

**LOCAL AGENCY FORMATION COMMISSION OF
SANTA CLARA COUNTY
MINUTES
FRIDAY, NOVEMBER 7, 2008**

1. ROLL CALL

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 7th day of November 2008 at 2:31 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 Don Gage, John Howe and Liz Kniss. Alternate Commissioner Terry Trumbull arrives at 3:30 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 adjourns to Closed Session at 2:32 p.m.

Chairperson reconvenes the meeting at 3:30 p.m. and announces that there is no report from the Closed Session.

On order of the Chairperson, there being no objection, the agenda is taken in the following order: Item No. 4.1, Item No. 5, Item 3, Item 4 and Item 6.

The Chairperson introduces Liz Kniss as the new alternate commissioner representing the County. Commissioner Kniss informs that she is fully prepared to take part as a LAFCO member today because she closely followed the incorporation process and has been regularly briefed by her staff who have attended all the LAFCO meetings.

In response to an inquiry by Eric Carruthers, a member of the public, the Chairperson informs that Item No. 5 will be heard after item 4.1.

4.1 PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN: UPDATE ON PAYMENT OF LAFCO FEES AND REQUEST FOR STATE CONTROLLER'S REVIEW OF THE PUBLIC HEARING DRAFT COMPREHENSIVE FISCAL ANALYSIS

The Chairperson requests the staff report. Ms. Palacherla informs that Item 4.1 on the agenda address two issues; namely, a request for State Controller's review of the Public Hearing Draft Comprehensive Fiscal Analysis (CFA) by the proponents, and the payment of LAFCO staff fees for processing the incorporation proposal. She then briefly discusses the process for filing a request for State Controller's Review of the CFA and informs that the proponents delivered a deposit check in the amount of \$38,554.00 on November 6, 2008 at 4:45 p.m. and executed an agreement that is different in form from that drafted by the LAFCO Counsel. She advises that State law requires that a public hearing must be held 90 days after the issuance of Certificate of Filing, and this public hearing was scheduled as close to that date as possible. Since the deposit for State Controller's review fees and agreement have only been submitted on November 6, 2008, the Executive Officer's Report was prepared and a community workshop was held in Morgan Hill. Addressing the request by the proponents to cancel the hearing because of their request for State Controller's review, she advises that there is no provision in State law or LAFCO policies that prohibits LAFCO from holding the public hearing because a request for a State Controller's review has been made. In addition, she reports that at the September 10, 2008 meeting, the Commission directed the proponents to pay the \$171,555.16 in staff fees 72 hours prior to the hearing and no payment has been made to date. The fee agreement states that the process be suspended if no payment is received on time; therefore, she recommends that the incorporation process be suspended.

Ms. Subramanian recommends that the Commission open the public hearing on Item No. 5, hear public testimony, close the public hearing, and direct staff to draft a resolution for adoption at the next meeting denying the incorporation proposal for failure by the proponents to pay the LAFCO fees pursuant to the fee agreement, without consideration of the merits of the proposal.

The Chairperson opens the public comment period for this item.

Kenneth Peterson, a resident of San Martin, states that he had moved to San Martin because of the many restrictions in the cities. He expresses opposition to the incorporation proposal as it would result in more restrictions.

Maureen Peterson, a resident of San Martin, requests the Commission to stop the incorporation process because the proponents have failed to pay the processing fee and are in violation of the fee agreement, she states that there is heavy opposition to the incorporation, and believes the proposed town will not be fiscally sound. She then calls attention to a Morgan Hill Times article on November 7, 2008 about the work force reduction being contemplated by the City of Morgan Hill.

Mike Berlinski, a resident of San Martin, expresses opposition to the proposed incorporation, stating that the Executive Officer's report outlines the fiscal difficulties of the future town. He expresses support for the staff recommendation to suspend the incorporation process because the proponents have failed to pay LAFCO fees. He indicates that Mr. Van't Rood, an attorney and a general contractor, stands to have great personal gain if San Martin is incorporated. He then states his preference is to live in the country and comments about how the utility tax would burden residents if incorporation is approved.

Commissioner Gage informs that he has tried to support the incorporation proposal and ensure that the process is fair. He adds that the proponents have been given enough time to pay as the Commission agreed not to require the fees until the hearing; however, the proponents have not complied with the agreement.

Commissioner Gage then moves that LAFCO suspend all the work on San Martin incorporation proposal, including sending the request by the proponents to have the CFA reviewed by the State Controller's office.

Commissioner Kniss seconds the motion. Commissioner Wilson proposes to amend the motion to include acceptance of the staff report and open Item No. 5, and Commissioners Gage and Kniss express agreement.

