



**LAFCO MEETING
AMENDED AGENDA – To Add Item 4.1**

**Friday, November 7, 2008
2:30 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://www.santaclaralafco.ca.gov/annexations&Reorg/PartyDiscForm.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://www.santaclaralafco.ca.gov/annexations&Reorg/LobbyDiscForm.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://www.santaclaralafco.ca.gov/sclafcopolicies_annex&reorg_home.html

2:30 PM

1. ROLL CALL

2. CLOSED SESSION

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

3:30 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 OCTOBER 1, 2008 MEETING

**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**

Possible Action: Accept report and provide direction to staff.

PUBLIC HEARING

5. PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

Public Hearing to consider the proposed incorporation of the Town of San Martin.

Possible Action: Consider the request and staff recommendation.

6. ADJOURN

Adjourn to LAFCO meeting on Wednesday, December 3, 2008, at 1:15 PM in the **Chambers of the Board of Supervisors, 70 West Hedding Street, First Floor, 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 (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

ITEM No. 4.1 DOCUMENTS

- [Fee Agreement for State Controller Review of Public Hearing Draft Comprehensive Fiscal Analysis](#)
- [Emails Providing Estimate of Fees Required for State Controller Review](#)
- [Request for State Controller Review dated October 30, 2008](#)

**FEE AGREEMENT FOR
STATE CONTROLLER REVIEW OF PUBLIC HEARING
DRAFT COMPREHENSIVE FISCAL ANALYSIS**

This FEE AGREEMENT FOR STATE CONTROLLER REVIEW OF DRAFT COMPREHENSIVE FISCAL ANALYSIS (“Agreement”) is entered into this ___ day of November, 2008, by and between the San Martin Neighborhood Alliance, Inc., Proponents of the San Martin Incorporation Proposal (“Proponents”) and the Local Agency Formation Commission of Santa Clara County (“LAFCO”) (collectively, the “Parties”).

RECITALS

WHEREAS, on October 30, 2008, Proponents requested State Controller review of the Public Hearing Draft Comprehensive Fiscal Analysis (the “Public Draft CFA”) within 30 days of the release of the Notice of Availability in accordance with Santa Clara County LAFCO Incorporation Policy No. 8.5; and

WHEREAS, pursuant to Section 8.5(c) of LAFCO Incorporation Policies, Proponents must submit a fee in the total estimated cost of review of the Public Draft CFA at the time the request for review is filed and LAFCO shall not submit the Public Draft CFA to the State Controller to begin review unless and until the Proponents have deposited a fee to cover all costs related to the request as more specifically described in this Agreement; and

WHEREAS, pursuant to Section 8.5(b) of LAFCO Incorporation Policies, the Proponents are responsible for all costs related to the request, and shall sign an agreement to pay such costs; and

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows.

1. Incorporation of Recitals. The above Recitals are hereby incorporated in Agreement.
2. Term. This Agreement is effective upon execution by both Parties. It shall remain in effect until all duties and obligations with regard to this Agreement are complete and all fees owed to LAFCO are paid in full.
3. Deposit. Proponents shall deposit a fee in the amount of Thirty-Eight Thousand Five Hundred Fifty-Four Dollars and No Cents (\$38,554.00), which is the estimated cost of the review of the Public Draft CFA (“Deposit Fee”) with LAFCO no later than 5:00 p.m. on November 6, 2008. The Deposit Fee shall be determined within the LAFCO’s sole discretion and shall include all costs related to the request, including without limitation, the State Controller’s estimated cost for review, LAFCO staff costs, costs for any consultants required to assist the State Controller with the review and other costs incurred in processing the request for review. The Deposit Fee is payable regardless of whether the requested review is withdrawn or otherwise terminated prior to completion.

3.1. Insufficient Deposit. If, at any time, the Deposit Fee is determined by LAFCO to be insufficient to cover the cost of review of the Public Draft CFA, Proponents shall deposit an additional fee in the amount of the excess estimated cost (“Additional Deposit”) within three (3) calendar days of LAFCO’s request for the Additional Deposit. If Proponents fail to pay the Additional Deposit within three (3) calendar days of LAFCO’s request, LAFCO shall immediately notify the State Controller to cease its review of the Public Draft CFA, and its review shall not be resumed until the Proponents have paid LAFCO the Additional Deposit in full.

3.2. Refund of Excess Deposit. If the amount of the Deposit Fee or Additional Deposit exceeds the actual cost incurred by LAFCO in connection with the Proponents’ requested review of the Public Draft CFA, LAFCO shall refund to Proponents the difference between the actual cost and the estimate after the review is complete.

4. No Liability. LAFCO shall not be liable for suspension or termination of processing or acting on the Proponents requested review of the Public Draft CFA by any person or entity, due to the Proponents’ failure or refusal to pay the Deposit Fee, Additional Deposit or any other fee requested by LAFCO in connection with processing the review as required in this Agreement, regardless of the Proponents reason for nonpayment.

5. Notices. All notices and invoices under this Agreement shall be in writing and shall be given by hand delivery, sent by e-mail or First Class US Mail to the Parties at the following addresses, or at such other address as the Parties may designate by written notice.

Proponents: San Marin Neighborhood Alliance
PO Box 886
San Martin, CA 95046
sylviaLRS@hotmail.com

LAFCO: LAFCO Executive Officer
LAFCO of Santa Clara County
70 West Hedding Street, 11th Floor, East Wing
San Jose, CA 95110
Neelima.Palacherla@ceo.sccgov.org

6. Indemnification. To the fullest extent permitted by law, Proponents shall defend, indemnify and hold LAFCO, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, arising out of or in any way connected to the Proponents’ requested review of the Public Draft CFA.

7. Attorneys’ Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

8. Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

9. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Santa Clara County.

10. Time of Essence. Time is of the essence for each and every provision of this Agreement.

11. LAFCO's Right to Employ Other Consultants. LAFCO reserves right to employ other consultants in connection with the requested review of the Public Draft CFA where necessary in its sole discretion.

12. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the Parties.

13. Assignment or Transfer. Proponents shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of LAFCO. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

14. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

15. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

16. No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

17. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

18. Authority to Enter Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective party.

19. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the Parties have entered into this Agreement by the authorized representatives of the Parties as of the dates shown below.

LAFCO

PROPONENTS

Pete Constant
Chair, LAFCO of Santa Clara County

By:
Title:

Date:

Date:

ATTEST:

Emmanuel Abello, LAFCO Clerk

APPROVED AS TO FORM AND LEGALITY

Malathy Subramanian, LAFCO Counsel

Palacherla, Neelima

From: Palacherla, Neelima
Sent: Wednesday, November 05, 2008 3:12 PM
To: 'FreddiCom@aol.com'; 'richard vantrood'
Cc: 'Malathy Subramanian'
Subject: Fee Agreement
Attachments: DOCS_OC-51830-v2-SANTA CLARA LAFCO Fee Agreement for Review of CFA.DOC

Please see attached Fee Agreement. LAFCO must receive the executed agreement along with the full payment as referenced in the email below before 5:00 PM on Thursday, November 6th. Thank you.

Neelima Palacherla
Executive Officer
LAFCO of Santa Clara County
www.santaclara.lafco.ca.gov

70 West Hedding Street
San Jose, CA 95110
Ph: (408) 299-5127 Fax: (408) 295-1613
neelima.palacherla@ceo.sccgov.org

NOTICE: This email message and/or its attachments may contain information that is confidential or restricted. It is intended only for the individuals named as recipients in the message. If you are NOT an authorized recipient, you are prohibited from using, delivering, distributing, printing, copying, or disclosing the message or its content to others and must delete the message from your computer. If you have received this message in error, please notify the sender by return email.

From: Palacherla, Neelima
Sent: Monday, November 03, 2008 3:24 PM
To: 'FreddiCom@aol.com'; 'richard vantrood'
Cc: 'Malathy Subramanian'
Subject: FW: Initial Deposit for State Controller Review

Please make payment by wire transfer to LAFCO of Santa Clara County
The following is the wire transfer information:
Bank of America
Routing # 121000358
Account # 14998-22284

Neelima Palacherla
Executive Officer
LAFCO of Santa Clara County
www.santaclara.lafco.ca.gov

70 West Hedding Street
San Jose, CA 95110
Ph: (408) 299-5127 Fax: (408) 295-1613
neelima.palacherla@ceo.sccgov.org

NOTICE: This email message and/or its attachments may contain information that is confidential or restricted. It is intended only for the individuals named as recipients in the message. If you are NOT an authorized recipient, you are prohibited from using, delivering, distributing, printing, copying, or disclosing the message or its content to others and must delete the message from your computer. If you have received this message in error, please notify the sender by return email.

From: Palacherla, Neelima
Sent: Monday, November 03, 2008 1:52 PM
To: 'FreddiCom@aol.com'; 'richard vantrood'
Cc: 'Malathy Subramanian'
Subject: Initial Deposit for State Controller Review

Freddie, Rick:

The State Controller's Office has estimated that their cost to perform the requested review is \$36,750.

EPS has estimated a cost of \$1,440.

LAFCO staff cost estimate is \$364.

The total estimated deposit that must be paid initially is therefore **\$38,554.00***. This deposit must be paid before 5:00 PM on Thursday, November 6, 2008 for LAFCO to consider this a complete request. In addition, the requestor must execute an agreement to pay costs. We will be sending you an agreement to execute shortly. If the request is completed before 5:00 PM on Thursday, November 6th, LAFCO will enter into an agreement with the Controller's Office and authorize the State Controller's Office to proceed with the review. Please make the payment of \$38,554.00 by wire transfer to LAFCO. Detailed information for the wire transfer will provided to you shortly. Please let me know if you have any questions. Thanks. Neelima.

* This amount will be held by LAFCO to pay the costs of review. Any difference between the actual costs and the estimate shall be refunded / charged to the requestor.

Neelima Palacherla
Executive Officer
LAFCO of Santa Clara County
www.santaclara.lafco.ca.gov

70 West Hedding Street
San Jose, CA 95110
Ph: (408) 299-5127 Fax: (408) 295-1613
neelima.palacherla@ceo.sccgov.org

NOTICE: This email message and/or its attachments may contain information that is confidential or restricted. It is intended only for the individuals named as recipients in the message. If you are NOT an authorized recipient, you are prohibited from using, delivering, distributing, printing, copying, or disclosing the message or its content to others and must delete the message from your computer. If you have received this message in error, please notify the sender by return email.

From: FreddiCom@aol.com [<mailto:FreddiCom@aol.com>]
Sent: Thursday, October 30, 2008 3:59 PM
To: Palacherla, Neelima
Cc: pete.constant@sanjoseca.gov; JH2@aol.com; Blanca Alvarado; susan@svwilsonlaw.com; Don Gage; wross@lawross.com; alliance@smneighbor.org
Subject: State Controller Review

Plan your next getaway with AOL Travel. [Check out Today's Hot 5 Travel Deals!](#)

11/5/2008



San Martin Neighborhood Alliance

"Together We Make A Difference"

October 30, 2008

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

RE: Request for State Controller Review of Comprehensive Fiscal Analysis

Dear Ms. Palacherla:

The San Martin Neighborhood Alliance, Inc. (SMNA), Proponent for the incorporation of San Martin, is requesting a State Controller Review of the Public Hearing Draft Comprehensive Fiscal Analysis (CFA) in accordance with Santa Clara County LAFCO Incorporation Policy No. 8.5.

The specific elements that the State Controller is being requested to review and the reasons for the request are attached.

Sincerely,

SAN MARTIN NEIGHBORHOOD ALLIANCE

Richard van't Rood

RVR/djk

cc: LAFCO Board of Commissioners
John Chiang, California State Controller
William Ross
San Martin Neighborhood Alliance

The San Martin Neighborhood Alliance, Inc. (SMNA), Proponent for the incorporation of San Martin, requests a State Controller's Review of the assumptions and methods for determining feasibility and revenue neutrality presented in the *Comprehensive Fiscal Analysis* (Public Hearing Draft CFA October 7, 2008) prepared by Economic Planning Systems, Inc. for the Santa Clara County LAFCO staff.

The Proponent will pay reasonable LAFCO staff time for transmission of this request to the State Controller, reasonable consultant charges, if required, and any charges of the Controller's Office to the extent required by law.

The specific issues that are being requested for review and the reasons for these requests are presented below.

STATEMENT OF ISSUE NO. 1

The State Office of Planning and Research Incorporation Policies dated October 2003 (OPR Guidelines) and LAFCO Incorporation Policies Revised August 1, 2007 (LAFCO Policies) provide that financial feasibility shall be based on the ability of the new city to maintain pre-incorporation service levels. This determination of feasibility appears to be required separate from, and before, a determination of revenue neutrality. Is the incorporation feasible under the OPR Guidelines and LAFCO Policies based on the ability of the new city to maintain pre-incorporation service levels with existing revenues?

Discussion

Based on the data included in the Public Hearing Draft CFA October 7, 2008,¹ (CFA), the consultant appears to have made findings that establish that the new city can maintain pre-incorporation service levels with existing revenues. However, the CFA also states that the proposed city can be feasible only if it imposes a new tax and pays \$500,771 per year to the County in revenue neutrality payments. Based on review of the tables and text of the CFA, none of the new tax is required for maintaining pre-incorporation service levels in the new city.

The Proponent believes that the OPR Guidelines and the LAFCO Policies provide that a determination of feasibility is separate from revenue neutrality. Page 39 of the OPR Guidelines clearly indicate that the LAFCO Commission makes a finding of feasibility before the revenue neutrality determination. LAFCO Policy No. 9.k. is similar. This finding of feasibility is made after analysis of projected revenues and expenditures for service responsibilities. It is determined based on the ability of the new city to maintain pre-incorporation service levels. There is no discussion in the guidelines indicating that feasibility is determined after deciding revenue neutrality, or that feasibility is contingent on revenue neutrality. Therefore, the Proponent is led to the conclusion that feasibility is determined prior to revenue neutrality. Therefore, revenue neutrality negotiations and imposition of revenue neutrality terms and conditions are done after feasibility is determined.

¹ There have been at least 10 versions of the CFA prepared over the past 10 months.

Based on the revenues and expenditures found in Table 1 of the CFA, the new city clearly has sufficient revenues to pay for the existing level of services and maintain all required contingencies without any new taxes. This conclusion is clearly supported by the findings and assumptions in the CFA related to revenues and expenditures. The CFA requires a new tax as a condition of incorporation solely to pay revenue neutrality to the County. None of the new tax is needed to fund pre-incorporation service levels. The new tax should not be included in the determination of feasibility.

Therefore, should the CFA conclude that the city is feasible and can maintain existing services with existing revenues without a new tax?

STATEMENT OF ISSUE NO. 2

Where a proposed incorporation generates sufficient revenues to maintain existing levels of service, can LAFCO, by separate analysis of restricted and unrestricted revenues, deny the application as infeasible without a new tax?

Discussion

The Public Hearing Draft CFA October 7, 2008 includes terms for revenue neutrality requiring imposition of a new tax and 25 annual revenue neutrality payments of \$500,771 to the County. None of the new tax is required to provide services to the new city as discussed for Issue No. 1.

The Proponent believes the purpose of determining feasibility prior to conducting revenue neutrality negotiations is to give the County and the new city an opportunity to negotiate terms to mitigate any adverse impacts that may be created by the transfer of revenue and service responsibility to the new city. In this case, the Proponent believes that it should be presumed that there is revenue neutrality where the new city retains only enough revenue to maintain the existing level of service. If there is an adverse impact from allocation of revenues based on transfer of service obligations, the County and the new city can negotiate terms to mitigate those impacts. In this case, the County would not agree to any mitigation measures.² Instead, the County insisted that revenue neutrality is a condition precedent to finding feasibility. In other words, the County, County Attorney, LAFCO staff and the consultant under their direction took the position that revenue neutrality was decided first and the budget was formed around that determination.

The revenue neutrality position taken by the County, the County Attorney and LAFCO staff was that revenue solely looked to the effect of the incorporation on the County budget. Road

² LAFCO was represented by County Counsel during revenue neutrality negotiations. LAFCO staff are all employees of the County Executive. The consultant also provided the County Executive advice on revenue neutrality negotiations, while proponent was prohibited from communicating directly with the consultant. Since the County Attorney, LAFCO staff and the consultant were working together, there was no acknowledgement of the Proponent's position in the negotiations.

maintenance was excluded from the calculation. Mixed expenditures like general government and some overhead were also excluded. This position fails to recognize that these expenditures are part of every municipal government. This position would render virtually all incorporations infeasible without county consent or new taxes. As such, because the County here opposes the incorporation, the County refused to consider any proposal that did not include a tax.

The Proponent believes that the LAFCO Commission does not have the discretion to use the revenue neutrality statute to render a feasible incorporation, according to the CFA, infeasible. It should be presumed that there is revenue neutrality where the new city can maintain existing services with projected revenues and retains no surplus. By definition, an incorporation that maintains existing services with projected revenues and retains no surplus is revenue neutral because it satisfies the requirement of a similar exchange of revenue and service responsibility and the incorporation is not sought primarily for financial reasons.³ The statute should not be read in such a way that makes a feasible incorporation impossible.

In this incorporation, the proposed terms for revenue neutrality contain a tax for the sole purpose of paying revenue neutrality to the County. This position presumes there are sufficient revenues to maintain existing services because the tax is equal to the revenue neutrality payment. However, the Proponent submits that where the sole purpose of a tax is the payment of "revenue neutrality," the proposed terms cannot comply with the requirements of Section 56815. LAFCO may only impose a tax on a new city where the new city does not generate sufficient revenues to maintain existing services. In such a case, there would be no revenue neutrality payment. The terms for revenue neutrality in the CFA are thus per se not revenue neutral.

Therefore, is the incorporation of San Martin revenue neutral without new taxes where the new city retains only enough revenue to provide the pre-incorporation level of services? In other words, is it not inconsistent with revenue neutrality where the sole purpose of a new tax is to make revenue neutrality payments? And, where the new city generates sufficient revenues to maintain existing services, does the CFA comply with the revenue neutrality equation where the sole purpose of the proposed utility tax is to make revenue neutrality payments to the County?

STATEMENT OF ISSUE NO. 3

Can the LAFCO Commission make a determination of revenue neutrality without including in the revenue neutrality calculation the expenditures for road maintenance assumed by the new city?

Discussion

The Public Hearing Draft CFA October 7, 2008 states that there is a revenue neutrality imbalance and that State law requires that the new city pay to the County its entire general

³ See Government Code Section 56815 (a)

fund shortfall. The CFA fails to quote or reference the State law that allegedly supports this conclusion.

The Revenue Neutrality Statute, Section 56815,⁴ states that the Commission cannot approve an incorporation unless (1) the revenues currently received by the County that would accrue to the new city and (2) expenditures currently made by the County for those services that will be assumed by the new city are substantially equal. Section 56815 does not differentiate between road maintenance and other types of expenditures assumed by the new city. The CFA is silent as to any statutory basis for exclusion of road maintenance as an expenditure assumed by the new city.

Road maintenance is the single largest expense assumed by the new city. The CFA notes that the County's cost for road maintenance was over \$1.6 million in FY 06-07. The cost is determined under LAFCO Policy 9.c. that mandates the cost shall be based on the "prior fiscal year," which in this case is FY 06-07. The CFA and the LAFCO staff have noted that

⁴ Section 56815 provides:

(a) It is the intent of the Legislature that any proposal that includes an incorporation should result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city, and other subject agencies. It is the further intent of the Legislature that an incorporation should not occur primarily for financial reasons.

(b) The commission shall not approve a proposal that includes an incorporation unless it finds that the following two quantities are substantially equal:

(1) Revenues currently received by the local agency transferring the affected territory that, but for the operation of this section, would accrue to the local agency receiving the affected territory.

(2) Expenditures, including direct and indirect expenditures, currently made by the local agency transferring the affected territory for those services that will be assumed by the local agency receiving the affected territory.

