



**LAFCO MEETING
AGENDA**

**Wednesday, June 4, 2008
1:15 PM**

**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, John Howe
ALTERNATES: Sam Liccardo, Pete McHugh, Al Pinheiro, 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. Disclosure of Campaign Contributions

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, 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. For disclosure forms and additional information see:

<http://santaclara.lafco.ca.gov/annexations&Reorg/PartyDisclForm.pdf>

2. Lobbying Disclosure

Any person or group lobbying the Commission or the Executive Officer in regard to an application before LAFCO must file a declaration prior to the hearing on the LAFCO application or at the time of the hearing if that is the initial contact. Any lobbyist speaking at the LAFCO hearing must so identify themselves as lobbyists and identify on the record the name of the person or entity making payment to them. For disclosure forms and additional information see: <http://santaclara.lafco.ca.gov/annexations&Reorg/LobbyDisclForm.pdf>

3. Disclosure of Political Expenditures and Contributions Regarding LAFCO Proceedings

If the proponents or opponents of a LAFCO proposal spend \$1,000 with respect to that proposal, they must report their contributions of \$100 or more and all of their expenditures under the rules of the Political Reform Act for local initiative measures to the LAFCO office. For additional information and for disclosure forms see:

<http://santaclara.lafco.ca.gov/annexations&Reorg/AB745%20Forms/PoliciesAB745Revised.pdf>

1. **ROLL CALL**
2. **CLOSED SESSION**

Conference with Legal Counsel - Anticipated Litigation
Significant exposure to litigation pursuant to Government Code § 54956.9
(1 case)

2:15 PM Time Certain

3. **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.

4. **APPROVE MINUTES OF APRIL 16, 2008 AND MAY 7, 2008 MEETINGS**

ITEMS FOR COMMISSION DISCUSSION / ACTION

5. **ENVIRONMENTAL / CEQA REVIEW FOR THE SAN MARTIN INCORPORATION PROPOSAL**

Additional Document

Possible Action: Accept report and provide direction to staff.

6. **COMPREHENSIVE FISCAL ANALYSIS (CFA) FOR THE SAN MARTIN INCORPORATION PROPOSAL**

Possible Action: Accept report and provide direction to staff.

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

Possible Action: Accept report and provide direction to staff.

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

Possible Action: Accept report and provide direction to staff.

PUBLIC HEARINGS

9. **FINAL LAFCO BUDGET FOR FISCAL YEAR 2008-2009**

Possible Action: Consider and adopt the final LAFCO budget for Fiscal Year 2008-2009.

10. **PROPOSED REVISION TO LAFCO FEE SCHEDULE**

Possible Action: Consider and adopt resolution revising the LAFCO Fee Schedule.

11. **AMENDMENT TO AGREEMENT BETWEEN LAFCO AND COUNTY OF SANTA CLARA FOR LEGAL SERVICES FOR FISCAL YEAR 2009**

Possible Action: Approve amendment to agreement with County of Santa Clara for legal services for the fiscal year 2009.

12. COMMISSIONERS' REPORTS

13. EXECUTIVE OFFICER'S REPORT

**13.1 [CALAFCO Annual Conference in Universal City
September 2-5, 2008](#)**

Possible Action: Authorize commissioners and staff to attend the 2008 CALAFCO Annual Conference and authorize travel expenses funded by LAFCO budget.

14. WRITTEN CORRESPONDENCE

(Information Only)

14.1 [Letter from the City of Santa Clara notifying LAFCO of its intent to extend dark fiber lines outside the City of Santa Clara boundaries.](#)

15. NEWSPAPER ARTICLES / NEWSLETTERS

15.1 [CALAFCO Newsletter: The Sphere](#)

16. PENDING APPLICATIONS / UPCOMING PROJECTS

(Information Only)

16.1 Protest proceeding for the West Valley Sanitation District Annexation 2008-1 (Canon Drive) is scheduled for Thursday, June 19, 2008 at 9:30 AM in Room 157 at 70 West Hedding Street, San Jose. The Executive Officer will conduct the hearing.

16.2 Notice of Intent to Circulate a Petition for the Formation of Greater San Jose Healthcare District

17. ADJOURN

Adjourn to the special meeting on Wednesday, July 2, 2008, at 1:15 PM in the **Sheriff's Auditorium, Office of the Sheriff, 55 Younger Avenue, San Jose, CA 95110.**

Any disclosable public records related to an open session item on the agenda and distributed to all or a majority of the Commission less than 72 hours prior to that meeting are available for public inspection at the LAFCO Office at the address listed at the bottom of the first page of the agenda during normal business hours.

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, APRIL 16, 2008**

1. ROLL CALL

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 16th day of April 2008 at 1:16 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; and Dunia Noel, LAFCO Analyst. Kathy Kretchmer, LAFCO Counsel is present; however, she steps down during discussion of items on the agenda relating to San Martin incorporation.

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

2. PUBLIC PRESENTATIONS

There are no public presentations.

3. APPROVE MINUTES OF FEBRUARY 6, 2008 MEETING

On motion of Commissioner Howe, seconded by Commissioner Gage, it is unanimously ordered on a vote of 5-0 that the minutes of February 6, 2008 meeting be approved, as submitted.

4. PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

4.1 WITHDRAWAL OF LEGAL COUNSEL FROM REPRESENTATION OF LAFCO ON THE SAN MARTIN INCORPORATION PROPOSAL

Commissioner Howe inquires whether items on the agenda relating to the incorporation of San Martin should be continued in the absence of legal counsel. Chairperson Constant indicates that the Commission has that option and inquires from staff on the date of the next meeting. Ms. Palacherla advises that the next scheduled meeting is a special meeting for the incorporation proposal on May 7, 2008. Commissioner

Gage recommends that San Martin items be continued to that date. In response to an inquiry by the Chairperson, Ms. Palacherla advises that the Office of the County Counsel has notified LAFCO that it has withdrawn from representation of LAFCO on matters related to the San Martin incorporation proposal; however, the office continues to advise the Commission on other issues.

Commissioner Howe proposes to seek advice from the Kathy Kretchmer relating to continuation of certain items on the agenda, and the Chairperson agrees.

Ms. Kretchmer joins the meeting at 1:32 p.m.

In response, Ms. Kretchmer informs that the question is very generic and advises that an item on the agenda is typically continued to the next meeting and, at that meeting, it may be continued further to another date. Ms. Kretchmer advises that it should be indicated that if there is no quorum at the May 7, 2008 meeting, an item would be continued further to the next scheduled meeting on June 4, 2008. In response to an inquiry by Commissioner Wilson, Ms. Kretchmer advises that continued items do not need to be re-noticed.

Ms. Kretchmer returns to the audience at 1:34 p.m.

Commissioner Wilson notes that there is a need to retain an alternate legal counsel for the San Martin incorporation proposal in view of the withdrawal of representation by the County Counsel. She then moves that the Commission establish a two-member subcommittee authorized to hire an alternate legal counsel and that, in the event that the two commissioners differ in opinion as to the choice of the alternate LAFCO counsel, the full Commission will choose the alternate legal counsel at the May 7, 2008 meeting. Commissioner Wilson volunteers to be a member of that subcommittee. Commissioner Alvarado seconds the motion. Chairperson Constant expresses interest in participating on the subcommittee and proposes to amend the motion to state that the two members of the subcommittee are Chairperson Constant and Vice-Chairperson Wilson. Commissioners Wilson and Alvarado accept the amendment to the motion.

It is unanimously ordered on a vote of 5-0 that a subcommittee composed of Chairperson Constant and Vice Chairperson Wilson be formed to hire alternate legal

counsel for the San Martin incorporation proposal; and in the event that the subcommittee is unable to reach a decision, the full Commission will make the hiring decision at the May 7, 2008 meeting.

4.2 ANALYSIS OF POTENTIAL CONFLICT OF INTEREST FOR THE LAFCO EXECUTIVE OFFICER

Chairperson Constant invites members to discuss whether or not to continue this item to the next meeting because the Commission has no legal counsel. Commissioner Howe proposes that the new legal counsel review the issue of a conflict of interest for the Executive Officer. In response to the inquiry by Commissioner Wilson, Commissioner Howe informs that he feels there is no conflict of interest at this time; however, it could be possible in the future. Commissioner Wilson informs that it is the Commission that has to determine that a conflict of interest exists and, if there is, the Commission may seek the services of an executive officer from another LAFCO for the San Martin incorporation proposal.

Commissioner Howe requests reconsideration of the action taken on item 4.1 to direct the new alternate legal counsel to make a determination on whether or not the Executive Officer has a conflict of interest. The Chairperson and Commissioner Wilson respond that it is best to take separate actions on these two separate items.

In response to a suggestion from Commissioner Wilson to continue certain San Martin items on the agenda and discuss other items, the Chairperson recommends discussion of the potential conflict of interest for the Executive Officer before proceeding to the item on San Martin incorporation schedule. Chairperson Constant then comments that there is a difference between a legal conflict of interest and the appearance of a conflict of interest. Commissioner Alvarado informs that she does not see any conflict of interest for the Executive Officer, either perceived or actual. Having served as LAFCO Commissioner for many years, she has not seen Ms. Palacherla, as LAFCO Executive Officer, in roles other than that of a LAFCO executive officer, in the same way that she sees herself as a LAFCO Commissioner when attending LAFCO meetings and not as a member of the Board of Supervisors. She informs that a legal opinion would not change her actual and realistic perception of Ms. Palacherla as a LAFCO Executive Officer and

finds no need to refer this item any further to the LAFCO counsel. She then moves to declare that the Commission finds no conflict of interest for the Executive Officer with regard to the proposed incorporation of San Martin.

Commissioner Gage expresses agreement with Commissioner Alvarado stating that he conferred with Ann Ravel, County Counsel, who finds no conflict of interest for the Executive Officer. He then informs that the LAFCO Executive Officer, while being paid by the County, has no conflict of interest because she is operating independently and has no monetary gain relative to the proposed incorporation.

Commissioner Howe reiterates his proposal to reconsider the action taken under Item 4.1 to direct the alternate LAFCO counsel to review the potential conflict of interest for the Executive Officer. Commissioner Wilson expresses disagreement stating that the action on that item was already taken. She adds that being in LAFCO for over 12 years, she concurs with Commissioners Alvarado and Gage that the Executive Officer has no conflict of interest with regard to the San Martin incorporation proposal. Commissioner Wilson then seconds the motion.

Chairperson Constant expresses agreement that there is no legal conflict of interest. Commissioner Howe informs that while he too believes that the Executive Officer has no conflict of interest, he proposes that this determination be reviewed by the alternate LAFCO counsel. Commissioner Gage proposes that the alternate LAFCO counsel be requested to review all past actions and monitor future actions of the Commission for potential conflict of interest. Chairperson Constant expresses agreement.

Chairperson opens the public comment period for this item.

Charles Logan, member of the San Martin Neighborhood Alliance (SMNA) and a landowner in the incorporation area, states that SMNA has raised this question and that the Executive Officer herself had acknowledged that a potential for a conflict of interest exists. He indicates that no one has stated that it exists; however, it needs to be reviewed because certain information has been excluded. SMNA is not requesting the hiring of an alternate executive officer; however, there is need for a fair, impartial and reasonable evaluation of the proposal and a need to ensure that the Executive Officer remains neutral.

While the Commission has a choice of whether or not to hire an alternate executive officer for the San Martin incorporation, SMNA is comfortable working with the Executive Officer. He adds that SMNA has looked at LAFCO guidelines and notes that there could be a potential for a conflict of interest.

Chairperson Constant informs that as soon as alternate LAFCO counsel is hired, the Commission can seek advice on this matter. Commissioner Alvarado indicates that the concern was raised because the Executive Officer is an employee of the County.

Ms. Palacherla expresses appreciation for the Commissioners' confidence in her ability to remain objective relative to the San Martin proposal; however, she points out that it would be unfortunate if this issue and a need to hire an alternate executive officer for San Martin is brought back later in the process because that would cause a further delay and shift the focus from policy issues to staffing issues. She then recommends that the Commission consider and resolve this issue.

Commissioner Gage acknowledges Ms. Palacherla's concerns and notes that the issues raised by the proponents are addressed. He notes that while the Executive Officer is administratively reporting to the County, she is not receiving policy direction from the County. He then informs that the proponents have asked for this and should be responsible for the delay and additional costs.

Commissioner Howe informs that his vote against the motion on the table should not be misconstrued as a vote of no confidence against the Executive Officer. He explains that his voting is against the position of not reconsidering the action taken under Item 4.1. In response to this, Chairperson Constant explains that the motion is to declare that the Commission finds that the LAFCO Executive Officer has no conflict of interest relating to the San Martin proposal at this time. Commissioner Alvarado expresses agreement.

The Chairperson calls the question. It is unanimously ordered on a vote of 5-0 that the Commission declare that the Executive Officer has no conflict of interest relating to the proposed incorporation of San Martin.

4.3 PUBLIC HEARING ON THE REVISED INITIAL STUDY AND NEGATIVE DECLARATION FOR THE PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

The Chairperson indicates that the Commission should not act on items 4.3, 4.4 and 4.5 in the absence of legal counsel and requests a motion to continue these items.

Commissioner Howe moves to continue items 4.3, 4.4 and 4.5 to the meeting on May 7, 2008 and, if the alternate LAFCO counsel is not hired at that time, to further continue these items to the June 4, 2008 meeting. Commissioner Alvarado seconds the motion.

Commissioner Gage comments that he is in a delicate position as a County Supervisor to ensure that the incorporation does not fiscally impact the County. He informs that there is about \$220 million in deficit this fiscal year and the County would have to cut approximately \$1 billion from its \$3.5 billion budget next fiscal year. He then proposes that revenue neutrality negotiations be reopened. Ms. Palacherla advises that the proponents and the County have different opinions about how revenue neutrality should be calculated and how the impact to the County would be depicted in the CFA. She proposes that the alternate LAFCO counsel advise the Commission on how the State law provisions on revenue neutrality be interpreted and, based on that opinion, the Commission could decide on what process would be appropriate, i.e., either to reopen the revenue neutrality negotiations or begin the preparation of terms and conditions. Commissioner Gage calls on the subcommittee hiring the alternate LAFCO counsel to be mindful of the incorporation schedule. The Chairperson and Commissioner Wilson indicate that they will make it a priority.

Commissioner Wilson proposes to amend the motion to state that items 4.3, 4.4 and 4.5 of the agenda be continued to the next meeting and to take up Item 4.6 at this meeting unless there are legal issues relating to it. Commissioners Howe and Alvarado accept the amendment to the motion.

The Chairperson then informs that these two items, noticed for public hearing, are to be continued to the next meeting on May 7, 2008 and inquires if there are any members of the public who would like to speak to whether or not these items should be continued. The Chairperson determines that there are no members of the public who wish to speak for or against the continuance and announces that those who turned in speaker cards for these two items will be called at the next meeting.

The Chairperson calls the question. It is unanimously ordered on a vote of 5-0 that items 4.3 and 4.4 on the agenda be continued to the May 7, 2008 meeting; and to further continue these two items to the next regular meeting on June 4, 2008 if necessary.

4.4 PUBLIC HEARING ON DRAFT COMPREHENSIVE FISCAL ANALYSIS AND PLAN FOR SERVICES FOR THE PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

On motion of Commissioner Howe, seconded by Commissioner Alvarado, it is unanimously ordered on a vote of 5-0 that items 4.3 and 4.4 on the agenda be continued to the May 7, 2008 meeting; and to further continue these two items to the next regular meeting on June 4, 2008 if necessary.

4.5 REVISED SCHEDULE FOR THE PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

The Chairperson requests the staff report. Ms. Palacherla advises that due to the recent turn of events, the incorporation issue will not be ready for the November 2008 ballot. She then proposes a revised timeline for incorporation, stating that in order to complete the incorporation process by June 30, 2009, the incorporation may go on the ballot for the April 2009 election. In order to do that, a LAFCO hearing must be held by September or October 2008. She informs that the postponement of the election to April 2009 will result in increase of both the staffing and election costs, stating that April 2009 election would cost four times more than the November 2008 election. By Fall 2008, the status of a bill extending the Vehicle License Fee law would be known.

Commissioner Alvarado comments that it is important that the residents of the future town understand LAFCO wants to ensure that the process is fair and transparent. While revenue neutrality is important in ensuring that the County is fiscally protected, much greater importance must be placed on whether or not the future town could support itself. She expresses support for the community to have its own elected body and employees, however, she states that these have costs. Commissioner Alvarado continues by stating that while this currently appears as a revenue neutrality issue, the real issue is the ability of the future town to support itself. She comments that the Commission and staff have always been fair in accommodating the proponents' interests, stating that

Commissioners had waived the need for an indemnification agreement. The Commission has also agreed that proponents pay staff costs after their fundraising. She clarifies that the reason for continuing the hearings for the Initial Study/Negative Declaration and Public Hearing Draft CFA is because the Commission has no legal counsel. She indicates that when the legal counsel issue is settled, the real issue becomes the sustainability of the future town of San Martin. She observes that, without prejudice to the process, the draft CFA indicates that the fiscal outlook of the proposed town is not promising.

Commissioner Alvarado continues this concern is further exacerbated because cities and counties in the State are having a hard time meeting their budgets, with recent news that Vallejo is on the verge of bankruptcy. She informs San Martin residents that she is not against the incorporation; however, the law governing the process must be followed, and that the fiscal realities affecting cities and counties in the State must be taken into account.

Commissioner Gage comments that the proponents for the incorporation feel that the documents they provided have not been included and that there are some errors in the CFA, particularly with regard to the County's Road Fund savings and General Fund deficit. He comments that the proponents must have a fair shot. He adds that residents of San Martin, like those in other cities of the County, must have the opportunity to elect their leaders who would be responsible to run the town. The 6,000 residents of San Martin have the right to decide whether they will incorporate or not.

The Chairperson requests Commissioners to focus their comments on the incorporation schedule.

Commissioner Alvarado requests staff to provide at the next meeting comments on Morgan Hill's staff report, particularly the last paragraph referencing areas 4 and 5.

Commissioner Gage requests staff to continuously apprise the Commission on the schedule until the end of this process.

The Chairperson opens the public comment period for this item.

David Piccardo, a certified public accountant and resident of San Martin, informs that those San Martin residents opposed to incorporation who have been silent want to be involved because incorporation has now become a serious issue. He requests that all

incorporation costs must be looked at because it is an expensive process. Chairperson Constant informs that the revised schedule would give opportunity for more public input.

Commissioner Wilson moves to adopt the revised incorporation schedule as proposed with direction to staff to continuously review and update the incorporation schedule. Commissioner Howe proposes to amend the motion to state that the incorporation schedule be added as a regular item on the agenda. Commissioner Wilson accepts the amendment and Commissioner Howe seconds the motion.

It is unanimously ordered on a vote of 5-0 that the revised incorporation schedule be adopted as proposed, and that the incorporation schedule be included as a regular item on the LAFCO agenda to allow the Commission to review and update it as necessary.

4.6 INVOICES FOR LAFCO STAFF COSTS

The Chairperson requests the staff report. Ms. Palacherla directs attention to the invoices relating to staff time spent on the San Martin incorporation. She notes that for March 2008, the legal counsel for time spent on revenue neutrality issues is not included. She states that the Fee Agreement between LAFCO and the proponents requires the proponents to pay LAFCO fees prior to the public hearing. She indicates that when the agreement was signed, the hearing for the incorporation was scheduled for May 2007. She informs that significant costs have been incurred since the start of the project and, with the revision of the incorporation schedule, cost will exceed the projected \$100,000. She then recommends that the Commission reconsider the Fee Agreement or set a due date for the payment. In response to the inquiry by Commissioner Gage, Ms. Palacherla advises that the Fee Agreement signed in June 2007 directs LAFCO to provide an invoice to the proponents 30 days prior to the first public hearing and that LAFCO must receive the payment in full prior to that hearing. In response to a follow-up inquiry by Commissioner Gage, Ms. Palacherla advises that the public hearing will not occur until the next fiscal year. Commissioner Gage notes that LAFCO should receive part of the payment after SMNA's fund raising event on May 22, 2008.

The Chairperson opens the public comment period for this item.

Richard Van't Rood, SMNA Spokesperson, informs that a smaller fundraiser will be held on April 26, 2008 and a major one on May 22, 2008; however, it would be difficult to raise \$100,000 due to the uncertainty in incorporation process because of the delay from LAFCO counsel withdrawal and a recent vote by Santa Clara County Board of Supervisors to oppose incorporation. In response to an inquiry by Commissioner Gage, Mr. Van't Rood indicates that SMNA will remit to LAFCO some payment in April and some in May 2008. Commissioner Gage states that the proponents should pay part of the billed amount after each of the fund raising events because they may never be able to pay when the cost gets bigger. Mr. Van't Rood expresses agreement, adding that SMNA is willing to pay all the reasonable costs. Commissioner Gage requests SMNA to establish the dates in April and May 2008 by which payments are to be received by LAFCO. Mr. Van't Rood estimates that the proceeds from the two fundraisers would be sufficient to pay half of the currently invoiced staff cost of \$86,146.38. Commissioner Gage requests the proponents to make this payment.

In response to an inquiry by the Chairperson, Commissioner Gage states that the Fee Agreement requires the proponents to pay before the public hearing. The Chairperson notes that the Agreement does not establish a specific deadline. Commissioner Gage then proposes to require the proponents to pay 50 percent of the invoiced cost by May 22, 2008. Mr. Van't Rood expresses concern, stating that the Fee Agreement requires payment prior to a hearing and, presently, there is no revenue neutrality agreement, no determination of feasibility, and there is negative press that the County is opposed to incorporation. At the request of Commissioner Gage, Mr. Van't Rood informs that it is difficult to commit an amount at this time; however, SMNA will organize a fundraiser that could generate between \$20,000 to \$30,000 and another fundraiser in early Fall 2008.

Commissioner Wilson, expressing concern about Mr. Van't Rood's statement that the proponents will pay reasonable staff cost, proposes to establish a mechanism for resolving disputes relating to payment of LAFCO fees. She states that invoices must be considered at the time that they are issued. In response to an inquiry by Commissioner Wilson, Ms. Palacherla advises that the proponents have voiced general concerns about

the invoices at the February 6, 2008 meeting; however, staff has not received any specific comments about items on the invoices. She indicates that staff will confer with the proponents to address billing issues and advises that the Commission establish a specific date by which payment should be received before proceeding with the incorporation process. In response to this, Chairperson Constant indicates that it may be difficult to enforce a payment date without the concurrence of both sides because it is not stipulated in the existing fee agreement; a situation that should be considered when preparing future contracts. The Chairperson then requests staff and proponents to reach agreement on the bill and recommends that invoices must be reviewed at the time they are issued.

In response to another inquiry by Commissioner Wilson, Ms. Palacherla advises that the delay in payment of LAFCO fees may not immediately impact the LAFCO budget because revenues from the incorporation proposal have been conservatively estimated.

Commissioner Howe requests Mr. Van't Rood to send a letter to the Commission informing about the schedule of fund raising events, the amount that has been raised, the amount that would be paid to LAFCO, and the specific dates by which the payments are to be made. Mr. Van't Rood expresses agreement. Commissioner Howe proposes that the Commission revisit this item at the June 4, 2008 meeting to see if the payments have actually been made.

Commissioner Alvarado comments that there has been an assurance of funds when the process started and now there is an indication that SMNA disputes the amount being billed and is reluctant to assure payment of these fees. In response to an inquiry by Commissioner Alvarado, Mr. Van't Rood informs that the proponents paid over \$100,000 for the cost of consultants from the fundraisers last year. Commissioner Alvarado then expresses agreement with Commissioner Howe's proposal to review this item on June 4, 2008.

Commissioner Wilson states that if Commissioner Howe's suggestion is the motion, she proposes that it be amended to include direction to staff to go over the bills with the proponents to resolve whatever disputes and to bring to the Commission those billing disputes that are not resolved. Commissioner Howe indicates that his suggestion is the

motion and the direction to staff is included in that motion. Mr. Van't Rood informs that he is not fully confident that the billing issues could be resolved with staff. Commissioner Howe restates his motion to request the proponents to send a letter to the Commission relating to the schedule of fundraisers, the amounts that would be raised, the amount to be paid to LAFCO, and the specific dates by which payments are to be made; that this item be reviewed at the June 4, 2008 meeting; and that the proponents and staff review and resolve issues relating to the invoices and bring to the Commission those issues that have not been resolved.

Ms. Palacherla advises that additional staff costs could be incurred for preparing the legal description and mapping for CEQA, as well as increased elections cost in April 2008. State law requires the future town to pay for the cost of the election if voters approve the incorporation; therefore, the election cost of about \$200,000 should be added to the town's budget on the CFA.

