

**LOCAL AGENCY FORMATION COMMISSION OF
SANTA CLARA COUNTY
MINUTES
WEDNESDAY, MAY 7, 2008**

1. ROLL CALL

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 7th day of May 2008 at 1:15 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 Pete Constant, Vice Chairperson Susan Vicklund-Wilson, and Commissioners Blanca Alvarado, Don Gage and John Howe. Alternate Commissioners Al Pinheiro and Terry Trumbull are also present.

The LAFCO staff in attendance includes Neelima Palacherla, LAFCO Executive Officer; Dunia Noel, LAFCO Analyst; and Mala Subramanian, LAFCO Counsel for San Martin Incorporation proposal.

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

2. PUBLIC PRESENTATION

There are no public presentations.

3. APPOINTMENT OF ALTERNATE COUNSEL TO REPRESENT LAFCO ON THE SAN MARTIN INCORPORATION PROPOSAL

The Chairperson introduces Mala Subramanian, LAFCO Counsel, for the San Martin incorporation proposal. Commissioner Howe expresses appreciation to Chairperson Constant and Vice-Chairperson Wilson for their participation on the subcommittee to hire the Alternate Counsel.

4. CONTINUED FROM APRIL 16, 2008 (ITEM 4.3): PUBLIC HEARING ON THE REVISED INITIAL STUDY AND NEGATIVE DECLARATION FOR THE PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

This being the time and place set for a public hearing, continued from April 16, 2008 (Item 4.3), to accept comment on the Revised Initial Study and Negative Declaration for the proposed incorporation of the Town of San Martin, the Chairperson declares the hearing open.

The Chairperson requests the staff report. Ms. Noel provides an overview of the IS/ND process, including the revised IS/ND. She then walks through the comments received on the Revised IS/ND. She adds that at the April 16, 2008 meeting, Commissioner Alvarado requested an explanation of the last paragraph in Morgan Hill's staff report to its City Council on incorporation boundary. Ms. Palacherla notes that the Morgan Hill staff report discusses that the larger boundaries for San Martin could set a precedence for Morgan Hill to also consider annexation of their SOI and explains how that would negatively impact the long standing policies LAFCO, the County and the cities.

Ms. Noel then informs that Steve Jenkins, CEQA consultant for the incorporation proposal, is available to answer questions and adds that Mr. Jenkins has completed a preliminary review of comments to the Revised IS/ND and based on that recommends that a Mitigated Negative Declaration should be prepared. Ms. Noel informs that Michael Brandman and Associates has already assisted staff on the Revised IS/ND at no additional charge and indicates that the contract may need to be amended to allow the consultant to work on the Mitigated Negative Declaration which is estimated at \$9,570.

The Chairperson informs that those who requested to speak at April 16, 2008 meeting will be called to speak.

Lynne Bonino, who requested to speak on April 16, 2008, is not present.

Roger Costa, a landowner in San Martin, states that this forum allows him to be heard because he is not a resident in the area and therefore unable to vote on the issue. He opposes the incorporation because San Martin has a weak commercial base and would be unable to sustain itself and would not have a diverse tax base. He adds that EPS estimates that 30 percent of the General Fund revenues would come from sales and transient occupancy taxes of five businesses which would be fiscally unstable because there would not be enough property tax revenues to cover potential shortfall in sales taxes. Rural infrastructure such as roads and drainage would suffer and the burden will be transferred to the residents in the form of new fees and assessments, resulting in depreciated property values and a reduction in the quality of life. He notes that while he does not agree with all County policies and programs, being in the unincorporated area offers far greater stability,

predictability and accountability because of the County's size, population and economic diversity. He adds that creating another layer of government at this time would further compound fiscal problems.

Dave Piccardo, a resident of San Martin since 1985, states that adding another layer of government comes with long term costs. He states that the city core will require a sewer system that will serve that limited area but will be paid for by the entire population. He proposes that no service be installed unless everyone benefits. Relative to the proponents' stated goal that local control would protect San Martin from pressures of more housing, he informs that cities like Morgan Hill and Gilroy have more than doubled in population over the last 25 years. He concludes that incorporation would not preserve rural community or keep agriculture viable and requests the Commission to stop the incorporation process, and protect agriculture.

