hill and San Jose, and between Morgan Hill, San Martin, and Gilroy." "Greenbelt" is not a defined term in the context of SC 17.9. We are not aware that the three jurisdictions have developed a program to maintain greenbelts between the cities. There is no provision related in the section related to incorporated boundaries. Without the benefit of an existing program to develop greenbelts, proponents will assume that rural residential zoning or use is consistent with the term "greenbelt." The incorporation does not propose any new land uses. Thus the incorporation is not inconsistent with SC 17.9 and does not constitute a reason to alter the proposed incorporation boundaries.

**No Creation of Urban Service Area.** A more critical concern relates to the creation of an "Urban Service Area" for San Martin. The SCJAPP do not require creation of an urban service area for the new town. Further, there is nothing in the County General Plan or local or State law requiring the creation of an Urban Service Area.

While the SCJAPP should be applied to the incorporation of San Martin, the urban use policies that apply to Morgan Hill and Gilroy cannot be applied to the proposed incorporation of San Martin. The SCJAPP provides at SC 18.16:

If, in the future, changes in the level of development or form of governance are recommended for San Martin, a special area plan and an implementation program should be prepared for the San Martin area. This plan should be prepared with input from the Cities of Gilroy and Morgan Hill, and the San Martin Planning Committee.

If San Martin is successful in its bid for incorporation, all the jurisdictions in South County should convene to appropriately modify the SCJAPP in a manner that is consistent with preserving rural residential uses in San martin.

Upon incorporation of San Martin, to the extent that a new general plan is developed or the County General Plan is modified for the new city, the city's general plan should be consistent with the goals of the SCJAPP. SC 0.2. San Martin should adopt its general plan with consultation with other South County Jurisdictions. SC 1.5, SC 18.16. There should be no urban service area created upon incorporation. After incorporation, San Martin may create an Urban Service Area with its adoption of a general plan only to the extent that any urban areas are proposed. SC 1.9, SC 1.12. It is unlikely that an Urban Service Area larger than the "core area" of the town will be created. After incorporation, San Martin should create policies to limit any urban service area extensions and utility extensions to guide urban growth away from long-term agricultural areas. SC 14.9.

Based on the above, the proponent does not support the creation of an urban service area upon incorporation.

**Spheres of Influence Encourage Urban Growth Within City Limits.** SMNA is concerned by the potential exclusion of portions of the proposed incorporation boundaries presented in our Application for Incorporation to create Spheres of Influence between Morgan Hill and San Martin on the north and Gilroy

Neelima Palacherla

1/31/08

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and San Martin on the south. It is the primary stated purpose of the incorporation to allow local control of land use decisions to preserve the rural residential quality of San Martin. SMNA does not believe that excluding these areas furthers that goal.

Creation of Spheres of Influence between San Martin and the neighboring cities would actually be counter productive and may actually be growth inducing. Santa Clara County has a unique provision that requires a city to utilize most of the land in it's "urban service area" for urban development before additional land can be considered for annexation into the city. However, oppose creation of an urban service area in connection with the incorporation. Therefore, any land left out to create Spheres of Influence could never be annexed into the new town unless an urban service area is created and the land is consumed by urban development.

**Exclusion of Perimeter Roads.** Proponents propose that the boundaries be modified slightly to exclude the perimeter roads from the incorporation including Watsonville Road, Masten/Fitzgerald and Maple Avenue. These roads carry traffic that is mostly unrelated to San Martin. Further, County maintenance of these roads will free up some of the general fund for the town to be used for revenue neutrality payments while still showing savings to the County road fund as a result of the incorporation. As stated in our January 15, 2008 letter, there are no incorporation policies that require inclusion of perimeter roads in the incorporation boundaries. Neither is there any state policy or law that prohibits exclusion of these roads.

**Summary.** For these reasons, among others, excluding the north and south parts of the town from the incorporation boundaries do not represent prudent planning. Excluding the perimeter roads, however, does provide benefits to the county and the new town. Proponents hope to have an opportunity to further address these concerns and answer questions at the February 6, 2008, LAFCO meeting.

