

**LOCAL AGENCY FORMATION COMMISSION OF
SANTA CLARA COUNTY
MINUTES (REVISED)
WEDNESDAY, OCTOBER 1, 2008**

1. ROLL CALL

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 1st day of October 2008 at 12:03 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 Commissioner Terry Trumbull arrives at 1:15 p.m.

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

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

2. CLOSED SESSION

At the order of the Chairperson, there being no objection, the Commission adjourned to Closed Session at 12:05 p.m.

Chairperson reconvenes the meeting at 1:15 p.m. and announces that there is no report from the Closed Session.

3. PUBLIC PRESENTATIONS

There are no public presentations.

4. APPROVE MINUTES OF SEPTEMBER 10, 2008 MEETING

Ms. Palacherla informs that staff is proposing revisions to the minutes based on comments received from Richard Van't Rood, San Martin Neighborhood Alliance (SMNA) and recommends approval of the minutes as revised.

On motion of Commissioner Gage, seconded by Commissioner Howe, it is unanimously ordered on a vote of 4-0, with Commissioner Alvarado abstaining, that the minutes of September 10, 2008 be approved, as revised.

5. REVENUE NEUTRALITY OPTIONS FOR THE PROPOSED INCORPORATION OF SAN MARTIN

The Chairperson requests the report. Ms. Palacherla directs attention to information relating to revenue neutrality mitigation options 1 and 4. She advises that Option 1, a proposal by the County, provides for a 10-year mitigation period with payments spread over 25 years. Since the projected budget is insufficient to make these payments, the Commission must either make a feasibility finding based on approval of a new tax or deem the incorporation infeasible. Option 4, which considers that the Road Fund savings would offset a portion of the General Fund loss, enables smaller mitigation payments. Under this option, the Commission must determine what portion of Road Fund can be used to offset the loss to the General Fund. She then describes the reasons for the staff recommendation of a 50 percent offset and the need for a new tax for the town to be fiscally feasible.

In response to an inquiry by Commissioner Howe, Ms. Palacherla advises that a 50 percent offset, means 50 percent of approximately \$870,000 which is the same amount as the loss to the County's General Fund. In response to a follow-up inquiry by Commissioner Howe, Ms. Palacherla advises that State law requires the use of FY07 data which amounts to \$1.5 million; however, the County has indicated that the average annual cost of road maintenance spending in San Martin area is only about \$800,000.

The Chairperson opens the public comment period for this item.

Mr. Van't Rood, Spokesperson, San Martin Neighborhood Alliance (SMNA), states that Option 4 is a compromise position between the proponents' and the County's positions and informs that they will not initiate litigation against LAFCO if Option 4 is adopted without requiring a new tax. He states that the County's budget deficit should not determine financial feasibility. He states that the reduced road savings considered by the Commission is not consistent with the statutes since it does not use the FY07 data.

Sylvia Gallegos, Deputy County Executive, County of Santa Clara, informs that the incorporation is not feasible because it does not meet the revenue neutrality provisions of

State law and LAFCO should not consider Option 4. She states that the County opposes Option 4 because revenue neutrality evaluates impact to General Fund and LAFCO has no statutory authority to unilaterally impose these terms and conditions.

Craig Bassett, stating that he may be involved in the San Martin incorporation in a legal capacity, informs that the manipulation of data resulted in the incorporation being infeasible. He informs that State law requires the use of \$800,000 to \$950,000 which cannot be arbitrarily changed or reduced. Commissioner Gage requests clarification to this figure because the actual road maintenance spending for FY07 was \$1.5 million. The Chairperson informs that Mr. Bassett could be incorrect. Ms. Palacherla advises that the actual road maintenance spending in FY07 was \$1.5 million and that number is used in the CFA.

The Chairperson calls the next speaker. Ms. J.F. Comprechio indicates she is deferring her time to Mr. Van't Rood, and the Chairperson informs that speakers need not defer their time as the spokesperson for the proponents will be given additional time to speak.

In response to an inquiry by Commissioner Wilson, Ms. Palacherla advises that per the Legal Counsel, the Commission may first choose the mitigation option and then determine feasibility. In response to another question by Commissioner Wilson, Ms. Subramanian advises that since the \$1.5 million was an anomaly, the 50 percent offset is being recommended based on a typical year expense by the County.

In response to an inquiry by the Chairperson, Ms. Subramanian opines that LAFCO has authority to determine the amount of offset in Option 4. In response to an inquiry by the Chairperson, Ms. Subramanian advises that \$56815 refers to services and revenues being substantially equal, \$56810 refers to revenue neutrality calculation and procedures; however, when parties cannot come to an agreement, the Commission will determine the terms and conditions that may include the benefit from Road Fund as an offset. In response to an inquiry by the Chairperson, Ms. Palacherla advises that staff is recommending the 50 percent offset based on estimated Road Fund savings in a typical year and adds that this amount is about the same amount as the General Fund shortfall.