John Sanders, SMNA member, inquires the date of SMNA letter on Attachment 3 of the staff report and Ms. Noel informs that the letter is dated April 10, 2008. Mr. Sanders expresses concern that staff failed to include SMNA's April 16, 2008 letter in the staff report. He notes that the Commission would be unable to react to SMNA's letter because it is not included in the packet. He then discusses the content of that letter which conveys SMNA's concurrence with the Revised IS/ND because the proposed project would not have significant impact on the environment. However, the letter expresses concern over the addition of Section 3.1, relating to Consistency with LAFCO and Local Policies. The Chairperson indicates that the allotted time for the speaker has expired and requests for a copy of SMNA's April 16, 2008 letter.

Brian Schmidt, Committee for Green Foothills, directs attention to an email from Mr. Jenkins, included as Attachment A of the staff report and states that a more robust analysis should be made in response to the comments received. Mr. Schmidt informs that comment letters from Committee for Green Foothills focused on how the inclusion of areas 4 and 5 to the incorporation boundary contradicts with LAFCO policies and the CKH Act requirement for compact development. He expresses concern that the proposed boundary extends all the way to the SOIs of Morgan Hill and Gilroy. He adds that even if

areas 4 and 5 are excluded, there would still be environmental impact and informs that some farmers in the area have approached the Committee for Green Foothills in this regard.

Warren Walsh, a farmer and resident of San Martin, requests the Commission to stop the incorporation because it adversely impacts agriculture, violates the County's Right to Farm ordinance, and brings uncertainty to Williamson Act contracts. He notes that while there are conflicting statements about the future of existing Williamson Act contracts, it is certain that farmers would no longer be able to enter into new contracts. He adds that incorporation will increase water rates, impact the farmers and discontinue County services such as that of a rural crime deputy. He states that a vote for incorporation will be a vote against agriculture. He notes that proponents have said that San Martin's soil is not suited for agriculture; however, he informs that San Martin farmers are growing a wide range of agricultural produce. He requests the Commission to stop the incorporation because San Martin is the last agricultural area in Santa Clara County.

Richard Van't Rood, SMNA spokesman, states that he is giving his time to Mr. Sanders.

Mr. Sanders provides copies of SMNA's April 16, 2008 letter and informs that Section 3.1 of the IS/ND is misleading and inconsistent with the rest of the document. As an example, he notes that the acreages in that section are different from the rest of the document and it does not provide exhibits to show the areas that are referred. Additionally, he notes that the document does not disclose that Section 3.1 was prepared by LAFCO staff. He reads from Section 3.1 discussion about how the town, upon incorporation, would have jurisdiction to designate future land uses and authority to provide urban services within its boundaries that could result in the premature conversion of agricultural lands, or impact adjacent agricultural lands. He states that this statement is misleading because the County already has land use authority and has approved a 19-lot subdivision on a 100-acre parcel designated as prime agricultural land. He then states that San Martin Airport will expand into 100 acres of farmlands. He comments that there is no

exhibit showing what comprises the 2,552 acres of “undeveloped lands.” With regard to Williamson Act lands, he comments that the discussion on page 14 is misleading and inconsistent with information on pages 22 and 31.

The Chairperson informs that Mr. Sanders’ time to address the Commission has expired. Jenny Van’t Rood, SMNA member, states that she is giving her time to Mr. Sanders.

Mr. Sanders continues by stating that page 28 of the IS/ND indicates that 187 properties are under Williamson Act contracts eventhough 126 of these contracts are expiring in 2016 and 2017. He adds that of the 1,800 acres under contract, 1,700 acres are in the Haye’s Valley Estates area and contracts for 300 acres, designated as prime farmland and farmland of statewide importance, will not be renewed. He informs that incorporation will not result in the conversion of agricultural lands and proposes that the statement, “the project is not entirely consistent with policies,” be revised to state, “the project is generally consistent with policies,” and “less than significant impact” be revised to state, “no impact” for each consistency analysis in order to follow the CEQA format used within the rest of the document. He questions why Morgan Hill’s March 19, 2008 staff report and HCP are being discussed at this meeting.

In response to an inquiry by Commissioner Howe, Mr. Sanders informs that the Morgan Hill staff report discussing the San Martin boundary is dated March 19, 2008 while the March 20, 2008 letter to LAFCO from Morgan Hill Planning Director does not mention this issue.