Sincerely,

SAN MARTIN NEIGHBORHOOD ALLIANCE



Richard van't Rood

RVR/djk

## **LOCAL GENERAL PLAN POLICIES CONCERNING BUFFERS**

### **SOUTH COUNTY JOINT AREA PLAN POLICIES (Book B, Part 5, Santa Clara County General Plan)**

#### **SC 14.11**

In order to separate agricultural from urban activities, and to minimize land use conflicts, buffers should be established between viable agricultural areas and urban expansion areas. Activities in these buffer zones should be limited to uses which are compatible with both agricultural and urban activities. Specific uses should be defined through an open intergovernmental process.

#### **SC 16.0**

The wide variety of open space areas in the South County should be preserved and maintained. Greenbelts should delineate and provide contrast to the urban areas of the South County cities.

#### **SC 16.13**

Greenbelts should define the urban areas of the South County Cities. The northern boundary of Morgan Hill should be defined by a Coyote Valley greenbelt comprised of agricultural uses, rural estates and the Coyote Park chain. A similar area should be maintained between Morgan Hill and Gilroy to maintain community identity.

#### **SC 16.14**

A greenbelt should be established between San Jose and Morgan Hill in the Coyote Valley.

#### **SC 16.22**

The South County Cities and the County together should:

- a. establish policies and implementation plans for greenbelts between cities, and
- b. identify and help establish a viable source of funding for acquiring and developing regional parks and pathways and, open space.

#### **SC 17.9 Consistent with Preservation 2020 Program,**

- a. consideration should be given to land uses that will result in permanent preservation of substantial areas of open space;

- b. new land uses should be consistent with programs which the three jurisdictions develop to maintain greenbelts between Morgan Hill, San Martin, and Gilroy.
- c. the three jurisdictions should further define the appropriate land uses for greenbelts and methods of implementation that address conflicts between private property rights and public objectives.

*This same policy is also included in the Open Space and Conservation Element of Morgan Hill General Plan (Policy 2b)*

## CITY OF GILROY GENERAL PLAN

### *Action 4.B*

**Interagency Coordination for Agricultural Protection.** Work with the County and key stakeholder groups to protect and support the continued viability of agriculture in lands within the City's sphere of influence. Discourage (a) property subdivisions or the splitting of properties by new roads into parcels too small to be used economically for agricultural purposes, and (b) the premature conversion of agricultural lands to urban uses until such lands are annexed by the City. Also, ensure proper referral procedures for project proposals in unincorporated areas of the City's Sphere of Influence, facilitating communication between the City and County on projects that may have an impact on the City's land use plans and policies.

### *Policy 20.05*

**Greenbelts.** Designate protected open space areas in conjunction with agricultural lands to create significant natural buffers, or "greenbelts," between Gilroy and surrounding communities, helping to retain the city's semi-rural, small town quality. Land uses within a greenbelt should be determined by joint planning activities of the South County cities and the County, but might include very low density residential development; public parks and recreation areas; privately operated recreation areas; and agriculture. Of special concern is the area separating the northern part of the Gilroy Planning Area from the community of San Martin. If an adequate greenbelt cannot be established in the area north of Masten and Fitzgerald Roads, then the Gilroy General Plan Land Use Map should be amended to include a greenbelt strip in the northern part of the Planning Area.

*Action 20.E*

**Greenbelt Definition and Protection.** Work with the other South County communities and Santa Clara County to define a greenbelt of open spaces and agricultural areas separating Gilroy from adjoining communities. Ensure that this greenbelt area is protected from urban development through the policies of the South County Joint Area Plan and the general plans of each planning entity. Work with the South County Joint Planning Advisory Committee to define allowed land uses for the greenbelt area.

*Action 20.F*

**Gilroy-San Martin Greenbelt.** If a greenbelt cannot be defined in the area north of Masten and Fitzgerald Roads to separate the projected build-out area of Gilroy from the community of San Martin, amend the Gilroy General Plan Land Use Map to provide such a greenbelt in the area just south of Masten and Fitzgerald Roads.