(c) Notwithstanding subdivision (b), the commission may approve a proposal that includes an incorporation if it finds either of the following:

(1) The county and all of the subject agencies agree to the proposed transfer.

(2) The negative fiscal effect has been adequately mitigated by tax sharing agreements, lump-sum payments, payments over a fixed period of time, or any other terms and conditions pursuant to Section 56886.

(d) Nothing in this section is intended to change the distribution of growth on the revenues within the affected territory unless otherwise provided in the agreement or agreements specified in paragraph (2) of subdivision (c).

(e) Any terms and conditions that mitigate the negative fiscal effect of a proposal that contains an incorporation shall be included in the commission resolution making determinations adopted pursuant to Section 56880 and the terms and conditions specified in the questions pursuant to Section 57134.

the County expects to spend less on San Martin Roads in the future.⁵ However, there is no provision in the policy for reduction of the County expense, which shall be based on the “prior fiscal year.” It should be noted that the cost to the new city will be different than to the County cost because the new city will not provide the service in the same manner as the County now provides the service. It is not expected that the new city will contract with the County Roads Department for its road maintenance. The new city budget is also based on future projection of costs. Therefore, the new city budget is based in part on comparison to other similar small city road maintenance expenditures.⁶

The County and LAFCO have previously argued that LAFCO Policies and OPR Guidelines suggest that restricted revenues be evaluated separately. The guidelines actually speak to restricted *revenues*, not expenses. Furthermore, the guidelines indicate separate *evaluation* of revenues.⁷ So even if maintenance expenditures are included in a *separate evaluation* of *revenues*, the policies do not suggest that road maintenance expenditures can be excluded from the revenue neutrality equation.

The County and LAFCO staff have further argued that the definition of “total net cost” in the property tax transfer statute, Section 56810, applies to revenue neutrality and supercedes the definition of “expenditures” in Section 56815. The Proponent believes that because the revenue neutrality statute uses different words (“expenditures” versus “total net cost”) and because the revenue neutrality statute does not adopt the specific definition of “total net cost” for revenue neutrality, the definitions are separate and different. Furthermore, adopting the definition in Section 56810 would be inconsistent with the stated legislative intent of revenue neutrality noted at Section 56815(a) which requires a similar exchange of both revenue and responsibility for service delivery among the County, the proposed city, and other subject agencies. Exclusion of the road maintenance expense that is assumed by the new city from the revenue neutrality equation cannot result in a similar exchange of both revenue and responsibility for service delivery among the County and the proposed city.

The result of the failure to include in revenue neutrality the new city’s obligation to provide road maintenance is the conclusion that the new city must pay a tax to the County for revenue neutrality. Because the new city will not provide any extra services, such an arrangement would be per se not revenue neutral. Furthermore, the CFA notes that the County will receive a benefit of more than \$1.5 million by transferring the road maintenance obligation to the new city based on fiscal year 2007.

⁵ The CFA does not reference any data that would support how much less the County will spend in the future on the roads.

⁶ The new city budget in the CFA is a blend of comparable cities’ expenditures and County estimates. The Proponent believes the cost should be based on comparable cities only.

⁷ The impact on County road fund revenues is included on page 87 of the CFA and does not include any expenditures. The impact is the loss of only \$69,000 annually of the county road maintenance budget.

Therefore, this scenario would leave the County with a windfall or profit for the mitigation period of \$1.5 million overall per year with the proposed tax and \$680,000 per year without the new tax. The Proponent submits that the incorporation is not revenue neutral if either party comes away with a windfall or profit.

Therefore, when LAFCO is required to impose terms and conditions for revenue neutrality, does LAFCO have discretion to exclude road maintenance from the equation where that exclusion leaves the County with a significant windfall in the road fund?

STATEMENT OF ISSUE NO. 4

The CFA states that San Martin, like many other small cities, would have difficulty funding required levels of road maintenance because of limited revenues. This implies that the restricted gas tax revenues are intended to be sufficient to fund the entire road maintenance expense. Is the gas tax revenue and a new city's road maintenance expense presumed to be revenue neutral in the same manner that services funded on a cost recovery basis (such as permits/building inspection), which are, by definition, revenue neutral?

Discussion

LAFCO Policy No. 10.b. excludes from the revenue neutrality calculation services funded on a cost recovery basis (such as permits/building inspection), which are, by definition, revenue neutral. Implicit in the CFA is an apparent presumption that road maintenance should be treated in the same manner as services based on a cost recovery basis. This was an argument made by the County attorneys and LAFCO staff during revenue neutrality negotiations and before the LAFCO Commission. Proponent believes there is no such presumption or policy that allows the LAFCO Commission to exclude road maintenance from revenue neutrality. If the road fund is really revenue neutral as the County and LAFCO presume it to be, it should not matter whether the fund is included or not. The mere fact that the parties dispute the issue is evidence that the road fund is not revenue neutral.

There is no exclusion included in Section 56815, or any of the OPR Guidelines and LAFCO Policies associated therewith, for road maintenance or other services funded by restricted funds. The Proponent believes there is no such presumption. The Proponent further believes the statement that the new city will have difficulty funding required levels of road maintenance is not appropriate because it leads the public to an erroneous conclusion.

There are several reasons why road maintenance and road fund revenues cannot be presumed to be neutral under the statute. First, the County or new city is not in control of the amount of revenue generated by the State for road maintenance. There is no direct correlation between the amount of road fund revenues received and the actual cost of required road maintenance. Second, there is nothing in State or local law that states that the restricted road fund revenues are the exclusive source of road maintenance money. The road fund revenue from the State is a fixed amount based on a specific formula. There is nothing in State law that prohibits the local agency from committing additional general fund revenue to the road maintenance obligation. Third and finally, road maintenance is a general obligation of the

new city. The new city will own the roads and must maintain them. Most services funded on a cost recovery basis are application-based services for voluntary activities like building inspection or land use applications. Technically, the new city does not have to provide those cost recovery services. The new city does, however, have to provide road maintenance for the roads because it owns them. Therefore, the road fund cannot be presumed to be revenue neutral. (See State Controller's review of Wildomar Incorporation Issue No. 2, July 11, 2007.)

There are some cities where the projected road maintenance expense is substantially similar to the new city road revenues. (Wildomar was one such instance.) In our case, the consultant does not discuss this possibility. Whether the city's road revenue is sufficient to cover the road maintenance expense should be analyzed in the CFA. If the road maintenance revenue is sufficient, the Commission could conclude that the road fund is revenue neutral. However, as noted above, there cannot be a *presumption* of revenue neutrality for the road fund.

In the case of San Martin, the data in the CFA clearly indicates that neither the County nor the new city's road funds are revenue neutral. The County spends significantly more in San Martin than it generates from San Martin. Based on the CFA, the County spent \$1.6 million on the roads in FY 06-07 and loses only \$69,000 in revenues as a result of the incorporation for an imbalance of more than \$1.5 million. Thus the incorporation would leave the County with a significant windfall or profit to its road fund under the terms in the CFA. The city likewise is not revenue neutral because the CFA requires general funds to maintain its roads. The new city has a projected budget of almost \$900,000 per year with average restricted revenues of about \$215,000. The road maintenance revenue generated by the new city is not equal to the expense. The result is to give a profit to the County road fund at the expense of the new city general fund.

The Proponent believes the road maintenance expense must be included in the revenue neutrality calculation when the facts do not show that the road fund is revenue neutral. The proponent submits that the assumption in the CFA excluding the road maintenance expenditure from the revenue neutrality calculation is incorrect. The revenue neutrality calculation must include the road maintenance expense when the Commission cannot find the road revenues and the road expense to be revenue neutral.

Therefore, does LAFCO have discretion to find that the road fund is revenue neutral and categorically excluded from revenue neutrality calculation where the funds are not in fact neutral?

STATEMENT OF ISSUE NO. 5

The Public Hearing Draft CFA October 7, 2008 requires repayment to the County for transition year services and also revenue neutrality payments. Should the CFA properly charge the incorporation for both revenue neutrality and transition year services performed by the County where the County continues providing those services during the transition year and retains revenues generated during the transition year?

Discussion

The Proponent believes it should be presumed that the new city is revenue neutral where the expenditures for services assumed by the new city are substantially equal to the revenues transferred to the new city. The Cortese Knox Hertzberg Act provides that the County will continue to provide services during the transition year. The CFA provides that the revenues that accrue to the County during the transition year will be credited to the new city. It appears that the general fund revenues retained by the County (about 1.5 million dollars) far exceed the expenditures for services the County will continue to provide during the transition year (police, animal control, planning and building, public works and engineering). Yet, there does not appear to be a corresponding credit in the CFA for the extra revenue retained by the County.

Similarly, the County continues to provide the road maintenance in San Martin during the transition year. In order to place the County in the position it enjoyed prior to incorporation, the new city should compensate the County for the impacts on road fund revenue associated with the incorporation. According to Appendix V of the CFA and Table 3, the impact on the County Road Fund revenues is \$69,323. Therefore, the new city should not be charged more than \$69,323 for the transition year for road maintenance. The County would thus be made whole during the transition year.

In both areas, the County is realizing a substantial profit for transition year services. The Proponent believes the Cortese Knox Hertzberg Act does not allow such a profit for the County at the expense of the new city.

Therefore, is it appropriate to collect revenue neutrality payments and retain transition year revenues during the transition year?

STATEMENT OF ISSUE NO. 6

Is the cost of elections in the transition year reasonable?

Discussion

The Proponent's research indicates that no other County charges more than about \$20 per registered voter for small special elections, with similar counties, like Orange County, estimating charges of less than \$5.00 per voter for a similar election (Rossmoor \$27,000 for 7,000 voters). The Public Hearing Review Draft CFA October 7, 2008 includes a charge of about \$65 per registered voter. The Proponent believes this amount, which is based on an estimate by Santa Clara County, is unreasonable and interferes with citizens' right of free elections.

Therefore, is the cost of elections in the transition year reasonable?

STATEMENT OF ISSUE NO. 7

Does the Public Hearing Draft CFA October 7, 2008 use correct assumptions of expenditures for general government and services under existing law?

Discussion

Under existing law, new cities are entitled to a declining scale of additional funds under the Provisions of Sections 7104, 11005, and 11005.3 of the Revenue and Taxation Code, and Section 2107 of the Streets and Highways Code, (see AB 1602 (2006)) relating to local government finance. The purpose of this “bump” is to provide additional start up costs for the new city.

The CFA makes the assumption, based on LAFCO Policies, that the current general government cost to the County is not included in the expenditures for costs assumed by the new city for purposes of revenue neutrality. As such, under the LAFCO Policies, the new city only retains revenues substantially equal to County expenditures without including the cost of general government. The new city receives the “bump” to allow it to pay for general government. Theoretically, the new city should be revenue neutral when it combines the expenditures assumed by the new city and the “bump” for general government.

This issue focuses on the relationship of the new city budget to the allocation of revenues received by the new city. The Proponent believes the budget for the new city should reflect the estimated costs of services in the future. These costs may be based on the preexisting County costs where applicable or on the costs for similar services experienced by other cities. Under this issue, the Proponents look at the new city budget in terms of the expenditures for services transferred and the cost of general government separately. We presume revenues equal to the cost of services assumed from the County plus the general government cost is sufficient to maintain the existing level of service.

Given the revenue neutrality policy of excluding the cost of general government, it must be assumed that the Legislature presumed the “bump” and other revenues reserved exclusively for cities (revenue received but not transferred from the county) would be enough to pay for the cost of general government in the first few years existence of the new city. Otherwise, it would be impossible to incorporate a new city without the consent of the County where the “bump” does not cover the entire cost of general government.

The consultant was instructed by LAFCO to use comparable sized established cities to determine the estimated cost for the general government expenditures in the CFA. The consultant was further required to use costs from the higher end of the scale for such cities. This approach may or may not generate cost estimates comparable to the experience of a new city. The Proponent believes in the case of a new city, the amount left for general government after accounting for the expenditures assumed from the County should be the driving factor for the general government budget, not necessarily the experience of established cities. In other words, the feasibility of the new city should be determined by asking the question of whether the appropriate services can be purchased with the available

revenue. After all, if one were to decide to buy a new car to commute to work, he or she would not base the cost of the car on what all the neighbors spend on their cars. The decision would necessarily be driven by the amount available in the purchaser's budget. It may be that the purchaser can only afford a good used economy car and all the neighbors have a new luxury car. Either car will just as effectively provide the service. One just costs a lot less. This concept can apply to the costs of general government services as well as other services for the new city. To determine the expenses that the new city will likely see, the consultant should look at how much is available in the budget and then to both existing County costs and the experience of comparable cities. The feasibility study should determine if the new city could provide existing levels of service with the revenues available. The Proponent does not believe the CFA analyzes the budget this way and gives too much deference to the costs incurred by the County and not enough to what services can be purchased based on comparable cities' experience.

In addition to the above failure to analyze the cost of what services can be purchased within the budget, the CFA has a built in mechanism that further increases projected costs to the new city. In this case, the new city budget is based on the County costs with a ten percent reserve in the first year and ten percent contingency on top of that. The budget further assumes that the contingency is spent each year. The net effect of this method is to add ten percent to the cost for each budgetary item for the entire revenue neutrality period. As such, the estimates could create an inflated budget for basic services that takes away from the money available for general government. The approach further does not make a realistic estimate of what similar services could be secured from vendors other than the County.

Under the terms of this CFA, the higher cost of government may impair the ability to find revenue neutrality because it artificially inflates the new city budget to more than the County would pay for those services in the future. If the size of the city's budget, without general government, were more than the expenditures in the revenue neutrality calculation, then the incorporation would fail because the new city would not be able to pay revenue neutrality without a tax or the consent of the County. This would mean the County is in control of the new city's feasibility, thereby effectively taking away the discretion of LAFCO to find terms for revenue neutrality without the County's consent.

This concept is particularly troubling to the Proponent due to the fact that the County already controls LAFCO. Two of the five LAFCO Commissioners also sit on the County Board of Supervisors. LAFCO has contracted with the County for all its services and employees without the benefit of ethical walls; LAFCO is listed and operated as an agency of the County Executive office; and all of the LAFCO staff are County employees. The County can easily scuttle this incorporation by simply having LAFCO staff budget it out of feasibility.

Therefore, must LAFCO use the revenues available for the new city to determine if existing services can be maintained with existing revenues without raising taxes?

CONCLUSION

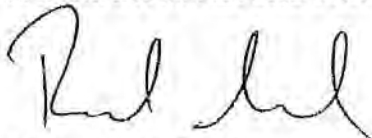
Given the fact that the Santa Clara County Board of Supervisors has already passed a resolution opposing the incorporation unless San Martin pays a ransom of \$10,000,000, it is critical to have these questions answered so LAFCO has objective and rational rules to govern its conduct. If there is no baseline to determine objectively terms for feasibility and revenue neutrality, a potential new city will be left to the dictates of the County and could be forever foreclosed from the opportunity to vote on incorporation without the County's consent.

Failure to have any objective standards have driven up the charges LAFCO staff has billed for the application to many times what any other incorporation applicant has had to pay. It has also greatly increased the processing time for the application.

The Proponent believes with objective standards that comply with the statutory scheme in the Cortese-Knox-Hertzberg Act, the San Martin incorporation is feasible and revenue neutral. The financial analysis should not prevent the citizens of San Martin from voting on the incorporation without the imposition of a new tax.

Thank you for considering these matters.

SAN MARTIN NEIGHBORHOOD ALLIANCE, INC.



Richard van't Rood



EXECUTIVE OFFICER'S REPORT

PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

OCTOBER 31, 2008

TABLE OF CONTENTS

I.	INTRODUCTION	1
	A. Purpose of the Incorporation	1
	B. Locations and Physical Characteristics of Incorporation Area	1
	C. Alternatives to Incorporation	2
	D. Proposed Government Structure	3
	E. Background and History	3
	F. Statutory Procedures for Incorporation	3
II.	SAN MARTIN INCORPORATION PROCESS AND TIMELINE	4
	A. LAFCO Receives Petition, Develops Incorporation Policies and Hires Consultants	4
	B. Comprehensive Fiscal Analysis (CFA) and Revenue Neutrality Activities	5
	C. Environmental Review and Consideration of Alternative Incorporation Boundaries	6
	D. Next Steps: LAFCO Public Hearing and Payment of Fees	7
	E. Public Participation and Consideration of Comments	7
III.	PLAN FOR SERVICES	8
IV.	EFFECT ON SPECIAL DISTRICTS	12
	A. Waive Detachment from County Lighting Service Area	12
	B. Detach from County Library Service Area	13
V.	PROPOSED AND RECOMMENDED BOUNDARIES	13
	A. Incorporation Boundaries for the Town of San Martin	13
	B. Sphere of Influence (SOI) for the Town of San Martin	19
	C. Urban Service Area (USA) for the Town of San Martin	19
VI.	CEQA: ENVIRONMENTAL EVALUATION	20
VII.	COMPREHENSIVE FISCAL ANALYSIS (CFA)	21
	A. Financial Feasibility	22
	i. Utility Users Tax Required	22
	ii. Election and Ballot Measures	23
	iii. Summary of Town's Expenditures and Revenues	25
	B. Revenue Neutrality	26
VIII.	FACTORS TO BE CONSIDERED IN REVIEW OF PROPOSAL	28
	A. Agricultural Lands / Williamson Act Contracts Considerations	28
	B. Fair Share of Regional Housing Needs	29
	C. Environmental Justice	29
IX.	REQUIRED LAFCO FINDINGS AND DETERMINATIONS	30
	A. Government Code §56720 Findings	30
	B. Findings Regarding Revenue Neutrality §56815	32
X.	RECOMMENDED TERMS AND CONDITIONS	33

XI. STAFF RECOMMENDATIONS 42

XII. ATTACHMENTS (provided separately)

- Attachment A: Draft LAFCO Resolution making determinations and approving the incorporation of the Town of San Martin subject to specific terms and conditions.
- Attachment B: Revised Initial Study and Negative Declaration for the Proposed Incorporation of the Town of San Martin (dated March 11, 2008)
- Attachment C: Comprehensive Fiscal Analysis and Plan for Services for the Proposed Incorporation of the Town of San Martin (dated October 7, 2008)

TABLES

Current and Proposed Service Providers in San Martin	9
Summary of City Revenues and Expenses	24
Change in Revenues and Expenses to Santa Clara County:	27

FIGURES

Figure 1: Incorporation Boundary as Proposed by the Proponents	15
Figure 2: Staff Proposed Modifications to the Proposed Incorporation Boundary	16
Figure 3: Preferred Incorporation Boundary Identified by LAFCO	17
Figure 4: Proposed Amendment to the Sphere of Influence (SOI) of Morgan Hill	18

I. INTRODUCTION

A. Purpose of the Incorporation

The purpose of the incorporation of the Town of San Martin as stated by the proponents of the incorporation is to:

- Create a locally accountable governing body that is more visible and accessible
- Have local control of land use, growth, planning policy and other governmental activities
- Legally recognize that San Martin already has the critical attributes of a town in that it has a name, a distinct geographic area, a variety of land uses and a positive relationship with bordering cities

B. Location and Physical Characteristics of Incorporation Area

The unincorporated community of San Martin is located in the southern part of Santa Clara County roughly between the cities of Morgan Hill and Gilroy. Regional access to the area is provided by U.S. Highway 101 (US 101) which divides the community and runs in a north-south direction. The area west of the freeway is more intensively developed and supports most of the commercial and industrial uses in the community. To the far west is the Hayes Lane subdivision consisting of single family homes on large lots (20+ acres) and the Cordevalle Golf Course and residential development. The South County Airport is located along the west side of US 101. The area east of US 101, which is the more rural part of the community, is characterized by low to medium-density, single family residences and various land uses.

