

**LOCAL AGENCY FORMATION COMMISSION OF
SANTA CLARA COUNTY
MINUTES
WEDNESDAY, APRIL 8, 2009**

1. ROLL CALL

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 8th day of April 2009 at 12:03 p.m. in the Board Meeting Chambers, County Government Center, 70 West Hedding Street, San Jose, California, with the following members present: Chairperson John Howe, Vice Chairperson Susan Vicklund-Wilson, and Commissioners Pete Constant, Don Gage and Liz Kniss.

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

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

2. CLOSED SESSION

The Chairperson determines that there is a quorum and, there being no objection, orders that the meeting be adjourned to Closed Session at 12:04 p.m.

(The Commission reconvenes at 1:15 p.m.)

(Alternate Commissioners Al Pinheiro and Terry Trumbull are present.)

The Chairperson reports that the Commission conferred in Closed Session with legal counsel pursuant to Government Code §54956.9 and informs that the Commission has given direction to counsel.

The Chairperson then directs that the roll be called and it is determined that there is a quorum.

3. PUBLIC PRESENTATION

There is no public presentation.

4. APPROVE THE MINUTES OF FEBRUARY 4, 2009 MEETING

On motion of Commissioner Gage, seconded by Commissioner Constant, it is unanimously ordered that the minutes of February 4, 2009 meeting be approved, as submitted.

5. MUNRO ANNEXATION NO. 7

This being the time and place set for a public hearing to consider the request by the City of Morgan Hill to annex a 20-acre parcel outside its urban service area (USA), the Chairperson declares the public hearing open.

Ms. Palacherla briefly describes the project and advises that LAFCO policies disallow annexation of land outside a city's USA but allow consideration of exceptions on a case by case basis if the annexation is for the preservation of open space lands. She states that the annexation would allow the City to acquire the land and preserve El Toro as open space. She reports that the City has entered into an agreement with the property owner whereby the City would allow a lot line adjustment that would enable future subdivision within the City and in return, the property owner would sell the property located on El Toro to the City. She discusses the various factors considered in evaluating this application. She continues by stating that while the City has provided no additional assurance to maintain the area as open space, if Santa Clara County Open Space Authority (SCCOSA) funds are used to acquire the property, the City will be required to maintain the area as open space in perpetuity. In view of the circumstances presented, staff recommends approval, and to emphasize that the intent of the annexation is not for urban development, staff recommends that no urban services be provided to the property even though LAFCO would not have any enforcement capacity once the property is within the city.

In response to an inquiry by Commissioner Wilson, Ms. Palacherla advises that the restriction against provision of urban services is enforceable until the Williamson Act contract expires on January 1, 2017. The Chairperson informs that David Bischoff, representing Morgan Hill, is present to answer questions. In response to an inquiry by Commissioner Wilson, Mr. Bischoff states that SCCOSA has not made any commitment to fund the acquisition of the property at this time. He informs that it is the intent of the City Council to preserve this parcel as open space as the City has acquired more than 60 acres of open space lands in the area. Commissioner Wilson expresses concern that without stronger commitment from the City to keep the land in open space, the agreement

between the City and the property owner could be changed and LAFCO will have no oversight after annexation. She also requests that Morgan Hill consult with LAFCO in the early stages of such applications to allow greater LAFCO input. Mr. Bischoff expresses support for staff recommendation. In response to an inquiry by Alternate Commissioner Pinheiro, Mr. Bischoff informs that Morgan Hill has its own open space fund amounting to nearly \$1 million.

There being no further comments from the public, on motion of Commissioner Gage, seconded by Commissioner Constant, it is unanimously ordered that the public hearing be closed.

Commissioner Gage moves for approval and Commissioner Constant seconds the motion. Commissioner Gage clarifies the motion at the request of Commissioner Wilson.

The Chairperson calls the question. It is unanimously ordered that Resolution 2009-02 be adopted, approving the annexation to the City of Morgan Hill and the detachment from the South Santa Clara County Fire Protection District, designated as Munro Annexation No. 7. Said Resolution, by reference hereto, is made part of these minutes.

6. DRAFT LAFCO BUDGET FOR FISCAL YEAR (FY) 2009-2010

This being the time and place set for a public hearing to consider the Draft LAFCO Budget for FY 2009-2010, the Chairperson declares the public hearing open.

Ms. Palacherla reports that the CKH Act requires LAFCO to adopt a proposed budget by May 1 and a final budget by June 15. At its February 4, 2009 meeting, the Commission designated a Budget Subcommittee composed of Commissioners Gage and Howe to recommend a budget to the full Commission. The Subcommittee met and prepared the draft budget based on the proposed work plan for FY 2010. She then briefly discusses the work plan which includes, among other items, the next round of service reviews, assistance to cities on island annexations, and a comprehensive review and update of LAFCO policies. She reports that the draft budget is less than that of the current fiscal year, the costs to the County and the cities are reduced. She further notes that the staff report on page 4 only indicates the cost of processing the San Martin incorporation proposal through November 2008. She states that costs through January 2009 totaled

\$221,686.16. She continues that the staff report includes a description for each line item on the budget and also estimates the cost to the County and each of the cities based on LAFCO operating expenses.

There being no comments from the public and there being no objection, the Chairperson declares that the public hearing be closed.

Commissioner Constant moves for approval of the Draft LAFCO Budget for FY 2009-2010. Commissioner Gage seconds the motion.