January 10, 2008

Neelima Palacherla, Executive Director  
Local Agency Formation Commission  
70 West Hedding Street  
11<sup>th</sup> Floor, East Wing  
San Jose, CA 95110

Subject: Proposed San Martin incorporation boundary

Dear Neelima;

Thank you for the opportunity to comment on the proposed boundaries for the future incorporation of San Martin. Gilroy has always recognized the eventual incorporation of this unique rural community, and directs its comments to specific characteristics that will help define its place in southern Santa Clara County. The City of Gilroy has the following preliminary comments:

#1. Of immediate concern is the proposed boundary for San Martin that assumes the sphere of influence line, urban service area boundary, and city limit line will be coterminous with the future edge Gilroy's northerly limits. There are a number of issues and concerns here that focus upon consistency with the adopted South County Joint Area Plan [jointly adopted by the County of Santa Clara and the cities of Gilroy and Morgan Hill in 1989]. Specifically, these potential conflicts arise within the following policies:

- Policy 1.08 – Urban growth should be managed and scheduled consistent with the ability to provide public facilities and services, such as sewer capacity, water, transportation, schools, public safety and other urban services.
- Policy 1.10 - Urban development should occur only in the cities and where the full array of urban services can be provided.
- Policy 5.00 – Infrastructure needs should be identified and its development coordinated to minimize costs and to support achievement of community goals.

- Policy 6.03 – San Martin’s sewage treatment needs should be determined with consideration given to the implications of economics, population, land use, environmental concerns, and the governmental status of San Martin.
- Policy 14.09 – The Cities should use their policies for urban service area extensions and utilities to guide urban growth away from long term agricultural areas.
- Policy 16.15 – The area between Morgan Hill and Gilroy should be studied for the purpose of establishing a greenbelt with such uses as low-density rural residential, agricultural activities such as row crops, and recreation areas.
- Policy 18.00 - ... If, in the future, urbanization is recommended for San Martin, a wastewater management program should be developed which includes mechanisms for implementation and financing.

#2. Agricultural Mitigation Policies have been a strong focus for recent LAFCO actions, indicating that those policies will be applied to ALL future city requests for expansion of urban service area boundaries. The proposed incorporation of San Martin and establishment of an Urban Service Area boundary will include a substantial amount of agricultural land, much of which is designated as “prime.” In addition, the negative declaration background documentation states the possibility of future land use changes by the San Martin City Council. It is unclear, and a bit ambiguous, why the proposed boundary would include agricultural land within the proposed city limits, all the while acknowledging the potential to be converted to a more urban use in the future.

#3. A lack of consistency with established LAFCO policies relevant to the subject incorporation. It appears that the proposed San Martin boundaries may be inconsistent with the following LAFCO incorporation policies:

- Policy 3(e) – states in part “An area proposed for incorporation must be compact and contiguous, and possess a community identity.”
- Policy 3(f) – states in part “The proposed boundaries and alternatives shall not create islands or areas that would be difficult to serve.”
- Policy 3(h) – states in part “Inclusion of agricultural and open space lands within the boundaries of a proposed city is discouraged.”

#4. The California Environmental Quality Act (CEQA) review documentation needs some additional clarification prior to proceeding with project evaluation. The proposed negative declaration indicates that LAFCO will potentially consider, as part of the San Martin incorporation request, alternative boundaries for the proposed city. Will this action occur prior to, parallel with, or some unknown time following the adoption of the negative declaration. It is imperative that the city limits, urban service area boundary, and the sphere of influence line be properly established before the completion of the environmental assessment and the adoption of the negative declaration.

Without clear articulation of these boundaries, it is not possible to determine consistency of the proposal with LAFCO or South County Joint Area Plan policies, and therefore, potential impacts.

Thank you for the opportunity to comment on the proposed San Martin incorporation.

Sincerely;

William Faus  
Planning Division Manager  
[Bill.faus@ci.gilroy.ca.us](mailto:Bill.faus@ci.gilroy.ca.us)





LAFCO of Santa Clara County  
70 West Hedding Street, 11th Floor, East Wing  
San Jose, CA 95110

February 6, 2008

Dear Commissioners:

Greenbelt Alliance believes that the San Martin Neighborhood Alliance has the purest of intentions when it comes to incorporating in order to maintain their community's rural character. Greenbelt Alliance also recognizes that CEQA can not speculate on what a future San Martin City Council may do, although it is foreseeable that future San Martin Councils will have to deal with significant development pressure due to the community's location along Highway 101 and Caltrain.