The Chairperson calls on the next speaker from the public on this item.

Roger Costa, a landowner in San Martin area, requests that the Commission ensure that the proponents pay all the incorporation costs given the burden on taxpayers and the budget difficulties of local governments. He calls on the Commission to make an informed decision by considering how a city of 6,000 people can support itself. He states that the ability of the proponents to pay for LAFCO fees is an indicator of how viable the future city would be.

The Chairperson confirms that there are no more speakers from the public for this item.

The Chairperson calls the question. It is unanimously ordered on a vote of 5-0 that the proponents submit a letter to the Commission relating to the schedule of fund raising events, the estimated amounts to be raised, the amount that would be paid to LAFCO, and the specific dates by which payments are to be made; that the Commission be apprised on the payments made at the June 4, 2008 meeting; and, that staff and proponents go over the bills to resolve any issue, and to bring to the Commission billing disputes that could not be resolved.

Kathy Kretchmer joins LAFCO staff at 2:24 p.m.

5. PUBLIC HEARING ON THE WEST VALLEY SANITATION DISTRICT ANNEXATION 2008-1 (CANON ROAD)

This being the time and place set to consider the petition by the landowners for annexation to West Valley Sanitation District (WVSD), the Chairperson declares the public hearing open.

The Chairperson requests the staff report. Ms. Palacherla directs attention to the staff report and informs that a petition from property owners for annexation to WVSD has been submitted. However, all property owners have not consented to the annexation. She informs that staff has evaluated the proposal and finds that it complies with LAFCO policies and criteria in State law governing annexations and therefore recommends approval. She adds that the CEQA recommendation is a categorical exemption as indicated in the CEQA report. Following LAFCO approval, staff will conduct a protest proceeding to allow property owners and registered voters in the annexation area to submit protest against the annexation. If more than 50 percent protest is received, the annexation is terminated; if less than 25 percent protest is received, the annexation is approved; if 25 to 50 percent protest is received, an election will be conducted. In June 2001, the Commission delegated authority to the LAFCO Executive Officer to hold a protest proceeding in accordance with the Cortese-Knox-Hertzberg Act and the LAFCO conducting authority policies.

The Chairperson opens the public comment period for this item.

Gordon Yamate, the applicant, informs that there is opposition to the proposal and requests to reserve time for rebuttal or to answer any questions.

Kevin Flynn, representing Jacklyn Flynn, owner of two parcels being annexed, informs that Mrs. Flynn opposes the annexation because of her concerns about the location of the sewer line, the number of homes that would be built when the Yamate property is developed, and the impact on her property.

At the request of the Chairperson, Ms. Palacherla advises that there are two possible locations for connections to the sewer line; the first is to connect to a sewer main on Bainter Avenue through a private easement on APN 510-25-070; the other option is to

connect to a sewer main along Redberry Avenue using a private property easement. In response to Mr. Flynn's question relating to the number of new homes that may be built on the Yamate property, Ms. Palacherla explains that the County has jurisdiction over land use and zoning in the area and that the property will be developed in accordance with the County's General Plan/zoning designation. She adds that the sewer connection may allow the property owners to maximize development of their property, subject to the County's standards. Chairperson Constant indicates to Mr. Flynn that staff will meet with him if he has further questions.

Mr. Yamate informs that the proposed sewer line will not go through the Flynn property and will not impact that property. He adds that the number of homes to be built will be discussed at a hearing before another body.

On motion of Commissioner Gage, seconded by Commissioner Howe, it is unanimously ordered that the CEQA recommendation be adopted; that annexation to WVSD be approved, and that the LAFCO Executive Officer be directed to conduct protest proceedings in accordance with LAFCO policies and the CKH Act.

6. PUBLIC HEARING ON THE PROPOSED LAFCO BUDGET FOR FISCAL YEAR 2009

This being the time and place set to consider the proposed LAFCO budget for Fiscal Year (FY) 2008-2009, the Chairperson declares the public hearing open.

The Chairperson requests the staff report. Ms. Palacherla informs that the Commission formed a Budget Subcommittee on February 6, 2008 composed of Commissioners Gage and Howe to draft the FY 2008-09 LAFCO budget for consideration by the full Commission. The Subcommittee met twice, discussed several issues relating to the budget and recommends that: (1) the current legal services agreement between LAFCO and the County be extended for an additional year, ending on June 30, 2009, and that staff develop a process to seek proposals from outside attorneys for provision of legal services within this year; (2) LAFCO policies on "Travel and Expense Reimbursement" referring to meeting per diem/stipend be clarified to state that "LAFCO meetings" include meetings authorized by the Commission, such as policy or budget sub-committee meetings; (3) the LAFCO Executive Officer position be made a full time position in order

to address the increase in current and long term work load; (4) LAFCO staff work with the County to explore the appropriate method of compensation for the new duties that the LAFCO Clerk has taken on in independently managing the LAFCO website among other duties; (5) LAFCO staff should explore staff training and professional development opportunities in local government (e.g., Management Talent Exchange Program); and (6) LAFCO application fees be revised to more accurately reflect the increase in processing costs. Ms. Palacherla indicates that these items are included in the proposed budget and, if not, staff will follow-through and bring them to the full Commission for consideration. The proposed budget is about 10 percent higher than the previous year's budget; however, the net operating expenses are lower than the current year. The reason for this being the high amount of savings that could be rolled over to the next fiscal year, offsetting the costs to the County and the cities.

Commissioner Gage moves for approval. Commissioner Howe seconds the motion and comments that the solicitation for outside legal services does not prevent the County from submitting a proposal.

In response to the inquiry by Commissioner Wilson, Commissioner Gage informs that FY 2008-09 LAFCO budget will take into account the cost of hiring an alternate LAFCO counsel for the proposed incorporation of San Martin, as well as the revenues expected from the proponents. Ms. Palacherla advises that in accordance with the law, the final budget has to be adopted before June 15, 2008. Until then, the Commission may revise the budget when more information about current costs is received, including the revenues expected from San Martin to reimburse LAFCO staff time costs. Since the current budget does not take into account revenues from SMNA, the fees when received, will help offset future costs. In response to Commissioner Wilson, Commissioner Howe comments that the Budget Subcommittee has increased the reserves from \$60,000 two years ago to roughly \$100,000 this fiscal year. In response to this, Ms. Palacherla informs that a session about budget at the CALAFCO Staff Workshop recommended that LAFCO budget reserves be set between 15 to 25 percent.

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

The Chairperson calls the question. It is unanimously ordered on a vote of 5-0 that the Draft LAFCO budget for FY 2008-09 be adopted; that the Draft FY 2008-09 LAFCO Budget is adequate to allow the Commission to fulfill its statutory responsibilities; that staff be authorized to transmit the Draft Budget and the estimated costs for each agency to each of the cities, the County and the Cities Association; and that staff be directed to send a notice of hearing on the final LAFCO budget scheduled for June 4, 2008.

7. COMMISSIONERS' REPORTS

Commissioner Gage announces that the Cities Selection Committee has reappointed Commissioner Howe as Cities Representative and Alternate Commissioner Al Pinheiro as Alternate Cities Representative.

8. EXECUTIVE OFFICER'S REPORT

The Chairperson requests the staff report. Ms. Palacherla reports that Santa Clara LAFCO hosted the CALAFCO Staff Workshop in San Jose on April 2-4, 2008. The three-day workshop was successful, had the highest attendance on record, and received very good evaluations. On April 2, 2008, staff arranged a Mobile Workshop that took attendees to tour the unincorporated island of Buena Vista, to Ideas, a retrofitted green building with zero energy and zero emissions, and to the Google Café 150 that receives produce from within 150 miles. A simultaneous session that morning was "LAFCO 101" for new LAFCO staff. In the afternoon, Chairperson Constant and Vice-Chairperson Wilson welcomed the participants. It was followed by case studies in LAFCO innovations; roundtables for attorneys, executive officers, analysts, and clerks. On April 3, 2008, the workshop started with breakout sessions on groundwater over-drafting, environmental justice and improving application process; and a DiSC personal profile system session by CALAFCO Executive Director Bill Chiat; followed by a lunch with Don Weden, a retired Santa Clara County Principal Planner, addressing the gathering on the climate, economic and social changes taking place and LAFCOs relevance in addressing these issues; this was followed by concurrent sessions on the Brown Act, Municipal Service Reviews, and

LAFCO's roles in the special districts and cities annexations. On April 4, 2008, there were concurrent sessions on geographic information system (GIS), processing LAFCO applications, digital records system and website management. There were also sessions relating to developing and understanding budgets and climate change. These were followed by a legislative session and the CALAFCO business meeting.

Commissioner Wilson informs that she heard positive comments from CALAFCO about the workshop and adds that this is one of the best attended CALAFCO workshops.

9. PENDING APPLICATION

There is no pending application.

10. WRITTEN CORRESPONDENCE

There is no written correspondence.

12. NEWSPAPER ARTICLES

There are no newspaper articles.

13. ADJOURNMENT

At the request of Commissioner Wilson, the Chairperson clarifies that there is a meeting on May 7, 2008 to discuss the San Martin incorporation and a regular meeting on June 4, 2008.

On the order of the Chairperson, there being no objection, the meeting is adjourned at 2:46 p.m.

The next scheduled LAFCO meeting on Wednesday, May 7, 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

**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 even though 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

LAFCO Meeting: June 4, 2008
TO: LAFCO
FROM: Neelima Palacherla, LAFCO Executive Officer
**SUBJECT: Environmental/CEQA Review for the San Martin
Incorporation Proposal**
Agenda Item # 5.0

STAFF RECOMMENDATION

Accept report and provide direction to staff.

ENVIRONMENTAL REVIEW

May 7, 2008 LAFCO Public Hearing on Revised Initial Study and Proposed Negative Declaration

The Revised Initial Study and Proposed Negative Declaration (Revised IS/ND) were released on March 12, 2008 for a 30 day public review period. LAFCO held a public hearing on May 7, 2008 to accept public testimony on the Revised IS/ND. At the request of Commissioner Alvarado, LAFCO staff provided a clarification/analysis of the last paragraph in Morgan Hill's Staff Report to their City Council dated March 19th. LAFCO staff also discussed the April 28, 2008 email from Stephen Jenkins, LAFCO's environmental consultant, in which he recommended that LAFCO prepare a Mitigated Negative Declaration for the proposed incorporation based on the comments received, testimony provided, and issues raised concerning the project's consistency with local and regional policies and plans.

Memo from Counsel Concerning Potential Next Steps in the Environmental Review Process

At the May 7, 2008 Meeting, LAFCO directed LAFCO staff to consider the comments received and directed LAFCO counsel to review the entire record and to provide advice to the Commission on next steps for the environmental review process. LAFCO counsel has prepared a memo (Attachment A) to assist the Commission.

MEMORANDUM

TO: Local Agency Formation Commission of Santa Clara County
Neelima Palacherla, Executive Officer

FROM: Scott Smith
Malathy Subramanian

DATE WRITTEN: May 27, 2008

MEETING DATE: June 4, 2008

RE: San Martin Incorporation - Environmental Review

Background

On April 16, 2008, the Local Agency Formation Commission of Santa Clara County ("Commission") heard comments from the public on a revised initial study ("Revised IS") and draft negative declaration for the proposed incorporation of San Martin ("Incorporation"). The Commission chose to take no action on the Revised IS and draft negative declaration at the hearing until it received guidance from legal counsel regarding CEQA compliance. The purpose of this memo is to provide the requested guidance. Specifically, this memo addresses whether (1) the potential policy inconsistencies described in Section 3.1 of the Revised IS (the "Inconsistencies") constitute "project impacts" under CEQA, and (2) if the Inconsistencies are impacts, whether CEQA requires they be analyzed through preparation of a negative declaration, mitigated negative declaration ("MND") or environmental impact report ("EIR"). This memorandum discusses the possibility that the Inconsistencies might constitute significant environmental impacts under CEQA. It then discusses how those impacts might be addressed in the Commission's CEQA document on the Incorporation, and the relative merits of each approach. Finally, it discusses the potential legal consequences for each approach.

Analysis

A. Evidence in the Record

The primary evidence in the record that could support preparation of a negative declaration, MND or EIR is the analysis in the Revised IS regarding the potential inconsistencies between the Incorporation and the Policies adopted by the County and the Cities within Santa Clara County ("Policies"). These Inconsistencies are summarized in Section 3.1 of the Revised IS and mentioned in various comment letters. In brief, Section 3.1 concludes that the Incorporation may be inconsistent with the Policies because:

1. It includes undeveloped lands which, according to the Policies, could lead to the premature conversion of agricultural lands, impact adjacent agricultural lands and discourage orderly growth and development.
2. It includes agricultural and open space lands within the boundaries of a proposed city, which, according to the Policies, could adversely impact and lead to the premature conversion of Williamson Act properties.
3. The proposed incorporation boundary is coterminous with the Spheres of Influence for Morgan Hill and Gilroy, and therefore would not leave between the cities greenbelts, buffers or other

community separators, which historically have consisted of lands located outside of the city limits and within a city's sphere of influence.

This analysis currently resides in the introductory provisions of the Revised IS, i.e., Section 3.1. The determination as to whether Section 3.1 ought to be included in the assessment of CEQA impacts ultimately rests with the Commission. The Commission's determination as to (1) whether this analysis reveals potentially significant environmental impacts under CEQA and (2) the level of significance of those impacts, will determine whether the Inconsistencies require preparation of a negative declaration (14 Cal. Code Regs. §§ 15071, 15371 [defined as a written document describing why the project will not a significant effect on the environment], MND (14 Cal. Code Regs. § 15369.5 [defined as a negative declaration for a project for which mitigation measures would eliminate the effects of identified significant effects on the environment]) or EIR (14 Cal. Code Regs. § 15362 [defined as a detailed statement describing and analyzing the significant effects of a project and the ways to mitigate or avoid the effects].)

B. CEQA's Definition of "Project" – Physical Impacts

The State CEQA Guidelines define "project" as "the whole of an action, which has a potential for resulting in either a direct *physical* change in the environment, or a *reasonably foreseeable* indirect *physical* change in the environment" (14 Cal. Code Regs. § 15378, subd. (a). Emphasis added.) CEQA does not require analysis of impacts to a policy or plan when such impacts will not affect the physical environment. CEQA has no interest in impacts to an existing general plan or other policy standing alone, "but instead has clearly expressed concern with the effects of projects on the actual environment upon which the proposal will operate." (*Environmental Planning and Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354.)

The purpose of the Revised IS is, in part, to determine whether the Incorporation would result in physical change to the environment. Additionally, its purpose is to assess the level of significance of potential physical change. As previously noted, CEQA does not require analysis of impacts to a policy or plan when such impacts will not affect the physical environment. In other words, CEQA does not apply to mere changes to plans or policies absent some evidence of actual impact on the environment.

The Commission's first task, then, is to review the analysis of the Inconsistencies in Section 3.1 to determine whether the Inconsistencies are simply "paper impacts" (i.e., not likely to create physical impacts "on the ground") or whether they relate to reasonably foreseeable physical impacts. The Commission's decision in this regard must be made in accordance with the "fair argument" standard. Under this standard, as long as there is *any* substantial evidence in the record of a possible physical effect on the environment, an EIR or MND *must* be prepared, regardless of the strength or existence of contrary evidence. (See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.) "Substantial evidence" is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (14 Cal. Code Regs. § 15384, subd. (a).)

An argument can be made that Section 3.1 describes policy inconsistencies that are non-physical, speculative impacts for which CEQA does not require environmental review. (14 Cal. Code Regs. §§ 15358, 15064 subd. (d)(3); *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645.) It can be argued that the Inconsistencies are based on mere speculation or supposition that San Martin will be more likely to convert agricultural and open spaces to urban uses

than the County would be under existing boundaries. Thus, the Commission should consider whether the new city's protection of buffers, agriculture lands, and open space would be greater or less than the protection currently afforded by the County. The Incorporation proponents may very well argue that there is no greater likelihood for physical change to occur in the buffer areas post-incorporation than there is now.

The case of *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 269-270, 281 casts light on how development *potential* can trigger the need for environmental review at the LAFCO stages. In *Bozung*, the court required Ventura LAFCO to prepare an EIR for an annexation to Thousand Oaks, due to evidence that the annexation could result in the conversion of agricultural land to urban uses. While the evidence of possible development was clear in *Bozung* (the annexation application expressly stated that development was anticipated), the case nonetheless stands for the proposition that development pressures are a factor in determining whether environmental review is required for a LAFCO action. The case of *Livermore v. LAFCO* (1986) 184 Cal.App.3d 531 suggests that policy shifts, even without obvious pent up development pressure, can create the probability of significant physical impacts requiring an EIR. In that case, LAFCO deleted a policy in its sphere of influence Guidelines that required new growth to occur in cities. The court noted that the policy change could lead to leap-frog development and that more disperse development could, in turn, lead to greater travel times (and related traffic and air impacts), loss of open space, and agricultural impacts. The court held that kind of "major policy shift" would require preparation of an EIR.

For guidance on this issue, the Commission, as fact-finder, will need to consider all relevant evidence in the record. For example, the Commission will want to consider what events gave rise to the adoption of the Policies. LAFCO staff and consultants are prepared to provide information to the Commission regarding the legislative history behind the Policies. In essence, their position is that the Policies were enacted in response to the somewhat unregulated annexations of land by San Jose in the 1970's, which resulted in the sprawling nature of that City today. The absence of master growth management tools often resulted in sprawling urbanization, rather than a more compact urban core. These Policies, as a future check on this growth pattern, constituted an informal agreement among LAFCO, the County, and the cities that the County would not allow urban development and services outside the cities' urban service areas, and the cities would be able to annex that land, providing urban infrastructure and services within those urban service areas upon annexation. This master approach, it was believed, would maintain the natural and agricultural resources of the County while allowing managed growth. This history could provide evidence of physical effects that occurred prior to the Policies' adoption (unchecked annexation and urbanization by other cities) and could suggest a likelihood that Incorporation would trigger similar impacts that could rise to the level of significant impacts under CEQA.

Morgan Hill raised a potential "domino effect" resulting from amendments to the Policies in a letter included in the record. Morgan Hill argues that breaking with precedent and allowing San Martin to control all land within its sphere of influence without unincorporated buffers, could lead to development of open space and agricultural lands, and could induce growth and growth-related impacts. Perhaps most importantly, Morgan Hill notes that if San Martin were given full control over land within its sphere of influence, Morgan Hill should be given that same right. The result of such a transfer of land-control is obvious: erosion of the entire system of land use and growth control at the core of the Policies. The Commission might find that such a change in policy would give cities the same control over land use and growth, and could potentially result in the ill-conceived growth patterns that led to initial adoption of the Policies.

The Commission will also need to consider its environmental consultant's e-mail dated April 28, 2008, which states that based on comments received by the Commission on the Revised IS, the consultant believes a fair argument has been made that the Incorporation will result in significant environmental impacts.

In summary, the Commission's decision regarding whether CEQA requires preparation of an environmental document is based first on whether it determines the Incorporation could result in physical change to the environment. This determination must be made in accordance with the "fair argument" standard. Under this standard as long as there is *any* substantial evidence in the record of a possible physical effect on the environment, an EIR or MND *must* be prepared, regardless of the strength or existence of contrary evidence. (See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.) "Substantial evidence" is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (14 Cal. Code Regs. § 15384, subd. (a).)

C. Preparation of a Negative Declaration, MND or EIR

If the Commission finds that inconsistency with the Policies will potentially lead to *physical* environmental effects, it must then consider whether those effects are potentially significant.

1. Negative Declaration. If the Incorporation impacts are not potentially significant, the Commission would leave Section 3.1 of the IS intact (as a policy statement), and adopt a negative declaration, finding that the Incorporation would not have potentially significant adverse consequences.

2. Mitigated Negative Declaration v. EIR. If, on the other hand, the Commission concludes that these impacts are potentially significant, the Section 3.1 analysis could potentially be recast as part of the IS's Environmental Checklist. There, the Inconsistencies could be noted as either potentially significant or less than significant with mitigation (thus driving whether a MND or EIR is prepared), and detailed analysis of each of the inconsistencies should be included in the "Agricultural Resources," "Land Use" and/or "Population and Housing" sections of the IS. Currently, as noted above, the inconsistencies are simply noted as background information in the Revised IS/ND, but are not characterized as actual environmental impacts.

If the Commission, upon reviewing the entire record – including the initial IS/ND, Revised IS, all written correspondence to and from LAFCO, and all Minutes and Transcripts from public hearings – determines that there is substantial evidence to support a fair argument of significant environmental impacts, the Commission must direct the consultant to prepare either a MND or EIR.

To date, relevant evidence in the record to date – and the conclusions that evidence might lead the Commission to – can be summarized as follows:

On the one hand, the evidence supporting a "fair argument" in this case thus appears to be:

· the history underlying the policy which demonstrates LAFCO's long-time practice,

· the expert opinion of the consultant that the incorporation is inconsistent with the policy and could result in physical change due to urbanization, and

the City of Morgan Hill's staff report demonstrating that a change in LAFCO policy for San Martin's incorporation may induce Morgan Hill to also annex land within its sphere.

Because this information is in the record, and is not rebuttable without an EIR, in order for the Commission to approve the incorporation with a negative declaration, it would have to find on the basis of substantial evidence that despite the change in policy for this incorporation, no adverse physical changes will occur within San Martin's SOI, nor will the policy change for San Martin induce other City's to annex land within their SOIs or adjacent buffer areas for development. The evidence in support of that finding appears to be:

San Martin would adopt the County's general plan and zoning upon incorporation,

Morgan Hill's staff report mentioned additional annexation for the purpose of protecting open space, not development.

Keeping in mind the low bar of the fair argument standard, we believe that with the inclusion in the record of the information discussed above, there is probably substantial evidence to support preparation of either a MND or EIR.

A MND is the simplest, quickest, and least expensive means of proceeding, since it contemplates project revisions that will avoid significant adverse environmental consequences or reduce them to a level of non-significance. As currently envisioned by the Commission's consultant, the MND would propose mitigation in the form of boundary adjustments. Specifically, areas 4 and 5 will be removed from the Incorporation boundaries in order to provide greenbelt and buffer areas to comply with the Policies. Because the Inconsistencies – and potentially, impacts – are related to the provision of greenbelt and buffer areas, and related agricultural and open space preservation, this proposed mitigation measure could potentially eliminate any significant environmental impacts. Moreover, by providing a greenbelt/buffer, the possibility of eroding the long-standing Policies through the slippery slope of exceptions will be eliminated.

3. Environmental Impact Report.

The most costly and time-consuming approach is preparation of an EIR. Preparation of an EIR will most likely preclude legal challenge by an Incorporation opponent, since the standard of review is very high.

4. LAFCO-initiated Environmental Review of Modified Proposal (Negative Declaration).

The Cortese-Knox-Hertzberg presents, potentially, a unique alternative for CEQA compliance, in addition to those described above. Subsection 56375(a) of the Act provides that LAFCO may “review and approve or disapprove *with or without amendment*, wholly, *partially*, or conditionally, proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission.” (Emphasis added.) This means that LAFCO has the ability to modify incorporation proposals, including amendments to proposed boundaries, as it functions in a quasi-legislative capacity. It probably follows that since the Commission has the legislative prerogative to independently modify proposals, is also has the ability to independently measure and mitigate the impacts of those modifications.

In the event the Commission modified the Incorporation proposal in any significant degree, we would recommend that it amend the IS to measure the impacts of the proposed modified project. For example, if it approved an incorporation with boundaries that avoided the Inconsistencies, it could (prior to final approval) re-analyze the modified incorporation to determine what impacts have been avoided and to what extent they have been avoided. If the Commission's alternative were determined to have no potentially significant impacts, the Commission could also approve it subject to a negative declaration.

Conclusion

Under the fair argument standard, if there is *any* substantial evidence of a significant physical environmental impact in the record, regardless of the existence or strength of contrary evidence, a MND or EIR *must* be prepared. We expect that the record on this proposal will include more information relating to the environmentally-relevant history and intent of the Policies, the possible growth-inducing and cumulative impacts of permitting exceptions to the Policies. The Commission might also hear evidence of development pressures currently facing the County and cities. After the Commission has considered that evidence, it can probably made a better determination about whether a change of organization inconsistent with the Policies and any resulting change in buffer areas is speculative, or whether there are environmental concerns that support a decision to prepare a MND or EIR. The Commission might also amend the proposed incorporation In a manner that warrants a re-assessment of impacts to determine which might have been exacerbated through the modification and which might have been lessened or avoided.