The community core is centered at the intersection of Monterey Road and San Martin Avenue. This community core consists of single-family lots and most of the commercial and industrial uses within the community. The community core is characterized by a predominance of small lots and higher population density than the remainder of the area. In general, the unincorporated lands in the area consist of the following land uses: rural residential development on small and large lots, agricultural operations, some industrial and commercial uses, a U.S. Post Office, an airport, a golf club, a winery, and permanently protected open space.

C. Alternatives to Incorporation

The proponents evaluated several alternatives to incorporation for their ability to satisfy the intent of the incorporation which is to provide the San Martin residents local control over land use issues. In the information submitted to LAFCO in September 2004, the proponents concluded that none of the evaluated alternatives would fulfill the underlying purpose and objectives which they sought. The following is a summary of the alternatives considered by the proponents.

Annexation to an Adjacent City

San Martin is located roughly between the cities of Gilroy and Morgan Hill. The proponents indicated that their intent and vision to preserve San Martin as a rural residential community would not be consistent with the general plans for Morgan Hill or Gilroy. Additionally, San Martin lies outside the sphere of influence and urban service areas of both cities and neither of the two cities have expressed any interest in annexing the area. Both cities currently have many decades worth of vacant land within their boundaries.

Formation of a Special District

This option would not address the key purpose of the incorporation which is to have more local control over land use since special districts do not have jurisdiction over land use and planning.

Formation of an Area Planning Commission (APC)

An APC is a body authorized by the County Board of Supervisors with land use powers and responsibilities for a specific area as a substitute to the countywide Planning Commission. The proponents of the incorporation and the County considered the alternative of forming an Area Planning Commission for San Martin and rejected it. The proponents felt that an APC would be inadequate for the purposes of establishing complete local control over land use policy and the County felt that an APC would result in increased costs and inefficiencies as well as an undesired precedent for other areas in the County.

San Martin Planning Advisory Committee (SMPAC) / Status Quo

The County Board of Supervisors appointed the SMPAC in 1981 to serve as an advisory body to the Board and the County Planning Commission regarding land use and planning issues in the San Martin area. According to the proponents, although it has been beneficial in communicating San Martin's issues and positions to the Board and the Planning Commission, this body is

advisory only and does not give residents the ability to set policy and establish regulations in the community.

D. Proposed Government Structure

The incorporation proposal would create the Town of San Martin which would be a general law city with a Council/ Manager form of government. A five-member city council would be elected at large from the incorporated area. The City Council would hire a city manager, a city clerk, a city attorney and a city treasurer. The city manager would hire additional staff as necessary to provide services.

E. Background and History

The San Martin Neighborhood Alliance, a non-profit community group initiated incorporation efforts in San Martin with the preparation of an Initial Fiscal Analysis (IFA) in June 2003. The IFA concluded that the incorporation would be financially feasible. At that time, LAFCO staff requested a reexamination of issues establishing fiscal feasibility, including issues related to financial viability of the incorporation given the changes occurring in state and local government financing structure at that time and the assumptions used in developing the analysis such as the assumption of the amount of commercial development projected in the analysis contrary to the community's desire to remain rural residential in nature and not change the level of services. The current incorporation process began with the proponent's submittal of a "Notice of Intent to Circulate a Petition" to LAFCO on November 30, 2006.

F. Statutory Procedures for Incorporation

The Cortese Knox Hertzberg Local Government Reorganization Act (CKH Act) establishes the procedures and requirements for an incorporation. Five basic steps involved in the incorporation process include:

- **Petition / Application to LAFCO:** An incorporation application can be initiated by either agency resolution or by petition of 25% of registered voters or landowners in the area. **This proposal was initiated by petition of registered voters.**
- **LAFCO Review and Analysis:** LAFCO staff is required to review and analyze the application material and complete analysis of the proposal including fiscal analysis, environmental analysis and other factors as required by LAFCO policies and state law and prepare a staff report with recommendations. **Review and analysis completed with this report.**

- **LAFCO Public Hearing:** LAFCO will conduct a public hearing to consider the report, receive public testimony, and decide whether to deny or approve the application, make the required findings and decide on what terms and conditions to apply. Any person or agency may file a request for reconsideration with the Commission within 30 days after adoption of a resolution by the Commission. The request must be accompanied by a LAFCO filing fee and must state what new or different facts that could not be presented previously are claimed to warrant the reconsideration pursuant to Government Code §56895(a). **Public hearing date is set for November 7, 2008.**
- **Election:** If incorporation is approved by LAFCO, then the County Board of Supervisors will call an election for voters who reside in the incorporation area. A majority approval is required for the incorporation to be successful. **Tentative election date is June 2009.**
- **Finalization:** If the election is successful, LAFCO will record a Certificate of Completion which makes the incorporation effective. **Tentative effective date of incorporation is July 1, 2009 or soon thereafter.**

II. SAN MARTIN INCORPORATION PROCESS AND TIMELINE

The following summarizes the various steps undertaken in processing the San Martin incorporation proposal:

A. LAFCO Receives Petition, Develops Incorporation Policies and Hires Consultants

LAFCO received a petition and application for the incorporation of the Town of San Martin in February 2007 from the San Martin Neighborhood Alliance, the proponents of the incorporation. The petition was verified by the Registrar of Voters and LAFCO issued a Certificate of Sufficiency on March 6, 2007.

Prior to receiving the incorporation application, LAFCO staff and the incorporation proponents had several pre-application meetings in November and December 2006 to review the petition, process, and general timeline for the project. During that time, LAFCO staff also held a meeting with staff from the County, Cities of Gilroy and Morgan Hill, and the proponents to discuss potential incorporation boundaries.

This being the first incorporation ever processed by Santa Clara LAFCO, LAFCO had to develop and adopt incorporation policies. LAFCO held two workshops - one in San Martin and another at the LAFCO meeting to provide information on the incorporation process and to seek input on the policies. LAFCO adopted its incorporation policies at a public hearing in May 2007 with follow-up revisions in August 2007. These policies in addition to the CKH Act and the OPR Incorporation Guidelines serve as a guide to LAFCO in processing the incorporation. During this time, staff met multiple times with the incorporation proponents to discuss alternative boundaries and various other process issues. On May 30, 2007, LAFCO authorized a fee agreement with the San Martin Neighborhood Alliance (incorporation proponents).

LAFCO staff then established its first working timeline which was dictated by the proponent's desire to have the incorporation effective by June 30, 2009, after which time the Vehicle License benefits allowed in State law for new incorporations were set to expire. This law was subsequently changed to remove the original sunset clause. The original timeline has gone through many revisions to address the various changes in circumstances.

In May 2007, LAFCO retained Economic & Planning Systems (EPS) to prepare the Comprehensive Fiscal Analysis and in July 2007, it retained Michael Brandman Associates (MBA) to conduct the environmental analysis for the incorporation proposal. Both consultants were selected following an RFP and interview process which included proponents, County and LAFCO staff.

LAFCO issued a Certificate of Filing for the incorporation proposal on June 26, 2008.

B. Comprehensive Fiscal Analysis (CFA) and Revenue Neutrality Activities

In August and September of 2007, EPS, LAFCO's CFA Consultant and LAFCO staff worked with the various governmental agencies and departments to collect the data necessary to prepare the CFA. EPS then prepared an Administrative Draft CFA which was reviewed by LAFCO staff, County staff, and the incorporation proponents. EPS presented the Public Hearing Draft CFA to LAFCO at its meeting in February 2008. The Public Hearing Draft CFA was released for a 30-day public review and comment period on March 7, 2008. Government Code §56801 allows any interested person to request State Controller's review of the CFA within 30 days of the notice of availability. No request was received during that time. Revenue neutrality negotiations between

the County and the proponents which had begun in December 2007 concluded in March 2008 (six meetings) without the two parties reaching an agreement.

In April 2008, County Counsel, representing LAFCO on the incorporation proposal, withdrew due to a conflict of interest. In May 2008, LAFCO hired Best Best & Krieger as special counsel to LAFCO to advise and represent LAFCO on the incorporation proposal. At the May 2008 LAFCO public hearing, LAFCO accepted comments on the Draft CFA and directed staff to revise it as appropriate. LAFCO also directed its Counsel to review the legal opinions submitted by the County and by the proponents on revenue neutrality and to prepare an independent analysis of the issue.

At the June 2008 meeting, staff presented revised CFA tables which included new information concerning election costs and repayment to the County of the transition year costs. LAFCO Counsel provided their legal analysis of revenue neutrality issues at the July 2008 meeting. Following review of the analysis, LAFCO sent a letter to the County Board of Supervisors requesting that the County consider renegotiating with the proponents to reach agreement on revenue neutrality using a professional facilitator. The two parties met on August 15, 2008, but could not reach agreement. As a result, LAFCO will impose terms and conditions for revenue neutrality.

At the September 10, 2008 LAFCO meeting, LAFCO staff presented various revenue neutrality mitigation options for the Commission's consideration and the Commission selected two potential options and directed staff to provide more information and a recommendation at the next meeting. At the October 1, 2008 LAFCO Meeting, LAFCO directed staff to revise the Public Hearing Draft CFA to reflect its preferred option and to prepare the Executive Officer's Report. Please see Section VII of this report for more detailed information on this issue.

C. Environmental Review and Consideration of Alternative Incorporation Boundaries

In July 2007, MBA, LAFCO's CEQA Consultant, began collecting information to prepare a CEQA Initial Study for the incorporation proposal. In November 2007, LAFCO released the Draft Initial Study and Proposed Negative Declaration (IS/ND) for public review. In December 2007, LAFCO held a public hearing to accept comments on the document. At the meeting, LAFCO staff also provided a report to the Commission on alternative boundaries. In February 2008, LAFCO identified a preferred alternative boundary for the proposed incorporation and directed staff to revise the IS/ND, and to re-circulate the document for public review and comment.

In March 2008, LAFCO circulated the revised IS/ND for public review and comment. In May 2008, LAFCO held a public hearing to accept comments on the Revised IS/ND and directed LAFCO Counsel to review the entire record and to advise LAFCO at the June meeting. At the June 2008 LAFCO Public Hearing, LAFCO directed staff to proceed with the Negative Declaration. Please see Section VI on CEQA compliance for more detailed information.

D. Next Steps: LAFCO Public Hearing and Payment of Fees

LAFCO set November 7, 2008 as the LAFCO public hearing date for the incorporation proposal. With the issuance of this report, the LAFCO Executive Officer's Report has been released for public review and a community workshop is scheduled for November 3, 2008 in Morgan Hill. Please see LAFCO website (www.santaclara.lafco.ca.gov under What's New) for more information.

Per the Fee Agreement between the proponents and LAFCO, LAFCO fees are due prior to the first public hearing. As of September 30, 2008, the total LAFCO fees incurred in processing the San Martin incorporation proposal amount to \$171,555.16. At its September meeting, the Commission directed that this full amount of fees be paid no later than 72 hours prior to the November 7, 2008 LAFCO public hearing.

On October 30, 2008, the proponents submitted a letter requesting State Controller's review of the CFA as allowed under Government Code §56801. Pursuant to LAFCO Incorporation Policies 8.5(c), the request must include a deposit for the total estimated cost of the review. Proponents will be informed of the estimated cost. Following the receipt of the deposit, staff will forward the request to the State Controller's Office. The State Controller has 45 days from receipt of the request to issue a report with its analysis.

E. Public Participation and Consideration of Comments

Throughout the entire process, LAFCO and its staff have received and considered multiple comments (written and verbal) from the proponents, San Martin residents, affected local agencies, various stakeholder groups, and interested parties. LAFCO received comments from the following affected local agencies: including various departments within the County such as the County Executive's Office, the County Counsel's Office, County Planning Office and the County Parks and Recreation Department. In addition, the cities of Morgan Hill and Gilroy have also provided comments.

LAFCO has communicated with the community and various stakeholders involved through a variety of ways to encourage participation and

understanding of process and issues through workshops, meetings, public hearings, by posting information on the LAFCO website, distributing information by emails, U.S. mail, newspaper notices, etc.

The Commission considered all comments received, including those from affected local agencies, and addressed these comments where determined appropriate. The entire public record is on file at the LAFCO office.

III. PLAN FOR SERVICES

Cities are required to provide the following municipal services:

- General government including city council, management, administration
- Land use regulation and planning, code enforcement and building inspection
- Maintenance of public roads
- Law enforcement
- Animal control

The proposed Town of San Martin will assume responsibility for all these required services upon incorporation. The proposed new Town of San Martin will be a contract city providing many of its services through contract with another public agency or private provider. Existing special districts in the area will continue to provide services without changes to their boundaries. The proponents of the incorporation proposal do not propose any new services upon incorporation or any changes to the service levels currently provided in the area. Upon incorporation, the new Town would have the authority to provide additional services and / or the authority to change the service levels if desired. Attachment C contains the Plan for Service which describes the various governmental services currently provided and proposed to be provided upon incorporation including discussion of the funding required to provide the services. The following table provides an overview of the current service providers in the San Martin community and the proposed service providers following incorporation.

TABLE: CURRENT AND PROPOSED SERVICE PROVIDERS IN SAN MARTIN

SERVICE	CURRENT SERVICE PROVIDER	PROPOSED SERVICE PROVIDER
General Government	County	Town
Law Enforcement	Sheriff's Office	Town (contract w/ Sheriff)
Traffic Control	California Highway Patrol	Town (contract w/ Sheriff)
Fire Protection	South SCC Fire Protection District	No change
Ambulance/ Emergency Medical	South Santa Clara County Fire Protection District	No change
Animal Control	County	Town (contract w/ County)
Vector Control	Vector Control District	No change
Land Use Planning & Regulation	County	Town
Building Inspection	County	Town
Parks and Recreation	County	Town
Regional Parks/Open Space	County, Open Space Authority	No change
Library	Santa Clara County Library District	No change
Road Maintenance, etc.	County	Town
Water Service	San Martin County Water District, West San Martin Water Works, Mutual Water Companies	No change
Waste Water Disposal / Sewer	Lions Gate Community Services District in Cordevalle, Remaining area on septic tanks	No change
Solid Waste Collection/Disposal	County	Town
Flood Control	Santa Clara Valley Water District	No change
Street Lighting	Santa Clara County Lighting Service Area	No change
Schools and Colleges	Gilroy / Morgan Hill Unified School Districts and Gavilan Community College	No change
Gas and Electricity	PG&E	No change
Cable TV	Charter Communications	No change
Public Transit	Valley Transit Authority	No change

The following is a brief description of provision of key services after incorporation.

Law Enforcement and Traffic Control

In unincorporated areas, law enforcement is provided by the Sheriffs' Office. Traffic enforcement is provided by California Highway Patrol (CHP) which has statewide responsibility for traffic control and accident investigation in unincorporated areas. Upon incorporation, the responsibility for law and traffic enforcement transfers to the new Town. It is expected that the new Town would contract with the Sheriff's Office for traffic and law enforcement services. No change in level of service is proposed after incorporation.

Water Service

The San Martin County Water District and the West San Martin Water Works provide water services to a portion of San Martin. San Martin County Water District serves approximately 180 connections within a one square mile service area centered along San Martin Avenue east of Monterey Road. The West San Martin Water Works is a private water company that serves approximately 270 connections to the west of Monterey Road including the Cordevalle golf course and residential development. Properties in other areas within the incorporation boundaries are served by individual or shared wells or mutual water companies. Since the incorporation does not propose any changes to land use or involve any new development, incorporation will not result in an increased demand on water supplies.

The water suppliers in the South County area including the San Martin County Water District, the West San Martin Water Works and the Cities of Morgan Hill and Gilroy all rely on ground water extracted from the Llagas sub-basin which is managed by the Santa Clara Valley Water District. Groundwater quality in the area is impacted by high nitrate levels due to septic systems and surrounding agricultural land use as well as by perchlorate contamination from past manufacturing operations. The water produced at individual and shared wells frequently does not meet drinking water quality standards and there will continue to be a need for expanded treated water facilities (through a public water agency rather than individual wells and small mutual water companies) in the San Martin area in order to provide water treatment services for failed or at risk systems. Incorporation in itself will not result in a change in water service providers or in a change in the level of service.

Waste Water Disposal / Sewer Service

Sewer service is not provided in the San Martin area, the only exceptions being South County Government Center and the John H Boccardo San Martin Living Center on Monterey Road. All other properties rely on individual private septic systems for waste water disposal. The Lion's Gate Community Services District operates a package sewage treatment system for the Cordevalle development in the proposed incorporation boundaries. Current growth within the San Martin area is limited per the County's policies. Since the incorporation does not propose any changes to land use or involve any new development, incorporation will not result in an increased demand for sewer service.

Although no change in service levels is expected as a result of the incorporation, the majority of the septic systems in San Martin's core area are ageing and it is a matter of time before they will need replacement. Any future need or demand for sewer service in San Martin after incorporation would require significant resources for planning and infrastructure (including sewer pipes as well as sewage treatment facilities) development.

Parks and Recreation

After incorporation, the new Town will become responsible for future park and recreation services within the Town. Although there will be no local parks within the incorporation boundaries (based on exclusion of Area 1 from the boundaries), the Coyote Lake/ Harvey Bear Ranch County Park will be located adjacent to the Town's boundaries. No new park and recreation services are planned as part of the proposed incorporation.

Solid Waste Collection and Disposal

The County has a franchise agreement for this area and the current service provider for solid waste collection and disposal is South Valley Disposal. After incorporation, the Town of San Martin is likely to enter into a franchise agreement.

Animal Control

Animal control services are currently provided by the County through its Animal Care and Control Department. After incorporation, the Town could provide these services or contract with the County.

IV. EFFECT ON SPECIAL DISTRICTS

Several special districts provide services within all or a portion of San Martin. These districts include the San Martin County Water District which provides water service to a portion of San Martin, the Lions Gate Community Services District which provides sewer service to the Cordevalle golf course and residential community, the South Santa Clara County Fire Protection District which provides fire protection services and emergency medical services to San Martin and other parts of unincorporated South County, the Loma Prieta Resources Conservation District which provides resource conservation services to all of the south county area, the Santa Clara Valley Water District which is a countywide water retailer and flood protection district, the Santa Clara County Open Space Authority which provides open space protection in the south county area, the County Library Service Area which provides library services to several cities and all of the unincorporated areas, the County Lighting Service Area which provides lighting services to some unincorporated areas and the Santa Clara County Vector Control District which provides countywide vector control services. The proposed incorporation will not affect these districts or the services provided by these special districts.

Nonetheless, Streets and Highways Code §22613 requires automatic detachment from County Service Areas (CSA) when CSA lands are incorporated or annexed to cities. Two CSAs exist within the proposed incorporation boundaries of San Martin namely, the County Lighting Services Area and the County Library Services Area.

Waive Detachment from County Lighting Service Area

The Lighting Service Area provides lighting service to small non-contiguous unincorporated areas including a small area within the San Martin incorporation boundaries. The proponents have indicated that they expect the County Lighting Services Area to continue providing services upon incorporation. Government Code §56375(n) allows LAFCO to waive the automatic detachment of territory from a CSA provided LAFCO is able to make specific findings that the detachment would deprive an area of service needed to ensure the health, safety and welfare of the residents of the area and that the waiver would not affect the ability of the city to provide any service.

The Executive Officer recommends that LAFCO waive the detachment of the County Lighting Service Area since the removal of the area from the CSA would deprive the area of street lighting as the Town has not proposed an alternate means of providing the service. Therefore retaining the CSA for providing

lighting services would benefit the public health and safety of the residents and would not affect the ability of the new town to provide service.

Detach from County Library Service Area

The sole purpose of the County Library Service Area is to provide financing for library services through the levy of benefit assessments. Since the voter-approved assessments expired in 2005, the County Library Service Area has no legal authority to levy the assessments and no longer serves any function. The Joint Powers Authority (composed of County and Cities members) that was created to administer and operate the County Library formed a Community Facilities District in 2003 with the same geographical area as the County Library Services Area for the purpose of funding library services. In May 2005 residents voted to continue funding library services through the Community Facilities District. The County Library Services Area continues to exist until a formal process officially dissolves it. Therefore, San Martin upon incorporation would be automatically detached from the County Library Service Area without any impact on the funding or provision of library services in the area.