One thing that Greenbelt Alliance does trust, however, is that as LAFCO Commissioners, you take seriously your important role in encouraging orderly growth, preserving agricultural lands and discouraging urban sprawl.

Greenbelt Alliance supports LAFCO staff's modifications to the proposed boundaries for San Martin. All of the valley floor in between Morgan Hill and Gilroy could be included within San Martin's Sphere of Influence, but working farms and greenbelt lands on the edge of this rural community do not need to be placed within city limits. This is in keeping with the community's intention to preserve the area's rural charm and to not provide urban services.

The bus tour reinforced Greenbelt Alliance's position that a smaller boundary line should be accepted for San Martin. Oftentimes, the statement that 'farming is no longer viable' is used to justify why land should be annexed. How much farmland must disappear before we recognize the value of locally grown fresh produce? Open space lands also operate as community separators, giving South Santa Clara County a breath of fresh air compared to North County. However, what needs to be emphasized is that allowing expansive boundaries for San Martin would achieve the opposite of what LAFCO is charged with monitoring. The efficient use of land is extremely important as our state faces a booming population, climate change and the premature conversion of farmlands. Greenbelt Alliance is looking to the Commission to provide visionary leadership on these issues.

Again, Greenbelt Alliance supports staff's recommendations, and in particular supports the exclusion of areas 1, 4, 5 and 6 from the proposed town's boundaries.

Sincerely,



Michele Beasley  
South Bay Field Representative

**PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN**

**STATEMENT OF LAFCO STAFF COSTS**

Statement Month: November 2007

<b>Beginning Balance</b>	<b>AMOUNT</b>
<b>BALANCE FROM THE PREVIOUS STATEMENT</b>	<b>\$ 18,462.48</b>

<b>Staff Time for September 2007</b>					\$ 15,498.04
LAFCO Staff	Hours	Hourly Rate	Cost		
LAFCO Clerk	28.75	\$ 93.00	\$ 2,673.75		
LAFCO Analyst	29.75	\$ 139.00	\$ 4,135.25		
LAFCO Counsel	9.40	\$ 198.00	\$ 1,861.20		
LAFCO Executive Officer	44.92	\$ 152.00	\$ 6,827.84		
<b>Expenses</b>					\$ 209.10
San Jose Post Record publication of of Notice of Intent to Adopt Initial Study and Negative Declaration (IS/ND)			\$ 147.20		
Mailing postage for Notice of Intent to Adopt IS/ND (\$0.42 x 95)			\$ 39.90		
San Jose Post Record publication of Public Hearing Notice for IS/ND 12/5/2007 Hearing Notice: Initial Study/Negative Dec.			\$ 22.00		
<b>TOTAL DUE FOR THE CURRENT STATEMENT</b>					<b>\$ 15,707.14</b>

<b>BALANCE DUE TO DATE</b>	<b>\$ 34,169.62</b>
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**NOTE:** Pursuant to the Fee Agreement for the San Martin Incorporation Proposal, the payment for LAFCO staff costs is due prior to the first LAFCO public hearing, which is expected to occur in May 2008. An invoice will be provided thirty days prior to the first hearing.