Recommendation

We recommend that the Commission consider the entire record before it to determine whether the Inconsistencies could create reasonably foreseeable physical impacts. If the Commission concludes that physical impacts are reasonably foreseeable, it should consider whether the record contains substantial evidence giving rise to a fair argument that those impacts are potentially significant. If not, the Commission could adopt a Negative Declaration. If yes, the Commission may adopt a MND or an EIR. If the Commission is inclined to amend the proposed incorporation, we recommend that it re-assess the environmental effects of the modified project through an amended IS. If the modified project avoids potentially significant impacts, the Commission may adopt a negative declaration on the modified project.

ITEM #5:

**ENVIRONMENTAL/CEQA REVIEW FOR THE SAN
MARTIN INCORPORATION PROPOSAL**

Additional Letters Attached:

- B. Letter from Proponents Concerning Urban Service Area (USA) and Boundary Alternatives
- C. Letter from Santa Clara County Planning Department Concerning Proposed Boundaries and Possible Implications for Countywide Growth Management/Urban Development Policies and Revised Initial Study

Palacherla, Neelima

From: richardv [rvantrood@mindspring.com]
Sent: Saturday, May 31, 2008 2:23 PM
To: scott
Cc: Palacherla, Neelima; Rachael Gibson; Blanca Alvarado; jh2@aol.com; Constant Pete; Susan Wilson; freddi
Subject: USA and boundary alternatives

Scott,

It appears that your environmental analysis is primarily based on the unique urban service area policies adopted in this county and the south county joint area plan policies in the county general plan. This matter has been addressed in prior meetings and in comment letters. The town will adopt the current county general plan with all of the ag and open space policies. There is no requirement to create an urban service area with the incorporation and proponents do not understand why staff is insisting that an urban service area coterminous with the boundary be created with the incorporation.

Please keep in mind that the town and proponents have objected on the record and continue to object to creation of an urban service area for San Martin that is coterminous with the boundaries. We believe that as part of adopting a new general plan or modification of the existing general plan, the town council should adopt an urban service area to outline any potential urban development. Adoption of the urban service area would require environmental review. Prior to that, no urban service area should be created as part of the incorporation. We believe there is no law requiring creation of an urban service area with the incorporation.

Staff has been trying to impose on the new town an urban service area coterminous with the city limit. This, we believe is counter productive to the intent of this incorporation. By imposing an urban service area on the entire town, LAFCO staff is creating an environmental question and the impression that the incorporation is inconsistent with the policies to protect ag and open space. If no urban service area is imposed, then the only difference in the environmental analysis will be that the town counsel rather than LAFCO will approve the environmental report. It will be subject to all the same CEQA analysis as any other application.

Please be absolutely clear that the proponents and the town want to protect the town from further loss of open space and agriculture. Please make sure this email gets into the record

Thank You

Richard van't Rood

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
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June 2, 2008

To: Neelima Palacherla, Executive Officer, Santa Clara County Local Agency Formation Commission (LAFCO)

From:  Bill Shoe, Principal Planner

RE: San Martin Incorporation Proposal – Proposed Boundaries and Possible Implications for Countywide Growth Management/Urban Development Policies, and Revised Initial Study

Following LAFCO's May 7, 2008 meeting, at which LAFCO staff presented analysis of comments provided from the City of Morgan Hill, County of Santa Clara Planning Office staff have further reviewed the proposed boundaries of the Town of San Martin in light of the City of Morgan Hill's comments. In a memo dated April 10, 2008, the Planning Office commented on the revised text of the Initial Study, and made the following general comments:

- Planning staff concurred with the analyses provided and the conclusions that the proposed boundaries are inconsistent with various policies as described in the revised Initial Study;
- Planning staff believes the proposed town boundaries are more similar to Morgan Hill and Gilroy's Sphere-of-Influence boundaries and are initially more expansive than necessary to meet the stated aims of the incorporation proponents; and,
- Planning staff has concerns about the possible regional implications of approving such expansive boundaries for the future growth management of South County cities.

With regard to the last bullet point above, in its May 7, 2008 memo to LAFCO on agenda item 4.0, LAFCO staff analyzed certain comments from the City of Morgan Hill contained in a City Council Staff Report dated for a March 19, 2008 Council meeting. LAFCO staff states that Morgan Hill may believe, based on LAFCO's treatment of the San Martin incorporation boundaries, that Morgan Hill "may be better situated than San Martin to regulate lands within its boundaries and ... LAFCO oversight of Morgan Hill's boundaries may not be needed if Morgan Hill were allowed larger boundaries that include all lands within their [Morgan Hill's] urban limit line or sphere-of-influence." In other words, if LAFCO is perceived as being in agreement with the relatively expansive boundary proposals for San Martin, it may be similarly receptive or acquiescent to future proposals for expansion by other cities. LAFCO staff proceeds to elaborate on the importance of LAFCO's, the County's, and the cities' roles in adhering to the longstanding, countywide growth management and urban development policies for Santa Clara County. Finally, LAFCO staff concludes that the boundaries for the incorporation proposal may have an undesirable precedent-setting effect

for other cities that may perceive that urban expansion and annexation are appropriate for purposes of expanding territorial control of land use within its sphere-of-influence or similar surrounding areas, regardless of whether those lands are appropriate for urban development or imminently needed for urban uses.

The Planning Office shares similar concerns, not just for the possible diminishment of LAFCO's role in countywide urban growth management that Morgan Hill's comments may portend. The possible precedent set by San Martin's expansive boundaries may be inadvertent, but it is nonetheless very real. If San Martin's boundaries were perceived as precedent for urban expansion into hillsides or valley lands to secure territorial jurisdiction and future control of such lands without further need for either LAFCO's or the County's role in our countywide urban development and open space preservation, the stability of our county's growth management system could be called into question and undermined.

To elaborate, the concept of the cities annexing lands that are deemed more appropriate for long term or permanent open space with low, rural densities was abandoned by joint agreement of the cities and County over 30 years ago with the adoption of the joint Urban Development/Open Space plan. Those who carefully developed that plan, including the cities, agreed that managing and conserving the County's rural lands should not be left to the policy prerogatives of the individual cities. Rather, cities should be responsible for urban planning, growth, and development within urban service areas, and outside those boundaries, the County should be responsible for the long term conservation of rural lands. The framers of those joint growth management policies understood that with the appropriate checks and balances, between the cities, County, and LAFCO, the stability of the joint urban development policies would better stand the test of time than if each individual city assumed unilateral control over the future of rural hillside and agricultural lands.

In conclusion, the Planning Office maintains no formal position in favor or against the concept of incorporation of San Martin. The disposition of that proposal lies within the jurisdiction of LAFCO, subject to the applicable policies and goals of LAFCO, the County General Plan, other local plans, and related state goals, policies, and statutes. However, the Planning Office urges that the incorporation process for San Martin, including the review of its boundaries, fiscal analysis, and appropriate environmental analysis under the California Environmental Quality Act be conducted in full cognizance of its possible impact on countywide growth management policies, and the roles of LAFCO, the County, and cities in upholding those longstanding policies.

With regard to the first revised Initial Study and comments received thereon to date, Planning Office staff recommends that boundary adjustments and reductions adequate to serve as possible mitigations for policy inconsistencies should be further evaluated through preparation of a revised initial study and mitigated negative declaration, at minimum. Hillside areas to the northwest, including Hayes Lane and W. San Martin Avenue subdivisions, Cordevalle open space lands, and areas adequate to serve as urban buffers along Maple Ave. and Masten Avenue should be excluded from initial incorporation boundaries to serve as a basis for avoiding or mitigating impacts associated with significant policy inconsistencies.

CC: Sylvia Gallegos, Deputy County Executive

LAFCO Meeting Date: June 4, 2008

TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
SUBJECT: **Comprehensive Fiscal Analysis for the San Martin
Incorporation Proposal**
Agenda Item # 6

STAFF RECOMMENDATION

Accept report and provide direction to staff.

BACKGROUND

The Public Hearing Draft CFA and Plan for Services for the Proposed Incorporation of San Martin was released on March 7, 2008 for a 30 day public review period. LAFCO held a hearing on May 7, 2008 to accept public testimony on the Draft CFA. LAFCO, at its May 7, 2008 hearing, directed LAFCO staff to review comments and to make any necessary revisions to the Public Hearing Draft CFA and Plan for Services.

REVISION OF DRAFT CFA BASED ON NEW COST ESTIMATES

Since the release of the March 5, 2008 Draft CFA, new information has become available which could potentially affect the fiscal analysis. Based on that information, EPS revised Table 1 which is included in Attachment A. The following is a discussion of the issues that have a bearing on the financial feasibility analysis of the new Town.

Incorporation election in April 2009

If the incorporation election were held in April 2009, the estimated cost would be approximately \$200,000, according to County elections officials. The Table 1 has been revised to include this amount in the city's first year budget. Pursuant to Government Code §57150(b), the new city will be responsible for the election costs if the incorporation is successful. If not, the County absorbs the election costs.

Repayment of the transition year costs to the County

A July 1, 2009 effective date for San Martin incorporation allows a full transition year, from effective date of incorporation to the end of the fiscal

year - June 30, 2010. During this transition period the County is required by state law (§ 57384) to continue providing services that were provided prior to incorporation. The new city has up to 5 years to reimburse the County for the cost of services provided during this transition period.

Please note that the July 1, 2009 effective date is based on the assumption that the legislation (SB 301) removing the sunset date for providing extended VLF funding for new cities is successful, as San Martin is reliant on VLF funding to be financially feasible.

Table 1 has been revised to include the payment of transition year costs to the County. Additionally, the road related service costs in the transition year are reduced to approximately \$871,000. This cost includes traffic engineering and signal maintenance (\$120,000) and other road maintenance costs. The road maintenance cost portion has been reduced by 50% (of the County's base year costs) to reflect future cost reductions resulting from recent / expected significant investments by the County in road maintenance and rehabilitation (per information from County staff report dated April 8, 2008). The repayment of these costs has been amortized over a 5-year period with equal payments including 5 percent interest on any outstanding balances.

The cost of repayment of transition year costs for general fund, non-road related services has been assumed to be repaid at the end of the transition year, without creating a shortfall, due to the availability of revenues by the end of that year. The repayment could be spread over 5 years; however, this would incur additional costs due to interest charges.

Participation in the Santa Clara Valley Habitat Conservation Program

The Santa Clara Valley Habitat Plan (HCP) is being developed as a partnership effort by six local agencies with anticipated adoption in early 2010. It includes the cities of San Jose, Morgan Hill, Gilroy, the County of Santa Clara, the Santa Clara Valley Water District and the Valley Transportation Authority. The HCP Program Manager, in his memo dated May 1, 2008, estimates that the cost for San Martin to participate in the HCP would be in the range of \$150,000 to \$250,000.

The HCP is currently being developed under the assumption that San Martin is an unincorporated area of the County. Including San Martin in the HCP as a separate jurisdictional entity would allow the new Town to issue incidental "take" permits for development that might threaten or endanger "covered species" under the HCP's umbrella take permit. Upon incorporation, the alternative would be for the Town to remain outside the

HCP, with each landowner or developer or city (in the case of public projects) left individually to seek permits from state and federal resource agencies. According to the HCP Program Manager, this can be difficult and extremely time-consuming, and may even be futile as they may be referred back to the local HCP implementing agency.

The Cordevalle and Hayes Lane areas in San Martin are considered highly sensitive areas for wildlife habitat. Two years ago, Cordevalle obtained endangered species permits from the federal wildlife agencies. Other recent development proposals in the flatlands of San Martin have not been subject to any habitat mitigation requirements. The development projection for the new Town is not significant (7 dwelling units per year). If that were to change in the future and there was substantial development (public or private) proposed in the area, the new City Council may opt to join the program and may consider recovering its participation costs from development activity or find other means to raise necessary funds.

Staff therefore recommends that at this time no further costs be included in the new Town's budget for participating in the HCP.

ADDITIONAL COMMENTS RECEIVED ON THE DRAFT CFA

Since the May 7, 2008 LAFCO meeting, additional comment letters have been received and are attached to this staff report for your information.

NEXT STEPS

LAFCO Counsel is reviewing Table 3 in the CFA which includes a calculation of impacts to the County. The outcome of that review as well as a legal opinion on the revenue neutrality issue will be provided to LAFCO at the next meeting.

ATTACHMENTS

Attachment A: Table 1 dated 6/3/08, a ten-year summary of San Martin's projected revenues and expenses for (1.) the Proponents' proposed boundary (2.) Proponents' boundary minus Area 4 (3) Proponents' boundary minus Area 5 and (4) Proponents' boundary minus Area 4 & Area 5

Attachment B: Comment letters relating to the CFA received after May 7, 2008.

6/3/08 DOES NOT INCLUDE REVENUE NEUTRALITY MITIGATION

Table 1
Summary of Revenues and Expenses (All Figures in Constant \$'s)
San Martin Incorporation Analysis, EPS #17060 Full Transition Year 12 months Proponents' Proposed Boundary

Item	Fiscal Year											
	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19		
A. GENERAL FUND OPERATIONS												
General Fund Revenues												
Property Taxes	\$687,951	\$705,773	\$724,107	\$742,968	\$762,367	\$782,320	\$802,841	\$823,945	\$845,646	\$867,960		
Sales Tax	\$838,885	\$838,885	\$838,885	\$838,885	\$838,885	\$838,885	\$838,885	\$838,885	\$838,885	\$838,885		
Transient Occupancy Tax	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557		
Real Property Transfer Tax	\$5,305	\$5,436	\$5,571	\$5,708	\$5,849	\$5,983	\$6,141	\$6,292	\$6,447	\$6,605		
Franchise Fees	\$289,670	\$289,673	\$290,075	\$290,277	\$290,479	\$290,681	\$290,883	\$291,086	\$291,288	\$291,490		
Planning and Building Fees	\$0	\$274,742	\$276,116	\$277,496	\$278,884	\$280,278	\$281,679	\$283,088	\$284,503	\$285,926		
Public Works/Eng. Fees	\$0	\$89,020	\$89,465	\$89,913	\$90,362	\$90,814	\$91,268	\$91,724	\$92,183	\$92,644		
Fines, Penalties, Misc.	\$42,813	\$32,684	\$32,793	\$32,901	\$33,009	\$33,117	\$33,225	\$33,333	\$33,441	\$33,549		
State Motor Vehicle License Fees	\$62,172	\$62,377	\$62,583	\$62,788	\$62,994	\$63,200	\$63,405	\$63,611	\$63,816	\$64,022		
Property Tax/VLF Swap	\$547,312	\$512,513	\$477,474	\$442,193	\$406,670	\$370,907	\$372,113	\$373,320	\$374,526	\$375,733		
Revenue Credits (transition yr., rec'd by County)	\$5,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		
Investment Earnings	\$53,913	\$69,657	\$60,373	\$60,094	\$59,821	\$59,555	\$60,040	\$60,527	\$61,014	\$61,502		
Total	\$2,754,579	\$3,093,519	\$3,078,998	\$3,064,780	\$3,050,878	\$3,037,308	\$3,062,039	\$3,087,377	\$3,113,339	\$3,139,939		
General Fund Expenses												
Legislative	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500		
Elections	\$200,000	\$10,000	\$0	\$10,000	\$0	\$10,000	\$0	\$10,000	\$0	\$10,000		
City Manager and City Clerk	\$281,225	\$328,659	\$330,289	\$331,927	\$333,573	\$335,227	\$336,890	\$338,561	\$340,240	\$341,928		
City Attorney	\$250,000	\$76,131	\$76,511	\$76,894	\$77,278	\$77,665	\$78,053	\$78,443	\$78,836	\$79,230		
Police	\$166,050	\$222,507	\$223,620	\$224,738	\$225,861	\$226,991	\$228,126	\$229,266	\$230,413	\$231,565		
Administrative Services	\$0	\$588,661	\$594,698	\$600,694	\$606,650	\$612,567	\$618,444	\$625,184	\$631,485	\$637,850		
Animal Control	\$0	\$74,811	\$75,185	\$75,561	\$75,939	\$76,319	\$76,700	\$77,084	\$77,469	\$77,856		
Planning and Building	\$137,672	\$443,032	\$444,635	\$446,246	\$447,864	\$449,491	\$451,126	\$452,769	\$454,421	\$456,080		
Public Works Administration	\$74,250	\$178,040	\$178,931	\$179,825	\$180,724	\$181,628	\$182,536	\$183,449	\$184,366	\$185,288		
Non-Departmental	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		
Office Rent/Supplies	\$109,000	\$112,500	\$84,500	\$76,500	\$76,500	\$76,500	\$76,500	\$76,500	\$76,500	\$76,500		
Insurance	\$37,431	\$61,915	\$61,133	\$61,554	\$61,975	\$62,397	\$62,819	\$63,241	\$63,663	\$64,085		
Contingency (10%)	\$233,596	\$212,576	\$209,890	\$211,334	\$212,778	\$214,222	\$215,666	\$217,110	\$218,554	\$220,000		
Reserve Fund Contribution	\$233,596	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		
LAFCO	\$1,279	\$1,279	\$1,279	\$1,279	\$1,279	\$1,279	\$1,279	\$1,279	\$1,279	\$1,279		
Repayment of Transition Yr Cnty Services (1)	\$1,050,827	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		
Total	\$2,804,425	\$2,339,612	\$2,310,070	\$2,325,950	\$2,341,890	\$2,357,830	\$2,373,770	\$2,389,710	\$2,405,650	\$2,421,590		
General Fund Operating Surplus (Deficit)	(\$49,846)	\$753,907	\$768,928	\$738,829	\$835,942	\$797,123	\$819,261	\$819,242	\$842,401	\$843,432		
Reserve Fund Balance	\$233,596	\$233,596	\$233,596	\$233,596	\$233,596	\$233,596	\$233,596	\$233,596	\$233,596	\$233,596		
% of Expenditures (exc. conting. reserves)	10.0%	11.0%	11.1%	11.1%	11.6%	11.5%	11.6%	11.3%	11.3%	11.2%		
B. ROAD FUND OPERATIONS												
Road Fund Revenues												
Gas Taxes	\$200,789	\$188,455	\$176,036	\$163,531	\$150,940	\$138,264	\$138,692	\$139,119	\$139,547	\$139,975		
Prop 42 Funds	\$63,687	\$63,899	\$64,751	\$65,614	\$66,488	\$67,373	\$68,268	\$69,175	\$70,084	\$71,023		
Total	\$264,476	\$252,354	\$240,787	\$229,145	\$217,428	\$205,637	\$206,960	\$208,295	\$209,641	\$210,998		
Road Fund Expenditures												
Pavement Maintenance	\$211,049	\$213,160	\$215,292	\$217,444	\$219,619	\$221,815	\$224,033	\$226,274	\$228,536	\$230,814		
Signal Maintenance, Traffic Engineering	\$51,008	\$51,263	\$51,519	\$51,776	\$52,035	\$52,296	\$52,557	\$52,820	\$53,084	\$53,351		
Other Costs (sweeping, trash removal, signs, drainage)	\$523,833	\$526,452	\$529,071	\$531,690	\$534,309	\$536,928	\$539,547	\$542,166	\$544,785	\$550,404		
Contingency (10%)	\$78,589	\$79,087	\$79,585	\$80,083	\$80,581	\$81,079	\$81,577	\$82,075	\$82,573	\$83,071		
Repayment of Transition Yr Cnty Services	\$0	\$201,206	\$201,206	\$201,206	\$201,206	\$201,206	\$201,206	\$201,206	\$201,206	\$201,206		
Total	\$1,065,685	\$1,071,168	\$1,076,691	\$1,082,252	\$1,087,813	\$1,093,374	\$1,098,935	\$1,104,496	\$1,110,057	\$1,115,618		
Road Fund Operating Surplus (Deficit)	\$264,476	(\$813,331)	(\$830,382)	(\$847,546)	(\$864,824)	(\$882,216)	(\$899,605)	(\$917,199)	(\$934,793)	(\$952,386)		
TOTAL, All Funds	\$214,631	(\$59,424)	(\$61,454)	(\$108,716)	(\$28,982)	(\$85,094)	\$133,933	\$129,568	\$148,350	\$144,976		
Cumulative Surplus (Deficit)	\$214,631	\$155,207	\$93,753	(\$14,964)	(\$43,946)	(\$129,040)	\$4,893	\$134,461	\$282,811	\$427,787		

(1) Repayment cost accounts for animal services, planning and land use, code enforcement, public works, and sheriff department services the County is obligated to provide for the remainder of the first fiscal year.

6/3/08 DOES NOT INCLUDE REVENUE NEUTRALITY MITIGATION

Table 1
Summary of Revenues and Expenses (All Figures in Constant \$)
San Martin Incorporation Analysis, EPS #17060 Full Transition Year 12 months Proponents' Proposed Boundary minus Area 4

Item	Fiscal Year									
	2008-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
A. GENERAL FUND OPERATIONS										
General Fund Revenues										
Property Taxes	\$653,307	\$670,478	\$688,150	\$706,335	\$725,047	\$744,300	\$764,108	\$784,485	\$805,447	\$827,009
Sales Tax	\$837,677	\$837,677	\$837,677	\$837,677	\$837,677	\$837,677	\$837,677	\$837,677	\$837,677	\$837,677
Transient Occupancy Tax	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557
Real Property Transfer Tax	\$5,311	\$5,445	\$5,582	\$5,722	\$5,865	\$6,012	\$6,162	\$6,316	\$6,474	\$6,636
Franchise Fees	\$286,784	\$286,986	\$287,188	\$287,390	\$287,592	\$287,795	\$288,000	\$288,208	\$288,421	\$288,636
Planning and Building Fees	\$0	\$274,742	\$276,116	\$277,496	\$278,884	\$280,278	\$281,679	\$283,088	\$284,503	\$285,926
Public Works/Eng. Fees	\$0	\$89,020	\$89,485	\$89,913	\$90,362	\$90,814	\$91,268	\$91,724	\$92,183	\$92,644
Fines, Penalties, Misc.	\$40,280	\$30,131	\$30,239	\$30,347	\$30,455	\$30,563	\$30,671	\$30,779	\$30,887	\$30,996
State Motor Vehicle License Fees	\$57,314	\$57,520	\$57,726	\$57,931	\$58,137	\$58,342	\$58,548	\$58,753	\$58,959	\$59,165
Property Tax/VLF Swap	\$504,551	\$472,604	\$440,415	\$407,984	\$375,313	\$342,400	\$343,606	\$344,813	\$346,019	\$347,226
Revenue Credits (transition yr. rec'd by County)	\$5,000									
Investment Earnings	\$51,735	\$58,523	\$58,252	\$58,047	\$57,818	\$57,595	\$58,065	\$58,548	\$59,042	\$59,549
Total	\$2,643,497	\$2,984,682	\$2,972,396	\$2,960,399	\$2,948,707	\$2,937,333	\$2,961,339	\$2,985,940	\$3,011,161	\$3,036,986
General Fund Expenses										
Legislative	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500
Elections	\$200,000	\$10,000	\$0	\$10,000	\$0	\$10,000	\$0	\$10,000	\$0	\$10,000
City Manager and City Clerk	\$281,225	\$328,659	\$330,289	\$331,927	\$333,573	\$335,227	\$336,890	\$338,561	\$340,240	\$341,928
City Attorney	\$250,000	\$76,131	\$76,511	\$76,894	\$77,278	\$77,665	\$78,053	\$78,443	\$78,836	\$79,230
Administrative Services	\$166,050	\$222,507	\$223,620	\$224,738	\$225,861	\$226,991	\$228,126	\$229,266	\$230,413	\$231,565
Police	\$0	\$573,108	\$578,889	\$584,728	\$590,626	\$596,582	\$602,597	\$608,673	\$614,810	\$621,008
Animal Control	\$0	\$73,895	\$74,264	\$74,636	\$75,009	\$75,384	\$75,761	\$76,140	\$76,520	\$76,903
Planning and Building	\$137,672	\$443,032	\$444,636	\$446,246	\$447,864	\$449,491	\$451,126	\$452,769	\$454,421	\$456,080
Public Works Administration	\$74,250	\$178,040	\$179,931	\$179,825	\$180,724	\$181,628	\$182,536	\$183,448	\$184,366	\$185,288
Non-Departmental										
Office Rent/Supplies	\$109,000	\$112,500	\$84,500	\$76,500	\$76,500	\$76,500	\$76,500	\$76,500	\$76,500	\$76,500
Insurance	\$37,431	\$61,421	\$60,634	\$61,050	\$61,468	\$61,887	\$62,307	\$62,728	\$63,149	\$63,571
Contingency (10%)	\$228,170	\$210,879	\$208,177	\$209,604	\$209,504	\$201,774	\$201,992	\$204,280	\$204,517	\$206,824
Reserve Fund Contribution	\$228,170	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
LAFCO	\$986,569	\$1,224	\$1,224	\$1,224	\$1,224	\$1,224	\$1,224	\$1,224	\$1,224	\$1,224
Repayment of Transition Yr Cnty Services (1)	\$2,739,260	\$2,320,897	\$2,291,174	\$2,308,871	\$2,195,772	\$2,220,734	\$2,223,138	\$2,248,305	\$2,250,915	\$2,276,290
Total	(\$95,764)	\$663,786	\$681,221	\$653,528	\$752,935	\$716,599	\$738,202	\$737,636	\$760,236	\$760,696
General Fund Operating Surplus (Deficit)	\$228,170	\$228,170	\$228,170	\$228,170	\$228,170	\$228,170	\$228,170	\$228,170	\$228,170	\$228,170
Reserve Fund Balance	10.0%	10.8%	11.0%	10.9%	11.4%	11.3%	11.3%	11.2%	11.2%	11.0%
% of Expenditures (exc. conting. reserves)										
B. ROAD FUND OPERATIONS										
Road Fund Revenues										
Gas Taxes	\$185,633	\$174,310	\$182,900	\$151,406	\$139,826	\$128,160	\$128,568	\$129,015	\$129,443	\$129,871
Prop 42 Funds	\$58,695	\$59,906	\$59,709	\$60,521	\$61,344	\$62,178	\$63,021	\$63,876	\$64,741	\$65,617
Total	\$244,328	\$233,216	\$222,609	\$211,927	\$201,170	\$190,338	\$191,609	\$192,891	\$194,184	\$195,488
Road Fund Expenditures										
Pavement Maintenance	\$185,888	\$187,747	\$189,624	\$189,624	\$191,520	\$193,435	\$195,370	\$197,324	\$199,297	\$201,290
Signal Maintenance, Traffic Engineering	\$51,008	\$51,263	\$51,519	\$51,776	\$52,035	\$52,296	\$52,562	\$52,829	\$53,096	\$53,364
Other Costs (sweeping, trash removal, signs, drainage)	\$509,365	\$511,912	\$514,472	\$517,044	\$519,629	\$522,227	\$524,838	\$527,463	\$530,100	\$532,751
Contingency (10%)	\$74,626	\$75,092	\$75,561	\$76,034	\$76,510	\$76,989	\$77,472	\$77,958	\$78,447	\$78,937
Repayment of Transition Yr Cnty Services	\$0	\$117,939	\$117,939	\$117,939	\$117,939	\$117,939	\$117,939	\$117,939	\$117,939	\$117,939
Total	\$0	\$936,825	\$943,952	\$949,115	\$954,313	\$959,549	\$964,882	\$970,219	\$975,557	\$980,904
Road Fund Operating Surplus (Deficit)	\$244,328	(\$705,609)	(\$721,343)	(\$737,187)	(\$753,143)	(\$769,211)	(\$785,273)	(\$801,336)	(\$817,400)	(\$833,463)
TOTAL, All Funds	\$148,564	(\$41,824)	(\$40,121)	(\$83,659)	(\$209)	(\$52,612)	\$82,929	\$78,336	\$96,883	\$93,263
Cumulative Surplus (Deficit)	\$148,564	\$106,741	\$66,620	\$17,040	(\$17,249)	(\$69,860)	\$13,069	\$91,405	\$188,288	\$261,551

(1) Repayment cost accounts for animal services, planning and land use, code enforcement, public works, and sheriff department services the County is obligated to provide for the remainder of the first fiscal year.