In response to the inquiry by Mr. Sanders, Chairperson Constant informs that the Morgan Hill staff report and HCP issue are being discussed because a Commissioner has requested for clarification.

Susan Glasser, a resident of San Martin, states that she would like to convey comments by Lynne Bonino regarding page 14 of the CFA. The Chairperson informs that the CFA is the next item on the agenda.

Commissioner Gage moves to request LAFCO Counsel to review the IS/ND and to report back to the Commission.

Commissioner Wilson proposes to amend the motion to direct staff to include SMNA's April 16, 2008 letter even it is almost identical to their April 10, 2008 letter, as well as direction to LAFCO Counsel to review that letter. Commissioner Wilson further requests that LAFCO Counsel's review include clarification relating to the comments made on the part of the IS/ND prepared by staff. Commissioner Gage expresses agreement and further amends the motion to state that all documents should be included in the review.

The Chairperson clarifies that the motion is to accept public comments with direction to the LAFCO Counsel to review all related documents.

Commissioner Howe seconds the motion.

The Chairperson calls the question. It is unanimously ordered on a vote of 5-0 that comments on the Revised IS/ND be accepted; and, that LAFCO Counsel be directed to review all the related documents and to advise the Commission at the June meeting.

In response to an inquiry by Commissioner Wilson, Ms. Palacherla advises that staff would wait for direction from Counsel and the Commission on whether a Mitigated Negative Declaration (MND) or Environmental Impact Report (EIR) would be required. The Chairperson expresses agreement.

5. CONTINUED FROM APRIL 16, 2008 (ITEM 4.4): PUBLIC HEARING ON DRAFT COMPREHENSIVE FISCAL ANALYSIS AND PLAN FOR SERVICES FOR THE PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

This being the time and place set for a public hearing, continued from April 16, 2008 (Item 4.4), to consider the Public Hearing Draft Comprehensive Fiscal Analysis and Plan for Services for the proposed incorporation of the Town of San Martin, the Chairperson declares the public hearing open.

The Chairperson requests the staff report. Ms. Palacherla provides information on the process and preparation of the CFA. She then presents an overview of the CFA with regard to financial feasibility of the new city and fiscal impact to the County. She states that the County and the proponents were unable to reach agreement on revenue neutrality issues and both parties have different interpretations of revenue neutrality provisions and have submitted legal analyses. Ms. Palacherla then proposes that LAFCO Counsel review

the material and advise the Commission on the issue. She states that the CFA may need to be revised to reflect new cost information relating to road maintenance costs, and HCP costs. She indicates that Ken Schrieber, HCP Program Manager, and Richard Berkson, CFA consultant, are available to answer questions.

The Chairperson indicates that there are two opinions on the CFA and that LAFCO Counsel will provide the Commission with an independent opinion.

The Chairperson informs that those who requested to speak at the April 16, 2008 meeting will be called.

Sylvia Gallegos, Deputy County Executive, Santa Clara County, advises that on April 8, 2008, the Board of Supervisors voted to oppose incorporation of San Martin because the proposed town does not have sufficient resources to make the County General Fund whole as required by State law. She then outlines the historical context for revenue neutrality in State law. She then indicates that since the Road Fund is restricted to road related uses, it cannot be used to mitigate the loss to the General Fund. Ms. Gallegos then informs that Bob Campbell, Assistant County Counsel, is available for questions.

Sylvia Hamilton, SMNA President, states that residents, business owners, and other community members should be heard. She informs that SMNA did a massive community outreach before the IFA came out. She then welcomes the opportunity to communicate with those opposing the incorporation. She clarifies that the proponents do not provide data to consultants. She states that the purpose of the IFA was to determine if San Martin might be financially feasible but it is not considered part of the incorporation process. She notes that Table I-2 of the IFA, which caused the most confusion, was intended by the consultant to be a demonstration and was not used for calculation. The proponents also wanted to ensure that EPS take a very conservative approach in its analysis because they wanted to be assured that San Martin is financially viable.

David Piccardo indicates that he has already spoken.