NOVEMBER 2007

STAFF	DATE	ACTIVITY/TASK	HOUR UNITS	MONTHLY TOTAL
EXECUTIVE OFFICER	11/1/2007	Discuss re. General Plan conditions of approval, open space easements. Revisions to Steve Jenkins.	6.00	44.92
	11/2/2007	Discussion re. County Lighting Service Area; finalize maps	6.00	
	11/5/2007	Finalize IS/ND and appendices	4.00	
	11/6/2007	Review Initial Study to clearinghouse	1.00	
	11/7/2007	Administrative Draft Comprehensive Fiscal Analysis (CFA) review	2.00	
	11/8/2007	CFA review	3.00	
	11/9/2007	Conversation with Roseanne Chamberlain, R. van't Rood and K. Kretchmer re. CEQA and CFA.	0.50	
	11/13/2007	CFA review and comments	1.00	
	11/14/2007	CFA review and comments	2.00	
	11/15/2007	Review CFA revisions and provide comments	2.00	
	11/16/2007	Discussion with Greg van Wassenhove re. Animal Control issues in the CFA		
	11/19/2007	Send out Administrative Draft CFA	1.00	
	11/20/2007	SRA discussion with K. Kretchmer. Auditor's Ratio info to Rick van't Rood	0.17	
	11/21/2007	Review CFA tables with Berkson	2.00	
	11/26/2007	Discuss with M. Murdter, Roads and Airports Department, re. road issues	2.00	
		Discuss CFA issues with Berkson	0.50	
		Emails re auditor's ratio; phone call from Rick and follow-up	0.50	
		Discuss with K. Kretchmer	0.33	
		Meeting to review and discuss County Planning Department comments on CFA	4.50	
	11/27/2007	Review roads with Ginny Millar; Discuss Cordevalle easement with K. Kretchmer. Review staff report on boundaries.	1.42	
11/28/2007	Review boundaries staff report / review CFA issues	3.00		
11/29/2007	Discussion with K. Kretchmer re. CFA and Negative Declaration (ND)	2.00		
LAFCO ANALYST	11/1/2007	Review and Revise Draft Initial Study (IS) and ND	3.00	
		Prepare Notice of Intent/Availability	3.00	
		Review Mailing List for Notice of Intent and CEQA Noticing Procedures	0.50	
	11/2/2007	Review/Revise Draft IS/ND and discuss with K. Kretchmer and N. Palacherla	4.00	
		Revise Notice of Intent/Availability	0.50	
	11/5/2007	Final Review of Draft IS/ND and discuss with N. Palacherla	2.00	
Finalize and send Draft IS/ND Appendices to S. Jenkins		1.00		

NOVEMBER 2007

STAFF	DATE	ACTIVITY/TASK	HOUR UNITS	MONTHLY TOTAL
LAFCO ANALYST (Continued)		Review State Clearinghouse NOC and send comments to S. Jenkins	0.25	29.75
	11/12/2007	Prepare Request for No Effect Determination for State Dept. of Fish & Game and send to Dave Johnston	1.50	
	11/26/2007	Prepare LAFCO staff report regarding consideration of potential modifications to the proposed incorporation boundaries of the Town of San Martin and draft map	2.00	
	11/27/2007	Prepare LAFCO staff report regarding the Initial Study and Proposed Negative Declaration for the proposed incorporation of the Town of San Martin	4.00	
	11/28/2007	Revise LAFCO staff report regarding the consideration of potential modifications to the proposed incorporation boundaries of the Town of San Martin	5.00	
	11/29/2007	Final revision to the LAFCO staff report regarding the consideration of potential modifications to the proposed incorporation boundaries of the Town of San Martin and map	3.00	
LAFCO COUNSEL	11/2/2007	Review revised language for Initial Study and discussion with LAFCO staff	2.50	
	11/9/2007	Initial discussion with N. Palacherla regarding review of administrative draft CFA	0.20	
	11/13/2007	Review preliminary draft CFA and discuss comments with N. Palacherla; consultation with D. Noel regarding language for Notice of Hearing on IS/ND	2.50	
	11/15/2007	Review and discuss statutory requirements for CFA. Review and discuss draft language. Check statutory language for exact date of end of increased population calculations for Vehicle License Fee (VLF) distribution.	1.50	
	11/16/2007	Discussion with N. Palacherla regarding preparation of term sheet for revenue neutrality negotiations	0.10	
	11/20/2007	Research effect of incorporation on lands within state responsibility area for fire protection	0.50	
	11/21/2007	Communications regarding CFA review and revenue neutrality meetings	0.10	
	11/26/2007	Review of open space and conservation easements in Cordevalle area, respond to questions from N. Palacherla.	1.00	