The Chairperson comments that the review of the CFA by the State Controller should occur; however, he concurs with the motion to suspend the incorporation process

because the LAFCO fees have not been paid per agreement. Commissioner Gage expresses concern that if LAFCO fees are not paid, the County and the cities will have to pay for the cost because 50 percent of the LAFCO budget is paid for by the County, 25 percent by the City of San Jose, and 25 percent by the other 14 cities in the County.

The Chairperson calls the question. It is ordered on a roll call vote of 4-1, with Commissioner Howe voting against, that the staff report be accepted, that LAFCO suspend the San Martin incorporation proposal, and that staff be directed not to forward to the State Controller the request for review of the CFA.

5. PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

This being the time and place set to consider the proposed incorporation of the Town of San Martin, on motion of Commissioner Gage, seconded by Commissioner Kniss, it is unanimously ordered on a vote of 5-0 that the public hearing be opened.

The Chairperson opens the public comment period for this item.

Eric Carruthers, a retired planner in Santa Clara County, presents a letter and speaks against the incorporation proposal, stating that he has over 30 years of urban planning experience and have seen the creation of cities and transformation of rural lands, and that approving the incorporation proposal would irrevocably change South County. He states that maintaining rural community after incorporation is impossible given the dynamics and economics of cities. He states that San Martin would be a starving city because of financial conditions and demand for services. He also states that it would be irresponsible for the Commission to approve the incorporation with a negative declaration because urban development in San Martin is inevitable. He then talks about how a failure of septic tanks in the central part of San Martin could trigger the construction on an expansive sewer system and that development within the huge proposed boundary would no longer require any LAFCO approval.

Doug Stauffer, a resident of San Martin, expresses support for the incorporation to enable representation regarding land use and for the community. He comments about how the County allows facilities that are undesired by the other cities, and how zoning

designations are being changed whimsically. He states that incorporation will protect the community from the whims of the County.

Michele Beasley, Greenbelt Alliance, provides a letter to the Commission and informs that Greenbelt Alliance is opposed to the incorporation and that the Negative Declaration is inadequate.

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

At the request of the Chairperson, Ms. Subramanian recommends that the Commission direct staff to prepare a resolution denying the incorporation for failure to pay LAFCO fees pursuant to the fee agreement for the Commission's consideration at the next meeting.

Commissioner Gage moves that staff be directed to prepare a resolution for adoption at the next LAFCO meeting denying the incorporation proposal for failure to pay LAFCO fees pursuant to the fee agreement for the Commission's consideration at the next LAFCO meeting.

Commissioner Wilson seconds the motion.

Commissioner Howe expresses the opinion that the request for a review of the CFA by the State Controller should be allowed to go forward since the proponents have already paid the deposit. Commissioner Wilson proposes that the motion be amended to direct staff to return the check to the proponents. Commissioner Gage expresses agreement.

The Chairperson comments that the review of the CFA by the State Controller should be allowed to go forward; however, the process must be suspended because of breach in the contract for payment of fees. At the request of Commissioner Kniss, Commissioner Gage restates the motion.

The Chairperson calls the question. It is ordered on a vote of 4-1, with Commissioner Howe voting against, that staff be directed to draft a resolution for the Commission's adoption denying the incorporation proposal for failure to pay LAFCO fees

pursuant to the fee agreement, and that staff be directed to return the check paid by the proponents as deposit for the State Controller's review of the public hearing draft CFA.

3. TAKEN OUT OF ORDER - PUBLIC PRESENTATIONS

There are no public presentations.

4. TAKEN OUT OF ORDER - APPROVE THE MINUTES OF OCTOBER 1, 2008 MEETING

Ms. Palacherla advises that staff received a letter from Mr. Van't Rood requesting revisions to the minutes. Staff reviewed the minutes and the minutes are correct except for misspelling of the name of Craig Bassett. Therefore, staff is recommending approval of the minutes, with the correction of the spelling mistake.

On motion of Commissioner Howe, seconded by Commissioner Gage, it is ordered on a vote of 4-0, with Commissioner Kniss abstaining, that the minutes of October 1, 2008 meeting be approved, as corrected.

6. ADJOURN

On order of the Chairperson, there being no objection, the meeting is adjourned at 3:58 p.m. to a regular meeting to be held on Wednesday, December 3, 2008 at 1:15 p.m. in the Isaac Newton Senter Auditorium, County Government Center, 70 West Hedding Street, San Jose, California.

Pete Constant, Chairperson
Local Agency Formation Commission

ATTEST:

Emmanuel Abello, LAFCO Clerk