Brian Schmidt, Committee for Green Foothills, informs that there will be cost a for San Martin to participate in HCP and proposes that this be included in the CFA. He then inquires from Commissioner Gage if there will be a cost if San Martin does not participate

in HCP. In response to this, Commissioner Gage informs that San Martin will have a choice to participate or not, stating that if they do not participate they will pay the Federal and State regulatory agencies. Brian Schmidt then continues that the cost for both participating and for not participating should be reflected in the CFA. Commissioner Gage informs that the cost for not participating would be paid for by the developers and not by the city. Mr. Schmidt indicates that the Town may also pay fees if the impact is caused by the Town due to infrastructure projects. He then expresses concern that the CFA shows an optimistic housing trend. He then requests information on the selection process that led to hiring of EPS for the incorporation proposal.

Leonette Stafford, who requested to speak at the April 16, 2008 meeting, is not present.

Rick Van't Rood, SMNA spokesperson, questions whether it is necessary for San Martin to join HCP because the CFA projects that only seven new residential units would be built per year over the next 10 years. He notes that while he does not agree with all assumptions in the CFA, he supports the premise that existing tax revenues could support San Martin. He expresses hope that the Public Hearing Draft CFA is not the final document because of changes that need to be made and because of the possibility of reopening revenue neutrality negotiations. In response to a statement made by Ms. Gallegos, Mr. Van't Rood states that tax revenues generated from San Martin for countywide services would be retained by the County.

Kendra Whitehead and Vicki Wittman, who requested to speak at the April 16 meeting, are not present.

John Sanders, SMNA member, inquires why HCP is being discussed when a letter from HCP Program Manager was received after the April 16, 2008 deadline and why SMNA's April 16, 2008 letter was not included in the packet. He then comments that the HCP is still a work in progress. He questions why San Martin would have to pay for revisions to the HCP. He states that HCP fees will be recovered from user fees. He comments that HCP and County staff have not coordinated with the proponents and questions why San Martin would have to pay for this failure.

Jenny Van't Rood informs that she is giving her time to Sylvia Hamilton.

Sylvia Hamilton, states that residents of San Martin will be better stewards than people who do not live there since they want to incorporate San Martin in order to protect agricultural lands. She informs that there will be no new taxes unless the community wants certain services because State law requires 2/3 of voters to pass a new tax. She informs that incorporation does not require a municipal water or sewer system and future businesses in the area could either connect to sewer system of Morgan Hill or Gilroy or create a special district. She notes all members of the community should have a voice in the present and future destiny of the community. She informs that there is a broad based participation in the incorporation process and expresses hope that all concerns of the community will be resolved through open communication and active listening.

J. Freddi Comperchio, who requested to speak at the April 16, 2008 meeting, is not present.

Susan Glasser, a resident of San Martin, comments that the "village core" mentioned on page 16 of the CFA is non-existent and questions how San Martin would sustain itself without a viable business center. Directing attention to page 5 of the CFA, she questions why there is no list of businesses.

John Wolfinbarger, SMNA member, requests the Commission to allow residents to place the incorporation on the ballot. If the voters approve the incorporation, the residents will make the town viable. He states that the proponents will protect farmlands because food is running out in the country.

Chairperson Constant reads a written comment from Betsy Simmons, SMNA member. Ms. Simmons states that she is in favor of incorporation because she does not want to see urban sprawl.

Commissioner Gage requests the proponents to meet with Mr. Schrieber in order to get more accurate information about the HCP. He then comments that the County has \$220 million deficit this year and would have to cut one third of the budget amounting to \$1.3 billion. He also states that the residents of San Martin should have a fair shot to determine whether or not San Martin will be a city. He states that both staff and the

proponents agree that certain parts of the CFA need to be reexamined including the election costs, and change in the road maintenance cost, among others.

Commissioner Gage then moves to direct staff to revise the CFA and reopen the revenue neutrality negotiations. Commissioner Howe seconds the motion.

Commissioner Alvarado responds to a comment from the public, stating that she requested staff to comment on the last paragraph of Morgan Hill staff report. She states that she also requested information on HCP because San Martin incorporation is located right in the middle of the HCP area. She indicates that while San Martin has a choice of whether or not to participate in HCP, there will be costs. With regard to the motion, she expresses concern that the LAFCO counsel is being directed to reopen revenue negotiations and requests Commissioners not to exert undue influence upon the LAFCO counsel.