V. PROPOSED AND RECOMMENDED BOUNDARIES

A. Incorporation Boundaries for the Town of San Martin

The proposed incorporation boundaries as submitted by the proponents, roughly encompass a 10,473 acre (approx. 16 square miles) area bounded by Maple Avenue on the north, New Avenue on the east, Masten Avenue on the south and Watsonville Road on the west. Please see Figure 1 for map of proponent's incorporation boundaries.

LAFCO is required to consider alternative boundaries and is empowered to modify boundaries in its review of proposals in accordance with Government Code §56668 and §56375 (a) & (l) and LAFCO Policies.

Staff evaluated the proponents' boundary and proposed the following modifications to the proponent's boundaries to better comply with State law, OPR incorporation guidelines and LAFCO policies:

- Exclusion of Area 1, 3, 4, 5, 6, and 7
- Inclusion of Area 2

Figure 2 depicts the staff proposed modifications to the proposed incorporation boundaries.

The Commission considered these alternative boundaries, the comments from the proponents, community, neighboring cities and other agencies at its December 5, 2007 meeting and at its February 6, 2008 meeting and directed staff to proceed with the following changes to the proponent's boundary:

- Exclusion of Areas 1 and 6
- Inclusion of Area 2 and 3

This preferred boundary identified by LAFCO and depicted in Figure 3 was used to clarify the project description for completing the environmental analysis process and for completing the fiscal analysis in the CFA.

For more detailed analysis of the boundary alternatives refer to December 5, 2007 and February 6, 2008 staff reports on alternative boundaries. The preferred boundary identified by LAFCO includes approximately 9,279 acres (approx. 12 square miles).

Figure 1: Incorporation Boundary as Proposed by Proponents

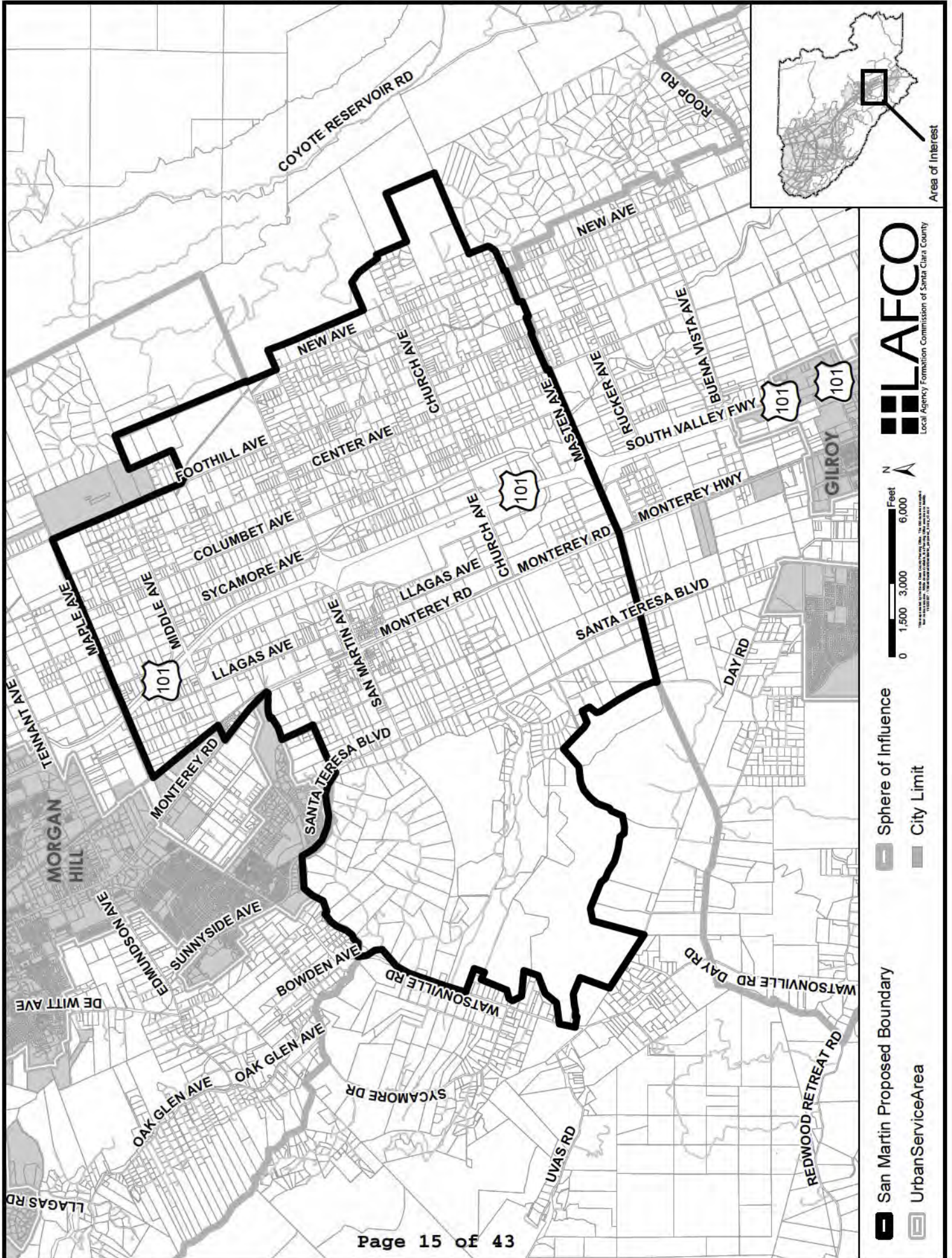


Figure 2: Staff Proposed Modifications to the Proposed Incorporation Boundary

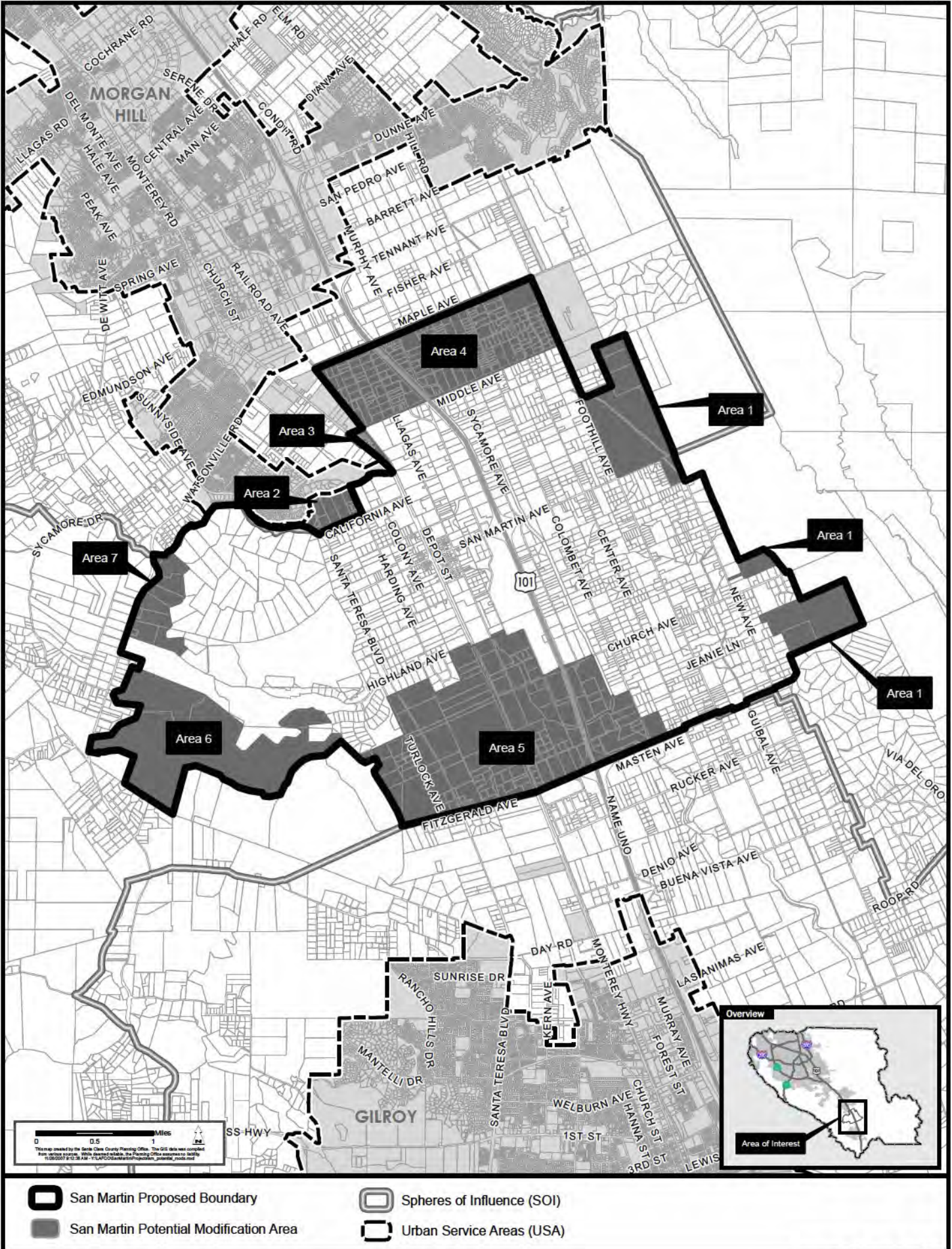
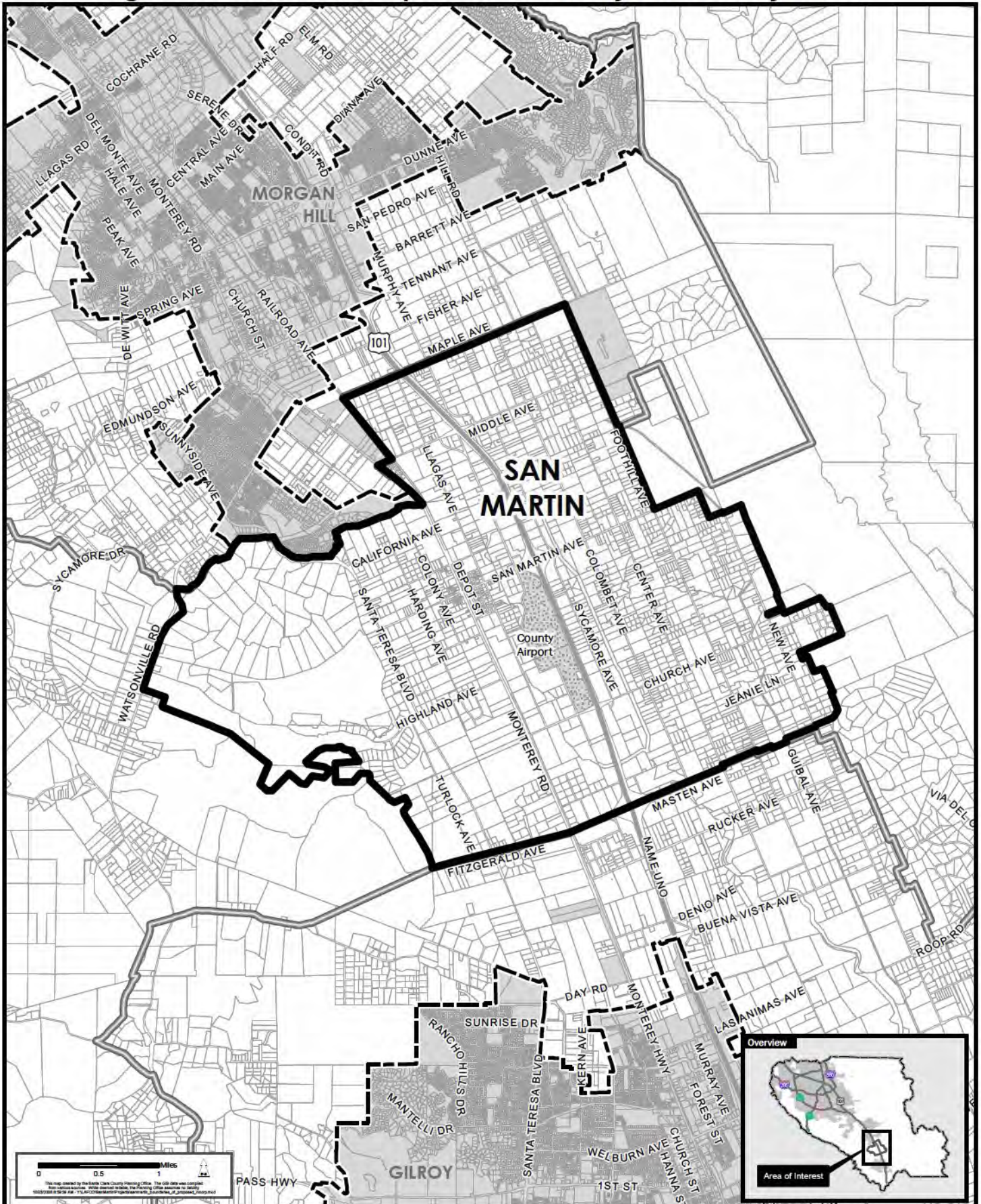


Figure 3: Preferred Incorporation Boundary Identified by LAFCO



0 0.5 1 Miles
This map created by the Santa Clara County Planning Office. The GIS data was compiled from various sources. While every effort was made to ensure the accuracy of the data, the user assumes all responsibility for any errors or omissions.

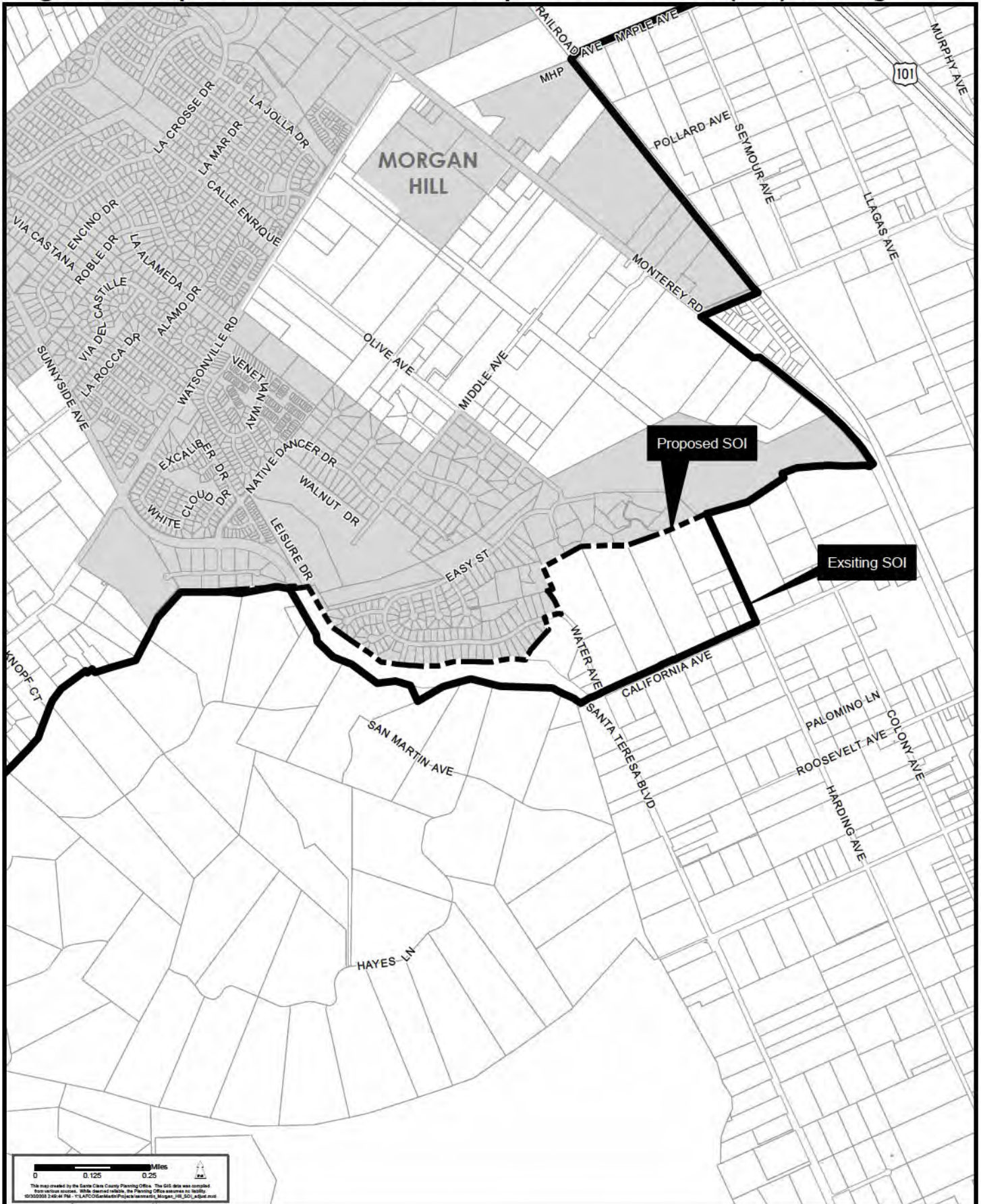
Recommended Boundary for Town Limits, Urban Service Area, and Sphere of Influence

Other Cities' Spheres of Influence

Other Cities' Urban Service Areas

LAFCO
 Local Agency Formation Commission of Santa Clara County

Figure 4: Proposed Amendment to the Sphere of Influence (SOI) of Morgan Hill



Existing SOI for Morgan Hill



Proposed SOI for Morgan Hill



Morgan Hill City Limits



Local Agency Formation Commission of Santa Clara County

B. Sphere of Influence (SOI) for the Town of San Martin

In Santa Clara County, a SOI boundary for a city serves multiple purposes including:

- A long-range planning tool to help LAFCO evaluate urban service area boundary changes and annexation requests,
- The area designated as a city's planning area or area covered by a city's General Plan,
- Areas that will not necessary be annexed by a city or will not necessarily receive services from the city, but are areas in which the County and a city may have shared interested in preserving non-urban levels of land use,
- Areas where a city and a county have significant interaction, and
- Areas that contain social or economic communities of interest to a city.

Government Code §56076 defines the SOI as "...a plan for the probable physical boundaries and service area of a local agency, as determined by the Commission." LAFCO is required by Government Code §56425 to develop and adopt a SOI for each city and special district in the county.

LAFCO may either approve a SOI for a new city at the time of LAFCO's hearing on the proposed incorporation or postpone consideration of the SOI for up to one year (Government Code § 56426.5) after voter approval.

The incorporation boundaries for San Martin abut the SOI of Morgan Hill to the north and the SOI of Gilroy to the south and include all lands up to the foothills in the east and up to Watsonville Road on the west. Because the incorporation boundaries include all potential lands within the Town limits, the Executive Officer recommends that the Commission establish a SOI boundary for San Martin that is coterminous with the Town's boundaries.

C. Urban Service Area (USA) for the New Town

In the early 1970s, LAFCO, Santa Clara County, and its 15 cities, all adopted Joint "Urban Development Policies" that implement the concept of staged urban development and managed growth and development in Santa Clara County. Each city in Santa Clara County has an urban service area boundary which designates the land that the city would annex in the next 5 years. The establishment of an Urban Service Area and Sphere of Influence will provide a framework for long range planning for the new Town. Cities in Santa Clara County are allowed to annex lands within their USAs without LAFCO approval.

Given the large incorporation boundaries, the Executive Officer recommends that an USA boundary be established for San Martin that is coterminous with the Town's boundaries and its sphere of influence. The Town would have the land use and service provision authority over all lands within the Town limits regardless of whether those lands are in the USA or not. An USA boundary would not necessarily create any expectations with regard to the provision of urban services as it is the establishment of Town limits that commits the Town to provide services and not the establishment of an USA boundary. The type and level of urban services provided within the Town limits will be determined by the Town Council based on its plans and policies.