In response to an inquiry by Commissioner Kniss, Ms. Palacherla informs that the unpaid fees for processing the San Martin incorporation application were not projected as LAFCO revenue. She states that, in addition, some of the staff costs in processing the San Martin incorporation proposal, were covered using funds allocated for other projects (which were not initiated due to workload issues as a result of the incorporation application). Therefore, the budget does not directly reflect the impact of the loss of these fees. However, if the fees had been paid, the costs to the cities and the County would have been correspondingly lower. Commissioner Kniss requests that this information be on record because it is significant in these economic times and Ms. Palacherla indicates that it will be included in the minutes. Commissioner Wilson expresses concurrence, stating that this be recorded in the minutes as a loss sustained by LAFCO. Chairperson Howe states that the Budget Subcommittee developed a balanced budget which is lower than that of the current year. Commissioner Wilson expresses appreciation to commissioners Gage and Howe for their work on the Subcommittee.

The Chairperson calls the question. It is unanimously ordered that the Commission adopt the Draft LAFCO Budget for FY 2009-2010; find that the Draft Budget is expected to be adequate to allow the Commission to fulfill its statutory responsibilities; and, that staff be authorized to transmit to each of the cities, the County and the Cities Association the adopted Draft Budget, including the estimated agency costs, as well as the notice of public hearing for adoption of the Final Budget for FY 2009-2010.

In response to a clarification by the LAFCO Counsel, Commissioners Constant and Gage inform that the motion approved includes all the recommendations in the staff report.

7. LEGISLATIVE REPORT

Ms. Noel reports that there are 30 bills of interest to California Association of LAFCOs (CALAFCO) during the 2009-2010 legislative session. She then briefly discusses the bills that are most pertinent to Santa Clara LAFCO, namely, Assembly Bill (AB) 528 (Silva), relating to financial disclosure language in CKH Act; Senate Bill (SB) 215 (Wiggins), requiring "Sustainable Community Strategy" as an additional factor to be considered in reviewing LAFCO applications; AB 853 (Arambula), requiring LAFCO to conduct a feasibility review for consolidation of small water community systems when the Board of Supervisors receives a complaint and votes to require a LAFCO report; AB 113 (Senate Committee on Local Government), relating to non-substantive changes to local government laws, including those requested by CALAFCO; and, SB 211 (Simitian), allowing the Santa Cruz Board of Supervisors to create a regional open space district outside of the LAFCO process.

In response to an inquiry by Commissioner Kniss, Ms. Noel advises that small water systems are generally maintained and managed by individuals designated by a small group of residents. In response to an inquiry by Supervisor Gage, Ms. Palacherla advises that mutual water companies formed by residents with a common water source and that the 2005 Countywide Water Service Review identified several mutual water companies in the South County region. She states that at that time, there were requests from the San Martin County Water District to absorb small water agencies. In response to an inquiry by Commissioner Howe, Ms. Noel informs that Redwood Estates Mutual Water Company was taken over by the San Jose Water Company.

On motion of Commissioner Gage, seconded by Commissioner Kniss, it is unanimously ordered that the report be accepted.

8. EXECUTIVE OFFICER'S REPORT

Ms. Palacherla reports that LAFCO staff conducted a workshop on March 10, 2009 for cities and special districts staff involved in processing annexations and dealing with associated service transitions. Over 35 staff members attended from various County departments, cities, special districts, and Board of Supervisors offices. As a follow up, LAFCO staff will meet with the City of San Jose, the County, and various special districts staff to better coordinate the transition of services in anticipation of larger island annexations by San Jose. She also reports that the Commission, at its February 4, 2009 meeting, has retained Best, Best & Krieger to provide legal services to LAFCO. Additionally, she informs that on March 27, 2009, staff and Alternate Commissioner Trumbull attended a CALAFCO class on SB 375.

9. COMMISSIONERS' REPORTS

Alternate Commissioner Pinheiro requests that the Commission consider allowing alternate commissioners to attend LAFCO closed sessions. The Chairperson directs staff to include this item on the agenda of the June 3, 2009 LAFCO meeting. Commissioner Kniss requests staff to consider policies of other agencies relating to attendance of alternate members in closed sessions. Alternate Commissioner Pinheiro informs that he is an alternate Valley Transportation Authority (VTA) board member and was allowed to sit in a closed session. Commissioner Gage informs that VTA no longer allows alternates to attend closed sessions unless they are required to fill in for an absent board member.

On order of the Chairperson, there being no objection, staff is directed to prepare a report for the June 3, 2009 meeting relating to attendance of alternate commissioners in closed sessions.

Alternate Commissioner Trumbull expresses appreciation to Commissioner Wilson for her work on CALAFCO and for putting together the SB 375 class on March 27, 2009.

10. WRITTEN CORRESPONDENCE

There is no written correspondence.

11. NEWSPAPER ARTICLES / NEWSLETTERS

The Chairperson notes that the April 2009 issue of The Sphere, the CALAFCO newsletter, is included in the packet, and congratulates Commissioner Wilson on her position as Vice-Chair of CALAFCO Board of Directors.

12. PENDING APPLICATIONS / UPCOMING PROJECTS

Ms. Palacherla advises that staff expects to receive an application from the City of Campbell to amend its USA and annex West Parr Road.

13. ADJOURN

On order of the Chairperson, there being no objection, the meeting is adjourned at 1:54 p.m. to a regular meeting to be held on Wednesday, June 3, 2009 at 1:15 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California.

John Howe, Chairperson
Local Agency Formation Commission
of Santa Clara County

ATTEST:

Emmanuel Abello, LAFCO Clerk