Commissioner Alvarado, referring to the March 25, 1993 letter from Sacramento County to San Diego LAFCO Executive Officer, comments that restricted funds may not be used to offset loss in the general fund. She adds that the incorporation must show evidence of feasibility. This is especially important given the present economic uncertainty. In response to an inquiry by the Chairperson, Ms. Subramanian advises that legislative intent generally involves various opinions that the legislators considered when they made their determinations on the statute and is generally not the opinion of any one group.

In response to an inquiry by Commissioner Gage, Ms. Palacherla advises that the Commission, for the purpose of establishing revenue neutrality, could consider a typical year's savings whether that amount was lower or higher than the FY07 cost. Commissioner Gage informs that in deciding on revenue neutrality, he would consider whether or not the citizens of the County are held harmless by the incorporation, and not whether the County has a deficit.

In response to an inquiry by Commissioner Wilson, Ms. Palacherla advises that Option 1, is the revenue neutrality proposal offered by the County.

Commissioner Wilson moves that mitigation Option 1 be recommended and that staff revise the CFA based on this option. Commissioner Alvarado seconds the motion.

The Chairperson comments that the citizens of the County will benefit from improved traffic and road maintenance with the Road Fund savings from incorporation. He expresses opposition to Option 1 because it ignores the County's \$1.5 million road surplus. In response to an inquiry by the Chairperson, Ms. Palacherla advises that staff analyzed all items in the CFA; however, the discrepancy in road costs stood out. The Chairperson then continues by stating that while the Road Fund spending in FY07 may be considered unusual, there could be other anomalous items in the projected budget that could add up towards revenue neutrality. He then expresses support for Option 4 provided that the offset is between 75 to 80 percent. Commissioner Howe states that residents of San Martin should be allowed to vote for their own governance since the purpose of this incorporation is to protect the environment. He expresses support for

Option 4 stating that it is fair and equitable, would make the County General Fund whole, and will not require a new tax. Commissioner Gage informs that he is voting for Option 1 as it will make the County's General Fund whole.

The Chairperson then discloses that he spoke with Mr. Van't Rood on a number of occasions. Commissioners Gage and Wilson likewise disclose that they spoke with Mr. Van't Rood.

At the request of Ms. Subramanian, Commissioner Wilson clarifies that her motion is to choose the mitigation option in one action and then discuss feasibility.

Commissioner Wilson comments that she is unable to ignore the loss to the General Fund and that restricted funds cannot be used to make up for the loss. Although the County residents may benefit from road services, the General Fund loss could impact other programs. Commissioner Alvarado informs that the County provides various services in South County, such as roads and the new health facility in Gilroy that San Martin residents are able to use and that in the big picture the County's General Fund is going to be impacted by the incorporation. The Chairperson informs that after incorporation, the County's responsibility in maintaining San Martin roads will be diminished; however, the County will have \$1.5 million in savings.

The Chairperson calls the question. It is ordered on a roll call vote of 3-2, with the Chairperson and Commissioner Howe against, that mitigation Option 1 be adopted, and that staff be directed to revise the CFA based on this direction.

The Chairperson informs that the next step is to determine feasibility. At the request of the Chairperson, Ms. Palacherla advises that the Commission may direct staff to include information on the new tax in the CFA. She adds that the Commission may find that this is not necessary because the proponents have indicated that they would withdraw their support for the incorporation if a new tax is imposed.

Commissioner Wilson moves that the Commission may be able to find the incorporation feasible based on approval of a new tax. Commissioner Alvarado seconds the motion.

Commissioner Alvarado comments that there may be strong opposition to a tax, however, a tax is necessary because of insufficient funds. This will allow the people to determine the outcome and voters need to know what the incorporation requires of them.

The Chairperson reopens public comment period exclusively with regard to feasibility and tax issues.

Mr. Van't Rood states that the proponents are not looking forward to a new tax as a condition for incorporation and requests the Commission to find the incorporation infeasible and terminate the process.

At the request of the Chairperson, Commissioners Wilson and Alvarado decline to amend the motion. Mr. Van't Rood informs that he represents a very large proportion of the population of San Martin and states that proponents do not support the incorporation if it requires a new tax, and reiterates his request that the Commission find the incorporation infeasible and end this process. Commissioner Gage comments that the incorporation is not feasible without a new tax and that the proponents should consider an alternative. Commissioner Wilson informs that while the proponents have stated that they do not support any new tax, her role as a LAFCO Commissioner is to look at the feasibility issue and determine if there is a possibility for feasibility. In response to the Chairperson, Ms. Subramanian clarifies that the Commission should give direction to staff for purposes of updating the CFA for the public hearing in November. The Chairperson, Ms. Subramanian and Commissioner Wilson restate the motion. In response to an inquiry by Commissioner Howe, Ms. Palacherla advises that the contract with the CFA consultant includes the preparation of terms and conditions. Ms. Subramanian informs that the proponents would have to withdraw their application in order to avoid incurring additional costs. At the request of the Chairperson, Ms. Subramanian advises that the withdrawal of the application be made in a written statement delivered by October 2, 2008. In response to an inquiry by Mr. Van't Rood, Ms. Subramanian informs that the final decision on revenue neutrality will be made at the November 7, 2008 hearing unless the application is withdrawn prior to that. Mr. Van't Rood then informs that the proponents will not withdraw the application.