VI. CEQA: ENVIRONMENTAL EVALUATION

The proposed incorporation of the Town of San Martin and the associated actions are considered a "project" under the California Environmental Quality Act (CEQA). LAFCO of Santa Clara County is the Lead Agency for the purposes of preparing and completing the environmental review process for this project.

On November 5, 2007, LAFCO released an Initial Study and Proposed Negative Declaration for the project for a 30-day public review and comment period. During this period, LAFCO received several comment letters requesting that LAFCO clarify issues and include additional information in the Initial Study. On February 6, 2008, LAFCO identified a preferred alternative boundary for the proposed San Martin Incorporation. In order to address these comments and to include new information, the Initial Study was revised to include:

- Analysis of the project's consistency with State law, and LAFCO, Cities, and County policies,
- Clarification of the current and future provision of park and recreation services within the project area,
- Clarification of the current and future role of County Services Areas within the project area, and
- An amendment of Morgan Hill's Sphere of Influence Boundary and inclusion of Area 2 in the proposed incorporation boundary

The Revised Initial Study and Proposed Negative Declaration (Revised IS/ND) was released on March 12, 2008 for a 30-day public review and comment period. See Attachment B for the document. The new Section 3.1 included prefatory information indicating the proposed project may not be entirely consistent with

LAFCO policies as well as various local and regional policies. Additional written comments were received from various stakeholders. LAFCO held a public hearing on May 7, 2008 to accept public testimony on the Revised IS/ND. LAFCO then directed its 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.

On June 4, 2008, LAFCO, after considering the entire record (including additional information from LAFCO staff, LAFCO's environmental consultant, and LAFCO's Counsel), directed staff to finalize and proceed with the Revised IS/ND on the basis that the project could not have a significant effect on the environment. LAFCO determined that any potential inconsistencies with LAFCO policies or local and regional policies documented in Section 3.1 would not result in a foreseeable physical change to the environment as a result of the incorporation, and that it would be speculative to foresee physical changes as the incorporation does not propose any changes in land use or service levels and only proposes a change in decision making authority. LAFCO also determined that most of the impacts were "paper" impacts that were purely speculative. Without the support of any real, credible evidence of immediate or imminent development pressures, LAFCO indicated that it was unable to foresee how a community incorporated for the purpose of preserving the rural agricultural character would succumb to development pressures. Furthermore, LAFCO noted that even with no change in decision making authority (i.e. no incorporation), development in the area would continue to occur under the County General Plan because of the County's actions or decisions and that it is not possible to speculate on what changes the new city council would make to its General Plan after incorporation. Any future changes to land use or zoning that the new Town makes would be subject to CEQA at that time.

If LAFCO adopts the Revised Initial Study and Negative Declaration and approves the incorporation, LAFCO staff will file a Notice of Determination of a Negative Declaration with the County Clerk within 5 working days. The filing of the Notice of Determination starts a 30-day statute of limitations on court challenges to the approval of the project under CEQA.

VII. COMPREHENSIVE FISCAL ANALYSIS (CFA)

The Comprehensive Fiscal Analysis and Plan for Services for the Proposed Incorporation of the Town of San Martin was prepared by Economic & Planning Systems Inc. and is based on requirements and guidelines for CFAs established

by the Cortese Knox Hertzberg Act, the State Office of Planning and Research (OPR) and the Santa Clara LAFCO Incorporation Policies.

The CFA was prepared in collaboration with the County and the proponents of the incorporation. All assumptions and methodologies used in the calculations are identified and detailed in the CFA. The financial calculations in the CFA are based on Fiscal Year 2006-2007 data. FY 2006-2007 is the most recent fiscal year preceding the issuance of the certificate of filing for which data on actual direct and indirect costs and revenues are available as required by Government Code §56810(g).

A. Financial Feasibility

One of the key findings that the Commission must make prior to approving an incorporation proposal relates to financial feasibility of the new city specifically *“that the proposed city is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation.”* The CFA provides LAFCO with the information necessary to assess financial feasibility of the new city.

Two key aspects of the incorporation proposal, namely the proposed plan for services and the boundaries for the incorporation proposal influence the feasibility analysis. The CFA includes information on the proposed plan for services as well as an analysis of alternative boundaries.

i. Utility Users Tax Required

The CFA concludes that the incorporation of San Martin is fiscally feasible contingent on the approval of a Utility Users Tax (UUT) of 10.7% on gas and electricity in the first six years of the incorporation and a 6.9% UUT on gas and electricity from Year 7 through Year 25 following the incorporation. The Table titled “Summary of Revenues and Expenses” (which is Table 1 excerpted from the CFA) summarizes the 10-year projections of the city’s revenues and expenses assuming the UUT is approved. In the initial six years, the Town must generate approximately \$500,000 in additional new taxes and approximately \$380,000 in new revenues from Year 6 to Year 25 in order to have sufficient revenues to cover its expenses and revenue neutrality payments. It is expected that a minimum 10.7% UUT in the first six years followed by a 6.9% UUT from then onwards will be necessary. For San Martin residents, the estimated average annual cost of a 10.7% UUT would be approximately \$284 per household and the average annual cost of 6.5% UUT would be approximately \$182 per household, assuming a \$220 average monthly utility bill for gas and electricity and assuming 1,766 residential electricity customers.

Please note that the tax percentages have been revised slightly from the percentages in the CFA, based on utility billing data provided by PG&E for the San Martin area for 2007.

ii. Election and Ballot Measures

If the incorporation is approved by LAFCO, a majority of voters in San Martin must approve both the incorporation and the UUT for the incorporation to be successful. If either one of the measures does not receive majority approval, the incorporation fails. It is assumed that the issue will be on the June 2, 2009 ballot and if both the incorporation and the tax measures pass, the incorporation will become effective on July 1, 2009 or soon thereafter.

Pursuant to Government Code §57133(a) and §57134, the proposed ballot wording shall be substantially in the following form:

Shall the Order adopted on November ____, 2008, by the Local Agency Formation Commission of Santa Clara County ordering the incorporation of the territory described in the Order and designated in the order as the "Proposed Incorporation of the Town of San Martin" be confirmed subject to the terms and conditions specified in the Order, including a Utility Users Tax as described in the Order?

Shall the San Martin Town Council levy and collect a Utility Users Tax on electricity and gas of 10.7% in the first six years of the incorporation and of 6.9% from Year 7 through Year 25 to fund general services as described in the Order?

TABLE: SUMMARY OF REVENUES AND EXPENSES

INCLUDES REVENUE NEUTRALITY MITIGATION

Table 1
Summary of Revenues and Expenses (All Figures in Constant \$'s)
San Martin Incorporation Analysis, EPS #17080

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	\$0	\$705,773	\$724,107	\$742,968	\$762,367	\$782,320	\$802,841	\$823,945	\$845,646	\$867,960		
Sales Tax	\$419,443	\$638,885	\$638,885	\$638,885	\$638,885	\$638,885	\$638,885	\$638,885	\$638,885	\$638,885		
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	\$5,993	\$6,141	\$6,292	\$6,447	\$6,605		
Franchise Fees	\$289,670	\$289,670	\$290,075	\$290,277	\$290,479	\$290,681	\$290,883	\$291,088	\$291,288	\$291,490		
Planning and Building Fees	\$0	\$274,742	\$278,116	\$277,496	\$278,884	\$280,278	\$281,679	\$283,088	\$284,503	\$285,926		
Public Works/Eng. Fees	\$42,813	\$89,020	\$89,465	\$89,913	\$90,362	\$90,811	\$91,268	\$91,724	\$92,183	\$92,644		
Fines, Penalties, Misc.	\$62,172	\$62,377	\$62,583	\$62,788	\$62,994	\$63,200	\$63,405	\$63,611	\$63,816	\$64,022		
State Motor Vehicle License Fees	\$499,800	\$499,800	\$499,800	\$499,800	\$499,800	\$499,800	\$499,800	\$499,800	\$499,800	\$499,800		
Utility Users Tax (1)	\$547,312	\$512,513	\$477,474	\$442,193	\$406,670	\$370,907	\$332,113	\$293,320	\$254,526	\$215,733		
VLF (AB1602)												
Revenue Credits (transition yr. rec'd by County)												
Investment Earnings	\$41,761	\$70,653	\$70,369	\$70,090	\$69,817	\$69,551	\$69,285	\$69,019	\$68,753	\$68,487		
Total	\$2,129,834	\$3,603,315	\$3,588,794	\$3,574,576	\$3,560,674	\$3,547,104	\$3,533,639	\$3,520,173	\$3,506,707	\$3,493,241		
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	\$78,511	\$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	\$588,661	\$594,598	\$600,594	\$606,650	\$612,767	\$618,944	\$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	\$451,128	\$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		
Revenue Neutrality Mitigation Payment (1)	\$500,771	\$500,771	\$500,771	\$500,771	\$500,771	\$500,771	\$500,771	\$500,771	\$500,771	\$500,771		
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	\$61,915	\$61,133	\$61,564	\$62,001	\$62,438	\$62,875	\$63,312	\$63,749	\$64,186		
Contingency (10%)	\$233,596	\$212,576	\$209,890	\$211,334	\$208,771	\$206,307	\$203,843	\$201,379	\$198,915	\$196,451		
Reserve Fund Contribution	\$233,596	\$1,020	\$2,886	\$1,444	\$10,083	\$2,286	\$236	\$2,305	\$255	\$2,324		
LAFCC	\$1,437	\$1,437	\$1,437	\$1,437	\$1,437	\$1,437	\$1,437	\$1,437	\$1,437	\$1,437		
Repayment of Transition Yr. Only Services (2)	\$61,566	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0		
Total	\$2,192,960	\$2,819,521	\$2,808,314	\$2,828,323	\$2,705,882	\$2,743,400	\$2,743,943	\$2,771,369	\$2,772,122	\$2,799,760		
General Fund Operating Surplus (Deficit) (3)	(\$63,127)	\$783,794	\$780,480	\$746,253	\$854,792	\$803,703	\$645,822	\$643,734	\$668,943	\$667,905		
Reserve Fund Balance	\$233,596	\$212,576	\$209,890	\$211,334	\$208,771	\$206,307	\$203,843	\$201,379	\$198,915	\$196,451		
% of Expenditures (exc. conting. reserves, mitgatio)	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%		
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	\$67,372	\$68,258	\$69,175	\$70,094	\$71,023		
Total	\$264,476	\$252,354	\$240,787	\$229,145	\$217,428	\$205,637	\$206,950	\$208,295	\$209,641	\$210,998		
Road Fund Expenditures												
Payment Maintenance	\$310,050	\$313,150	\$316,282	\$319,445	\$322,639	\$325,865	\$329,124	\$332,415	\$335,740	\$339,065		
Signal Maintenance	\$51,008	\$51,263	\$51,519	\$51,776	\$52,036	\$52,296	\$52,557	\$52,820	\$53,084	\$53,348		
Other Costs (sweeping, trash removal, signs, drainage)	\$370,644	\$372,497	\$374,360	\$376,232	\$378,113	\$380,003	\$381,903	\$383,813	\$385,732	\$387,661		
Contingency (10%)	\$73,170	\$73,691	\$74,216	\$74,745	\$75,279	\$75,816	\$76,358	\$76,905	\$77,456	\$78,011		
Repayment of Transition Yr. Only Services	\$0	\$180,928	\$180,928	\$180,928	\$180,928	\$180,928	\$180,928	\$180,928	\$180,928	\$180,928		
Total	\$855,872	\$935,336	\$949,495	\$963,666	\$977,844	\$992,037	\$1,006,244	\$1,020,466	\$1,034,693	\$1,048,931		
Road Fund Operating Surplus (Deficit)	\$264,476	(\$733,446)	(\$750,742)	(\$768,160)	(\$785,698)	(\$803,357)	(\$821,021)	(\$838,698)	(\$856,381)	(\$874,066)		
TOTAL, All Funds	\$201,360	\$60,348	\$29,738	\$21,907	\$69,094	\$346	\$18,802	\$12,086	\$32,631	\$26,892		
Cumulative Surplus (Deficit)	\$201,360	\$251,698	\$281,436	\$259,529	\$328,622	\$328,989	\$347,770	\$359,856	\$392,487	\$419,379		

(1) New utility users tax included to offset payment for impacts on County General Funds. Amount reduced in Year 7 when City is able to contribute other net revenues to repayment.
 (2) Repayment for animal services, planning and land use, code enforcement, public works, and street services the County is obligated to provide for the remainder of the first fiscal year (less County-retained revenues).
 (3) Fiscal initial year shortfall can be spread over subsequent years by deferring repayment of County's Transition Year service costs. This will not affect the fiscal conclusions.
 Economic & Planning Systems, Inc. 10/27/2008

iii. Summary of Town's Expenditures and Revenues

The total General Fund expenditure for the new Town is an annual average of approximately \$2.8 million. The largest expenditure is for police protection which is an average annual cost of approximately \$600,000. An annual revenue neutrality mitigation payment of \$500,771 to the County is included in the expenditures. In addition to the General Fund expenditures, the road expenditures amount to an annual cost of approximately \$800,000. A 10% annual contingency is included in both the General Fund and Road Fund and another 10% reserve fund is maintained cumulatively as of the first year.

The new Town would receive a small portion of its funds as Road Funds (approximately \$220,000) which are revenues restricted by law to road related expenses and which cannot be used to pay for general services. General Fund revenues make up the majority of the new Town's revenues and can be used to provide for a variety of city services.

The Table titled "Summary of Revenues and Expenses" shows that the estimated General Fund surplus for the 10 year period following incorporation averages approximately \$730,000 annually without including the first year of incorporation. An annual revenue neutrality mitigation payment of \$500,771 to the County is budgeted following the incorporation. The first year ends with a General Fund shortfall of \$63,000. This shortfall may be dealt with by spreading the transition year costs over the following five years, as allowed by State law. The General Fund surpluses in the subsequent years are used to cover the road maintenance costs.

Estimated Road Funds over the ten-year period result in an average deficit of approximately \$700,000 each year except for the first year that sees a \$264,476 surplus as that year's costs for road maintenance are spread over the subsequent five year period. Despite using the General Fund to cover the Road Fund shortfalls, one of the first ten years results in a deficit - Year 4 reflects an overall deficit of \$21,907. This deficit is likely slightly underestimated as it does not include the payment of the General Fund's first year shortfall of \$63,000. The combined surplus for General Fund and Road Fund in the remaining years ranges from approximately \$300 to \$200,000 and averages around \$50,000.

A July 1, 2009 effective date allows for a transition period of 12 months, that is the period from the effective date of the incorporation up to the end of the fiscal year (July 1, 2009 to June 30, 2010). During this transition period the County is required by state law to continue providing services while the new city receives

certain revenues. This allows the new city to get ready to take on the full responsibility for service provision. The new town has up to 5 years to reimburse the County for the cost of services provided during this transition period.

B. Revenue Neutrality

In addition to financial feasibility, incorporations must meet the revenue neutrality requirements in the CKH Act. Government Code §56815 states that incorporations must result in a similar exchange of both revenue and responsibilities for service delivery among the county, the proposed city and other affected agencies. Based on the CFA, it has been determined that the incorporation of San Martin will result in a negative fiscal impact to the County since the revenues transferred to the Town exceed the service costs transferred to it by approximately \$870,000 annually as summarized in the Table titled "Change in Revenues and Expenses to Santa Clara County" (which is Table 3 excerpted from the CFA). The CKH Act allows the County and the Town to negotiate terms to achieve revenue neutrality. All recent incorporations in the state have had negotiated revenue neutrality agreements with varying mitigation amounts and terms. In this case, the County and the Town were unable to reach agreement during the two opportunities that they were given. LAFCO will therefore establish the revenue neutrality terms at its discretion.

At its October 1, 2008 LAFCO meeting, LAFCO directed staff to develop revenue neutrality terms in which the Town must pay the County a total of \$10,296,398 (including a 3% inflation rate) to mitigate the projected revenue loss to the County of \$8.7 million over a 10 year period. In order to reduce annual payments by the Town, the Commission also directed that the period of mitigation payments be extended over a 25 year period. The annual mitigation payments equal \$500,771 for 25 years. This option was selected by the Commission from alternatives provided by staff at the September and October LAFCO meetings and is the same as the revenue neutrality proposal made by the County. (Refer to staff reports on Options for Revenue Neutrality dated September 10, 2008 and October 1, 2008)

TABLE: CHANGE IN REVENUES AND EXPENSES TO SANTA CLARA COUNTY

Table 3
Change in Revenues and Expenses to Santa Clara County
San Martin Incorporation Analysis, EPS #17060 **Proponents' Proposed Boundary**

Item	Amount	Notes
General Fund Revenues and Expenditures (FY07) (1)		
Revenues Transferred to the City		
Property Taxes	\$599,522	Estimated transfer amount FY 07
Transient Occupancy Tax	\$221,557	
Sales Tax	\$838,885	Includes estimated 12% unallocated
Real Property Transfer Tax	\$2,335	50% of FY 07 amount (\$.55/\$1,000 value)
Franchise Fees	\$253,621	Including solid waste, PG&E, cable, water
AB 939 Fees	\$10,237	
Subtotal	\$1,926,157	
Expenditures for Service Responsibilities Transferred to the City (1)		
Animal Control	\$278,447	
Land Use Planning, Inspection, Enforcement	\$151,056	
Clean Water	\$3,186	
Waste Management	\$129,205	
Sheriff	\$483,933	
Subtotal	\$1,045,827	
Other (revenue increases) (2)		
Property Tax Administration Fees	\$8,090	Based on first year of city
Booking Fees	\$0	Not paid by cities, per State budget
Net County Surplus or (Deficit)	(\$872,240)	
County Road Fund		
Revenue Reductions (3)		
Gas Tax: Highway User Tax 2106c	\$27,491	Based on 7.7% reduction in unincorp. a.v.
Gas Tax: Highway User Tax 2105a [2]	\$208	Based on reduction in County maintained miles
Grants		No reduction assumed
Traffic Congestion Relief: 2182a [1] (B)	\$41,624	Based on reduction in County maintained miles
Subtotal	\$69,323	
Expenditure Reductions		
Road Maintenance (4)	\$1,502,235	Based on FY07 costs, noted as atypical (higher) of recent average road maintenance expenditures.
Other Road Costs (traffic engineering, signal maint.)	\$120,000	Excludes cost-recovery, development engineering
Subtotal	\$1,622,235	
Net County Road Fund Surplus or (Deficit)	\$1,552,912	
Total General Fund and Road Fund Surplus or (Deficit)	\$680,672 (5)	

- (1) Costs shown in this table represent FY07 County costs for those service responsibilities to be transferred to the new city. Future city costs shown in Table 1 will not necessarily correspond to these FY07 County costs since the specific future services, staffing, facilities, contracts and manner of service provision will differ for the future city. For example, the future city will need to provide traffic enforcement, which currently is not a County responsibility.
- (2) The County will realize new revenues (e.g., property tax administration charges) for services currently provided without compensation.
- (3) County road revenues are not significantly affected, as they largely depend on Countywide population and registered vehicles, and are not influenced by a change in unincorporated vs. incorporated population or road miles.
- (4) Road maintenance expenditures are based on County estimates of FY07 expenditures. These costs are higher than the County's estimated average expenditures in the San Martin area and are above the estimate of average annual road maintenance costs that the new city is likely to incur.
- (5) Legal requirements restrict the transfer of certain Road Fund revenues to directly offset General Fund service cost impacts. Legal counsel has indicated that LAFCO may consider the two funds in total when determining revenue neutrality impacts.