6/3/08 DOES NOT INCLUDE REVENUE NEUTRALITY MITIGATION

Table 1
Summary of Revenues and Expenses (All Figures in Constant \$'s)
San Martin Incorporation Analysis, EPS #17060 Full Transition Year 12 months Proponents' Proposed Boundary minus Area 5

Item	Fiscal Year									
	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
A. GENERAL FUND OPERATIONS										
General Fund Revenues										
Property Taxes	\$658,341	\$675,594	\$693,349	\$711,619	\$730,417	\$749,757	\$769,652	\$790,119	\$811,171	\$832,823
Sales Tax	\$808,133	\$808,133	\$808,133	\$808,133	\$808,133	\$808,133	\$808,133	\$808,133	\$808,133	\$808,133
Transient Occupancy Tax	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557
Real Property Transfer Tax	\$5,310	\$5,443	\$5,579	\$5,719	\$5,862	\$6,008	\$6,158	\$6,311	\$6,468	\$6,629
Franchise Fees	\$271,169	\$271,371	\$271,573	\$271,775	\$271,978	\$272,180	\$272,382	\$272,584	\$272,786	\$272,988
Planning and Building Fees	\$0	\$274,742	\$276,116	\$277,496	\$278,884	\$280,278	\$281,679	\$283,088	\$284,503	\$285,926
Public Works/Eng. Fees	\$0	\$89,020	\$89,465	\$89,913	\$90,362	\$90,814	\$91,268	\$91,724	\$92,183	\$92,644
Fines, Penalties, Misc.	\$40,749	\$30,620	\$30,728	\$30,836	\$30,944	\$31,052	\$31,161	\$31,269	\$31,377	\$31,485
State Motor Vehicle License Fees	\$58,245	\$58,451	\$58,656	\$58,862	\$59,067	\$59,273	\$59,479	\$59,684	\$59,890	\$60,095
Property Tax/VLF Swap	\$512,744	\$480,251	\$447,515	\$414,539	\$381,321	\$347,862	\$349,069	\$350,275	\$351,481	\$352,688
Revenue Credits (Transition Yr. rec'd by County)	\$5,000									
Investment Earnings	\$51,525	\$58,304	\$68,053	\$78,809	\$87,571	\$97,338	\$107,105	\$116,872	\$126,639	\$136,406
Total	\$2,632,773	\$2,973,486	\$2,960,726	\$2,948,258	\$2,936,096	\$2,924,252	\$2,912,408	\$2,900,564	\$2,888,720	\$2,876,876
General Fund Expenses										
Legislative	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500
Electronics	\$200,000	\$10,000	\$0	\$10,000	\$0	\$10,000	\$0	\$10,000	\$0	\$10,000
City Manager and City Clerk	\$281,225	\$328,659	\$330,289	\$331,927	\$333,573	\$335,227	\$336,890	\$338,561	\$340,240	\$341,928
City Attorney	\$250,000	\$76,131	\$76,511	\$76,894	\$77,278	\$77,665	\$78,053	\$78,443	\$78,836	\$79,230
Administrative Services	\$166,050	\$222,507	\$223,620	\$224,738	\$225,861	\$226,991	\$228,126	\$229,266	\$230,413	\$231,565
Police	\$0	\$573,108	\$578,889	\$584,728	\$590,625	\$596,582	\$602,592	\$608,673	\$614,810	\$621,008
Animal Control	\$0	\$74,070	\$74,441	\$74,813	\$75,187	\$75,563	\$75,941	\$76,320	\$76,702	\$77,086
Planning and Building	\$137,672	\$443,032	\$444,635	\$446,246	\$447,864	\$449,491	\$451,126	\$452,769	\$454,421	\$456,080
Public Works Administration	\$74,250	\$178,040	\$178,931	\$179,825	\$180,724	\$181,628	\$182,536	\$183,449	\$184,366	\$185,288
Non-Departmental										
Office Rent/Supplies	\$109,000	\$112,500	\$84,500	\$76,500	\$76,500	\$76,500	\$76,500	\$76,500	\$76,500	\$76,500
Insurance	\$37,431	\$61,426	\$60,639	\$61,055	\$61,474	\$61,891	\$62,308	\$62,726	\$63,143	\$63,561
Contingency (10%)	\$228,966	\$210,897	\$208,195	\$209,623	\$209,523	\$209,423	\$209,323	\$209,223	\$209,123	\$209,023
Reserve Fund Contribution	\$228,966	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
LAFCO	\$1,213	\$1,213	\$1,213	\$1,213	\$1,213	\$1,213	\$1,213	\$1,213	\$1,213	\$1,213
Repayment of Transition Yr Cnty Services (t)	\$1,004,530	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$2,748,803	\$2,321,084	\$2,291,363	\$2,307,060	\$2,195,962	\$2,220,925	\$2,223,330	\$2,248,498	\$2,251,109	\$2,276,485
General Fund Operating Surplus (Deficit)	(\$116,029)	\$652,401	\$669,364	\$641,198	\$740,133	\$703,327	\$725,018	\$724,541	\$747,231	\$747,783
Reserve Fund Balance	\$228,966	\$228,966	\$228,966	\$228,966	\$228,966	\$228,966	\$228,966	\$228,966	\$228,966	\$228,966
% of Expenditures (exc. conting. reserves)	10.0%	10.9%	11.0%	10.9%	11.5%	11.3%	11.3%	11.2%	11.2%	11.1%
B. ROAD FUND OPERATIONS										
Road Fund Revenues										
Gas Taxes	\$188,537	\$177,020	\$165,417	\$153,729	\$141,955	\$130,096	\$130,524	\$130,951	\$131,379	\$131,807
Prop 42 Funds	\$59,652	\$59,863	\$60,075	\$61,497	\$62,330	\$63,173	\$64,027	\$64,891	\$65,767	\$66,653
Total	\$248,189	\$236,883	\$225,492	\$215,226	\$204,285	\$193,269	\$194,551	\$195,843	\$197,146	\$198,460
Road Fund Expenditures										
Pavement Maintenance	\$168,081	\$168,081	\$169,762	\$171,459	\$173,174	\$174,906	\$176,655	\$178,421	\$180,205	\$182,007
Signal Maintenance	\$51,008	\$51,008	\$51,263	\$51,519	\$51,776	\$52,035	\$52,296	\$52,557	\$52,820	\$53,084
Other Costs (sweeping, trash removal, signs, drainage)	\$481,238	\$481,238	\$483,644	\$486,062	\$488,492	\$490,935	\$493,389	\$495,856	\$498,336	\$500,827
Contingency (10%)	\$70,033	\$70,033	\$70,467	\$70,904	\$71,344	\$71,788	\$72,234	\$72,683	\$73,136	\$73,592
Repayment of Transition Yr Cnty Services	\$0	\$137,761	\$137,761	\$137,761	\$137,761	\$137,761	\$137,761	\$137,761	\$137,761	\$137,761
Total	\$0	\$908,119	\$912,896	\$917,705	\$922,548	\$927,424	\$932,340	\$937,299	\$942,301	\$947,344
Road Fund Operating Surplus (Deficit)	\$248,189	(\$671,237)	(\$686,804)	(\$702,479)	(\$718,263)	(\$734,155)	(\$750,102)	(\$766,114)	(\$782,191)	(\$798,337)
TOTAL, All Funds	\$132,160	(\$18,835)	(\$17,440)	(\$61,281)	\$21,871	(\$30,828)	\$124,995	\$120,866	\$139,860	\$136,792
Cumulative Surplus (Deficit)	\$132,160	\$113,324	\$95,884	\$34,604	\$56,474	\$25,646	\$150,641	\$271,507	\$411,367	\$548,119

(t) Repayment cost accounts for animal services, planning and land use, code enforcement, public works, and sheriff department services the County is obligated to provide for the remainder of the first fiscal year.

6/3/08 DOES NOT INCLUDE REVENUE NEUTRALITY MITIGATION

Table 1
Summary of Revenues and Expenses (All Figures in Constant \$'s)
San Martin Incorporation Analysis, EPS #17060 Full Transition Year 12 months Proponents' Proposed Bdry minus Area 4 & Area 5

Item	Fiscal Year									
	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
A. GENERAL FUND OPERATIONS										
General Fund Revenues										
Property Taxes	\$623,414	\$640,012	\$657,099	\$674,888	\$692,793	\$711,427	\$730,604	\$750,338	\$770,645	\$791,538
Sales Tax	\$806,924	\$806,924	\$806,924	\$806,924	\$806,924	\$806,924	\$806,924	\$806,924	\$806,924	\$806,924
Transient Occupancy Tax	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557
Real Property Transfer Tax	\$5,317	\$5,453	\$5,592	\$5,734	\$5,880	\$6,033	\$6,183	\$6,339	\$6,500	\$6,664
Franchise Fees	\$248,282	\$248,484	\$248,687	\$248,889	\$249,091	\$249,293	\$249,495	\$249,697	\$249,899	\$250,102
Planning and Building Fees	\$0	\$274,742	\$276,116	\$277,496	\$278,884	\$280,278	\$281,679	\$283,088	\$284,503	\$285,926
Public Works/Eng. Fees	\$0	\$89,020	\$89,465	\$89,913	\$90,362	\$90,814	\$91,268	\$91,724	\$92,183	\$92,644
Fines, Penalties, Misc.	\$38,196	\$28,067	\$28,175	\$28,283	\$28,391	\$28,500	\$28,607	\$28,715	\$28,823	\$28,931
State Motor Vehicle License Fees	\$53,388	\$53,593	\$53,799	\$54,004	\$54,210	\$54,416	\$54,621	\$54,827	\$55,032	\$55,238
Property Tax/VLF Swap	\$469,984	\$440,341	\$410,456	\$380,331	\$349,963	\$319,355	\$320,562	\$321,768	\$322,975	\$324,181
Revenue Credits (transition yr. rec'd by County)	\$5,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Investment Earnings	\$49,341	\$56,164	\$55,957	\$55,756	\$55,561	\$55,372	\$55,180	\$55,000	\$54,816	\$54,632
Total	\$2,521,404	\$2,864,357	\$2,853,627	\$2,843,575	\$2,833,617	\$2,823,964	\$2,814,330	\$2,804,717	\$2,795,103	\$2,785,489
General Fund Expenses										
Legislative	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500
Elections	\$200,000	\$10,000	\$0	\$10,000	\$0	\$10,000	\$0	\$10,000	\$0	\$10,000
City Manager and City Clerk	\$281,225	\$328,669	\$330,288	\$331,927	\$333,573	\$335,227	\$336,880	\$338,533	\$340,186	\$341,839
City Attorney	\$250,000	\$76,131	\$76,511	\$76,894	\$77,278	\$77,665	\$78,053	\$78,443	\$78,836	\$79,230
Administrative Services	\$166,060	\$222,507	\$223,620	\$224,739	\$225,861	\$226,991	\$228,126	\$229,266	\$230,413	\$231,565
Police	\$0	\$57,554	\$56,179	\$54,861	\$53,600	\$52,400	\$51,250	\$50,150	\$49,100	\$48,100
Animal Control	\$0	\$73,154	\$73,520	\$73,888	\$74,257	\$74,628	\$75,001	\$75,376	\$75,753	\$76,132
Planning and Building	\$137,672	\$443,032	\$444,635	\$446,246	\$447,864	\$449,491	\$451,126	\$452,769	\$454,421	\$456,080
Public Works Administration	\$74,250	\$178,040	\$179,931	\$179,825	\$180,724	\$181,628	\$182,536	\$183,449	\$184,366	\$185,288
Non-Departmental	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Office Rent/Supplies	\$109,000	\$112,500	\$84,500	\$76,500	\$76,500	\$76,500	\$76,500	\$76,500	\$76,500	\$76,500
Insurance	\$37,431	\$60,932	\$60,141	\$60,551	\$60,961	\$61,371	\$61,781	\$62,191	\$62,601	\$63,011
Contingency (10%)	\$223,496	\$209,201	\$206,482	\$207,893	\$197,776	\$200,029	\$200,230	\$202,501	\$202,721	\$205,010
Reserve Fund Contribution	\$223,496	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
LAFCO	\$249,833	\$1,158	\$1,158	\$1,158	\$1,158	\$1,158	\$1,158	\$1,158	\$1,158	\$1,158
Repayment of Transition Yr. Cnty Services (1)	\$2,683,111	\$2,302,368	\$2,272,465	\$2,287,980	\$2,176,697	\$2,201,473	\$2,203,689	\$2,228,666	\$2,231,085	\$2,256,267
Total	(\$161,706)	\$561,989	\$581,362	\$555,596	\$622,491	\$643,641	\$642,612	\$642,612	\$642,612	\$642,612
General Fund Operating Surplus (Deficit)	\$223,496	\$223,496	\$223,496	\$223,496	\$223,496	\$223,496	\$223,496	\$223,496	\$223,496	\$223,496
% of Expenditures (exc. conting. reserves)	10.0%	10.7%	10.8%	10.8%	11.3%	11.2%	11.2%	11.0%	11.0%	10.9%
B. ROAD FUND OPERATIONS										
Road Fund Revenues										
Gas Taxes	\$175,381	\$162,874	\$152,282	\$141,604	\$130,841	\$119,992	\$120,420	\$120,847	\$121,275	\$121,703
Prop 42 Funds	\$54,659	\$54,871	\$55,633	\$56,405	\$57,186	\$57,978	\$58,780	\$59,592	\$60,414	\$61,247
Total	\$226,040	\$217,745	\$207,915	\$198,009	\$188,027	\$177,970	\$179,200	\$180,439	\$181,689	\$182,950
Road Fund Expenditures										
Pavement Maintenance	\$142,919	\$144,348	\$144,348	\$145,792	\$147,250	\$148,722	\$150,209	\$151,711	\$153,229	\$154,761
Signal Maintenance, Traffic Engineering	\$51,008	\$51,263	\$51,519	\$51,776	\$52,035	\$52,296	\$52,556	\$52,817	\$53,080	\$53,344
Other Costs (sweeping, trash removal, signs, drainage)	\$466,770	\$469,104	\$471,449	\$473,806	\$476,176	\$478,556	\$480,949	\$483,354	\$485,771	\$488,199
Contingency (10%)	\$66,070	\$66,471	\$66,876	\$67,283	\$67,693	\$68,106	\$68,522	\$68,940	\$69,362	\$69,789
Repayment of Transition Yr. Cnty Services	\$0	\$54,493	\$54,493	\$54,493	\$54,493	\$54,493	\$54,493	\$54,493	\$54,493	\$54,493
Total	\$0	\$781,259	\$785,679	\$790,129	\$794,609	\$799,120	\$803,668	\$808,239	\$812,824	\$817,424
Road Fund Operating Surplus (Deficit)	\$226,040	(\$563,514)	(\$577,764)	(\$592,120)	(\$606,582)	(\$621,149)	(\$635,729)	(\$650,322)	(\$664,933)	(\$679,551)
TOTAL, All Funds	\$66,333	(\$1,526)	\$3,597	(\$36,626)	\$50,338	\$1,342	\$73,873	\$69,312	\$88,064	\$94,686
Cumulative Surplus (Deficit)	\$66,333	\$64,807	\$68,404	\$31,880	\$82,218	\$83,560	\$157,233	\$226,545	\$314,629	\$399,314

(1) Repayment cost accounts for animal services, planning and land use, code enforcement, public works, and sheriff department services the County is obligated to provide for the remainder of the first fiscal year.

FAXED TO: (408)295-1613

DATE: May 28, 2008

TO: Neelima Palacherla
FROM: CCOI & Don & Lynne Bonino
RE: Proposed Incorporation/Town of San Martin
Deficiencies in CFA Draft dated March 5, 2008

PAGES INCLUDING COVER SHEET: 6

CC: Don Gage, County Representative (408)298-8460
Blanca Alvarado, County Representative (408)298-8460
John Howe, City Representative (408)730-7699
Pete Constant, San Jose Representative (408)292-6448
Susan Wilson, Public Representative (408)779-4333

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May 26, 2008

LAFCO
70 West Hedding Street, 11th Floor
San Jose, CA 95110

Attn: Neelima Palacherla

From: Concerned Citizens Opposed to Incorporation (CCOI)
P.O. Box 1384
San Martin, CA 95046

Dear Ms. Palacherla,

At the meeting of May 7, 2008, Susan Grasier asked for clarification on two issues as follows:

1. where is the village core?
2. what are the other businesses

CCOI wants a map of the village core and a list of names of the other businesses.

Also, Warren Walsh spoke on the farming issue. An EIR must be done to determine the impact of agriculture on the new city or redraw the boundaries of the proposed incorporation area to exclude all productive agriculture from the proposed incorporation.

Dave Piccardo spoke on two issues as follows:

1. Fiscal years 2006 and 2007 were used on the CFA to project gross income, this needs to be amended using fiscal years 2007 and 2008 to reflect the downturn in the economy.
2. Sewer system-SMNA, through a community outreach program, determined that it was necessary to have a municipal sewer system to server the commercial areas as well as industrial areas. Because of SMNA's plans to offer municipal sewer service to the above mentioned areas there should be an EIR prior to incorporation in order to determine if there is even an adequate area for waste water disposal and would the cost be prohibitive for such a small city.

We would like a response from the Executive Officer and the Board at the June 4, 2008, meeting.

Sincerely,

C.C.O.I.
Bonino / Chairperson

Cc: Blanca Alverado, Pete Constant, Don Gage, John Howe, Susan Vicklund-Wilson, Sam Licacarado, Pete McHugh, Al Pinheiro, Terry Trumbull

May 26, 2008

To: Neelima Palacherla
Executive Officer
LAFCO
70 West Hedding
11th Floor, East Wing
San Jose, CA 95110

From: Don and Lynne Bonino

Legend: LAFCO – LOCAL AGENCY FORMATION COMMISSION OF SANTA CLARA COUNTY; SMNA-SAN MARTIN NEIGHBORHOOD ALLIANCE; IFA-INITIAL FINANCIAL ANALYSIS; CFA-COMPREHENSIVE FINANCIAL ANALYSIS

Dear Ms. Neelima and LAFCO Commissioners,

As residents of San Martin we have many concerns regarding the incorporation of San Martin.

Erroneous material in IFA: EPS produced the IFA. In this document is a lot of erroneous information. From where or whom did they receive their information? Incomes were grossly overstated as were the number of employees for several businesses. Many businesses listed in 2003 were not active, some were never in San Martin, some business owners had died & therefore were no longer in business. This report was used to apply for incorporation. Is a report with all this erroneous material considered fraudulent??? Isn't the IFA an integral part of the incorporation application process???

At the last LAFCO hearing on May 7, 2008, Brian Schmitz of the Greenbelt Alliance questioned the commissioners about whether the contract issued to the EPS for the CFA was a sole source contract. That contract was supposed to go out to bid and Mr. Schmitz wanted to know if it went out for competitive bid or not. An answer was NOT forthcoming & we would like to know if it did or did not go out for competitive bid.

Example of downtown small shops, local crafts, antiques? Take a look at Gilroy! They are struggling to keep their downtown in business. Morgan Hill is also struggling. Small businesses don't stand a chance in an area that is not traveled (S.M. is bypassed by 101) and where most people go to the bigger shopping malls, including San Martin residents.

Sewer hookup or plant ---where, how funded, EIR??? The sewer plant located in Gilroy & serving both M.H. & Gilroy claims to be at capacity. If that is so, where is S.M. going to put the sewage from the "village core" and the industrial area? Shouldn't an EIR be done BEFORE incorporation to help in the decision of incorporation? This should be included in the CFA and not passed onto the residents AFTER incorporation with assessments. Lafco rules say that a sewer system must be in place for industrial/core areas.

Economic times are at an all time low at present and it appears will be worse in the near future. With such uncertainty involved it seems foolish to add more and more costs to the taxpayers who live in San Martin and there will be such costs in order to cover salaries & benefits to city officials, road upkeep, sewer, police protection, fire truck, and other items NOT mentioned in the CFA. How much more can the average citizen in San Martin pay???

According to a study done by a major road building company, (this study is a few months old so the figures have probably changed already), a ton of asphalt per resident per year is the figure for road repair. SMNA reports there are 6900 residents in San Martin. 6900×1 each = 6,900 tons of asphalt per year. Asphalt is now selling for approximately \$100.00 - \$200.00 per ton, depending on the job, over lay or digging out and replacing. Multiply that times 6,900 and the cost for the asphalt = \$690,000.00 - \$1,380,000.00 per year for road upkeep/repair alone. With the price of oil going up these figures will probably be obsolete by the time you receive this letter.

It has been said that the crossing at Monterey Road and S.M. that is under construction now is costing one million dollars plus. We do not have the figures to verify these figures but you can probably find them within the county structure. With projects like these what will our taxes and assessments be?

Where is the "right to farm" mentioned in the CFA? What will happen to all the farmers who count on their occupation to make a living?

If the Town of San Martin cannot "make it" on its' own, what happens then? Does the County of Santa Clara get to "pick up the pieces" and have to bail us out? With the County budget facing cuts this would appear to put a SEVERE financial load onto the County's back.