The Chairperson calls the question. It is ordered on a roll call vote of 3-2, with the Chairperson and Commissioner Howe against, that the Commission find the incorporation feasible based on imposition of a new tax, and that staff be directed to revise the CFA.

6. UPDATE ON (a) PAYMENT OF LAFCO STAFF COSTS, (b) COMPLIANCE WITH DISCLOSURE REQUIREMENTS, AND (c) PROPOSED SCHEDULE FOR THE SAN MARTIN INCORPORATION PROCESS

The Chairperson requests the staff report. Ms Palacherla reports that the proponents provided the disclosure forms on September 23, 2008 and the forms are included in the staff report and posted on the website. The opponents have not yet submitted their disclosure. She adds that as of August 30, 2008, the application has incurred \$159,660.06 in fees and informs that the Commission has ordered the proponents to make the full payment 72 hours prior to the November 7, 2008 public hearing. She then provides an overview of the revised incorporation schedule.

In response to an inquiry from the Chairperson, Ms. Palacherla informs that all commissioners have confirmed availability for the November 7, 2008 hearing. In response to another inquiry by the Chairperson, Ms. Palacherla advises that the proponents sent a letter to LAFCO contesting the fees and the Commission directed staff to negotiate a 10 percent reduction; however, the proponents were not interested in that. Mr. Van't Rood informs that the 10 percent discount was offered contingent on payment within 30 days. He then comments that staff spent time advocating for the County's position and informs that the fee is higher than what other LAFCOs charge for larger incorporations. He indicates that he is unavailable for the November 7, 2008 hearing date.

7. ADOPTION AND PRESENTATION OF RESOLUTION COMMENDING KATHY KRETCHMER FOR HER SERVICES TO LAFCO

On Commission consensus, there being no objection, it is unanimously ordered that the Resolution be adopted commending Kathy Kretchmer, LAFCO Counsel, for her 20 years of service to LAFCO. Chairperson Constant then reads and presents the resolution to Ms. Kretchmer. Commissioner Wilson expresses her respect and confidence in Ms. Kretchmer. Ms. Kretchmer then thanks the Commission and staff.

8. LAFCO ANNUAL REPORT

The Chairperson requests the staff report. Ms. Noel provides a summary of the report stating that during Fiscal Year 2007-08 the Commission approved three reorganization proposals, processed 13 city-conducted annexations involving six different jurisdictions, processed 10 island annexations by the City of San Jose, approved an Urban Service Area Amendment for San Jose, and an out-of-agency contract for services for Town of Los Altos Hills. She adds that LAFCO completed service reviews and sphere of influence (SOI) updates for Northwest Santa Clara County Area, and SOI updates for all fire districts, water districts and resource conservation districts by the end of 2007 as required by law. LAFCO is also processing the San Martin incorporation proposal. She then reports that the Santa Clara LAFCO received CALAFCO's Most Effective Commission Award in August 2007, Commissioner Wilson was elected Vice Chair of CALAFCO Board of Directors and is participating on the CALAFCO Legislative Committee; Santa Clara LAFCO hosted the CALAFCO Staff Workshop in April 2008 in San Jose, and Commissioners and staff attended the CALAFCO Annual Conference and CALAFCO University classes. She adds that staff regularly attends the Santa Clara County Special Districts Association meetings, and participates on the Martial Cottle Park Master Plan Technical Advisory Committee.

Commissioner Alvarado expresses pleasure that, after 25 years of advocating for it, island annexations are underway. The Chairperson expresses appreciation to staff.

On motion of Commissioner Gage, seconded by Commissioner Howe, it is unanimously ordered on a 5-0 vote that the LAFCO Annual report be accepted.

9. LEGISLATIVE REPORT

The Chairperson requests for the staff report. Ms. Noel briefly provides an overview of bills which affect LAFCO that have been signed into law this year. She then directs attention to a letter from Orange County LAFCO opposing SB 375 which links Regional Transportation Plan and Regional Housing Needs Assessment under the CEQA and was signed into law on September 30, 2008. The Chairperson requests to be kept informed on any CALAFCO classes regarding SB 375.

On motion of Commissioner Gage, seconded by Commissioner Howe, it is unanimously ordered on 5-0 vote that the report be accepted.

10. EXECUTIVE OFFICER'S REPORT

There is no report.

11. COMMISSIONERS' REPORT

There is no report.

12. WRITTEN CORRESPONDENCE

The Chairperson notes the letter from the Committee For Campbell Annexation (CFCA) of Modified Pocket 6-1, dated September 18, 2008.

13. NEWSPAPER ARTICLES / NEWSLETTER

The Chairperson notes that the September 2008 issue of The Sphere, the CALAFCO newsletter, is included in the packet.

14. ADJOURN

On order of the Chairperson, there being no objection, the meeting is adjourned at 2:52 p.m. to a special meeting to be held on Friday, November 7, 2008 at 2:30 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