VIII. FACTORS TO BE CONSIDERED IN REVIEW OF PROPOSAL

In addition to the legally required findings described in this report, §56668 of the Government Code also requires LAFCO to consider several factors in its review of a proposal. Several of these factors have been considered and analyzed elsewhere in the report. The following is a discussion of other applicable factors:

A. Agricultural Lands / Williamson Act Contracts Considerations

The CKH Act requires LAFCO to protect agricultural lands, maintain the economic integrity of agricultural lands, requires that development be guided away from existing prime agricultural lands and requires the development of vacant lands within the jurisdiction before approving proposals that would allow development of agricultural lands outside jurisdictional boundaries.

The San Martin incorporation boundaries contain agricultural lands identified as Prime Farmland (approx. 2,132 acres), Unique Farmland (approx. 257 acres) and farmland of Statewide Importance (approx. 577 acres) by the State Department of Conservation and contain lands designated for agricultural uses in the County General Plan. Given the amount of vacant and agricultural land in and surrounding the incorporation area, the proposal could reasonably be expected to convert agricultural lands into other uses in the future. However, no change in land use is proposed and no development is proposed as part of the incorporation and the General Plan and zoning designations are not proposed to be changed following the incorporation. The proponents have stated that one of the objectives of the incorporation is to maintain the rural character of the area.

Within the proposed incorporation boundaries, there are currently 187 properties under the Williamson Act totaling approximately 2,200 acres. In 2006, the County filed and recorded notices for non-renewal on 126 of the 187 properties, as they did not meet the minimum acreage requirement and / or the requirement for having a commercial agricultural operation on the property. These 126 contracts are set to expire in the years 2016 or 2017. The remaining 61 properties under Williamson Act are scattered throughout the incorporation boundary.

Pursuant to Government Code section 56754, the new Town must succeed to the rights, duties and powers of the County in administering any Williamson Act contracts. LAFCO conditions of approval will specifically ensure that the status

of these contracts will not be affected by the proposed incorporation. See the section on recommended terms and conditions.

B. Fair Share of Regional Housing Needs

Each city and county is required to adopt a general plan with a mandatory housing element that must be updated every five years. Among other things, the Housing Element must include the city's share of regional housing needs. A state mandated process exists for determining how many housing units, including affordable units, each community must plan to accommodate and it is called the Regional Housing Needs Allocation (RHNA). Within the nine-county Bay Area region that includes Santa Clara County, the Association of Bay Area Governments (ABAG) distributes the regional housing needs to cities and counties. This year, ABAG released its San Francisco Bay Area Housing Needs Plan 2007-2014 which includes the housing needs allocations.

Since the incorporation will occur after the allocation has been made, Government Code §65584.07(c) allows the new Town and the County to reach a mutually acceptable agreement on that allocation and report it to ABAG to revise the determination of housing needs. If the two parties are unable to reach a mutually acceptable agreement then either party may request ABAG to consider the facts, data and methodologies presented by both parties and make the revised determinations. ABAG shall make the revised determination reallocating a portion of the County's share to the new Town within six months of receipt of the written request. The revised determination shall neither reduce the total regional housing needs previously allocated nor change the previous allocation to the other cities in the county.

As the incorporation proposal does not include a change in land use and zoning designations, no change is expected in the Town's ability to support the fulfillment of the regional housing needs.

C. Environmental Justice

The proposed incorporation is not expected to promote or discourage the fair treatment of minority or economically disadvantaged groups with respect to the location of public facilities and the provision of public services.

The incorporation proposal does not include the provision of any new services. One of the main objectives of the incorporation is to have local control over land use, growth, planning policy and other governmental activities and to maintain the existing service levels and rural residential community character.

IX. REQUIRED LAFCO FINDINGS AND DETERMINATIONS

The CKH Act provides that specific criteria must be met for city incorporations. These criteria termed “findings” must be made before LAFCO can approve the incorporation.

A. Government Code §56720 Findings

Government Code §56720 states that the Commission shall not approve or conditionally approve any proposal which includes an incorporation, unless the commission finds, based on the entire record, that certain findings can be made. The following are the five required findings and supporting information:

- (a) *The proposed incorporation is consistent with the intent of this division, including, but not limited to, the policies of Sections 56001, 56300, 56301 and 56377.*

The proposed incorporation area includes substantial amounts of prime agricultural lands (approximately 2,000 acres) and undeveloped lands (approximately 2,500 acres). The Town upon incorporation would have the land use jurisdiction to designate future land uses and would have the authority to provide urban type services to lands within its boundaries. Any changes that involve the provision of new urban services or more intensive development could result in premature conversion of agricultural lands or impact agricultural lands. However, the stated intent of the incorporation is to maintain the rural character of the community, the incorporation proposal does not involve changes to land use nor does it involve the provision of new services to the area. LAFCO, at its June 4, 2008 meeting, discussed whether the incorporation was consistent with LAFCO policies that call for the creation and maintenance of buffers between the South County cities and whether it was reasonably foreseeable that the incorporation could negatively impact agricultural or open space lands. LAFCO concluded that it could not speculate as to what actions the new city council would take and that buffers already exist between the proposed new city and the cities of Morgan Hill and Gilroy.

Based on and consistent with the Commission’s June 4, 2008 CEQA discussion and conclusion, it can be found that the incorporation proposal is consistent with the legislative intent of Government Code Section 56720(a).

- (b) *It has reviewed the spheres of influence of the affected local agencies and the incorporation is consistent with those spheres of influence*

The preferred incorporation boundary identified by LAFCO includes Area 2 which is land located along California Avenue, within the sphere of influence of Morgan Hill. This land consists of approximately 74 acres. Even though this area is within Morgan Hill's current SOI, it is outside its urban service area and is topographically and geographically better suited to be within San Martin. Keeping this area outside the incorporation boundaries would result in the creation of an island which is prohibited by state law and LAFCO policies. Concurrent with the approval of the incorporation, Morgan Hill's sphere of influence boundary will be amended to exclude this area. In an email dated March 20, 2008, Morgan Hill conveyed its City Council's support for excluding this area from its sphere of influence. Therefore the incorporation will not conflict with the sphere of influence of the City of Morgan Hill.

Other special districts lie within the incorporation area. No service changes are proposed and their spheres of influence are not affected by the proposed incorporation as described in this report. The incorporation boundary is therefore consistent with the spheres of influence of affected local agencies.

(c) *It has reviewed the comprehensive fiscal analysis prepared pursuant to Section 56800 and the Controller's report pursuant to Section 56801.*

The Comprehensive Fiscal Analysis (CFA) was prepared by Economic and Planning Systems and the Draft Report was made available for public review and comment in March 2008. The Commission held a public hearing in March 2008 to accept comment on the Public Hearing Draft CFA. EPS has prepared responses to comments received from proponents, the public and other agencies / organizations. The Report was further revised on October 7, 2008 in response to the comments and to include the revenue neutrality terms recommended by LAFCO. The proponents submitted a request for review of the CFA by the State Controller's Office on October 30, 2008. LAFCO Policies require a deposit towards cost of the review. If the request is completed with payment of the deposit by November 6, 2008, the LAFCO public hearing will be opened and staff will recommend continuation of the Public Hearing to include the Controller's analysis in the Executive Officer's Report.

Attachment C contains the entire Public Hearing Draft CFA dated October 7, 2008 and information from the Report is included within this Executive Officer's Report. The Commission has reviewed the Comprehensive Fiscal Analysis.

- (d) *It has reviewed the Executive Officer's report and recommendation prepared pursuant to Section 56665, and the testimony presented at its public hearing.*

The Executive's Officers Report with recommendations was prepared and distributed five days prior to the hearing date as required by the Government Code section 56665. The Report and all comments and public testimony received at the hearing and prior to the date of the hearing are part of the public record for the proposal. An informal workshop will be held to present the report to the community on November 3, 2008. The public hearing is scheduled for November 7, 2008.

- (e) *The proposed city is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation.*

The CFA concluded that the proposed Town is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation subject to the majority voter approval of a Utility Users Tax (UUT) of 10.7% on gas and electricity in the first six years of the incorporation and a 6.9% UUT on gas and electricity from Year 7 through Year 25 following the incorporation. The UUT will raise revenue for general governmental purposes of the Town and these revenues shall be placed in the Town's general fund and used for Town expenses.

B. Findings Regarding Revenue Neutrality: §56815

Government Code §56815 states:

- (b) *The commission shall not approve a proposal that includes an incorporation unless it finds that the following two quantities are substantially equal:*
- (1) *Revenues currently received by the local agency transferring the affected territory that, but for the operation of this section, would accrue to the local agency receiving the affected territory.*
 - (2) *Expenditures, including direct and indirect expenditures, currently made by the local agency transferring the affected territory for those services that will be assumed by the local agency receiving the affected territory.*
- (c) *Notwithstanding subdivision (b), the commission may approve a proposal that includes an incorporation if it finds either of the following:*
- (1) *The county and all of the subject agencies agree to the proposed transfer.*

(2) The negative fiscal effect has been adequately mitigated by tax sharing agreements, lump-sum payments, payments over a fixed period of time, or any other terms and conditions pursuant to Section 56886.

Revenues transferred from the County to the Town are higher than the expenditures transferred by the County to the Town by approximately \$870,000 annually and therefore this results in a negative fiscal impact to the County. Since the County and the proponents could not reach agreement on how to mitigate this negative fiscal impact, the Commission at its October 1, 2008 LAFCO meeting, recommended mitigation terms pursuant to 56815 (c)(2). The calculation of the impacts and the specific terms of mitigation are included in the CFA and in the Executive Officer's Report.

No other agency serving the area experiences a significant negative fiscal impact as a result of the incorporation.

X. RECOMMENDED TERMS AND CONDITIONS

The Commission approves the proposed incorporation of the Town of San Martin, subject to terms and conditions included below and subject to voter approval of the incorporation and voter approval of a Utility Users Tax (UUT) of 10.7% on gas and electricity in the first six years of the incorporation and a 6.9% UUT on gas and electricity from Year 7 through Year 25 following the incorporation. The UUT will raise revenue for general governmental purposes of the Town and these revenues shall be placed in the Town's general fund and used for Town expenses.

The Commission approves the proposed incorporation of the Town of San Martin subject to the following terms and conditions:

Town Boundaries

The boundaries of the Town of San Martin shall be as depicted in Figure 3. Within 14 calendar days of LAFCO adoption of this resolution, the proponents must submit to LAFCO, a map and legal description of the approved incorporation boundary. The legal description must be prepared by a licensed land surveyor to meet the standards of the State Board of Equalization. LAFCO will have the map reviewed by the County Surveyor for compliance with Government Code Section 56375 (1) and LAFCO of Santa Clara's policies.

General Law City

The Town of San Martin shall be incorporated as a general law city.

Name of City

The new city shall be the Town of San Martin

Terms of Office and Election of City Council members

The initial election of council members will be the same date as the vote on incorporation. The Town shall be governed by a five-member Town council elected at large. The terms of the five council members shall be subject to Government Code §57377 and §57378. Of the five elected members of the city council, the three receiving the lowest number of votes shall hold office until the first succeeding general municipal election held in the Town and until their successors are elected and qualified, and the two receiving the highest number of votes shall hold office until the second succeeding general municipal election held in the Town and until their successors are elected and qualified. If two or more members of the city council are elected by the same number of votes, the terms of each shall be determined by lot. The Town council members elected to succeed the members elected at the incorporation election shall hold office for four years from the Tuesday succeeding their election and until their successors are elected and qualified. Pursuant to Government Code §57118, the election shall be held within the entire territory of the proposed incorporation.

Appointment of City Staff

The Town council shall appoint a Town Manager, Town Clerk, Town Attorney and Town Treasurer.

Number of Registered Voters

Pursuant to Government Code §56375(f), the County Registrar of Voters determined that the number of registered voters within the territory proposed for incorporation was 2,824 as of the time of the last report of voter registration by the County elections official to the Secretary of State prior to the date the first signature was affixed to the petition.

Incorporation Fees and Costs

All required fees and costs of processing the incorporation application including the State Board of Equalization Fees, cost of preparing and / or reviewing the map and legal description of the approved incorporation boundary and all costs for staff time and expenses shall be paid by the proponents within 5 calendar days of LAFCO adoption of this resolution.

Election Costs

The costs of the incorporation election and the election of Town council members shall be borne by the Town if the incorporation is ratified by the voters. If the election is unsuccessful, the election costs will be borne by the County pursuant to Government Code §57150 (b). Election costs shall be paid within 30 days of written request from the Santa Clara County Registrar of Voters, unless alternative payment arrangement is agreed to by the parties.

Effective Date

The effective date of the incorporation shall be July 1, 2009 or soon thereafter as specified in the Certificate of Completion.

Continuation of County Ordinances for 120 days

Pursuant to Government Code §57376, the Town of San Martin shall, immediately following its organization and prior to performing any other official act, adopt an ordinance providing that all County ordinances previously applicable shall remain in full force and effect as Town ordinances for a period of 120 days thereafter, or until the Town Council has enacted ordinances superseding them, whichever shall occur first. Enforcement of continuing county ordinances in the incorporated area shall be with the Town, except insofar as enforcement services are furnished in accordance with Government Code §57384.

Indemnification

Proponent agrees as a condition of approval of this proposal to enter into an indemnification agreement in a form approved by LAFCO Counsel to defend using counsel approved by LAFCO, indemnify, hold harmless, and release LAFCO, its officials, officers, employees, consultants and agents from any claim, action or proceeding brought against them, or any of them, to attack, set aside, void, or annul the approval of this proposal, any term or condition of the approval, or the environmental document which accompanies the approval. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney fees and expert witness fees that may be asserted by any person or entity, including the proponent, whether or not there is concurrent passive or active negligence on the part of LAFCO, its officials, officers, employees, consultants and agents. Proponents shall execute the indemnification agreement within three calendar days of LAFCO's adoption of the resolution approving the incorporation.

The Town will be bound by and subject to all of the defense, indemnification and hold harmless obligations set forth herein following incorporation.

In any litigation, arbitration or any other proceeding where LAFCO of Santa Clara County seeks to enforce the indemnification provisions set forth above, or seeks a declaration of rights and obligations pursuant to this provision, LAFCO of Santa Clara County shall be awarded reasonable attorney fees, together with any costs and expenses incurred to resolve the dispute and to enforce the provision, if LAFCO of Santa Clara County prevails.

Transfer of County Roads and Highways to the Town

Upon the effective date of incorporation, pursuant to Government Code §57385, all roads and highways or portions of a road or highway in the incorporation territory, which had been accepted into the County road system shall become Town streets.

Waive Detachment from County Lighting Service Area

In accordance with Government Code §56375 (n), waive automatic detachment from County Lighting Service Area based upon the following findings:

- County Lighting Service Area provides lighting services through assessments to a portion of the incorporation territory
- Detachment would deprive the area's residents of lighting services needed to ensure their health, safety and welfare
- Waiving detachment will not affect the ability of the Town to provide any service

Detachment from the County Library Service Area

Concurrent with the effective date of the incorporation and in accordance with Streets and Highways Code §22613, the territory in the incorporation boundary will be automatically detached from the County Library Service Area. Library services to the Town will continue to be provided by the County Library Joint Powers Authority and funded by the Community Facilities District.

Williamson Act Contracts

Pursuant to Government Code §56889, the Town shall succeed to all Williamson Act Contracts that exist within the boundaries of the Town and the Town shall adopt the rules and procedures required by the Williamson Act, including but not limited to the rules and procedures required by Sections 51231, 51237 and 51237.5 of the California Government Code. The Town shall not provide services to the Williamson Act Contract properties for land uses or activities not allowed under the contract.

Continuation of Charges

Pursuant to Government Code §56886(t), the Town shall have the authority to continue the levying and collection of any previously authorized charge, fee, assessment or general or special tax levied within the subject territory by the County or other agency including fees or charges by County Service Areas or Community Facilities Districts.

Base Year Property Tax

The base year property tax transferred to the new Town from the County pursuant to Government Code §56810 shall be \$599,522, determined as follows:

- County Auditor's Ratio (Government Code §56810(c)(1): 57.33%
- Total Net Cost of Services Transferred by the County to the Town, as determined by the Commission (Government Code §56810(c)(2): \$1,045,827
- Calculation of Base Property Tax to be transferred to the Town §56810(c)(3): County Auditor's Ratio X Total Net County Cost = \$599,522

The County Auditor shall adjust the property tax amount to be transferred in accordance with state law and in proportion to the increase in assessed value from Fiscal Year 2006- 2007 to the effective date of incorporation.

Assessed Valuation

The Fiscal year 2006-2007 assessed valuation for property tax calculation purposes within the proposed incorporation boundaries is approximately \$1,021,447,543 and is estimated to be approximately \$1,173,276,629 in Fiscal Year 2009-2010. The CFA assumes a 5.87% annual growth (including inflation) in assessed value for the San Martin area.

Appropriations Limit

Pursuant to Government Code §56812(a), the provisional appropriations limit submitted for voter approval shall be \$3.8 million. The permanent appropriations limit of the Town shall be set at the first municipal election which is held following the first full fiscal year of operation and shall not be considered to be a change in the appropriations limit of the Town pursuant to Section 4 of Article XIII B of the California Constitution.

Transition Year Revenues

Pursuant to Government Code §57384, any revenues that are generated in the Town after incorporation, that are retained by the County, shall be applied to the

County's cost of service to the area during the transition period, that is, the remainder of the fiscal year following the effective date of incorporation. If the revenue generated exceeds the cost of County provided services, the difference shall be transferred to the Town.

Continuation of County Services

In accordance with Government Code §57384, the County of Santa Clara shall continue to furnish all services provided to the area prior to the incorporation. Those services shall be furnished for the remainder of the fiscal year during which the incorporation becomes effective or until the new Town Council requests discontinuance of the services, whichever occurs first. The County shall be reimbursed for these services in accordance with Government Code §57384 (b). A continuation of County services to the Town beyond the first fiscal year, for full cost recovery and/or provision of an enhanced level of service, may be arranged pursuant to an agreement between the two parties.

Revenue Neutrality Mitigation Payments

Total Obligation

The Town shall pay the County a total of \$10,296,398 in revenue neutrality payments based on a 10 year mitigation period. This revenue neutrality obligation is based on the County's annual deficit amount of \$872,000, as calculated in the CFA and includes a 3% inflation rate.

Payment Schedule

A minimum annual revenue neutrality mitigation payment of \$500,771 shall be made by the Town to the County for 25 years following the incorporation. The net present value of payments shall equal \$8,720,000 calculated using a 3% discount rate. Any delinquent payments would accrue interest at the rate of 3% annually. Interest shall continue to accrue on the outstanding prior year's balance until it has been paid in full. The Town may pre-pay any amount due under this obligation on terms mutually agreed upon by the Town and the County.

Town Appropriation

The Town shall appropriate on an annual basis sufficient funds to meet its obligations. The County and the Town, upon incorporation, shall negotiate and execute any additional legal documents necessary to implement the provisions under the "Revenue Neutrality Mitigation payments" and, if required to affect a direct transfer of payments due hereunder. A direct transfer is a transfer from either the State Board of Equalization or the County Auditor-Controller to the

County without the necessity of an intermediate transfer to the Town. Until an agreement for direct transfer of such funds is completed, the Town Council shall appropriate on an annual basis, sufficient funds to meet its obligations hereunder.

Morgan Hill Sphere of Influence Amendment

Concurrent with the effective date of the incorporation, the Morgan Hill Sphere of Influence shall be amended to exclude a portion of the proposed incorporation area, as more specifically depicted in Figure 4. The Commission adopts the following Statement of Determinations for the amendment of the sphere of influence of Morgan Hill:

STATEMENT OF DETERMINATIONS FOR AMENDMENT OF THE SPHERE OF INFLUENCE FOR THE CITY OF MORGAN HILL

1. Present and planned land uses in the area, including agricultural and open-space lands

The area is currently designated Rural Residential and is developed with single family homes. The area does not include agricultural and open-space lands

2. Present and probable need for public facilities and services in the area

The area is unincorporated and located outside Morgan Hill's urban service area. The area receives water service from West San Martin Water Works. The properties rely on septic systems for sewage disposal similar to surrounding properties proposed for inclusion into San Martin boundaries.