We hope you can answer our concerns as stated in this letter. Also, we hope you think long and hard about your vote on this issue.

Sincerely,



Don & Lynne Bonino
13115 Colony Avenue
San Martin, CA 95046

CC:

Blanca Avarado, Pete Constant, Don Gage, John Howe, Susan Vicklund-Wilson, Sam Liccardo, Pete McHugh, Al Pinheiro, Terry Trumbull

David G. Piccardo

Certified Public Accountant

11986 De Paul Circle
San Martin, CA 95046

Phone (408) 683-4CPA
& Fax (408) 683-4272
email: pic@garlic.com

May 28, 2008

Local Agency Formation Commission of Santa Clara County
Ms. Neelima Palacherla, Executive Officer

Via Electronic Mail: Neelima.Palacherla@ceo.sccgov.org
Via FACSIMILE: 408-295-1613

Re: Comments on the Comprehensive Fiscal Analysis
for the Proposed Incorporation of San Martin

Dear LAFCO Commissioners and Ms. Palacherla:

I am writing this letter to provide input for your consideration regarding the Comprehensive Fiscal Analysis (CFA) prepared for the proposed incorporation of San Martin. Since the CFA is one of the primary resources to be used by LAFCO in making this decision, it is of critical importance that the document be as accurate as is possible and that the commissioners have background information needed to properly update the document to account for recent events which are not available in historical data.

First, under "General Fund Revenues" of Table 1, Property Taxes of \$705,773 provide about 22.8% of total revenue for the first full fiscal year. Per Table B-2 of the CFA, the data for this table is provided from the County's last complete fiscal year which ended June 30, 2007 (FY 2007). However property tax revenues collected during FY 2007 were based on the County's assessed values as of January 1, 2006. Table B-2 specifies a 14.9% increase in values from FY 2007. As you are well aware, the assessed values of many residential properties within the County have dropped substantially. Residential properties purchased within the past three years have declined from 10% to 30% especially in the South County area. This decline is not reflected in the base numbers of the CFA, and when combined with the approximate 2.6% annual increase in property taxes as presented in Table 1, show a revenue source which does not reflect the reality of current residential assessed values.

Also please note that Table 1 presents data in "Constant \$'s" which should eliminate inflation. Therefore the 2.6% annual increase in property taxes shown is in addition to normal inflation which has averaged around 3% for the last eight years, for a projected annual increase of 5.6% in Assessed Value. I recommend that the LAFCO Commissioners discuss this with the County Assessors Office to determine if this amount of sustained growth is reasonable when compared with historical data.

The assumptions made in the CFA concerning Investment Earnings are unrealistic and dramatically inflated. The CFA assumes that all projected revenue for the year will be invested on the first day of the fiscal year and remain invested for the entire period with a 2% return. Effectively this is specifying that no expenditures will be made for the entire year since all funds are invested. A more accurate approach would be to perform a cash flow analysis which would provide a monthly balance of funds available for investment at a net return available for funds invested in FDIC insured instruments. A simple calculation using all surplus funds available plus Contingency Reserves and multiplied by a market rate would provide a better estimate.

For example, Table 1 shows Fiscal Year 3 as having a surplus of \$139,819 and a Contingency Fund of \$214,636. A total of \$354,455 would be available for the entire year which could be invested in insured instruments yielding an average of 4% for earnings of \$14,178. This is \$46,195 less than the \$60,373 projected in the CFA and accounts for about 33% of the surplus shown for Fiscal Year 3. During the period presented in the CFA this one error in methodology accounts for a minimum of 34% of the annual surplus shown and cumulatively accounts for approximately \$400,000 in revenues which will not be available. I strongly urge that a more realistic method of projecting earnings be substituted as part of the revisions to the CFA.

Moving to General Fund Expenses as presented in Table 1 of the CFA, I note that nominal increases appear in all categories with the exception of Insurance. The cost of Liability Insurance for the city is projected to start at \$62,515 in the first full year and then decline 2.8% over the subsequent nine years to \$60,774. As litigation and insurance costs have steadily risen over the past years I believe this to be either a mistake or a misprint and the data it is based on should be verified.

Another item to be reviewed is the Planning and Building category. While an approximate .36% inflation factor is used in fiscal years two through four, year five costs drop by \$98,382 or about 22%, then resume annual increases. During this same period of time Planning and Building Fees consistently increase on an annual basis. Why is there such a large one time drop in year five expenses, with the significantly reduced amount then carried forward, while revenue remains at the same general level throughout Table 1? I believe more analysis is needed in this category.

I am also concerned about the expense categories of City Manager and City Clerk, Administrative Services, Planning and Building, Public Works Adm. and Other Costs. These categories contain significant amounts of wages and benefits for projected city employees. These items have been projected with an annual increase of just .5%. I believe this minimal adjustment factor is not sufficient to accommodate the actual growth of wages and benefits for any future city employees. The cost of health insurance alone has consistently outpaced inflation over the last ten years. Combined with the cost of pension benefits and other related expenses a .5% adjustment factor does not take into consideration the actual cost of employees to the future city.

Information regarding increases in the cost of state and local government employee compensation is readily available from the U.S. Department of Labor. Following this letter please find two tables downloaded from the Bureau of Labor Statistics website, showing the average quarterly increase in the cost of total compensation for both "Executive, administrative and managerial occupations" and "Administrative support, including clerical, occupations". A review of the information will provide better quality data for this particular segment of the CFA since it is specifically focused on state and local government employee compensation. As a significant portion of total cost of operations derive from wages and benefits of employees, it is important to have accurate information available to provide solid estimates of future expenses.

My final comment on the current CFA draft concerns the Paving Maintenance expense under Road Fund Expenditures. Historical data has been used to determine a base number to build upon. I note that comparisons with other cities are based upon FY 2005-2006 data according to Table 5 or FY 2006-2007 budgeted information according to Appendix VII of the CFA. All of this information is at least two years old and does not include adjustments for the current cost of materials, most notable oil based or aggregate materials. As is apparent in the daily news, the cost of oil related products and the cost of transporting heavy/bulky items such as gravels, asphalt and base rock has increased greatly during the last year alone. Since these types of materials are a major cost of road maintenance, the historic data upon which comparisons and estimates have been made are not reflective of current actual costs. Since the cost of Road Fund Expenditures is more than 25% of the entire city budget, an inaccurate estimate based on historical data alone could provide a major understatement of expense and put the city close to operating at breakeven or possibly at a consistent loss.

I recommend that this large and important expenditure be updated with current pricing information on the cost of materials delivered to the job site. A category of expense which has increased so substantially over a short period of time needs to be thoroughly analyzed to provide accurate information due to the size of this type of expenditure compared to the total cost of operations for the city. Information regarding the FY 2005-2006 cost of materials should be available from the County Roads Department and can be compared to current costs. These prices can then be multiplied times the estimated material needs for the upcoming years and adjusted for inflation with information available from the Bureau of Labor Statistics for these types of products instead of the Consumer Price Index's general information.

While I am aware that the CFA is being updated with information not initially available, such as the cost of an election and the cost to reimburse the County for revenue neutrality, I feel the items presented in this letter are important to consider. Cumulatively these items have a major impact on the ability of the proposed city to pay for itself since the overall cost of government to the residents of San Martin will increase due to the additional governmental unit being created.

Santa Clara County Local Agency Formation Commission
Ms. Neelima Palacherla, Executive Officer

May 28, 2008
Page 4

To summarize I feel it is important for all parties concerned to judiciously review the information available and update historical information with current data when the impact on the resulting numbers will make them materially different. LAFCO commissioners have a fiduciary obligation to the people of Santa Clara County and the residents and property owners of San Martin. Information that is current, correct and verifiable is crucial to the process which is being carried out. While cumbersome, I do urge the LAFCO staff and commissioners to perform the additional analysis and information gathering recommended in this letter to provide the people they represent with the most accurate information now available.

Should you have any questions regarding the information presented please feel free to contact me at your convenience. I hope that the information and thoughts presented is beneficial to you.

Sincerely,



David G. Piccardo, CPA

Cc: LAFCO Commissioners:
Blanca Alvarado
Pete Constant
Don Gage
John Howe
Susan Vicklund-Wilson

Enclosure: Bureau of Labor Statistics Data



**U.S. Department
of Labor**
**Bureau of Labor
Statistics**
Bureau of Labor Statistics Data



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Employment Cost Index


Series Id: ECU11113A
Not Seasonally Adjusted
compensation: Total compensation
ownership: State and local government
periodicity: 12 month percent cha
group: Executive, administrative, and managerial occupations

Year	Qtr1	Qtr2	Qtr3	Qtr4	Annual
1995	3.4	3.2	3.5	3.7	
1996	3.0	2.8	2.2	2.2	
1997	2.6	2.6	2.7	2.7	
1998	2.6	2.5	3.6	3.8	
1999	3.7	3.5	2.9	3.2	
2000	3.2	3.2	3.2	3.1	
2001	3.7	4.4	4.8	4.7	
2002	4.6	4.0	3.8	3.9	
2003	3.6	3.7	3.4	3.2	
2004	2.9	3.1	2.5	3.1	
2005	3.9	3.3	3.9	3.3	

Series Id: ECU11143A
Not Seasonally Adjusted
compensation: Total compensation
ownership: State and local government
periodicity: 12 month percent cha
group: Administrative support, including clerical, occupations

Year	Qtr1	Qtr2	Qtr3	Qtr4	Annual
1995	2.8	2.9	2.8	2.7	
1996	3.0	2.7	2.7	3.0	

1997	2.5	2.4	2.6	2.3	
1998	2.7	2.9	3.1	3.2	
1999	3.3	2.9	2.5	3.2	
2000	3.1	3.7	3.8	3.1	
2001	3.4	3.5	3.9	4.1	
2002	4.1	4.2	4.5	4.3	
2003	4.4	4.0	4.3	3.8	
2004	4.0	4.5	3.8	4.1	
2005	4.1	3.5	3.4	3.5	

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U.S. Bureau of Labor Statistics

2 Massachusetts Avenue, NE Washington, DC 20212-0001

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LAFCO Meeting Date: June 4, 2008

TO: LAFCO

FROM: Neelima Palacherla, Executive Officer

**SUBJECT: Update on Payment of LAFCO Staff Costs for the Proposed
Incorporation of the Town of San Martin**

Agenda item# 7

STAFF RECOMMENDATION

Accept report and provide direction to staff.

DISCUSSION

At the May 7, 2008 LAFCO meeting, the Commission directed staff to work with the San Martin Neighborhood Alliance (SMNA) to resolve various issues concerning billing and payment of invoices for LAFCO staff time spent on the incorporation proposal. The SMNA requested a written response / proposal from staff. Attached for your information is staff's letter and SMNA's response.



May 16, 2008

San Martin Neighborhood Alliance
Attn.: Richard van't Rood and Sylvia Hamilton
PO Box 886
San Martin, CA 95046

RE: Payment of Fees for the San Martin Incorporation Proposal

Dear Rick and Sylvia:

We have reviewed your letter dated April 14, 2008 and the concerns you have expressed about the various LAFCO staff time entries in the invoices for the San Martin incorporation proposal.

In general, the invoices reflect a conservative reporting of the staff time spent on the San Martin incorporation proposal. Please remember that the invoiced work was completed over a course of 11 months and does not include Executive Officer's, Analyst's or LAFCO counsel's time spent on pre-application meetings with the proponents or on petition review/processing issues which occurred prior to May 2007. LAFCO also absorbed the cost for developing LAFCO's incorporation policies and for conducting informational workshops on the incorporation process. Processing an incorporation proposal is a complex and time intensive process, involving many aspects, including financial, policy and environmental analysis, and involving coordination and communication with the proponents, the county, the community and other interested groups. Clearly, we have been able to carefully manage the process to ensure that the project is on schedule for the May 2008 public hearing (until the legal counsel's conflict of interest issue was raised), thus avoiding longer processing times and more expenses. Although we have retained consultants for the financial and environmental analysis, the consultants rely heavily on LAFCO staff to obtain information and to get a better understanding of the local policies and the local context for their analysis. Staff time spent in providing information and reviewing drafts prior to public release and time spent in complying with

administrative / legal requirements prevents unnecessary public controversy and therefore time and expense in the future.

Staff has reviewed, analyzed and proposed alternative boundaries for the Commission's consideration consistent with the CKH Act, the OPR guidelines and the Santa Clara LAFCO policies. The analysis or conclusions reached by staff on this and other issues may not be the same as those sought by the proponents. The role of LAFCO staff is not to advocate for the proponents (even though the proponents are responsible for the incorporation processing costs) or another group, but to provide an objective analysis and recommendation to the Commission based on requirements in the state law and the policies established by the Commission. Please be aware that the March 2008 invoice does not include charges for Counsel's time pertaining to revenue neutrality issues.

You were informed at the start of this project that the estimated cost of LAFCO staff time for processing this incorporation would be approximately \$100,000. That estimate was based on the assumption that the proposal would be ready for a LAFCO public hearing in May 2008. The present delay in the incorporation schedule will likely result in an increase to costs over and above the \$100,000 initially estimated for processing this proposal. The likely increase in costs will be due to additional staff work that may be required on several aspects of the incorporation proposal (including CEQA, financial and revenue neutrality issues) and the higher hourly rate for the outside counsel. There may be additional consultant costs for CFA and CEQA work as well.

Each LAFCO adopts its own policies, procedures and fees schedule consistent with the CKH Act. The fees charged for the San Martin incorporation proposal are based on the fees schedule adopted by Santa Clara LAFCO and therefore, a comparison of fees with other LAFCOs is not reflective of Santa Clara LAFCO's actual costs.

As general practice, the revenues projected for the 08-09 LAFCO budget are estimated in a conservative manner. Therefore it may appear that LAFCO's budgeted revenues will not be impacted immediately. However, if LAFCO staff costs for processing applications are not recovered one year, it would in the following year, increase the amount that the cities and the county contribute towards LAFCO costs. As you may be aware, the County and the 15 cities fund the LAFCO budget and if LAFCO is not reimbursed by the proponents for the cost of processing the application, it is essentially the 15 cities and the County

that must fund the processing of the incorporation proposal. Furthermore, as staff time and resources continue to be diverted to the incorporation proposal, other items on the LAFCO work program are impacted.

We are seriously concerned about SMNA's ability to pay LAFCO staff costs (a total of \$86,148.38 as of March 2008) as you have indicated that recent fundraisers did not raise anticipated funds and that a fundraiser scheduled for May is now canceled/ postponed. Please provide a schedule of your fundraising events, the estimated amounts to be raised, the amount that would be paid to LAFCO, and the specific dates by which payments are to be made to LAFCO, as requested by the Commission at the April 16th meeting. Additionally, you have also mentioned in previous conversations that the proponents may be unwilling and /or unable to pay the LAFCO staff costs if LAFCO's decision is not in favor of the incorporation or is contrary to the proponent's positions.

Although we have not yet seen your proposed schedule to make payments, LAFCO is eager to expeditiously resolve this matter. Therefore, to help move the incorporation proposal forward in a manner that provides some security to all parties and to avoid additional staff time on review of individual invoice entries, we would like to propose a 10% reduction in total LAFCO staff costs billed as of March 31, 2008. This would reduce the amount payable by \$8,614.83 and bring the total amount down to \$77,533.50.

The understanding and intent when the Fee Agreement between SMNA and LAFCO was established was that the incorporation public hearing will take place in May 2008 in order for the issue to be on the ballot in November. Therefore LAFCO anticipated receiving the fees for the major portion of the work performed on the incorporation proposal by May 2008. The schedule for the public hearing and the circumstances under which the Agreement was reached have changed significantly and an amendment is required to better reflect the current situation.

As consideration for the reduction in the amount of money that is owed to LAFCO, LAFCO will require that proponents make the payment for the costs incurred (as of March 2008) by June 30, 2008 and to execute an amendment to the Fee Agreement for the San Martin Incorporation Proposal for costs incurred from April 2008. The amendment to the Fee Agreement shall include the following revisions as shown in redline format:

5.c. Payment for Staff Costs. ~~LAFCO will provide a first invoice to Proponents for staff costs and expenses 30 days prior to the date set for the first public hearing. LAFCO must receive payment in full on the invoice prior to the public hearing. Subsequent~~ Invoices for staff costs and expenses will be sent to Proponents on a monthly basis and must be paid in full 30 days from the date of the invoice. Non-receipt of any payment due on a timely basis will result in suspension of the process. All invoices must be paid in full prior to the recordation of the Certificate of Completion. Any protest of the invoice may be made after tending any required payment in full and providing a statement of the factual elements of the dispute and the legal theory forming the basis for the protest.

Alternatively, LAFCO would consider receiving an irrevocable letter of credit to assure LAFCO of payments at specific points in the LAFCO process.

In addition, we understand that the San Martin Neighborhood Alliance, Inc. (SMNA) is a California corporation. Therefore, we would like to have the Fee Agreement signed by two signatories of the corporation, who are legally authorized to sign on behalf of the corporation or receive appropriate documentation, such as a corporate resolution that authorizes the President to bind the corporation.

In closing, we would like to resolve this issue in a fair and reasonable manner and would like to discuss this further with you. Please provide a response by May 23rd, so that we can allow time to discuss this matter with you and allow consideration by the Commission at its June 4th meeting.

Thank you.

Sincerely,



Neelima Palacherla
LAFCO Executive Officer

cc:

LAFCO Commissioners



San Martin Neighborhood Alliance, Inc.

“Together We Make A Difference”

May 28, 2008

Neelima Palacherla, Executive Officer
Local Agency Formation Commission
70 West Hedding Avenue
11th Floor, East Wing
San Jose, California 95110

RE: San Martin Incorporation

Dear Neelima,

Thank you for the offer to recommend a discount for early payment of the LAFCO staff fees.

After consultation with the SMNA Board, SMNA prefers to comply with the terms of the agreement we have in place. While SMNA reserves the right to challenge LAFCO actions with which we disagree, please be assured that we intend to perform all obligations required of SMNA, Inc.

Sincerely,

SAN MARTIN NEIGHBORHOOD ALLIANCE

Sylvia Hamilton
President

Richard van't Rood
Incorporation Committee Chair

RVR/djk



San Martin Neighborhood Alliance, Inc.

“Together We Make A Difference”

May 28, 2008

Neelima Palacherla, Executive Officer
Local Agency Formation Commission
70 West Hedding Avenue
11th Floor, East Wing
San Jose, California 95110

RE: San Martin Incorporation

Dear Neelima:

SMNA objects to payment of additional fees to the environmental consultant for preparation of a Mitigated Negative Declaration. The Mitigated Negative Declaration proposed in the consultant's email dated April 28, 2008 is clearly covered by the Scope of Services and Cost Estimate in Exhibit A to the contract with Michael Brandman and Associates including analysis of boundaries and consistency with LAFCO and other policies. Their contract is a task-oriented contract, not a budget contract with a not-to-exceed maximum compensation. Therefore, the consultant is not entitled to further payment for a Mitigated Negative Declaration.

In reviewing the minutes for the LAFCO Public Hearing on April 4, 2007, LAFCO staff reported that the cost for mapping and notices were estimated to be \$3,000. We assume this was confirmed at the time with the LAFCO surveyor. That estimate is not consistent with the \$9,000 to \$12,000 cost estimate you provided on April 7, 2008. Please explain the discrepancy. Also, as the surveyor is part of the LAFCO staff according to the 2008 staff roster, the surveyor's cost should be billed with the other LAFCO staff fees.

Thank you for your attention to these items.

Sincerely,

SAN MARTIN NEIGHBORHOOD ALLIANCE

Richard van't Rood
Incorporation Chairman

RVR/djk

LAFCO Meeting: June 4, 2008
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
SUBJECT: **Proposed Final Budget FY 2008-2009**
Agenda Item # 9

STAFF RECOMMENDATION

1. Adopt the Final LAFCO Budget for fiscal year 2008-2009. (Attachment A)
2. Find that the Final FY-09 Budget is expected to be adequate to allow the Commission to fulfill its statutory responsibilities.
3. Authorize staff to transmit the final budget adopted by the Commission including the estimated agency costs to each of the cities, the County and the Cities Association.
4. Direct the County Auditor-Controller to apportion LAFCO costs to cities and the County using the most recent edition of the Cities Annual Report published by the Controller, and collect payments pursuant to Government Code § 56381.

BACKGROUND

LAFCO Budget and Adoption Process

The Cortese Knox Hertzberg Local Government Reorganization Act of 2000 (CKH Act) which became effective on January 1, 2001, requires LAFCO to annually adopt a draft budget by May 1 and a final budget by June 15 at noticed public hearings. Both the draft and the final budgets are required to be transmitted to the cities and the County. The CKH Act establishes that at a minimum, the budget must be equal to that of the previous year unless the Commission finds that reduced staffing or program costs will nevertheless allow it to fulfill its statutory responsibilities. Any unspent funds at the end of the year may be rolled into the next fiscal year budget. After the adoption of the final budget, the County Auditor is required to apportion the net operating expenses of the Commission to the agencies represented on LAFCO.

CHANGES TO THE DRAFT / PRELIMINARY BUDGET

The Commission on April 16, 2008, adopted the preliminary budget for Fiscal Year 2008-2009. The preliminary budget was prepared using the best information available at that time. Since then, slight changes in staffing (special attorney costs) have occurred increasing the expenses. Also, LAFCO has received higher interest from deposits in the current year than was estimated in the preliminary budget.

Taking these changes into consideration, the actual operating expenses are reduced to **\$541,794**, which represents a small reduction in LAFCO's net operating costs from the draft preliminary budget. Presented below are the proposed revisions to items:

EXPENDITURES

5258200 INTRA-COUNTY PROFESSIONAL

The end of year estimate for this item is being increased by \$4,800 to a total of \$144,600 to account for the higher hourly rate for LAFCO's special counsel for the San Martin incorporation proposal.

REVENUES

4301100 INTEREST (end of year projection for FY 2008) (Increase from \$9,000 to \$15,000)

It is estimated that LAFCO will receive \$6,000 more in interest than was projected for the end of this current year.

NET LAFCO OPERATING EXPENSES (Decrease from \$542,994 to \$541,794)

As a result of the above listed estimated changes in costs and revenues, the net operating expenses of LAFCO for FY 2009 are reduced from \$542,994 in the Draft Budget to \$541,794 in the Final Budget. This would correspondingly reduce the costs to agencies.

BUDGET RELATED ISSUE: LAFCO CLERK POSITION

LAFCO's website used to be managed by the County's Information Services Department (ISD). In March of 2008, the LAFCO Clerk took over the responsibility for managing the LAFCO website from ISD. This allows LAFCO to create, make design modifications and/or add updates to its website in a more streamlined and timely manner. Additionally, there is a potential annual savings for LAFCO of approximately \$10,000 when LAFCO manages its own website.

However, the LAFCO Clerk's job description does not include this duty. Therefore, the LAFCO budget subcommittee directed staff to work with the County to review and amend the LAFCO Clerk's position classification and salary to reflect the added responsibility. Staff has begun working with the County on this issue and has been informed that it is likely to take a year to go through the process. Staff will keep the LAFCO budget subcommittee informed and will bring the issue back to the full commission for any necessary action with the subcommittee recommendation.

COST APPORTIONMENT TO CITIES AND COUNTY

The CKH Act requires LAFCO costs to be split in proportion to the percentage of an agency's representation (excluding the public member) on the Commission. Since the City of San Jose has a permanent membership on Santa Clara LAFCO, the law requires costs to be split between the County, the City of San Jose and the remaining cities. Hence the County pays half the LAFCO cost, the City of San Jose a quarter and the remaining cities the other quarter. The cities' share (other than San Jose's) is apportioned in proportion to each city's total revenue as reported in the most recent edition (2004-2005) of the Cities Annual Report published by the Controller, as a percentage of the combined city revenues within a county. If that report is not available in time for this report, then final revisions to the cities' apportionment will be prepared prior to providing the information to the cities.

The CKH Act requires the County Auditor to apportion the costs to the various agencies and to request payment from the cities and the County no later than July 1 of each year for the amount each agency owes based on the net operating expenses of the Commission and the actual administrative costs incurred by the Auditor in apportioning costs and requesting payment. Provided in the table is the draft apportionment to the agencies based on LAFCO's net operating expenses for FY-09 (\$541,794). Cost to individual cities is detailed in Attachment B.