NOVEMBER 2007

STAFF	DATE	ACTIVITY/TASK	HOUR UNITS	MONTHLY TOTAL
LAFCO COUNSEL (Continued)	11/27/2007	Discussion with Neelima regarding open space and conservation easement requirements and impact on incorporation	0.40	9.40
	11/29/2007	Discussion with N. Palacherla regarding timing of release of public draft CFA and timeline for compliance with schedule; information to Neelima regarding staff report for Initial Study and Negative Declaration for incorporation.	0.60	
LAFCO CLERK	11/2/2007	Prepare monthly staff time invoice for September	0.75	28.75
	11/2/2007	Reformat/reconfigure color map inserts to electronic version of Initial Study	3.25	
	11/5/2007	Prepare Notice of Intent (NOI) to Adopt IS/ND to various individuals and agencies; post NOI on County Government Center bulletin board; prepare NOI and IS for posting on LAFCO website; edit index and San Martin pages of LAFCO website for this update; and prepare website update diagram for TLC.	6.75	
	11/8/2007	Prepare Notice of Intent for posting on website; prepare Notice for newspaper publication; make copies of, and mail hardcopies of Notice and Draft Initial Study to various agencies, cities, special districts and SMNA.	6.25	
	11/9/2007	Continue working to mail Notice of Intent to all agencies, cities and special districts; Scan Initial Study to PDF, post on website and email to all agencies, organizations and individuals requesting for digital copies.	4.75	
	11/14/2007	Prepare, publish and mail Hearing Notice for 12/5/2007 LAFCO hearing: San Martin IS/ND	3.50	
	11/28/2007	Make copies of San Martin IS, staff reports and attachments to certain individuals and for distribution with agenda packets at the meeting.	3.50	

**PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN**

**STATEMENT OF LAFCO STAFF COSTS**

Statement Month: December 2007

<b>Beginning Balance</b>	<b>AMOUNT</b>
<b>BALANCE FROM THE PREVIOUS STATEMENT</b>	<b>\$ 34,169.62</b>

<b>Staff Time for September 2007</b>					\$ 7,184.09
LAFCO Staff	Hours	Hourly Rate	Cost		
LAFCO Clerk	11.75	\$ 93.00	\$ 1,092.75		
LAFCO Analyst	4.50	\$ 139.00	\$ 625.50		
LAFCO Counsel	7.40	\$ 198.00	\$ 1,465.20		
LAFCO Executive Officer	26.32	\$ 152.00	\$ 4,000.64		
<b>Expenses</b>					\$ -
None					
<b>TOTAL DUE FOR THE CURRENT STATEMENT</b>					<b>\$ 7,184.09</b>

<b>BALANCE DUE TO DATE</b>	<b>\$ 41,353.71</b>
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**NOTE:** Pursuant to the Fee Agreement for the San Martin Incorporation Proposal, the payment for LAFCO staff costs is due prior to the first LAFCO public hearing, which is expected to occur in May 2008. An invoice will be provided thirty days prior to the first hearing.

DECEMBER 2007

STAFF	DATE	ACTIVITY/TASK	HOUR UNITS	MONTHLY TOTAL
EXECUTIVE OFFICER	12/3/2007	Review second Administrative Draft Comprehensive Fiscal Analysis (CFA) and comments to Berkson	3.00	26.32
	12/4/2007	Phone conversation with Vinod Sharma, County Controller's Office re. Auditor's ratio;	0.16	
	12/4/2007	Phone conversation with R. van't Rood	0.16	
		Review and email second Administrative Draft CFA to County agencies and proponents; Work on meeting agenda for 12/6/2007.	1.00	
	12/5/2007	LAFCO meeting and preparations	1.00	
	12/6/2007	CFA meeting with County agencies and proponents, preparation and follow-up	6.00	
	12/7/2007	Meeting with Roads and Airports and R. van't Rood	1.00	
	12/7/2007	Revisions to CFA from County Planning Department	0.25	
	12/7/2007	Discusssion with Roads and Airports and Berkson	1.00	
	12/10/2007	CFA issues	1.00	
	12/12/2007	Phone conversation with van't Rood	0.75	
	12/13/2007	Preparation and first AdHoc Revenue Neutrality Negotiation (RNN) Meeting	3.00	
	12/17/2007	Review of information re Road and Airports, and CFA	2.00	
	12/18/2007	Meeting with CDF	1.00	
	12/18/2007	Tour of San Martin	2.00	
	12/19/2007	Review CFA comments and review revisions to CFA	2.00	
12/20/2007	Discuss revisions to CFA, boundaries	1.00		
LAFCO ANALYST	12/3/2007	Emails, calls and discussion with State Fish and Game staff concerning status of "No Effect Determination"	0.50	4.50
	12/13/2007	RNN Meeting	1.00	
	12/18/2007	Meeting with CDF	1.00	
	12/18/2007	Tour of San Martin	2.00	
LAFCO COUNSEL	12/6/2007	Meeting on CFA with County staff and with proponents	4.50	
	12/10/2007	Questions from N. Palacherla regarding release of administrative draft CFA and compliance with LAFCO policies, review language in statute and guidelines and local policies, provide smaple revenue neutrality agreements, work on sample agenda, provide Robert Campbell with sample agreement and discuss preparation of agreement, provide information on relevant terms for revenue nuetrality negotiations.	1.20	