3. The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.

The incorporation proposal does not propose to provide any new services or to change the level of services currently provided to the area. Additionally, there will be no change in service providers providing water or sewer facilities. The Town will contract with the County, other public agencies or private providers for services.

4. Existence of any social or economic communities of interest in the area, if LAFCO determines that they are relevant to the agency.

Even though the area is currently in the SOI of Morgan Hill, the area relates more with San Martin due to its topography, rural character, development patterns and its public access.

Sphere of Influence for the Town of San Martin

The Commission adopts a sphere of influence for the Town of San Martin that is coterminous with the boundary of the Town and adopts the following Statement of Determinations for the establishment of the Sphere of Influence for the Town of San Martin:

STATEMENT OF DETERMINATIONS FOR ESTABLISHMENT OF SPHERE OF INFLUENCE FOR THE TOWN OF SAN MARTIN

1. Present and planned land uses in the area, including agricultural and open-space lands

San Martin's population is estimated in the CFA to be 6,900. The area includes approximately 12 square miles. The proposed Town of San Martin is located between the cities of Morgan Hill and Gilroy along Highway 101. Its proposed boundaries and sphere of influence to the north and south are coterminous with the SOI of Morgan Hill and Gilroy respectively. Its boundaries to the east are along the eastern foothills and to the West the boundaries are along Watsonville Road and include the gated communities of Cordeville Golf Club/ residential development and Hayes Lane Subdivision. San Martin is a rural residential community, predominantly non-urban and residential in nature. Currently, the County General Plan designates the land uses in the area which include Agriculture Medium Scale, Hillside, Major Public Facilities, Other Public Lands, Ranchlands, Existing Roadside Services, Transportation and Rural Residential.

This incorporation and SOI boundary include much vacant land and agricultural land. The proponents have stated that they intend to maintain the rural residential nature of the area. Additionally, no new services or development is proposed for the new Town as part of the incorporation proposal. It is expected that the County General Plan would be adopted upon incorporation and no change in land use is proposed. Upon incorporation, the Town Council will be required to

immediately adopt all current County ordinances for a 120-day period, or until the Town Council has enacted ordinances superseding them, whichever occurs first. It is also expected that the Town would initially adopt the County's General Plan.

2. Present and probable need for public facilities and services in the area

The San Martin area has significant groundwater quality issues with high levels of nitrates and perchlorate contamination. The water produced at individual and shared wells frequently does not meet drinking water quality standards. The State Department of Health is not in favor of point-of-use treatment systems and so there is and will continue to be a need for expanded treated water facilities managed by public water agencies.

Sewer services are not provided in the community. Sewage treatment in the area is through individual septic systems. Given the ageing systems in use in San Martin's core area, the changing regulations for wastewater disposal and the groundwater quality issues, it is likely that there will be a need for sewage treatment and disposal systems in the area.

The incorporation proposal does not include any new services or any changes in service levels.

3. The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.

Water service is provided by the San Martin County Water District and the West San Martin Water Works to certain portions of San Martin. Both providers rely on groundwater extracted from the Llagas sub-basin. This source is contaminated with perchlorate and nitrates and must be treated. It appears that the two providers have adequate treatment (for perchlorate) and storage capacity to serve present needs within their boundaries. Additional capacity may be required to meet the needs for expanded water treatment facilities in the area.

The cities of Morgan Hill and Gilroy, through the South County Regional Wastewater Authority (SCRWA), a JPA, jointly own and share capacity allocations at the wastewater treatment plant and sewer. To address sewer needs in San Martin, the new Town may seek capacity from SCRWA or construct new wastewater facilities. In either

case, it will require significant resources for planning and implementation.

4. Existence of any social or economic communities of interest in the area, if LAFCO determines that they are relevant to the agency.

The proposed new Town is bordered on the north and the south by the spheres of influence of Gilroy and Morgan Hill. San Martin is a rural residential community. Although the community and residents interact with the neighboring cities, the community is characterized by a unique rural identity.

Urban Service Area for the Town of San Martin

The Commission adopts an Urban Service Area for the Town of San Martin that is coterminous with the boundary of the Town.

XI. STAFF RECOMMENDATIONS

Based on the analysis included in the report, staff recommends that the Commission:

1. As lead agency, adopt the Revised Initial Study/ Negative Declaration (March 11, 2008) prepared for the proposed incorporation of the Town of San Martin and related sphere of influence amendments based on the findings that the Negative Declaration was prepared in accordance with law and reflects the LAFCO of Santa Clara County's independent judgment and analysis; that LAFCO has considered the Negative Declaration and all comments received during the comment period; and that there is no substantial evidence in the record that the Project will have a significant effect on the environment. Designate LAFCO Executive Officer as the location and custodian of the documents and other materials that constitute the record of proceedings on which this decision is based.
2. Approve the incorporation of the Town of San Martin subject to the imposition of a Utility Users Tax (UUT) of 10.7% on gas and electricity in the first six years of the incorporation and a 6.9% UUT on gas and electricity from Year 7 through Year 25 following the incorporation and subject to the recommended terms and conditions attached to this report and make the findings and determinations attached to this report.

3. Approve concurrent detachment from the County Library Services Area and waive detachment from the County Lighting Services Area.
4. Amend the City of Morgan Hill's sphere of influence to exclude Area 2 as depicted in Figure 4 and adopt the related Statement of Determinations.
5. Approve a coterminous sphere of influence for the Town of San Martin and adopt the related Statement of Determinations.
6. Approve a coterminous Urban Service Area for the Town of San Martin.
7. Request the Board of Supervisors of County of Santa Clara to set June 2, 2009 as the election date for the subject reorganization and the Utility Users Tax, subject to the attached findings, determinations, terms and conditions and for the selection of the initial Town council members.

XII. ATTACHMENTS

- [Attachment A:](#) Draft LAFCO Resolution making determinations and approving the incorporation of the Town of San Martin subject to specific terms and conditions.
- [Attachment B:](#) Revised Initial Study and Negative Declaration for the Proposed Incorporation of the Town of San Martin (dated March 11, 2008)
- [Attachment C:](#) Comprehensive Fiscal Analysis and Plan for Services for the Proposed Incorporation of the Town of San Martin (dated October 7, 2008)

RESOLUTION NO. 2008-XX

**RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION
OF SANTA CLARA COUNTY MAKING FINDINGS AND DETERMINATIONS AND
APPROVING THE INCORPORATION OF THE TOWN OF SAN MARTIN WITH
TERMS AND CONDITIONS**

WHEREAS, on February 7, 2007, a registered voter petition and application for the incorporation of the Town of San Martin was filed with LAFCO pursuant to Title 6, Division 1, commencing with Section 56000 et seq. of the Government Code; and

WHEREAS, the stated purpose for the incorporation, as set forth in the petition, is to gain local control of land use, growth, planning policy and other governmental activities; to create a locally accountable governing body that is more visible, accessible, and responsive to the vision of local residents for the destiny of their rural community, and to legally recognize that San Martin already has the critical attributes of a town in that it has a name, a distinct geographic area, a variety of land uses and a positive relationship with bordering cities; and

WHEREAS, the Executive Officer submitted the petition to the County Registrar of Voters for verification that sufficient registered voters within the incorporation area signed the petition, and the County Registrar of Voters found that the requisite number of valid signatures were affixed to the petition, as required by law; and

WHEREAS, a Certificate of Sufficiency was issued on March 6, 2007; and

WHEREAS, a Certificate of Filing for the proposal was issued on June 26, 2008 by the Executive Officer of the Local Agency Formation Commission of Santa Clara County, pursuant to Title 6, Division 1, commencing with Section 56000 et seq. of the Government Code; and

WHEREAS, the Executive Officer, pursuant to Government Code Section 56665, has reviewed the proposal and prepared a report including recommendations thereon, and has furnished a copy of this report to each person entitled to a copy; and

WHEREAS, the Executive Officer, pursuant to Government Code Section 56664, set November 7, 2008 as the hearing date for consideration of this proposal; and

WHEREAS, a duly noticed informational public meeting was held at the Morgan Hill Community Center on November 3, 2008; and

WHEREAS, this Commission, on November 7, 2008, considered the proposed incorporation and the report of the Executive Officer, and considered the factors determined by the Commission to be relevant to this incorporation, including, but not limited to, the factors specified in Government Code section 56668; and

WHEREAS, this Commission called for and held a public hearing on the proposed incorporation on November 7, 2008, and at the hearing, this Commission heard and received all oral and written protests, objections and evidence which were made, presented or filed, and all

Incorporation of the Town of San Martin

persons present were given an opportunity to hear and be heard with respect to the proposed incorporation and the report of the Executive Officer; and

WHEREAS, pursuant to the California Environmental Quality Act, the Commission certifies that it has reviewed and considered the information in the Negative Declaration for the Proposed Incorporation of the Town of San Martin, having concluded at its meeting on June 4, 2008 that potential inconsistencies with LAFCO and local policies did not related to reasonably foreseeable physical impacts on the environmental; and

WHEREAS, pursuant to Government Code Section 56375, the Commission has determined that approval of the proposed incorporation, as presented to the Commission at its November 7, 2008 hearing, is in the public welfare and the best interests of the residents of the affected area.

NOW, THEREFORE, the Local Agency Formation Commission of Santa Clara County, based on the entire record, including the finding, discussions and conclusions set forth in the Executive Officer's Report, which is incorporated herein by this reference, DOES HEREBY RESOLVE, DETERMINE, AND ORDER as follows:

SECTION 1:

The Commission finds based on the entire record, that:

- a. The proposed incorporation is consistent with the intent of the Cortese-Knox-Hertzberg Local Government Reorganization Act ("Act") of 2000, including, but not limited to, the policies of Sections 56001, 56300, 56301, and 56377 of the Act.
- b. The Commission has reviewed the spheres of influence of the affected local agencies and is consistent with those spheres of influence upon amendment of the City of Morgan Hill sphere of influence to exclude a portion of the proposed incorporation area.
- c. The Commission has reviewed the Comprehensive Fiscal Analysis prepared pursuant to Section 56800.
- d. The Commission has reviewed the Executive Officer's Report and recommendations prepared pursuant to Section 56665, and the testimony presented at its public hearing.
- e. The proposed Town is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation.

SECTION 2:

The Commission orders the proposed incorporation subject to confirmation by a majority of registered voters and passage by a majority of voters of a Utility Users Tax (UUT) of 10.7% on natural gas and electricity in the first six years of the incorporation and a 6.9% UUT on

Incorporation of the Town of San Martin

natural gas and electricity from Year 7 through Year 25 following the incorporation. The UUT will raise revenue for general governmental purposes of the Town and these revenues shall be placed in the Town's general fund and used for Town expenses.

SECTION 3:

The Commission approves the proposed incorporation of the Town of San Martin with the boundaries as depicted in Exhibit A attached hereto and incorporated herein subject to:

a. the Town of San Martin levying and collecting a UUT of 10.7% on natural gas and electricity in the first six years of the incorporation and a UUT of 6.9% on natural gas and electricity from Year 7 through Year 25 following incorporation, as approved by the voters, by adopting the ordinance attached hereto as Exhibit B, which is incorporated herein by this reference.

b. specific terms and conditions as described in more detail in Exhibit C attached hereto and incorporated herein.

SECTION 4:

The Commission, as lead agency, hereby adopts the Revised Initial Study/ Negative Declaration (March 11, 2008) prepared for the proposed incorporation of the Town of San Martin and related sphere of influence amendments based on the findings that the Negative Declaration was prepared in accordance with law and reflects the LAFCO of Santa Clara County's independent judgment and analysis; that LAFCO has considered the Negative Declaration and all comments received during the comment period; and that there is no substantial evidence in the record that the Project will have a significant effect on the environment and designates LAFCO Executive Officer as the location and custodian of the documents and other materials that constitute the record of proceedings on which this decision is based.

SECTION 5:

The Commission hereby approves concurrent detachment from the County Library Services Area and waives detachment from the County Lighting Services Area.

SECTION 6:

The Commission hereby amends the City of Morgan Hill's sphere of influence to exclude Area 2 as depicted in Exhibit D attached hereto and incorporated herein by reference and adopts the related Statement of Determinations.

SECTION 7:

The Commission hereby approves a coterminous sphere of influence for the Town of San Martin and adopts the related Statement of Determinations.

Incorporation of the Town of San Martin

SECTION 8:

The Commission hereby approves a coterminous Urban Service Area for the Town of San Martin.

SECTION 9:

The Commission hereby requests the Board of Supervisors to call an election on the subject reorganization and the Utility Users Tax, subject to the attached findings, determinations, terms and conditions, the proposed ballot wording shall be substantially in the following form: Shall the Order adopted on November ____, 2008, by the Local Agency Formation Commission of Santa Clara County ordering the incorporation of the territory described in the Order and designated in the order as the "Proposed Incorporation of the Town of San Martin" be confirmed subject to the terms and conditions specified in the Order, including a Utility Users Tax as described in the Order?

Shall the San Martin Town Council levy and collect a Utility Users Tax on electricity and gas of 10.7% in the first six years of the incorporation and of 6.9% from Year 7 through Year 25 to fund general services as described in the Order?

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

AYES:

NOES:

ABSENT:

Pete Constant, Chairperson
LAFCO of Santa Clara County

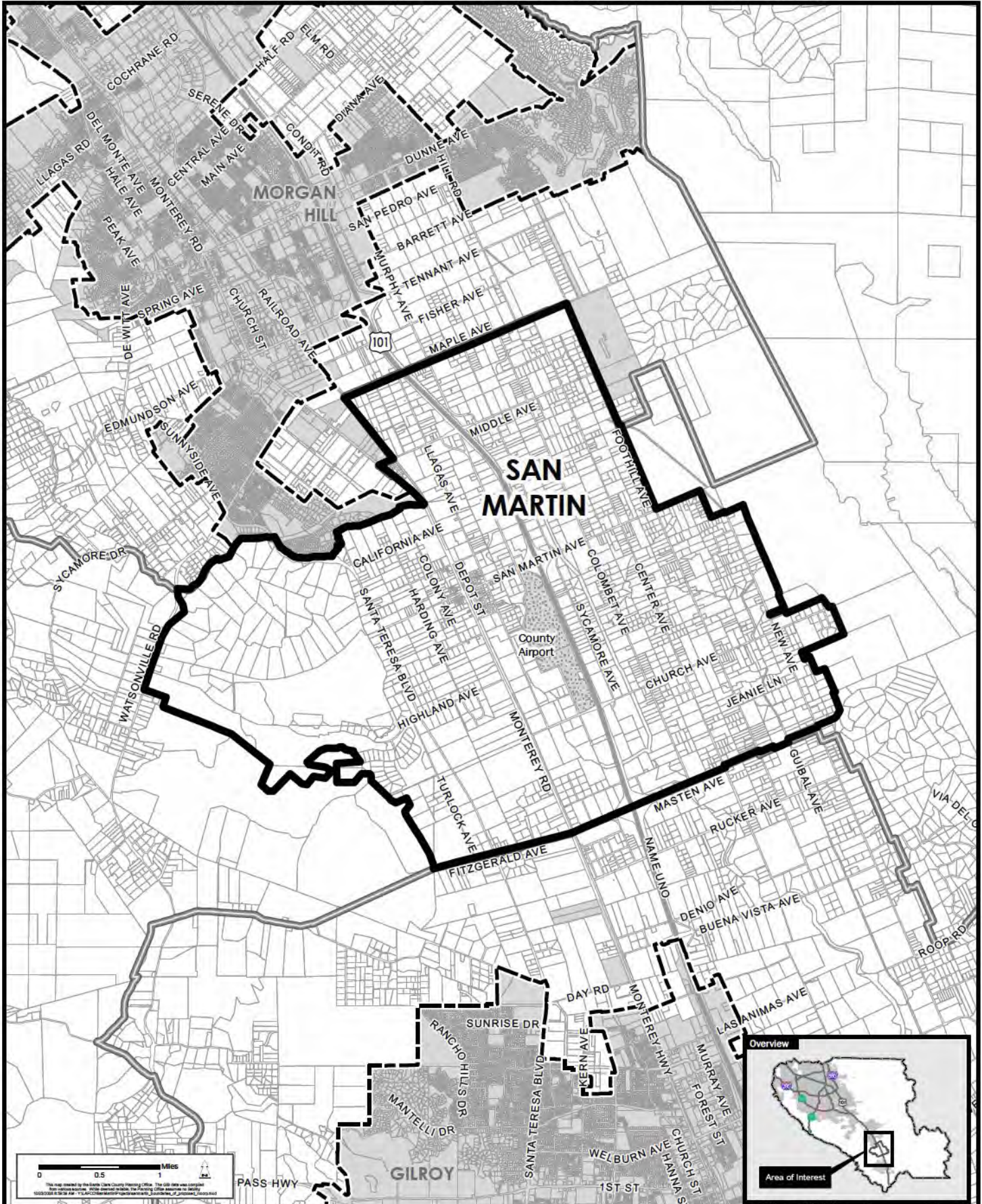
ATTEST:


APPROVED AS TO FORM AND LEGALITY:


Emmanuel Abello, LAFCO Clerk


Mala Subramanian, LAFCO Counsel

EXHIBIT A: San Martin Incorporation Boundary



 Recommended Boundary for Town Limits, Urban Service Area, and Sphere of Influence

 Other Cities' Spheres of Influence

 Other Cities' Urban Service Areas

 **LAFCO**
Local Agency Formation Commission of Santa Clara County

TOWN OF SAN MARTIN MUNICIPAL CODE

Chapter _____ UTILITY USERS TAX

Sections:

- ____.010 Purpose.
- ____.020 Definitions.
- ____.030 [Reserved].
- ____.040 Electricity users tax.
- ____.050 Gas users tax.
- ____.060 Collection of Tax From Service Users Receiving Direct Purchase of Gas or Electricity.
- ____.070 Constitutional and Statutory Exemptions.
- ____.080 Substantial Nexus/Minimum Contacts.
- ____.090 Duty to collect--Procedures.
- ____.100 Filing Return and Payment.
- ____.110 Collection of Penalties.
- ____.120 Deficiency Determination and Assessment – Tax Application Errors.
- ____.130 Administrative Remedy – Non-Paying Services Users.
- ____.140 Actions to Collect.
- ____.150 Additional Powers and Duties of Tax Administrator.
- ____.160 Records.
- ____.170 Refunds.
- ____.180 Appeals.
- ____.190 No Injunction/Writ of Mandate.
- ____.200 Remedies Cumulative.
- ____.210 Notice of Changes to Ordinance.
- ____.220 Penalties.
- ____.230 Future Amendment to Cited Statute.
- ____.240 Independent Audit of Tax Collection, Exemption, Remittance and Expenditure
- ____.250 Operative Date.

____.010 Purpose. This chapter is enacted solely to raise revenue for the general governmental purposes of the Town. All of the proceeds from the tax imposed by this chapter shall be placed in the Town's general fund and used for the usual current expenses of the Town.

____.020 Definitions. The following words and phrases whenever used in this chapter shall be construed as defined in this section.

A. "Billing Address" shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

B. "Cogenerator" shall mean any corporation or person employing cogeneration (as defined in Section 216.6 of the California Public Utilities Code) for producing power for the

Incorporation of the Town of San Martin

generation of electricity for self use or sale to others from a qualified cogeneration facility (as defined in the federal Public Utility Regulatory Policies Act of 1978 and regulations thereunder).

C. "Electrical corporation" and "gas corporation" shall have the same meanings as defined in Sections 218 and 222 of the California Public Utilities Code except, "electrical corporation" and "gas corporation" shall also be construed to include any municipality, public agency, broker/marketer, person or franchised agency engaged in the selling or supplying of electrical power or gas to a service user.

D. "Exempt Wholesale Generator" shall have the same meaning as set forth in the Federal Power Act (15 U.S.C.S. 79z 5a) and regulations thereunder.