Costs to Agencies

	FY 07-08 Costs	FY 08-09 Costs
County of Santa Clara	\$271,6425	\$270,897
City of San Jose	\$135,821	\$135,449
Remaining 14 cities in the County	\$135,821	\$135,449

ATTACHMENTS

Attachment A: Final Budget for FY 2008-2009

Attachment B: 2008-2009 LAFCO Cost Apportionments to Cities and the County

**Final LAFCO Budget
Fiscal year 2008-2009**

**ITEM No. 9
ATTACHMENT A**

ITEM #	TITLE	APPROVED	ACTUALS	END OF	FINAL
		FY 07-08 BUDGET	Year to Date 1/31/2008	FY 2008 PROJECTIONS	FY 08-09 BUDGET
EXPENDITURES					
Object 1:	Salary and Benefits	\$331,889	\$198,666	\$361,342	\$403,013
Object 2:	Services and Supplies				
5258200	Intra-County Professional	\$134,200	\$29,741	\$134,200	\$144,600
5255500	Consultant Services	\$100,000	\$0	\$0	\$75,000
5285700	Meal Claims	\$750	\$103	\$605	\$750
5220200	Insurance	\$447	\$491	\$491	\$559
5250100	Office Expenses	\$2,000	\$612	\$1,000	\$2,000
5255650	Data Processing Services	\$13,459	\$5,967	\$13,459	\$10,000
5225500	Commissioners' Fee	\$5,400	\$1,900	\$7,300	\$9,000
5260100	Publications and Legal Notices	\$2,500	\$467	\$1,500	\$2,500
5245100	Membership Dues	\$5,500	\$5,500	\$5,500	\$7,000
5250750	Printing and Reproduction	\$1,500	\$5	\$1,500	\$1,500
5285800	Business Travel	\$10,500	\$4,997	\$10,500	\$12,000
5285300	Private Automobile Mileage	\$1,500	\$807	\$1,500	\$1,500
5285200	Transportation&Travel (County Car Usage)	\$1,500	\$809	\$1,500	\$2,911
5281600	Overhead	\$42,492	\$21,246	\$42,492	\$62,391
5275200	Computer Hardware	\$2,000	\$0	\$2,000	\$2,000
5250800	Computer Software	\$2,000	\$95	\$1,000	\$2,000
5250250	Postage	\$2,000	\$665	\$2,000	\$2,000
5252100	Staff Training Programs	\$2,000	\$0	\$1,000	\$2,000
5701000	Reserves	\$100,000	\$0	\$0	\$100,000
TOTAL EXPENDITURES		\$761,637	\$272,071	\$588,889	\$842,724
REVENUES					
4103400	Application Fees	\$50,000	\$24,781	\$40,000	\$40,000
4301100	Interest: Deposits and Investments	\$7,000	\$7,076	\$15,000	\$7,000
Total Interest / Application Fee Revenue		\$57,000	\$31,857	\$55,000	\$47,000
4600100	Cities (Revenue from other Agencies)	\$271,642	\$271,642	\$271,642	
5440200	County	\$271,642	\$271,642	\$271,642	
Savings/Fund Balance from previous FY		\$161,354	\$244,535	\$244,535	\$253,930
TOTAL REVENUE		\$761,638	\$819,676	\$842,819	
NET LAFCO OPERATING EXPENSES		\$543,283			\$541,794
COSTS TO AGENCIES					
	County	\$271,642			\$270,897
	City of San Jose	\$135,821			\$135,449
	Other Cities	\$135,821			\$135,449

2008/2009 LAFCO COST APPORTIONMENT
Estimated Costs to Agencies Based on the Final Budget

LAFCO Net Operating Expenses for 2008/2009				\$541,794
Jurisdictions	Revenue per 2004/2005 Report*	Percentage of Total Revenue	Allocation Percentages	Allocated Costs
County	N/A	N/A	50.0000000%	\$270,897.00
San Jose	N/A	N/A	25.0000000%	\$135,448.50
Campbell	\$33,583,551	2.3221444%	0.5805361%	\$3,145.31
Cupertino	\$44,567,482	3.0816315%	0.7704079%	\$4,174.02
Gilroy	\$87,762,328	6.0683516%	1.5170879%	\$8,219.49
Los Altos	\$29,341,524	2.0288282%	0.5072070%	\$2,748.02
Los Altos Hills	\$9,803,619	0.6778741%	0.1694685%	\$918.17
Los Gatos	\$29,227,240	2.0209260%	0.5052315%	\$2,737.31
Milpitas	\$79,213,756	5.4772581%	1.3693145%	\$7,418.86
Monte Sereno	\$1,926,533	0.1332107%	0.0333027%	\$180.43
Morgan Hill	\$62,734,560	4.3377994%	1.0844498%	\$5,875.48
Mountain View	\$149,284,097	10.3222922%	2.5805731%	\$13,981.39
Palo Alto	\$304,096,000	21.0268062%	5.2567015%	\$28,480.49
Santa Clara	\$384,386,866	26.5785414%	6.6446354%	\$36,000.24
Saratoga	\$15,767,551	1.0902519%	0.2725630%	\$1,476.73
Sunnyvale	\$214,534,993	14.8340844%	3.7085211%	\$20,092.54
Total	\$1,446,230,100	100.0000000%	100.0000000%	\$541,793.98
Total Cities (minus San Jose)				\$135,450.48

* The 2004-2005 Report is the most current available to date.

The cities' cost estimates will be revised according to the 2005-2006 Report (expected to be published soon).

LAFCO Meeting: June 4, 2008
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
**SUBJECT: Proposed LAFCO 2008 Fee Schedule Revision
Agenda Item # 10**

STAFF RECOMMENDATION

Adopt resolution revising LAFCO fee schedule, to be effective June 5, 2008.
Please see Attachment A and B for fee schedule and resolution.

Background

State law authorizes LAFCO to charge fees for filing and processing of proposals provided that these fees "... shall not exceed the estimated reasonable cost of providing the service for which the fee is charged..." (Government Code §56383).

LAFCO fees were last revised in June 2006. At that time, fees were revised to reflect the actual staff time spent on applications and the increases in staff hourly rates.

The budget subcommittee, at its meeting in April 2008, recommended that staff review and propose revisions to the LAFCO fee schedule, as necessary, to ensure cost recovery.

Public Hearing and Notice of Hearing

In addition to following standard noticing requirements for public hearings, a notice regarding this item was mailed out to the County, and all cities and special districts in the county. A copy of this staff report has been posted on the LAFCO web site and was so indicated on all the notices.

Revised LAFCO Staff Costs

Revised LAFCO staff costs have been used to determine the proposed revised fees. The LAFCO Counsel and Surveyor rates reflect the projected hourly rates for FY 09 that LAFCO would pay to the Office of the County Counsel and the County Surveyor's Office respectively for their staffing services. These rates, established annually by the individual departments, include salary & benefits,

productive time, and the administrative overhead costs. The projected hourly rates for the Executive Officer, the LAFCO Analyst and the LAFCO Clerk are calculated to include the salaries & benefits, productive hours, and the administrative overhead costs taking into consideration the indirect costs based on the projected FY 2009 budget.

LAFCO Staff	Current Rates	Proposed Rates
	FY 2007 hourly rates reflecting salary & benefits, productive time and administrative overhead charges	FY 2009 hourly rates reflecting salary & benefits, productive time and administrative overhead charges
Executive Officer	\$152	\$182
Analyst	\$139	\$164
LAFCO Counsel	\$183	\$212
LAFCO Clerk	\$93	\$106
Surveyor	\$125	\$125

City Conducted Annexation Applications

Proposed Revision

Increase the processing fee for city-conducted annexation from \$670 to \$959.

Discussion

Currently LAFCO charges a fee of \$670 for processing of city-conducted annexations. The proposed fee increase for processing and staff finalization of city-conducted annexations is based upon the following costs:

Staff Involved in Processing	Time Spent	Staff Costs
LAFCO Executive Officer	0.5 hr.	\$91
LAFCO Analyst	1 hr.	\$164
LAFCO Clerk	8 hrs.	\$848
Total Cost:		\$1,103

City conducted annexations typically involve detachment of territory from two / three special districts along with annexation of the territory to the city. As a final step to the processing of these annexations, LAFCO staff ensures that the boundaries of special districts and cities in GIS are accurately updated to reflect the approved annexation. This task is critical to having accurate and up to date information available in the GIS for use by LAFCO, the County, the cities, special districts as well as the public and others.

NOTE: For city conducted annexations, the County Surveyor's Office charges a fee of \$2,000 directly to the city for checking the map and legal descriptions and providing the Surveyor's Report. And the County Assessor's Office charges a fee directly to the city for providing the Assessor's Report. These fees are not adopted or collected by LAFCO and are not credited to the LAFCO account.

LAFCO Change of Organization Applications

The current fees for changes of organization are set in a two-tier system. Proposals that have 100% consent of all affected landowners are charged a lower fee because they generally do not require a public hearing and are less time consuming (\$4,658+ environmental review fees). The non-100% consent proposals are currently charged a higher fee (\$10,098 + environmental review fees) because they are generally more complicated, require extensive noticing, a public hearing and a protest hearing with notice.

The proposed fees for processing a change of organization application are based on these procedures and their associated costs.

100% Consent Proposals

Proposed Revision

Increase the LAFCO processing fee from \$4,658 to \$5,049 plus appropriate environmental review (ER) fee.

Discussion

The majority of reorganization proposals submitted to LAFCO fall under this category. These proposals are generally on the Commission's consent calendar. That is, these proposals do not generally require a public hearing, noticing or a protest hearing. The proposed fee increase for a 100% consent change of organization proposal is a direct result of the increase in staffing costs and LAFCO's responsibility to keep the mapping of city and special district boundaries up to date. The proposed fee is based on the following costs:

100% Consent Proposals

Staff Involved in Processing	Time Spent	Staff Costs
LAFCO Executive Officer	3 hrs.	\$546
LAFCO Analyst	3 hrs.	\$492
LAFCO Clerk	15.7 hrs.	\$1,664.2
LAFCO Counsel	.75 hr.	\$159
LAFCO Surveyor	17.5 hrs.	\$2,187.50
Total Cost:		\$5,048.7 Round off \$5,049

Non-100% Consent Proposals

Proposed Revision

Establish this fee on an actual cost basis with an initial deposit. Establish the initial deposit to be \$11,408, the total fee to be based on the actual cost of processing each individual application.

Discussion

In 2002, this fee was revised to take into account the significant changes to the LAFCO annexation process made by the CKH Act of 2000. Previously, protest proceedings were conducted by the affected agency after LAFCO approval of the proposal. The CKH Act requires LAFCO to conduct the protest proceedings. The CKH Act has also increased the noticing requirements for proposals requiring public hearings. These new responsibilities and requirements along with additional required analysis considerably increase staff time spent on each application.

Application history indicates that LAFCO does not receive many proposals of this type. Since 2002, we have had only one proposal (in April 2008) under this category. These type of proposals are time consuming because they require public hearings, public noticing and protest proceeding. Depending on the size and complexity of the proposal, the staff time required will vary significantly. Therefore, staff is recommending charging actual costs with an initial deposit as opposed to a flat fee. The proposed fee structure for a non-100% consent change of organization proposal is based on the following increased staffing costs:

Non-100% Consent Proposals

Staff Involved in Processing	Time Spent	Staff Costs
LAFCO Executive Officer	18 hrs.	\$3,276
LAFCO Analyst	6 hrs.	\$984
LAFCO Clerk	38.8 hrs.	\$4,112.8
LAFCO Counsel	4 hrs.	\$848
LAFCO Surveyor	17.5 hrs.	\$2,187.5
Total Cost:		\$11,408 Deposit

Environmental Review Fees

Proposed Revision

Increase the LAFCO environmental review fee for:

- Categorical exemptions, from \$460 to \$607
- Initial Study / Negative Declaration (ND) from \$630 to \$820
- Environmental Impact Review (EIR) from \$1,130 to \$1,476 and
- LAFCO as Lead Agency for ND or EIR from \$2,500 deposit + consultant fees and additional expenses to \$3,280 deposit + consultant fees and additional expenses.

Discussion

When LAFCO is the Lead Agency for a proposal that would require a ND or an EIR, it is likely that after preliminary review, a consultant will be hired to prepare the environmental report. The proposed fee increase for the various levels of environmental analyses is based on the following time spent by the LAFCO Analyst.

Environmental Review Fees

Type of Environmental Review	Time Spent on Review	Proposed Fee
Categorical Exemption (LAFCO is Lead or Responsible Agency)	3.7 hrs	\$606.8 Round off \$607
Negative Declaration (LAFCO is NOT Lead Agency)	5 hrs	\$820
EIR (LAFCO is NOT Lead Agency)	9 hrs	\$1,476
LAFCO as Lead Agency (Neg. Dec. or EIR)	20 hrs deposit + consultant time	\$3,280 deposit + consultant fees + any additional staff time / expenses

Deposit Fees

Urban Service Area (USA), Sphere of Influence (SOI) and Out of Agency Contract for Service (OACS) Applications, District Formations, Dissolutions, Consolidations, City Incorporations, Dissolutions

Proposed Revision

Increase the initial deposit from \$9,968 to \$11,481 for USA or SOI proposals; the total fee to be based on the actual cost of processing each individual application.

Increase the initial deposit from \$8,151 to \$9,487 for OACS proposals; the total fee would be based on the actual cost of processing each individual application.

Increase the fee for mandatory pre-application meetings from \$970 to \$1,374. A mandatory pre-application meeting is required with LAFCO staff (preferably prior to seeking signatures on petition) for applications involving formation of districts or city incorporations.

Increase the initial deposit from \$9,968 to \$11,481 for incorporations or special district formation proposals; the total fee based on actual cost of processing each individual application.

Discussion

Currently, LAFCO charges an upfront deposit of \$9,968 for proposals involving USA amendments, SOI amendments, and proposals involving district formations, dissolutions, consolidations and city incorporations and dissolutions and an upfront deposit of \$8,151 for OACS applications.

USA and OACS proposals can come to LAFCO only by City or District resolution. SOI proposals can come to LAFCO either from the agency or from any individual. When LAFCO is the lead agency for the purposes of environmental review, the environmental review fee for LAFCO as lead agency will apply in addition to the initial deposit.

In addition, staff is recommending that when LAFCO is the lead agency for an application, the environmental review fee deposit should also be required upfront if it is determined that an EIR or a Negative Declaration would be required. If proposals require other consultant work for preparing necessary reports such as fiscal impact analyses, service reviews or plan for services etc., such costs would be billed to the applicant. Other costs such as noticing or printing or copying costs would also be billed to the applicant. Several of these types of applications require extensive staff assistance prior to receipt of an application. Staff time spent on such review and meetings will be counted against the deposit.

The proposed fee increase for USA / SOI proposals is based on average time spent on such applications taking into account increased staffing costs:

USA/SOI Proposals and Proposals involving District Formations, Dissolutions, Consolidations and City Incorporations and Dissolutions

Staff Involved in Processing	Time Spent	Staff Costs
LAFCO Executive Officer	23 hrs.	\$4,186
LAFCO Analyst	18hrs.	\$2,952
LAFCO Clerk	22 hrs.	\$2,332
LAFCO Counsel	3 hrs.	\$636
LAFCO Surveyor	11 hrs.	\$1,375
Total Cost:		\$11,481

The proposed fee increase for an OACS proposal is based on average time spent on such applications taking into account increased staffing costs:

OACS Proposals

Staff Involved in Processing	Time Spent	Staff Costs
LAFCO Executive Officer	23 hrs.	\$4,186
LAFCO Analyst	13 hrs.	\$2,232
LAFCO Clerk	18 hrs.	\$1,908
LAFCO Counsel	3 hrs.	\$636
LAFCO Surveyor	5 hrs.	\$625
Total Cost:		\$9,487

If actual costs are less than the deposit, LAFCO will refund the difference and if the costs exceed this amount, an additional invoice will be sent to the applicant.

Reconsideration Requests

Proposed Revision

Increase the initial deposit from \$1,985 to \$2,350; the total fee to be based on the actual cost of processing application.

Discussion

The current fee for reconsideration requests is a deposit of \$1,985 plus any additional expenses. Government Code Section 56383 allows charging a cost recovery fee for reconsideration requests. The proposed fee increase is based on increased staff and application processing costs.

Research Fee

Proposed Revision

Staff is proposing that an hourly fee of \$173 be charged for staff research.

Discussion

This fee is for staff time spent in consultation or on research of a specific issue. Currently, the fee is \$146. The proposed fee increase is based on increase in average costs for LAFCO staff analytical work.

Island Annexation Fees

Recommendation

Continue to provide a LAFCO fee waiver for island annexations until January 1, 2014.

Discussion

In February 2001, the Commission authorized a LAFCO fee waiver for cities processing entire island annexations. This waiver was to be reviewed annually by the Commission based on the LAFCO budget. The state law allowing streamlined annexations without protest or an election has been extended to January 1, 2014. Over the years (fiscal year 2006, 2007 and the current year) LAFCO has waived over \$60,000 in island annexation fees.

Effective Date for the New Fee Schedule

Staff is proposing that the revised fee schedule become effective June 5, 2008.

Revenue Comparison

The following table compares the revenues generated under the current fee system with the potential revenues that would be realized if the proposed fee schedule were in place. This estimation is based on average level of application activity over the last five years (not including the current year activity). As seen in the table below there is almost a 15% increase in the revenues under the new proposed fee schedule.

However, it should be noted that application activity for the current year is lower than the 5-year average and therefore revenues for the current year are lower than those indicated in the following table.

Potential Revenue Generation

Type of Applications	Average # of Applications in last 5 FYs	Current Fees	Average Revenue (estimated)	Proposed Fees	Potential Revenue (estimated)
City Conducted	22	\$959	\$21,098	\$1,103	\$22,057
100% Consent +Cat Exempt.	4	\$5,172	\$20,688	\$5,655	\$25,860
Non-100% Consent	0	\$10,098	\$0.00	\$11,408	\$0.00
USA/ SOI	3	\$9,968	\$29,904	\$11,481	\$34,443
Out of Agency Contracts	1	\$8,151	\$8,151	\$9,487	\$9,487
Total	30		\$79,841		\$91,847
Island Annexations	64 (total in Fiscal Years 2006, 2007 and current year)	\$61,376 in Fees Waived			

Next Steps

After Commission adoption of the resolution establishing the Revised Fee Schedule:

- The Revised LAFCO Fee Schedule will be mailed to the County, cities and special districts in the county.
- The revised LAFCO Fee schedule will be posted on the LAFCO web site.

Attachments

Attachment A: Proposed LAFCO Fee Schedule

Attachment B: Resolution adopting revised fee schedule

Attachment A: PROPOSED LAFCO FEE SCHEDULE

	Type of Proposal	Fee
1.	City Conducted Annexations *	\$1,103 + SBE Fees
2.	LAFCO Change of Organization	
	100% Consent Proposals**	\$5,049 +ER Fees + SBE Fees
	Non-100% Consent Proposals***	\$11,408 deposit + SBE Fees
	Environmental Review (ER)	
	Categorical Exemption (LAFCO is Lead or NOT)	\$607
	Negative Declaration (LAFCO is NOT Lead Agency)	\$820
	EIR (LAFCO is NOT Lead Agency)	\$1,476
	LAFCO as Lead Agency (Neg. Dec. or EIR)	\$3,280 deposit + Actual Costs
3.	Deposit Fees ***	
	Urban Service Area (USA)/Sphere of Influence (SOI) Amendments	\$11,481 deposit + Actual Costs
	Out of Agency Contract for Services (OACS) Requests	\$9,487 deposit+ Actual Costs
	Pre-Application Meeting for district formations /incorporations (Mandatory, preferably prior to seeking signatures on petition)	\$1,374+ Actual Costs
	District Formation, Consolidation, Dissolution and City Incorporation and Dissolution	\$11,481 deposit + SBE fees + Actual Costs
	Reconsideration Requests	\$2,350 deposit + Actual Costs
4.	Research Fees	\$173 / hour

All fees / deposits are payable at time the application is filed.

* Please make one check (\$1,103) payable to LAFCO and one check payable to State Board of Equalization (SBE); see the SBE schedule of processing fees (based on acreage) included in the application packet to determine the SBE fee.

** Cost of individual change of organization applications varies depending on type of proposal and the type of environmental review needed. For example, a 100% consent annexation that qualifies for a categorical exemption is \$5,655. Please see the SBE schedule of fees to determine the SBE fee.

*** Deposit fees are initial payments towards actual costs of processing applications. **Staff time spent on pre-application assistance will be counted towards the deposit.** Actual costs include staff time, any consultant fees and miscellaneous costs such as noticing, copying etc. If actual costs are less than deposit, LAFCO will refund the difference to the applicant. If processing costs begin to exceed the deposit, additional fees are required. LAFCO approval will be conditional upon final payment within 35 days of LAFCO hearing date. If LAFCO is the Lead Agency and it is determined that the proposal requires a Negative Declaration or an EIR, an additional deposit of \$3,280 is required. Payment of appropriate SBE fees is required where applicable; please see SBE fee schedule.

RESOLUTION NO. _____

**RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION
OF SANTA CLARA COUNTY INCREASING FEES**

RESOLVED by the Local Agency Formation Commission of Santa Clara County, California, that

WHEREAS, Government Code section 56383 authorizes the Commission to establish a schedule of fees for the cost of proceedings; and

WHEREAS, the schedule of fees shall not exceed the reasonable cost of providing the service for which the fee is charged;

WHEREAS, in compliance with Government Code section 66016, the Executive Officer set June 4, 2008 as the hearing date on the revised fee schedule attached hereto as Attachment A and gave the required notice of hearing; and,

WHEREAS, this Commission called the proposal for public hearing, considered the public testimony and considered the revised fee schedule and the report of the Executive Officer;

NOW THEREFORE, the Local Agency Formation Commission of Santa Clara County does hereby resolve, determine, and order as follows:

SECTION 1:

The proposed revision to the Local Agency Formation Commission fee schedule attached hereto as Attachment A and incorporated herein by reference is hereby approved and is effective June 5, 2008.

PASSED AND ADOPTED by Local Agency Formation Commission of Santa Clara County, State of California, on June 4, 2008 by the following vote:

AYES:

NOES:

ABSENT:

PETE CONSTANT, Chairperson
Local Agency Formation Commission

ATTEST:

APPROVED AS TO FORM AND LEGALITY:

EMMANUEL ABELLO, LAFCO Clerk

KATHY KRETCHMER, LAFCO Counsel

LAFCO Meeting Date: June 4, 2008

TO: LAFCO

FROM: Neelima Palacherla, Executive Officer

SUBJECT: Amendment to Agreement between LAFCO and County of Santa Clara for Legal Services in Fiscal year 2009.

Agenda item# 11

STAFF RECOMMENDATION

Approve an amendment to the Agreement between the County of Santa Clara and the Local Agency Formation Commission of Santa Clara County for Legal Services.

DISCUSSION

The current agreement between LAFCO and the County Counsel's Office expires June 30, 2008. The proposed amendment (Attachment A) will extend the agreement for one additional year up to June 30, 2009 and increase the hourly rate to the County Counsel's standard Intra-County hourly rate of \$212.00. In addition, it modifies the existing conflict of interest language in the agreement as it relates to the San Martin incorporation proposal.

**FIRST AMENDMENT TO AGREEMENT BETWEEN
THE COUNTY OF SANTA CLARA AND
LOCAL AGENCY FORMATION COMMISSION OF SANTA CLARA COUNTY
FOR LEGAL SERVICES**

WHEREAS, the County of Santa Clara ("County") and the Local Agency Formation Commission of Santa Clara County ("LAFCO") entered into an Agreement ("Agreement") effective July 1, 2007, whereunder County, through the Office of the County Counsel, provides legal services to LAFCO; and

WHEREAS, the Agreement is due to terminate on June 30, 2008; and

WHEREAS, County and LAFCO desire to amend the Agreement to extend the term for an additional year, increase the hourly compensation, and modify the conflict of interest language,

NOW THEREFORE, the parties agree to amend the Agreement as follows:

1. Section 2 regarding Term of Agreement is hereby modified to extend the term through June 30, 2009 unless terminated earlier in accordance with Section 4.

2. Section 3A regarding Compensation is hereby modified to increase the allowed compensation for attorneys and paralegals as follows:

A. Pursuant to the Memorandum of Understanding Between the Local Agency Formation Commission of Santa Clara County and the County of Santa Clara dated June 5, 2001, COUNTY will be compensated for services provided under this Agreement at the County Counsel's intra-county hourly rate established annually and for reimbursable expenses and costs incurred. COUNTY's intra-county hourly rates are revised annually. No less than thirty days prior to the beginning of the fiscal year to which any new fee schedule will apply, COUNTY will provide LAFCO with a new rate schedule. The intra-county rate for the Fiscal Year ending June, 2009 is \$212.00 per hour for attorneys and \$83.00 per hour for paralegals.