DECEMBER 2007

STAFF	DATE	ACTIVITY/TASK	HOUR UNITS	MONTHLY TOTAL
LAFCO COUNSEL (Continued)	12/11/2007	Discussion with N. Palacherla regarding revenue neutrality, discussion regarding hearing process	0.50	7.40
	12/13/2007	Support to revenue neutrality negotiations	0.20	
	12/18/2007	Question regarding tour of San Martin and use of private automobile	0.10	
	12/20/2007	Question from N. Palacherla regarding applicable master tax sharing agreement for new city; Information from Dunia regarding tour of San Martin for next meeting.	0.10	
	12/27/2007	Research issue of determination of property tax exchange upon annexation of any future territory to San Martin	0.80	
LAFCO CLERK	12/3/2007	Copy and distribute SMNA comment letter on alternative boundaries	0.50	11.75
	12/4/2007	Prepare monthly staff time invoice for November	0.75	
	12/20/2007	Prepare agenda and maps for San Martin tour. Meeting with N. Palacherla and D. Noel to plan tour.	3.00	
	12/21/2007	Identify and reserve vehicle for San Martin tour; post agenda, tour itinerary and maps on LAFCO website; send emails on tour information to commissioners and other participants.	4.00	
	12/21/2007	Follow-up vehicle, prepare and distribute agenda packets and respond to public inquiries re. tour.	3.50	



LAFCO Meeting: February 6, 2008  
TO: LAFCO  
FROM: Neelima Palacherla, Executive Officer  
SUBJECT: **Pending Legislation: SB 301(Romero)**  
Agenda Item # 10

**SB 301 (Romero)**  
**Vehicle License Fee (VLF) for Annexation and Incorporations**

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**Recommended Action**

Authorize LAFCO to send a letter in support of SB 301.

**Background**

The statutory adjustments following Proposition 1A and the 2004 budget agreement, created a financial disincentive for city incorporations and annexation of inhabited territory. AB 1602 (Laird), passed in 2006, eliminated this disincentive by allocating VLF funding to newly incorporated cities and cities that annex inhabited area. However, AB 1602 will sunset on July 1, 2009. SB 301 extends the sunset established by AB 1602 and extends the VLF allocations for another 5 years to July 1, 2014.

**Effect of SB 301 on the Proposed Incorporation of San Martin.**

The current schedule for the incorporation calls for LAFCO public hearings on the incorporation in May and June 2008. This would allow the issue to be placed on the November 2008 ballot and allow for the incorporation to become effective as early as January/ February 2009.

Government Code Section 56800 requires the data in the CFA to be from the most recent fiscal year for which data is available, preceding the issuance of the certificate of filing. For this reason, LAFCO must take action on the incorporation within the Fiscal year 2008 in order to ensure that the CFA data is current. Therefore the extension of the VLF legislation would not affect the schedule for the LAFCO public hearings. However, the extension of the VLF legislation will provide more flexibility with establishing an effective date for the incorporation.

Government Code Section 57384(a) requires the County to provide all services provided to the area prior to incorporation during the transition period between the effective date of the incorporation and the remainder of the fiscal year. Passage of SB 301, would allow the proponents, county and LAFCO to coordinate on the effective date without the restriction of having an effective date by July 1, 2009.