Commissioner Gage responds that both staff and proponents acknowledge that certain aspects of the CFA should be reexamined, which may lead to reopening of negotiations. Commissioner Alvarado states that the County Board of Supervisors voted against the request by the proponents for the County to absorb the cost of the elections. Commissioner Gage responds that the County will absorb the cost of election if the residents vote against incorporation. He states that the CFA must be reexamined in view of new information because the Commission cannot decide based on the current version of CFA. Commissioner Alvarado informs that counsel should not assume that she is being directed to reopen the negotiations. The Chairperson states that this is not part of the motion.

Commissioner Wilson requests the counsel to consider the timeline of both CFA and CEQA. Commissioner Gage requests the counsel to come up with a legal analysis before the next LAFCO meeting, and Chairperson Constant adds that a legal analysis should include the Counsel's opinion about the CFA. Commissioner Gage expresses agreement.

In response to the inquiry by Commissioner Howe, Ms. Subramanian informs that she will try to report to the Commission at the next meeting. In response to a follow-up

inquiry by Commissioner Howe, Ms. Subramanian informs that considering the cut-off date for preparing agenda packets, counsel will have only 22 days. She indicates that she will meet the consultants and informs that her ability to meet the deadline depends on what information is currently available and what will have to be obtained.

Commissioner Gage amends his motion to state that staff be directed to revise the CFA based on legal analysis by the counsel; and that the counsel review all documents relating to the CFA and report to the Commission at the June 4, 2008 meeting, and if the report is not available at that time, a special meeting be scheduled as necessary.

Commissioner Howe accepts the amendment.

Commissioner Alvarado informs that she will be voting against the motion.

At the request of Commissioner Wilson, Commissioner Gage restates the motion. Commissioner Wilson expresses the opinion that 22 days will only allow the new counsel to do preliminary work and not a full legal analysis. She recommends that the counsel be given enough time to analyze all information to ensure that the Commission will have the best legal opinion. She informs that she will not support the motion, except the direction to staff to set up special meetings as necessary.

Commissioner Alvarado informs that the motion is redundant because this has been discussed at the closed session. She notes that this item of the agenda only is for public comments and referrals to staff. Commissioner Gage responds that no action was taken during the closed session. Ms. Subramanian informs that she will notify the Commission if a legal analysis would not be completed by June 4, 2008. She likewise advises that this item on the agenda allows direction to staff to respond to comments on the CFA and revise the document as necessary, and it would be upon the Commission to direct staff to come up with a legal analysis. Commissioner Gage proposes that the issue will be taken up at the June 4, 2008 meeting and other items may be taken up at in a special meeting. Ms. Subramanian expresses agreement, stating that she will confer with Ms. Palacherla on which part of the legal analysis could be postponed to a later meeting.

Chairperson Constant calls the question. It is ordered on a vote of 3-2, with Commissioners Alvarado and Wilson opposed, that staff make the necessary revisions to

the Public Hearing Draft CFA and Plan for Services; and that counsel review all documents relating to the CFA and provide a legal analysis to the Commission at the June 4, 2008 meeting; and, to schedule special meetings as necessary.

6. UPDATE ON SCHEDULE FOR THE PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

The Chairperson requests the staff report. Ms. Palacherla advises that staff will provide a revised schedule after the Commission makes a decision on the appropriate CEQA document and the CFA.

The Chairperson opens the public comments period for this item.

John Sanders requests the Commission to keep the proponents informed of the schedule.

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

7. UPDATE ON PAYMENT OF LAFCO STAFF COSTS FOR THE PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

The Chairperson requests the staff report. Ms. Palacherla informs that staff received comments from the proponents on the invoices. Staff will work with the proponents to resolve the issues and report to the Commission at the June 4, 2008 meeting.

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

8. COMMISSIONERS' REPORTS

There are no reports from Commissioners.

9. EXECUTIVE OFFICER'S REPORT

There is no report.

10. WRITTEN CORRESPONDENCE

There is no written correspondence.

11. NEWSPAPER ARTICLES

There are no newspaper articles.

12. ADJOURN

On motion of Commissioner Howe, seconded by Commissioner Gage, it is unanimously ordered on a vote of 5-0 that the meeting be adjourned at 2:51 p.m.

The next regular LAFCO meeting is scheduled to be held on Wednesday, June 4, 2008 at 1:15 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California.

Pete Constant, Chairperson
Local Agency Formation Commission

ATTEST:

Emmanuel Abello, LAFCO Clerk