3. Section 6 regarding Conflict of Interest is hereby modified in full to read as follows:

County acknowledges that it has both present and potential interests which do or may conflict with the performance of services. The present conflict is by virtue of the petition to LAFCO for the incorporation of San Martin. Effective April 7, 2008, the Office of the County Counsel has withdrawn from representing LAFCO on the incorporation proposal unless or until such time as the County and the

proponents execute a revenue neutrality agreement. The County has and will continue to have an ethical wall within the office to ensure the confidentiality of LAFCO information and attorney-client communications.

LAFCO also acknowledges that it is aware of potential conflicts of interest by virtue of the County's representation of certain fire and school districts, certain sanitation and sanitary districts, certain other special districts, some cities on litigation matters and when their in-house counsel has a conflict of interest, and that LAFCO waives these potential conflicts. In the event an actual conflict of interest does arise, LAFCO will be notified of the conflict and requested to specifically waive the actual conflict. COUNTY will take appropriate steps to create ethical walls and ensure the confidentiality of LAFCO information and attorney-client communications. If LAFCO declines to waive such actual conflict, the COUNTY will be unable to represent LAFCO with respect to that matter.

Except as provided herein, all other provisions of the Agreement shall remain in full force and effect.

LOCAL AGENCY FORMATION
COMMISSION OF SANTA CLARA
COUNTY

COUNTY OF SANTA CLARA

Name:
Title:
Date:

ANN MILLER RAVEL
County Counsel
Date:

ATTEST:

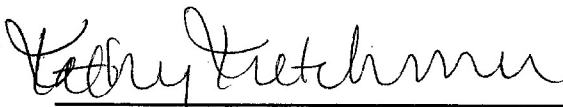
OFFICE OF THE COUNTY EXECUTIVE

LAFCO CLERK

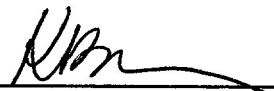
GARY A. GRAVES
Assistant County Executive

APPROVED AS TO FORM
AND LEGALITY

APPROVED AS TO FORM
AND LEGALITY



KATHY L. KRETCHMER 5-27-08
Deputy County Counsel



KRISTIN W. BAKER
Deputy County Counsel

LAFCO Meeting Date: June 4, 2008

TO: LAFCO

FROM: Neelima Palacherla, Executive Officer

SUBJECT: Amendment to Agreement between LAFCO and County of Santa Clara for Legal Services in Fiscal year 2009.

Agenda item# 11

STAFF RECOMMENDATION

Approve an amendment to the Agreement between the County of Santa Clara and the Local Agency Formation Commission of Santa Clara County for Legal Services.

DISCUSSION

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LAFCO also acknowledges that it is aware of potential conflicts of interest by virtue of the County's representation of certain fire and school districts, certain sanitation and sanitary districts, certain other special districts, some cities on litigation matters and when their in-house counsel has a conflict of interest, and that LAFCO waives these potential conflicts. In the event an actual conflict of interest does arise, LAFCO will be notified of the conflict and requested to specifically waive the actual conflict. COUNTY will take appropriate steps to create ethical walls and ensure the confidentiality of LAFCO information and attorney-client communications. If LAFCO declines to waive such actual conflict, the COUNTY will be unable to represent LAFCO with respect to that matter.

Except as provided herein, all other provisions of the Agreement shall remain in full force and effect.

LOCAL AGENCY FORMATION
COMMISSION OF SANTA CLARA
COUNTY

COUNTY OF SANTA CLARA

Name:
Title:
Date:

ANN MILLER RAVEL
County Counsel
Date:

ATTEST:

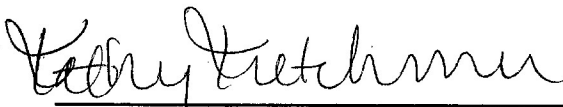
OFFICE OF THE COUNTY EXECUTIVE

LAFCO CLERK

GARY A. GRAVES
Assistant County Executive

APPROVED AS TO FORM
AND LEGALITY

APPROVED AS TO FORM
AND LEGALITY



KATHY L. KRETCHMER 5-27-08
Deputy County Counsel



KRISTIN W. BAKER
Deputy County Counsel

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Electric Department
Silicon Valley Power

April 28, 2008

Neelima Palacherla
Executive Officer
LAFCo of Santa Clara County
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

ITEM No. 14.1

Subject: Notification of Intent to Extend Aerial and Underground Dark Fiber
Lines Outside --City of Santa Clara Boundaries

Dear Ms. Palacherla,

This letter is to confirm whether an application requesting permission for the City of Santa Clara to extend its dark fiber lease services (i.e. infrastructure build and fiber lease) 5,000 feet into the City of Sunnyvale is necessary, given the 1993 legislation requiring LAFCo approval for extensions of services.

As background, the City of Santa Clara, through its electric utility, Silicon Valley Power ("SVP"), offers dark fiber leasing services to business customers and telecom carriers through the SVP Fiber Enterprise ("SVP Fiber Enterprise"). The SVP Fiber Enterprise is a 45-mile, 288-dark fiber network that loops throughout the City of Santa Clara connecting all utility substations, providing gateways into all major data centers and co-location facilities, and running near most commercial and residential locations in Santa Clara. SVP also provides wholesale leased dark fiber services to several telecom carriers, most of whom retail network services to the City's commercial and industrial business enterprises.

In this case, an SVP dark fiber lease customer has several offices in the City of Santa Clara and uses SVP fiber to connect its campus facilities. This business customer plans to move a network hub to its Sunnyvale location in September 2008 and has requested that SVP provide dark fiber services to the Sunnyvale location. Therefore, the SVP Fiber Enterprise seeks to build a 5,000 foot dark fiber route into the City of Sunnyvale to connect into the fiber business customer's campus and provide dark



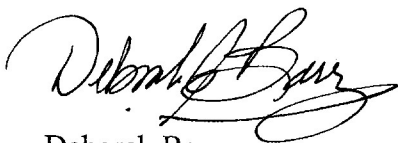
1500 Warburton Avenue
Santa Clara, CA 95050
(408) 261-5292
FAX (408) 249-0217
www.siliconvalleypower.com

fiber services. The site is located on the northwest side of Santa Clara (please refer to attached photo of site). As a result of a prior fiber build near Lawrence Station Road in 2002, the City of Santa Clara has a 10-year Encroachment Agreement with the City of Sunnyvale, effective January 31, 2002. This Encroachment Agreement defines the manner in which SVP may build and operate its dark fiber services within Sunnyvale rights-of-way and city limits.

The Santa Clara City Attorney's Office extensively researched the issue of whether the City of Santa Clara may lawfully install fiber optic lines in the streets of adjacent jurisdictions for purpose of leasing access to the fiber to businesses in those jurisdictions. The City Attorney's Office concluded that the California Public Utilities Code provides authority for such an enterprise. However, the City wanted to contact the Santa Clara County LAFCo to verify that an application to request permission to provide these services is not necessary, before any services are extended to customers outside City of Santa Clara boundaries.

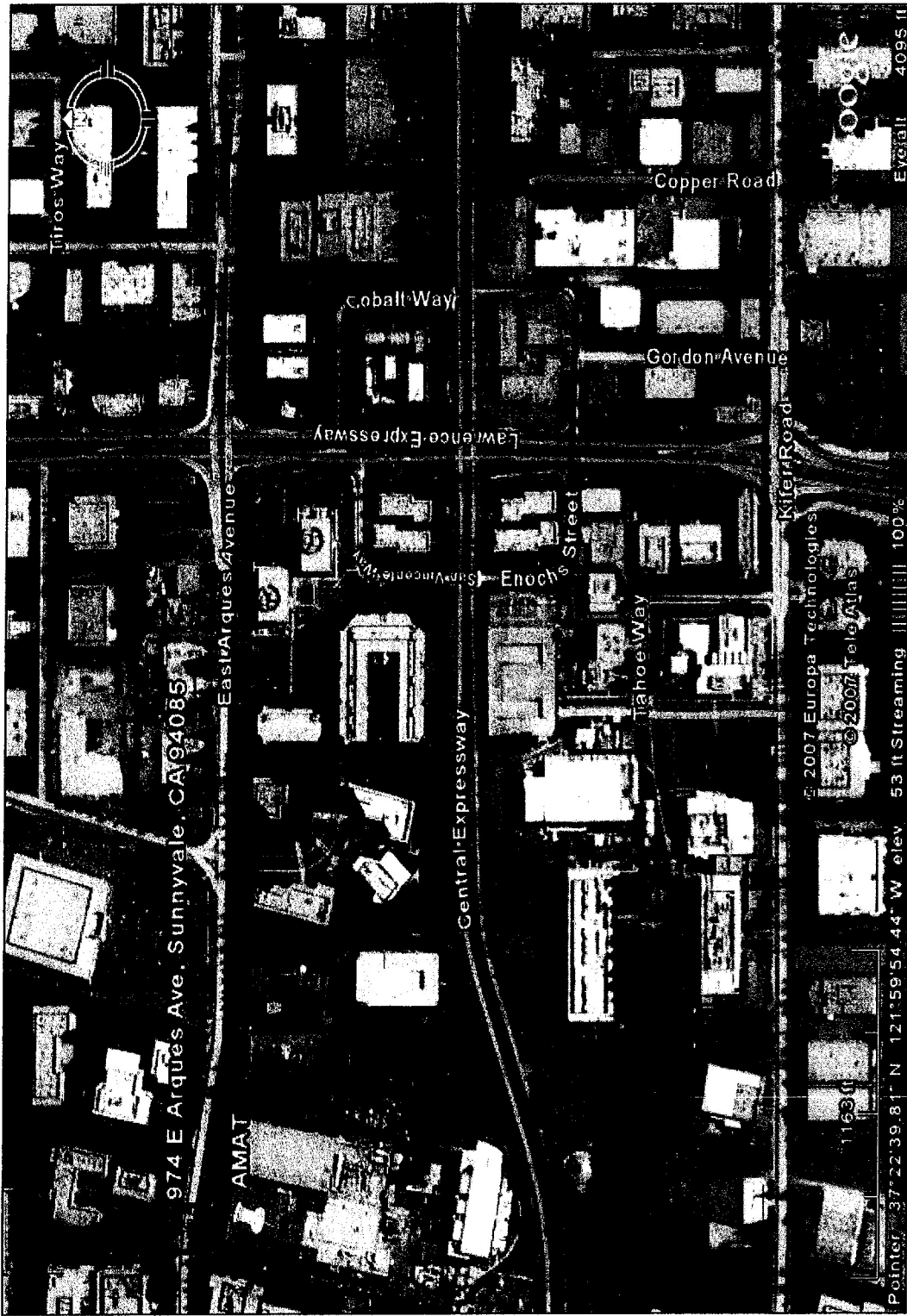
We would appreciate your response by June 2008. If you have any questions, please contact me directly at (408) 261-5486. Thank you for your assistance.

Sincerely,



Deborah Barry
SVP Fiber Enterprise
Silicon Valley Power
City of Santa Clara
(408) 261-5486

Encls.



SVP/City of Santa Clara Dark Fiber

- Existing Underground Route: Blue (Santa Clara)
- Aerial Fiber Route: Red (Santa Clara)
- Proposed Underground Route to Customer: Green (Sunnyvale)

June, 2008

Courts Rule on a Record Number of LAFCo Cases

Seven decisions handed down favor LAFCo

Perhaps you've noticed that the last six months have seen an unusually large number of decisions in Superior Courts and the Court of Appeals which affect LAFCos. Several of these include published decisions which positively affect LAFCo. By

our count, there have been three published decisions from the Court of Appeals and four recent Superior Court Decisions in Yuba, Sierra, Ventura, and Monterey counties. These decisions affect everything from annexation challenges to latent powers, incorporation EIRs, and who may serve as a LAFCo executive officer.

The articles in this issue of *The Sphere* highlight the decisions and some of the implications for LAFCos. Copies of the complete court decisions are available on the CALAFCO website (www.calafco.org) on the Resources page. Click on "court decisions."

statement of reasons for annexation—because the record was replete with references to widespread notice of annexation proceedings and reasons for annexation. The Commission did not violate §57052 and 56707 when it delegated a task to the elections department because department is a government division competent to perform the task. Commission did not err in counting the total number of registered voters at the end of the protest period rather than at commencement of annexation procedures where it had a reasonable explanation for doing so, and the matter was within commission's discretion. The commission properly excluded protests that did not include protesters' residence address under §57051, and trial court's determination that the requirement was inconsistent with the Act because some residents' residential address differed from their mailing address was in error.

See separate detailed article by Michael Colantuono on page 6: "Court Upholds Open Space District Annexation"

Citizens for Responsible Open Space v. San Mateo County LAFCo (Midpeninsula Regional Open Space District) – filed 31 January 2008, First District, Div. Three. Cite as **2008 SOS 744**

Special District Can Not Provide a "New or Different Service" Without LAFCo's Approval (Third District Court of Appeals)

A special district may not provide a "new or different service" without the approval of the county's local agency formation commission. Retail electric service, sought to be provided by an irrigation district that was currently providing wholesale electric service only, was a "new or different service" that could not be provided without LAFCo approval.

South San Joaquin Irrigation District v. Superior Court (San Joaquin Local Agency Formation Commission) - filed April 22, 2008, Third District. Cite as **2008 SOS 2324**

LAFCo
Champion Dead
at 60



MIKE GOTCH
Read more on page 5

COURT OF APPEALS DECISIONS

LAFCo's Approval of Annexation of Territory to Open Space District Upheld Notwithstanding Incomplete Notice of Protest Hearing and Protest Counting Methods (First District Court of Appeals)

This ruling from the First District Court of Appeals stated that where a district annexed property pursuant to Cortese-Knox-Hertzberg, the trial court's decision that San Mateo LAFCo substantially complied with Government Code §57026(e) was not in error—even though commission failed to comply with statute's requirements that public notice of protest hearing set forth a

The Sphere

CALAFCO Journal

June, 2008

The Sphere is a quarterly publication of the California Association of Local Agency Formation Commissions.

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Don Lockhart, Deputy Exec. Officer
Clark Alsop, Legal Counsel

To submit articles, event announcements, comments or other materials noteworthy to LAFCo commissioners and staff, please contact the Editor at 916-442-6536 or wchiat@calafco.org.

The contents of this newsletter do not necessarily represent the views of CALAFCO, its members, or their professional or official affiliations.

801 12th Street, Suite 611
Sacramento, CA 95814
916-442-6536

www.calafco.org

CALIFORNIA ASSOCIATION OF
LOCAL AGENCY FORMATION
COMMISSIONS **CALAFCO**

FROM THE EXECUTIVE DIRECTOR

CALAFCO Legislation Makes Progress

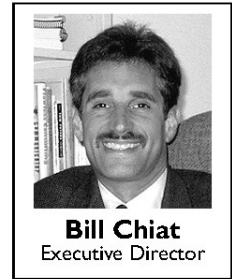
Despite the chaos in the Legislature over the budget, important legislation for LAFCos is making progress in the process. CALAFCO has been successful in advancing a number of bills and in keeping several pieces of legislation off the table. Advocating for LAFCo interests in state legislation is a critical cornerstone of CALAFCO member services.

CALAFCO is sponsoring four bills this year and supporting an additional three. Here is a brief overview of the legislation and its current status. Specific language and greater detail is available at: www.calafco.org.

Financial Disclosure to LAFCo – AB 1998 (Silva)

This *CALAFCO-sponsored* bill follows up on our success last year with AB 745 (Silva) which was signed into law in 2007 and requires that contributions and expenditures for political purposes on proposals before LAFCo be reported subject to the same requirements that the Political Reform Act provides for local initiative measures. The bill also clarified current law that allows a LAFCo to adopt local disclosure policies and procedures that are more stringent than the statewide requirements for petitions.

SB 1998 will add responsibility for financial disclosure requirements to the Political Reform Act of 1974 and move responsibility to administer the law from LAFCo to the Fair Political Practices Commission. Because this bill changes the Political Reform Act, it requires a 2/3 approval in both houses. The bill passed the Assembly unanimously on the consent calendar. It has been assigned to the Senate Elections, Reapportionment & Constitutional Amendments Committee. As of print date a committee hearing had not been scheduled.



Bill Chiat
Executive Director

Special District Latent

Power Process – AB 2484 (Caballero with Hollingsworth and Kehoe)

This *CALAFCO-sponsored* bill clarifies both the procedures, and that only the affected special district may initiate, by resolution, a proposal to increase, modify, decrease or divest itself of specified services or functions within its district service area. The bill defines such a proposal as a “change of organization” and requires LAFCo to ensure that proposed actions have a plan for how the affected services or functions will be funded in order to prevent the authorization of unfunded or under funded services. It also provides clear protest provisions to ensure that affected landowners and/or voters may participate in the process. AB 2484 has passed the Assembly and is scheduled for a hearing at the Senate Local Government Committee on 4 June.

Cortese-Knox-Hertzberg Omnibus Bill – AB 3047

This bill is authored by the Assembly Local Government Committee and *sponsored by CALAFCO*. It is the Association’s annual bill which makes non-substantive, technical changes to CKH. Typically these are cross reference errors, incorrect terms, and inconsistencies in the law. This year the bill contains five changes that range from clarification on number of days, to the elimination of requirements that resulted in duplicate mailings to voters and landowners. AB 3047 passed the Assembly and is scheduled for hearing at Senate Local Government Committee on 4 June.

continued on page 9

FROM THE BOARD CHAIR

CALAFCO's Focus on Member Services

By Peter Herzog, CALAFCO Board Chair

One of the priorities of CALAFCO has been to provide educational forums and professional development opportunities for commissioners, LAFCo staff, associate members and stakeholders. In 2007, the CALAFCO Board revisited its strategic plan and emphasized its continuing commitment to enhancing member services. One of the more popular member services has been our CALAFCO University classes.

By the time this issue of "The Sphere" reaches you, the latest class – *Delta Decisions and Drought: The Future of Water Supply in California* – will be over. When I wrote this article, the class was full and had a waiting list of people wanting to attend. The topic of the class – the various forces that could significantly affect the water supply throughout California – is timely and important given the State's deficit, recent court decisions, and the long, hot summer ahead. If you weren't able to attend *Delta Decisions and Drought*, don't worry. Course manuals and materials are now available on the CALAFCO Members' Only web page.

There are two more equally important CALAFCO University classes scheduled: "*Agriculture and Open Space Mitigation Policy, Practices and Definitions*" (Friday, July 11th in Sacramento) and "*Assessing Wastewater Infrastructure and Capacities*" (Friday, October 24th in Los Angeles). Agendas and registration for all CALAFCO University classes are posted on the CALAFCO website (www.calafco.org). If you want more information, want to volunteer as a "professor" or want to suggest future courses,

please contact CALAFCO Deputy Executive Officer **Don Lockhart** (Sacramento LAFCo). And thanks to Don for stepping up to organize these classes.



PETER HERZOG
CALAFCO Board Chair

The CALAFCO University courses in 2008 are the latest in a series of classes suggested by LAFCos and designed to enhance our member services. Topics of past courses have included incorporations, homeowners associations and public agencies, CEQA for LAFCos and water availability analysis for LAFCos. As with the most recent course, manuals and materials from past classes are available on the CALAFCO Members' Only web page. Finally a special thanks to **Santa Clara LAFCo** and all the program participants for a very successful and well-received Staff Workshop. The bar keeps getting raised!

As always, I welcome your ideas, thoughts and comments regarding CALAFCO. We are here to serve and make this organization a valuable resource for you. Let me know how we're doing!



BOARD OF DIRECTORS

2008 CALAFCO ACHIEVEMENT AWARDS

The CALAFCO Achievement Awards provide statewide recognition to individuals, agencies, and organizations that model and contribute to the ideals of LAFCo.

The 2008 Awards are now open for nominations. Categories include:

- ◆ Outstanding CALAFCO Member
- ◆ Distinguished Service Award
- ◆ Most Effective Commission
- ◆ Outstanding Commissioner
- ◆ Outstanding LAFCo Professional
- ◆ Outstanding LAFCo Clerk
- ◆ Project of the Year
- ◆ Government Leadership Award
- ◆ Legislator of the Year

Deadline for nominations is **Friday, 15 August 2008**. Awards must be received at Santa Cruz LAFCo by the deadline to qualify.

Awards will be presented at the beautiful black tie optional Awards Gala during the annual conference at Universal City on Thursday, 4 September 2008.

Awards information and nomination forms are available on the CALAFCO website (www.calafco.org).

NOMINATIONS OPEN FOR BOARD OF DIRECTORS

CALAFCO Board members serve two-year terms. Members must be a commissioner (regular or alternate) of a member LAFCo. Candidates are nominated by their LAFCo.

For 2008 there are nine seats open for election:

- ◆ Three county members*
- ◆ Two city members
- ◆ Two special district members
- ◆ Two public members

*At least one seat is expected to be an open seat

Nomination packets and complete details are available on the CALAFCO website (www.calafco.org).

Nominations must be received at the CALAFCO office by **Friday, 8 August 2008** to be eligible. Elections are held at the annual Business Meeting on Thursday, 4 September 2008.

TRACKS Around the State



VENTURA

Ventura
LAFCo has
hired **Kai
Luoma** to
serve as
the new

Analyst. Prior to joining LAFCo, Kai worked as a Senior Planner for the City of Santa Clarita. He was responsible for reviewing development projects in the unincorporated areas surrounding the City and coordinated the City's annexation applications with the Los Angeles LAFCo. In addition, he worked on a large regional planning project that encompassed the entire Santa Clarita Valley.

Kai earned his Bachelors degree in geography from California State University, Fresno, and is currently working toward his Masters degree in public administration from California State University, Dominguez Hills. Geographically speaking, Kai has come full circle: he was born in the City of Ventura and lived here for 13 years until his family relocated to Northern California. His fellow staff and the Commission are pleased to reap the benefits of his return "home!"

Submitted by Kim Uhlich, Executive Officer

GOLD ASSOCIATE URS

URS welcomes the Municipal Business Group (MBG) to its Santa Ana office in southern California. MBG, an experienced team of professionals specializing in a wide-range of management consulting services, assists municipal agencies seeking to improve business and management performance. MBG can help prepare for the Municipal Service Reviews (MSR), as well as provide leadership and program structure for implementing recommendations following these reviews.

For more information, contact Joe Tait at 714-973-4027 or joe_tait@urscorp.com.

VISIT www.CALAFCO.org

Electronic versions of many resources and publications are available on the CALAFCO website. Updated regularly.

HUMBOLDT

LAFCo Mourns Loss of Commission Chair and Humboldt County Supervisor

Roger Rodoni: Aug. 13, 1940 to April 24, 2008

Roger Rodoni, a three term Humboldt County Supervisor, was elected as Humboldt LAFCo Chairman in 2008. He had served on the Commission for several years prior to election as Chairman and had a strong interest in, and positive perspective on, LAFCo matters. Roger was campaigning for a fourth term on the Board of Supervisors. He was a member of Fortuna Sunrise Rotary, Humboldt-Del Norte Cattlemen's Association, California Cattlemen's Association, The Buckeye Conservancy, Farm Bureau, Grange, Fortuna Chamber of Commerce and Native Sons of the Golden West.



Humboldt Supervisor
and LAFCo Chair
Roger Rodoni

Roger Rodoni was many things to many people: teacher, philosopher, confidant, loving husband, true friend, father, grandfather and a man who loved his dogs.

Roger was born in Scotia, California to Jim and Eva Rodoni and, other than his years at Cal Poly, San Luis

Obispo, spent his entire life in Humboldt County. Proud of his long generational ties, he was a Humboldt County historian and a third-generation Native Son with an extensive collection of local historical documents and photographs. Roger loved Humboldt County.

Submitted by George Williamson, Executive Officer

QUOTES ON LIFE

"I get up every morning determined to both change the world and to have one hell of a good time. Sometimes, this makes planning the day difficult."

~ E. B. White (1899-1985)
American writer

Former LAFCo Executive Officer, Assembly Member and CALAFCO Executive Director Dies at 60

On May 18, 2008, Former San Diego LAFCo Executive Officer, San Diego City Councilman, and State Assemblyman **Mike Gotch**, died at Scripps Memorial Hospital in San Diego. His wife, Janet, said he had been battling stage 4 melanoma for about a year. Mike Gotch had a deep appreciation and love for LAFCo, politics, and local government.

Mike Gotch began a career in government as an intern with the Chief Administrative Office and the Department of Public Works in San Diego County in 1973. At the age of 27 in June 1974, Mike was appointed as a staff analyst to the San Diego LAFCo. He was appointed as Assistant Executive Officer in 1975 and was selected by the Commission to be its Executive Officer in 1976. Mike served in that capacity until his election to the San Diego City Council in 1979. In 1981, special legislation was enacted requiring that the City of San Diego obtain a permanent seat on the San Diego LAFCo. Curiously, then-Councilman Mike Gotch was not a supporter of the special legislation, but became the first City of San Diego representative on the San Diego LAFCo. While a member of the San Diego LAFCo, he was also elected to the CALAFCO Executive Board. After serving eight years on the City Council and several terms as Deputy Mayor, he decided not to run for another term at city hall. In 1987, he left politics, resigned his city member position on LAFCo, and re-entered the private sector as Vice President of Torrey Enterprises, Inc. In 1988, Mike Gotch re-emerged as the Alternate Public Member of the San Diego LAFCo.

In 1990, Mike once again left the San Diego LAFCo in his quest to be elected to the State Assembly. Mike Gotch was elected to the State Assembly in 1990 and represented San Diego from 1990 to 1994. He served as chair of the Local Government Committee and vice-chair of the Natural Resources Committee. During his time as an Assembly member, Gotch also served as a member of committees on Consumer Protection, Health, Ways and Means, and Public Safety. He had also served on several boards and commissions including the California Coastal Commission from 1980-1988, the San Diego Stadium Board of Governors from 1988-1990. While serving as Chairman of the Assembly Local Government Committee, Mike Gotch authored a number of bills, most notably AB 1335, often referred to as the



Mike Gotch

“Gotch Bill.” The Gotch Bill provided LAFCos with the power to initiate certain types of jurisdictional changes and empowered commissions to review the extension of new or different services outside jurisdictional boundaries.

After leaving the Assembly in 1994, Mike Gotch moved full time to Napa County and served on the Napa LAFCo as an Alternate Public Member. He also was elected to CALAFCO for a second tour of duty. In 1998, he decided to resign from the CALAFCO Executive Board to become its first paid Executive Director. Mike was instrumental in the re-engineering of CALAFCO during a turbulent time for the Association.

In 1999, Mike Gotch resigned from CALAFCO and became the Legislative Secretary for Governor Davis. He served until 2003 and was responsible for directing the Governor’s legislative program through the Senate and Assembly. After re-entering public life again, Mike split his time between his property in Napa County and his desert home in the Borrego Valley (San Diego County). Mike served as a Board member of the Borrego Springs Chamber of Commerce and the Anza Borrego Foundation and Institute. He was also a founding member of the Borrego Village Association.

Several months ago I informed one of Mike’s former San Diego LAFCo coworkers – Peter Detwiler, Senate Local Government Committee – about his battle with cancer. Peter sent him some encouraging words and commented to me that he was thinking why he had not heard from his dear friend (Mike Gotch) on the night of May 18th. After Mike passed away on May 18th, Peter commented to me that he was glad to have one last chance to reach out to Mike. Those whose lives have been changed as a result of knowing Mike Gotch will miss him beyond imagination, but we can all take comfort in knowing that his contributions will be ever lasting not only in the statutes of the State of California, but in the hearts and minds of those he touched.

Submitted by: Mike Ott, Executive Officer, San Diego LAFCo

1st District Court of Appeals

COURT UPHOLDS OPEN SPACE DISTRICT ANNEXATION

By Michael G. Colantuono

Citizens for Responsible Open Space v. San Mateo County LAFCo (Midpeninsula Regional Open Space District), 2008 WL 249775 (1st District Court of Appeal, January 31, 2008) is a recent appellate decision upholding the disputed annexation of coastal San Mateo County to the Midpeninsula Regional Open Space District (MPROSD). The case is good news for Local Agency Formation Commissions (LAFCos) because it indicates courts review annexation challenges practically, looking for serious errors which prejudice the rights of a challenger and not for technical perfection. The case will be helpful to other legislative decision makers, too, by requiring judicial deference to the actions of the elected branches of government.

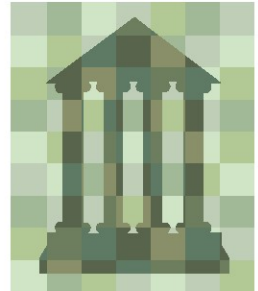
Under the Cortese-Knox-Hertzberg Local Government Reorganization Act under which LAFCos operate, an annexation is approved in two steps: first, LAFCo makes a discretionary, legislative decision whether to approve the annexation and on what conditions and then LAFCo gives notice of the proposed annexation to the registered voters of the affected territory or, if there are fewer than 12 voters, to the property owners of record. If more than half of the voters or property owners protest the annexation, it is defeated. If fewer than a quarter protest, it can be approved without an election. If between a quarter and a half of the voters or property owners protest, then an election is required. In this case, just over 23% of the annexation area's registered voters filed valid protests and LAFCo therefore approved it without an election. A grass-roots group filed suit.

The appellate court first found that the exclusion of a statement of reasons from the notice of the opportunity to protest the annexation did not prejudice anyone's rights both because it was plain that there was ample public discussion of the annexation and the reasons for it and because the notice mentioned the LAFCo resolution tentatively approving the annexation, which did include a statement of reasons. The court also concluded that alleged ambiguities in the map of the annexation area on the notice were not sufficient to confuse the electorate as to what land was involved. Also rejected was the challengers' claim that the LAFCo could not delegate to the County Elections Division responsibility to compare protest signatures with the voter roll. So long as LAFCo reviews the Elections Division's conclusions before adopting them, it fulfilled its obligation under the statute.

Another issue was the date on which the number of registered voters in the annexation area is determined to measure the number of protests required to defeat a proposal or to require an election. The challengers argued total voters should be determined when LAFCo accepts an annexation proposal for filing; San Mateo LAFCo had used the date of the protest hearing, reasoning that voters who registered after the application was filed could protest and thus should be included in the electorate against which the size of the protest is measured. The Court of Appeal found that LAFCo had not abused its discretion in deciding to use this later date. Although, technically, LAFCos remain free to determine on what date to measure the size of the electorate for protest purposes, the safest course will be to follow the lead of this case and to use the number registered on the protest hearing date.

Finally, the court concluded LAFCo had properly disqualified protests which listed a post office box rather than a residence address, concluding that the Cortese-Knox-Hertzberg Act, like the Elections Code, requires signatures to be accompanied by a residence address. This issue arose because the challengers circulated protest forms with only one line for the protestor's address, unlike LAFCo's protest form, which provided lines for both mailing and residence addresses, as do most elections forms.

Generally speaking, these lessons can be drawn from this case: Courts will not reverse LAFCo decisions unless a challenger proves an error occurred which "diversely and substantially affects the rights of any person" or that the decision was "not supported by substantial evidence in light of the whole record."



Courts do not look for technical perfection but for meaningful compliance with the requirements of the statute so that affected voters and property owners have a practical opportunity to be heard. Courts also defer to reasonable judgments by public agencies in construing ambiguous provisions of the statutes those agencies are charged to implement and allow agencies to delegate their responsibilities to other public agencies – like the County Elections Division – which have the expertise to assist them.

This is good news for public agencies of all kinds and should deter legal challenges which turn on picayune errors in complex agency actions.

Michael G. Colantuono and **Holly O. Whatley** of Colantuono & Levin, P.C. were retained by the Midpeninsula Regional Open Space District to draft an *amicus curiae* ("friend of the court") brief for use by CALAFCO and the California Special Districts Association (CSDA) in this case.

From the Cover

Courts Weigh in on LAFCo

Deliberative Process Privilege Prohibits Taking Depositions of LAFCo Commissioners (Third District Court of Appeals)

A disappointed applicant to a local agency formation commission may not take the depositions of the commissioners to learn what, if any, extra-record information the commissioners had when they denied the application because extra-record evidence is not admissible in an action or proceeding challenging a quasi-legislative administrative decision and because taking the commissioners' depositions would violate the deliberative process privilege.

San Joaquin Local Agency Formation Commission v. Superior Court (South San Joaquin Irrigation District) - filed April 22, 2008, Third District. Cite as **2008 SOS 2328**.

SUPERIOR COURT DECISIONS

No Incompatibility of Office Exists with a County Planning Director Also Serving as LAFCo Executive Officer (Sierra Superior Court)

The Court found there was no "conflict of interest" created in this case by virtue of the County Planning Director also serving as the Executive Officer of LAFCo. The Court pointed to Government Code §56380 and 56384 which specifically allow LAFCos to contract with public agencies for personnel. Therefore, the same person holding the position of Planning Director for the County and Executive Officer of LAFCo does not create "incompatible offices" for purposes of the actions taken in this case.

Sierra Valley Development Company, LLC and John K. Gullixson v. Board of Supervisors of Sierra County and Sierra County. Sierra County Superior Court Case Number 6728, filed 18 April 2008.

Independent Contractor May Serve as LAFCo Executive Officer (Yuba Superior Court)

In a question on whether a closed-door session could be held to conduct the evaluation on an independent contractor who had been appointed as the LAFCo executive officer, the Court ruled that the independent contractor can function as an officer of a LAFCo. The ruling stated that while there was incongruity in law and documents provided, "...that incongruity must be harmonized by giving controlling influence to the legislative provisions notwithstanding seemingly inconsistent provisions of the agreement. From that standpoint, the critical factual issue becomes whether (the independent contractor) was functioning as the LAFCo executive officer, notwithstanding the provisions of the agreement. The evidence provided at the trial (including minutes of LAFCo meetings) and the foregoing considerations, lead to the conclusion that he was and that, therefore, the evaluation of his performance was properly conducted in closed session."

Hoffman Ranch v. Local Agency Formation Commission of Yuba County. Yuba County Superior Court Case Number CVPT 06-0000487, filed 3 December 2007.

An Incorporation Application is Not a Project Under CEQA and an EIR Is Not Required (Monterey Superior Court)

Proponents for the incorporation of Carmel Valley filed a petition for incorporation. The LAFCo of Monterey County determined that the application was a project under CEQA and required an Environmental Impact Report. In a suit filed by the proponents, the court ruled that "LAFCo abused its discretion when it decided that incorporation of the Town of Carmel Valley was (1) a project and (2) that an EIR was required. There is no substantial

evidence in the whole record of any potential effect on the physical environment."

Carmel Valley Forum, Inc. v. Local Agency Formation Commission of Monterey County. Monterey County Superior Court Case Number M83394, filed 2 May 2008.



LAFCo's Determination to Process a Consolidation of a Municipal Water District and a Water Conservation District under C-K-H Act Provisions Upheld (Ventura Superior Court)

The Trial Court ruled that LAFCo has authority to consolidate a water conservation district with another water district because the "principal act," the Water Code, incorporated by reference the consolidation procedures set forth in statutes that the Legislature has reenacted. There is no "statutory gap" that prevents the completion of the consolidation because the provisions pertaining to County Water Districts, referred to in Water Code Section 76020, still apply. The notion of a "statutory gap" that would leave LAFCo with no procedure to complete a consolidation of districts is inconsistent with the Legislature's express statement of its intent.

San Bernardino Valley Water Conservation District v. Local Agency Formation Commission of the County of San Bernardino. Ventura County Superior Court Case Number 56-2007-00305563, filed 8 May 2008.

Copies of court decisions are available at www.calafco.org on the resources page. Please notify CALAFCO of any Superior Court decisions which may have a bearing on LAFCo.

From Page 2

Executive Director Reports on Legislation

Cortese-Knox-Hertzberg Changes – AB 1263 (Caballero)

This CALAFCO-sponsored bill makes several changes to CKH that did not qualify for the Omnibus Bill (AB 3047). There are four components to the bill: 1) removes private railroad companies from the definition of landowner, 2) clarifies that LAFCo can charge the full cost of processing to applicants on a schedule of fees and as service charges to a deposit; 3) allows LAFCos to process new islands created as a result of a county boundary change after 2000 under the islands annexation provision; and 4) a non-substantive clean up of LAFCo powers language in §56375.

This bill was a ‘gut and amend’ of a previous LAFCo bill from last year. It already passed the Assembly and is scheduled to be heard by Senate Local Government Committee on 4 June.

VLF Subventions for Incorporations and Annexations – SB 301 (Romero)

This CALAFCO-supported bill initially extended the sunset on VLF subventions for new incorporations and inhabited annexations from 2009 to 2014. Subsequent amendments have eliminated the sunsets for both incorporations and annexations and will make the subventions permanent. The bill passed the Senate and is scheduled at Assembly Local Government Committee on 4 June.

County Service Area Law Rewrite – SB 1458

Authored by the Senate Local Government Committee, this bill is a rewrite of the 1950s era CSA law. Among other things,

this bill brings CSA formation and activation of CSA latent powers into compliance with CKH and makes it clear that CSAs are subject to LAFCo law. It also requires LAFCo and the county to establish a list of existing powers for every CSA by 1 January 2009. This will ensure that an accurate accounting of all CSAs and their powers exists in California. CALAFCO was a participant in the working group that crafted the rewrite and supports this bill. SB 1458 has passed out of the Senate and is scheduled at the Assembly Local Government Committee on 4 June.

CSD Broadband Powers – SB 1191 (Alquist)

This bill adds broadband equipment and transmission to the list of Community Service District powers. This power was originally contemplated during the CSD rewrite two years ago but removed because of objections from SBC. The addition of broadband powers in CSDs was one of the recommendations of a Governor’s Task Force on Connectivity chaired by AT&T. CALAFCO supports this bill. It has passed the Senate and is scheduled for 4 June at Assembly Local Government Committee.

Those That Didn’t Make It

CALAFCO has also been working to ensure that legislation which ran counter to our legislative policies were not introduced or died in committee. In several cases CALAFCO helped find alternate solutions that did not require legislation. Among the bills that CALAFCO opposed or found alternate solutions were AB 2278 which would have granted fire protection districts the power to negotiate their own property tax exchange agreements; AB 2564 which would have circumvented the LAFCo process for the formation of certain utility

districts; and SB 1131 which would have created an expanded commission for Calaveras LAFCo. All three of these bills have died.

Still Out There

One bill critical to LAFCos future remains on the table and the future is uncertain. SB 375 (Steinberg) addresses greenhouse gas reduction through vehicle trip reductions. The legislation adds requirements to the Regional Transportation Plans (RTP) and ties future transportation funding to compliance with the plan. It creates a required “Sustainable Communities Strategy” (STS) within the RTP. The STS would guide future growth and development within a region, with a goal to maximize infill and minimize growth in agricultural or natural areas. This has the potential to conflict with C-K-H.



Numerous meetings have been held with the various local agency associations, the author’s staff and sponsor representatives (League of Conservation Voters). CALAFCO participated in these. We have been successful in getting agreement to amend the bill to require the STS to consider the LAFCo adopted boundaries and spheres of influence for local agencies, and to consider the Municipal Service Reviews in determining capacities of local agencies to provide services. This will help achieve some consistency between the STS and local LAFCo policies. It does not guarantee, however, that LAFCo policies and the RTP will be consistent. As a result, two different agencies would be considering and adopting growth strategies and/or policies for a region under separate state laws.

This despite the fact that many of the goals of both laws – orderly growth, prevention of sprawl, preservation of agricultural lands and open space – are similar.

The proposed amendments have yet to be put in print as of this writing. There remains a high level of pressure – within the legislature, executive branch, and environmental community – to enact measures now to begin moving the state towards achievement of AB 32 greenhouse gas reduction goals. This is one of the few pieces of legislation that addresses the issue. The CALAFCO Board has a watch position until the requested amendments are added and our peer associations have an opportunity to review the bill.

What Can You Do to Help?

Letters and calls of support from LAFCOs and individual commissioners for CALAFCO sponsored or supported bills are very helpful. Letters of support to the Assembly or Senate Local Government Committee Chairs with copies to the author and your Assembly Member or Senator make a difference!

For AB 1998 (Silva), calls and letters to your Senator encouraging his or her support will be very helpful, since the bill requires a 2/3 majority. Once

our bills are passed by the legislature, letters of support to the Governor encouraging him to sign the bills are most helpful.

Changes in legislation directly affect the operations and policy of LAFCO. CALAFCO has put its resources towards ensuring that bills under consideration by the Legislature assist LAFCOs in better achieving their goals of orderly growth, preservation of agricultural and open spaces and efficient delivery of local services. Complete language, support letters, and the current status of bills are available at www.calafco.org.

New Resources Available from the Institute for Local Government

Understanding the Basics of County and City Revenues provides a basic overview of how local agencies are funded and the sources of those revenues.

Climate Change Best Practices Framework offers practical suggestions for local action in ten leadership areas.

Both are available from the Institute for Local Government. ILG is the research affiliate of the League of Cities and CSAC. Publications are available free at: www.ca-ilg.org

KEY ADDRESSEES

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The Honorable Arnold Schwarzenegger
Governor of California
State Capitol Building
Sacramento, CA 95814
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The Los Angeles LAFCO is proceeding diligently in putting together a conference that will be **truly educational, sometimes controversial and fun!** A couple of the educational and controversial issues include:

- **"Water – The Good, the Bad and the Ugly"**, a truly realistic look at water availability and water transportation, and
- **"Transportation and Traffic Congestion: Learn from Our Mistakes"** – Los Angeles and other Southern California communities say, we made a mess and here is what you have to look out for as you grow.

However, how about some fun? CALAFCO is throwing the 3rd Annual Wine (who cares about the cheese) and Beer Competition that will really get you started for visiting Universal City and City Walk ... both just a short walk from the hotel. Both have great entertainment and restaurants. We expect that you will be able to relax, or dance the night away.

Mark your calendars for **September 2-5 2008** at the Sheraton Universal in Universal City. Registration, Sponsorship and Lodging information are all available at www.calafco.org. Looking forward to seeing you!



“It’s All About the Water!”

By Paul Hood, Executive Officer, San Luis Obispo LAFCo

The SLO Commission first considered the Los Robles Del Mar (LRDM) annexation to the City of Pismo Beach in March 2006. By way of background, the Los Robles del Mar project site involves 182 acres of vacant land located north of Highway 101 and adjacent to the northern boundary of the City of Pismo Beach. The rectangular-shaped property consists of two separately owned parcels referred to as Property A and Property B. Property A involves a total of 154 acres comprising the northern and western portions of the site and would be used for residential development of 312 units. Property B involves a total of 28 acres within the southeastern portion of the site and would be used for development of a private school. The LRDM property has been within the City’s Sphere of Influence since 1987.



The proposed development had been controversial for many years and had endured several lawsuits and two Environmental Impact Reports before the annexation proposal was even submitted to LAFCo by the city. The two previous EIRs and the

development plan had identified State Water as the water supply. However, at one of the last City Council hearings, the City approved a developer’s agreement that required the transfer of the onsite water supply (i.e. wells) to the City, eventually to become part of its municipal water supply. The City was not willing to serve the development from its existing water supply without the onsite wells since that water was committed to future development within the city. The City cited its Urban Water Management Plan and General Plan as support for this position.

The Commission reviewed the annexation proposal and concluded that pumping the onsite wells was not considered in the previous EIRs. The Commission required that a Supplemental EIR (SEIR) be prepared to study the impacts of using the on-site water wells as a municipal supply on neighboring rural residences and another City (Arroyo Grande) that also used the same aquifer. Over the course of the next year and a half, staff worked with a consultant, a hydro-geologist, the property owners, the affected agencies, and the neighboring property owners, to identify the issues, mitigate the impact, if possible, and complete the Draft SEIR. We received over 200 comment letters and responded to each one. The public involvement and outreach effort by LAFCo staff and the consultant was tremendous. Each interested party received a CD with the Public Review Draft of the EIR and a variety of other documentation prior to the LAFCo hearing.

As a result of the analysis contained in the SEIR, it became abundantly clear that the result of pumping the aquifer over a

number of years would likely place the aquifer into overdraft. Certainly there was no guarantee that pumping the wells was a sustainable and reliable water supply for the development project. The situation was made even more tenuous by the fact that the neighboring City of Arroyo Grande also had two wells that were pumping from the same aquifer. Needless to say Arroyo Grande was not willing to commit to reduce or stop pumping if there was an overdraft situation. LAFCo had no conditioning authority over the Arroyo Grande’s actions because the City was not part of the annexation proposal.

As a result, in an effort to mitigate the impact of the City’s pumping from the deep aquifer, the LAFCo staff recommendation was to 1) approve the annexation with the condition that onsite wells not be used by the City as a municipal supply (this would require that the city either use its existing water supply or locate supplemental water), or 2) approve the annexation with a groundwater monitoring program that would prevent the aquifer from going into overdraft (this would require that the city cease using the onsite wells when and if an overdraft occurs and either use its existing water supply or locate supplemental water).

In the end, after a nearly seven hour hearing in January 2008, the Commission decided (6-1) to deny the annexation because the City was not able to document an adequate, reliable, or sustainable water supply for the annexation. The Commission was lauded for having conducted a very accessible public process and for making a well thought out decision based on a very comprehensive information base. Although the City and the property owner did not support the Commission’s decision, they understood that it was based on sound LAFCo principles.

CITY OF FONTANA

City Reorganizes Fire Service at LAFCo

The Mayor and City Council are committed to improving services and infrastructure within the entire Fontana community. Critical to accomplishing this goal is to make sure that money generated in Fontana is reinvested into the community. An important tool to accomplish this objective is through the planned formation of the "Fontana Fire Protection District."

Background

In July 2005, the San Bernardino County Board of Supervisors initiated the reorganization of its fire operations. Following this action, the County filed an application with the San Bernardino Local Agency Formation Commission (LAFCo) to review and consider the reorganization of the San Bernardino County Fire Department. The purpose of the proposed fire reorganization was to achieve the most effective and efficient delivery of services for fire protection, emergency response, paramedic, ambulance and disaster preparedness to residents and landowners.

In response to the County Board's plan to reorganize fire protection services, the Fontana City Council initiated and subsequently filed with San Bernardino LAFCo an alternative proposal for the provision of fire protection. The

City proposed the creation of a subsidiary district and appointment of the City Council as the governing body of the new district. The service boundary includes Fontana's corporate limits and the County areas within the City's Sphere of Influence. It has been a goal of the City to obtain local control



for fire protection and to comprehensively serve the citizens and residents both within the City limits and the City's Sphere of Influence.

Impact to Residents

Residents will see no increase in their property taxes. The utility users' tax on residential property was eliminated in June 2004. The utility users' tax on commercial property will end in June 2009. One of the benefits of forming the Fontana Fire Protection District (FFPD) is that property tax revenues will remain local, instead of being diverted to other areas of the county. The City will be able to use that revenue to make needed improvements to fire stations and equipment. Residents of property recently annexed to the City will see no increase in their property tax rate.

In addition, as part of the formation of the Fontana FPD, the relocation of County Fire plan check and inspection staff to the City's Development

Services Organization will occur almost simultaneously. The plan check and inspection staff will be housed at City Hall. The additional staff will assist in streamlining the City's plan check and inspection process by creating a "one-stop shop."

The City of Fontana is a CALAFCO Associate Member.



UPCOMING COURSES

Mark your calendar!

◆ Agriculture and Open Space Mitigation Policy, Practices and Definitions

An in-depth examination of LAFCOs' role, responsibility and authority in agriculture and open space mitigation. **Friday, 11 July 2008** in Sacramento.

◆ Assessing Wastewater Infrastructure and Capacities

This practical course will help staff and commissioners understand the basics of wastewater infrastructure and systems and how to evaluate the existing and future capacity of systems. **Friday, 24 October 2008** in Los Angeles.

Watch for detailed course information and registration materials on www.calafco.org.

Miss a class? Looking for the materials? Check out the Members' Library at www.calafco.org/members.

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Sharing Information and Resources

2008 CALAFCO Staff Workshop Examines Emerging Trends

A record 129 LAFCo staff, attorneys and others interested in LAFCo attended the Staff Workshop in San Jose on April 2-4. Workshop hosts—**Santa Clara LAFCo**—coordinated an exceptional program of presentations and discussions. Sessions ranged from case studies in innovations and LAFCo as a lead agency, to improving the application process, records management and climate change. Highlights included the professional development session on interpersonal communications, and the keynote address from Don Weden, retired Principle Planner of Santa Clara County.

Thank You to all who participated and to the many volunteers who contributed their time and expertise to participate on a panel or serve as a speaker. Special thanks to Workshop sponsors **Dudek and Michael Brandman Associates**.



Roundtable discussions for Executive Officers (left), Clerks (right), and LAFCo Counsel allowed staff to share ideas and experience with each other



Participants engaged in a wide variety of presentations and discussions at workshop



Copies of Workshop presentations are available on the CALAFCO website www.calafco.org



Keynote speaker Don Weden examines "winds of change" for LAFCo



Stephen Jenkins discusses AB 32 greenhouse gas reduction requirements and LAFCo