E. "Gas" shall mean natural or manufactured gas or any alternate hydrocarbon fuel which may be substituted therefor.

F. "Month" means a calendar month.

G. "Non-utility Supplier" shall mean:

(1) a service supplier, other than a supplier of electric distribution services to all or a significant portion of the Town, which generates electricity for sale to others, and shall include, but is not limited to, any publicly-owned electric utility, investor-owned utility, cogenerator, municipal utility district, federal power marketing authority, electric rural cooperative, or other supplier or seller of electricity;

(2) an electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a supplier of electric distribution services to all or a significant portion of the Town, which sells or supplies electricity or supplemental services to electricity users within the Town; and

(3) a gas service supplier, aggregator, marketer, or broker, other than a supplier of gas distribution services to all or a significant portion of the Town, which sells or supplies gas to users within the Town.

H. "Person" shall mean, without limitation, any natural individual, firm, trust, common law trust, estate, partnership of any kind, association, syndicate, club, joint stock company, joint venture, limited liability company, corporation (including foreign, domestic, and non-profit), municipal district or municipal corporation (other than the Town) cooperative, receiver, trustee, guardian, or other representative appointed by order of any court.

I. "Service Supplier" shall mean any entity or person, including the Town, that provides electric or gas service to a user of such services within the Town, and includes an entity or person required to collect, or self-collect under Section _____.060 of this Chapter, and remit a tax as imposed by this Chapter, including its billing agent in the case of electric or gas service suppliers.

J. "Service User" shall mean a person required to pay a tax imposed under the provisions of this Chapter.

Incorporation of the Town of San Martin

K. "State" shall mean the State of California.

L. "Tax Administrator" means the finance director of the Town or his or her designee.

M. "Town" means the Town of San Martin.

N. "Town Manager" means the Town Manager of Town, or his or her authorized representative.

____.030 [Reserved]

____.040 Electricity users tax.

A. There is hereby imposed a tax upon every person using electricity for the person's residence in the Town. The tax imposed by this section shall be at the rate of 10.7% for the first six years of the incorporation and 6.9% for Year 7 through Year 25 of the incorporation, of the charges made for such electricity, and for any supplemental services or other associated activities directly related and/or necessary for the provision of electricity to the end-user, which are provided by a service supplier or non-utility supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent.

B. As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary or common to the receipt, use and enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

(1) energy charges;

(2) distribution and transmission charges;

(3) metering charges;

(4) stand-by, reserves, firming, ramping, voltage support, regulation, emergency, or other similar minimum charges for services;

(5) customer charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fee, franchise surcharge, annual and monthly charges, and other charges, fees and surcharges which are necessary to or common for the receipt, use and enjoyment of electric service; and

(6) charges, fees, or surcharges for electricity services or programs, which are mandated by the California Public Utilities Commission, or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

C. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity.

Incorporation of the Town of San Martin

D. The Tax Administrator, from time to time, may survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential customers in the Town, and the charges therefore, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The Tax Administrator, thereafter, may issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use or enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (A) above.

E. As used in this section, the term "using electrical energy" shall not be construed to mean the storage of such energy by a person in a battery owned or possessed by him or her for use in an automobile or other machinery or device apart from the premises upon which the energy was received; provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; nor shall the term include electricity used and consumed by an electric public utility; nor shall the term include the mere receiving of such energy by an electric public utility or governmental agency at a point within the Town for resale; or the use of such energy in the production or distribution of water by a public utility or a governmental agency.

F. The tax on electricity provided by self-production or by a non-utility supplier or an electric utility not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section _____.060. All other taxes on charges for electricity imposed by this section shall be collected from the service user by the electric service supplier or its billing agent. The amount of the tax collected in one month shall be remitted to the Tax Administrator on or before the twentieth (20th) day of the following month or, at the option of the person required to collect or remit the tax, such person shall remit an estimated amount of the tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

____.050 Gas users tax.

A. There is hereby imposed a tax upon every person using gas in the person's residence in the Town, which is transported through a pipeline distribution system. The tax imposed by this section shall be at the rate of 10.7% for the first six years of the incorporation and 6.9% for Year 7 through Year 25 of the incorporation, of the charges made for such gas, including all services related to the storage, transportation, and delivery of such gas.

B. As used in this section, the term "charges" shall apply to all services, components and items for gas service that are: i) necessary or common to the receipt, use and enjoyment of gas service; or, ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

(1) the commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering,

Incorporation of the Town of San Martin

trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;

(2) gas transportation charges (including interstate charges to the extent not included in commodity charges);

(3) storage charges; provided, however, that the service supplier shall not be required to apply the tax to any charges for gas storage services when the service supplier cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;

(4) capacity or demand charges, service establishment or reestablishment charges, administrative charges, marketing charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary or common to the receipt, use and enjoyment of gas service; and

(5) charges, fees, or surcharges for gas services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing.

C. As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas.

D. The Tax Administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential customers in the Town, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The Tax Administrator, thereafter, may issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use or enjoyment of gas service; or, ii) currently, or historically have been included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. Charges for such components and items shall be subject to the tax of subsection (A) above.

E. The following shall be excluded from the base on which the tax imposed in this section is computed:

(1) Charges made for natural gas which is to be resold and delivered through mains and pipes;

(2) Charges made for natural gas sold for use in the generation of electrical energy or for the production or distribution of water by a public utility or governmental agency;

(3) Charges made by a gas utility for gas used and consumed in the conduct of business of gas public utilities;

(4) Charges made for gas used in the propulsion of motor vehicles, as that phrase is defined in the vehicle code of the state, utilizing natural gas; and,

(5) Charges made for gas used by a nonutility supplier to generate electrical energy for its own use or for sale to others provided the electricity so generated is subject to the tax in accordance with Section _____.060 of this chapter.

Incorporation of the Town of San Martin

F. The tax on gas provided by self-production or by a non-utility supplier not under the jurisdiction of this Chapter shall be collected and remitted in the manner set forth in Section _____.060. All other taxes on charges for gas imposed by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount of tax collected in one month shall be remitted to the Tax Administrator, and must be received by the Tax Administrator on or before the twentieth (20th) day of the following month; or, at the option of the person required to collect or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the Tax Administrator on or before the twentieth (20th) day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

____.060 Collection of Tax from Service Users Receiving Direct Purchase of Gas or Electricity.

A. Any service user subject to the tax imposed by Sections _____.040 or _____.050, hereof, which produces gas or electricity for self-use, or which receives gas or electricity directly from a non-utility supplier not under the jurisdiction of this ordinance, or which otherwise is not having the full tax due on the use of gas or electricity in the Town that is directly billed and collected by the service supplier or its billing agent, shall report said fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the pattern payment of similar customers of the service supplier using similar amounts of gas or electricity, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the Tax Administrator, may be applied against any subsequent tax bill that becomes due.

B. The Tax Administrator may require said service user to identify its non-utility supplier and provide, subject to audit, invoices, books of account, or other satisfactory evidence documenting the quantity of gas or electricity used and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or, if the administrative cost of calculating the tax, in the opinion of the Town, is excessive, the Town may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the gas or electricity used had been provided by the service supplier which is the primary supplier of gas or electricity.

____.070 Constitutional and Statutory Exemptions.

A. The taxes imposed by this Chapter shall not apply to:

- (1) Any person or service user if imposition of such tax upon that person or service user would be in violation of a federal or state statute or the Constitution of the United States or the Constitution of the State of California, or otherwise exempted by this Chapter; and
- (2) The Town.

B. This ordinance shall require the Town to levy and collect a utility users tax at the rate of 10.7% for the first six years of the incorporation and 6.9% for Year 7 through Year 25 of the incorporation, of the charges made for any gas or electric services used by any service user

Incorporation of the Town of San Martin

within the Town, except where any such service user or utility service is made expressly exempt from utility users tax by this chapter.

C. Any service user that is exempt from the tax imposed by this Chapter pursuant to subsection (A) of this section _____.070, shall file an application with the Tax Administrator for said exemption or suspension; provided, however, this requirement shall not apply to a service user that is a state or federal agency or subdivision with a commonly recognized name. Said application shall be made upon a form approved by the Tax Administrator and shall state those facts, declared under penalty of perjury, which qualify the applicant for an exemption or suspension, and shall include the names of all utility service suppliers serving that service user. If deemed subject to an exemption or suspension by the Tax Administrator, such service user shall give the Tax Administrator timely written notice of any change in utility service suppliers so that the Tax Administrator can properly notify the new utility service supplier of the service user's tax exempt or suspended status. A service user that fails to comply with this section shall not be entitled to a refund of utility users taxes collected and remitted to the Tax Administrator from such service user as a result of such non-compliance. Upon request of the Tax Administrator, a service supplier or non-utility supplier, or their billing agents, shall provide a list of names and addresses of those customers which, according to their billing records, are deemed exempt or suspended from the payment of utility users tax.

D. The decision of the Tax Administrator may be appealed pursuant to Section _____.180 of this Chapter. Filing an application with the Tax Administrator and appeal to the Town Manager pursuant to Section _____.180 of this Chapter is a prerequisite to a suit thereon.

E. Following application and approval of any exemption or suspension from the payment of all or any part of the utility users tax by the Town, the Tax Administrator shall prepare a list of the persons exempted or suspended from the payment of such tax by virtue of this section and shall furnish a copy thereof to each service supplier.

F. Any service user who has been exempted or suspended from the collection of utility users tax pursuant to this section shall notify the Tax Administrator within ten (10) calendar days following a change in facts or circumstances which may disqualify said service user from receiving such exemption or suspension. It shall be a misdemeanor for any person to knowingly receive the benefits of an exemption or suspension provided by this section when the basis for such exemption or suspension does not exist or ceases to exist.

_____.080 Substantial Nexus / Minimum Contacts.

A. For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Chapter, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. A service supplier shall be deemed to have sufficient activity in the Town for tax collection and remittance purposes if its activities include, but are not limited to, any of the following: maintains or has within the Town, directly or through an agent or subsidiary, a place of business of any nature; solicits business in the Town by employees, independent contractors, resellers, agents or other representatives; solicits business in the Town on a continuous, regular, seasonal or systematic basis by means of advertising that is broadcast or relayed from a transmitter with the Town or distributed from a location with the Town; or

Incorporation of the Town of San Martin

advertises in newspapers or other periodicals printed and published within the Town or through materials distributed in the Town by means other than the United States mail.

B. The Town shall make available, upon request, an accurate description of its jurisdictional boundaries based on street addresses and/or ZIP Plus Four, in an electronic format. If a service supplier relies upon such information provided by Town, it shall not be responsible for any errors in taxation that may result.

____.090 Duty to collect--Procedures.

The duty to collect and remit the taxes imposed by this chapter shall be performed as follows:

A. The tax shall be collected insofar as practicable at the time and along with the charges made in accordance with the regular billing practices of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the charge and tax which has accrued for the billing period, such amount and any subsequent payments by a service user may be applied to the utility service charge first until such charge has been fully satisfied. Any remaining balance shall be applied to the taxes due, except in those cases where a service user pays the full amount of the charges but notifies the service supplier of his or her refusal to pay the tax imposed on the charges.

B. The duty to collect tax from a service user shall commence with the beginning of the first full regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this chapter. Where a person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing.

____.100 Filing Return and Payment.

Each person required by this Chapter to remit a tax shall file a return to the Tax Administrator, on forms approved by the Tax Administrator on or before the due date. The full amount of the tax collected shall be included with the return and filed with the Tax Administrator. The Tax Administrator is authorized to require such additional information as he/she deems necessary to determine if the tax is being levied, collected, and remitted in accordance with this Chapter. Returns are due immediately upon cessation of business for any reason. Pursuant to Revenue and Tax Code Section 7284.6, the Tax Administrator, and its agents, shall maintain such filing returns as confidential information exempt from disclosure provisions of the Public Records Act.

____.110 Collection Penalties.

A. Taxes collected from a service user, or self-collected by a service user subject to Section _____.060 of this Chapter, are delinquent if not received by the Tax Administrator on or before the due date. Should the due date occur on a weekend or legal holiday, the return must be received by the Tax Administrator on or before the first regular working day following the weekend or legal holiday. A direct deposit, including electronic fund transfers and other similar methods of electronically exchanging monies between financial accounts, made by a service supplier in satisfaction of its obligations under this subsection shall be considered timely if the transfer is initiated on or before the due date, and the transfer settles into the Town's account on or before the following business day.

Incorporation of the Town of San Martin

B. If a service supplier, or a service user subject to Section _____.060 of this Chapter, fails to remit any tax collected, on or before the due date, said person shall pay a penalty for such delinquencies at the rate as set forth by resolution of the Town Council of the total tax that is delinquent in the remittance, and shall pay interest at the rate as set forth by resolution of the Town Council, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent, until paid.

C. The Tax Administrator shall have the power to impose additional penalties upon persons required to collect and/or remit taxes pursuant to the provisions of this Chapter for fraud or gross negligence in reporting or remitting at the rate as set forth by resolution of the Town Council of the amount of the tax collected and/or required to be remitted, or as recomputed by the Tax Administrator.

D. For collection purposes only, every penalty imposed and such interest that is accrued under the provisions of this section shall become a part of the tax herein required to be paid.

E. Notwithstanding the foregoing, the Tax Administrator may, in his or her discretion, modify the due dates of this Chapter to be consistent with any uniform standards or procedures that are mutually agreed upon by UUT public agencies, or otherwise legally established, to create a UUT central payment location or mechanism.

_____.120 Deficiency Determination and Assessment – Tax Application Errors.

A. The Tax Administrator shall make a deficiency determination if he or she determines that any person required to collect or self-collect taxes pursuant to the provisions of this Chapter has failed to collect and remit the proper amount of tax by improperly or failing to apply the tax to one or more taxable services or charges.

B. The Tax Administrator shall mail a notice of such deficiency determination to the person required to pay or remit the tax, which notice shall refer briefly to the amount of the taxes owed, plus interest at the rate as set forth by resolution of the Town Council, on the amount of the tax from the date on which the tax should have been received by the Town. Within fourteen (14) calendar days after the date of service of such notice, the person may request in writing to the Tax Administrator for a hearing on the matter. If the person fails to request a hearing within the prescribed time period, the amount of the deficiency determination shall become a final assessment, and shall immediately be due and owing to the Town.

C. If the person requests a hearing, the Tax Administrator shall cause the matter to be set for hearing, which shall be held within thirty (30) days after receipt of the written request for hearing. Notice of the time and place of the hearing shall be mailed by the Tax Administrator to such person at least ten (10) calendar days prior to the hearing, and, if the Tax Administrator desires said person to produce specific records at such hearing, such notice may designate the records requested to be produced.

D. At the time fixed for the hearing, the Tax Administrator shall hear all relevant testimony and evidence, including that of any other interested parties. At the discretion of the Tax Administrator, the hearing may be continued from time to time for the purpose of allowing the presentation of additional evidence. Within a reasonable time following the conclusion of

Incorporation of the Town of San Martin

the hearing, the Tax Administrator shall issue a final assessment (or non-assessment), thereafter, by confirming, modifying or rejecting the original deficiency determination, and shall mail a copy of such final assessment to the person owing the tax. The decision of the Tax Administrator may be appealed pursuant to Section _____.180 of this Chapter. Filing an application with the Tax Administrator and appeal to the Town Manager pursuant to Section _____.180 of this Chapter is a prerequisite to a suit thereon.

E. Payment of the final assessment shall become delinquent if not received by the Tax Administrator on or before the thirtieth (30th) day following the date of receipt of the notice of final assessment. The penalty for delinquency shall be at the rate as set forth by resolution of the Town Council on the total amount of the assessment, along with interest at the rate as set forth by resolution of the Town Council, on the amount of the tax, exclusive of penalties, from the date of delinquency, until paid. The applicable statute of limitations regarding a claim by the Town seeking payment of a tax assessed under this Section _____.120 shall commence from the date of delinquency as provided in this subsection E.

F. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

_____.130 Administrative Remedy - Non-Paying Service Users.

A. Whenever the Tax Administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or whenever the Tax Administrator deems it in the best interest of the Town, he or she may relieve such person of the obligation to collect the taxes due under this Chapter from certain named service users for specific billing periods. Whenever the service user has failed to pay the amount of tax owed for a period of two (2) or more billing periods, the service supplier shall be relieved of the obligation to collect taxes due. The service supplier shall provide the Town with the names and addresses of such service users and the amounts of taxes owed under the provisions of this Chapter.

B. In addition to the tax owed, the service user shall pay a delinquency penalty at the rate as set forth by resolution of the Town Council of the total tax that is owed, and shall pay interest at the rate as set forth by resolution of the Town Council, on the amount of the tax, exclusive of penalties, from the due date, until paid.

C. The Tax Administrator shall notify the non-paying service user that the Tax Administrator has assumed the responsibility to collect the taxes due for the stated periods and demand payment of such taxes, including penalties and interest. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have a change of address, to his or her last known address.

D. If the service user fails to remit the tax to the Tax Administrator within thirty (30) days from the date of the service of the notice upon him or her, the Tax Administrator may impose an additional penalty of fifteen percent (15%) of the amount of the total tax that is owed.

Incorporation of the Town of San Martin

____.140 Actions to collect.

Any tax required to be paid by a service user under the provisions of this Chapter shall be deemed a debt owed by the service user to the Town. Any such tax collected from a service user which has not been remitted to the Tax Administrator shall be deemed a debt owed to the Town by the person required to collect and remit and shall no longer be a debt of the service user. Any person owing money to the Town under the provisions of this Chapter shall be liable to an action brought in the name of the Town for the recovery of such amount, including penalties and interest as provided for in this Chapter, along with any collection costs incurred by the Town as a result of the person's noncompliance with this Chapter, including, but not limited to, reasonable attorneys fees and court costs.

____.150 Additional Powers and Duties of Tax Administrator.

A. The Tax Administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this Chapter.

B. The Tax Administrator may adopt administrative rules and regulations not inconsistent with provisions of this Chapter for the purpose of interpreting, clarifying, carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such administrative rules and regulations shall be on file in the Tax Administrator's office.

C. Upon a proper showing of good cause, the Tax Administrator may make administrative agreements, with appropriate conditions, to vary from the strict requirements of this Chapter and thereby: (a) conform to the billing procedures of a particular service supplier (or service user subject to Section _____.060 of this Chapter) so long as said agreements result in the collection of the tax in conformance with the general purpose and scope of this Chapter; or, (b) to avoid a hardship where the administrative costs of collection and remittance greatly outweigh the tax benefit. A copy of each such agreement shall be on file in the Tax Administrator's office, and are voidable by the Tax Administrator or the Town at any time.

D. The Tax Administrator may conduct an audit, to ensure proper compliance with the requirements of this Chapter, of any person required to collect and/or remit a tax pursuant to this Chapter. The Tax Administrator shall notify said person of the initiation of an audit in writing. In the absence of fraud or other intentional misconduct, the audit period of review shall not exceed a period of three (3) years next preceding the date of receipt of the written notice by said person from the Tax Administrator. Upon completion of the audit, the Tax Administrator may make a deficiency determination pursuant to Section _____.120 of this Chapter for all taxes, penalties and interest owed and not paid, as evidenced by information provided by such person to the Tax Administrator. If said person is unable or unwilling to provide sufficient records to enable the Tax Administrator to verify compliance with this Chapter, the Tax Administrator is authorized to make a reasonable estimate of the deficiency. Said reasonable estimate shall be entitled to a rebuttable presumption of correctness.

E. Upon receipt of a written request of a taxpayer, and for good cause, the Tax Administrator may extend the time for filing any statement required pursuant to this Chapter for a period of not to exceed forty-five (45) days, provided that the time for filing the required statement has not already passed when the request is received. No penalty for delinquent

Incorporation of the Town of San Martin

payment shall accrue by reason of such extension. Interest shall accrue during said extension at the rate of three-quarters of one percent ($\frac{3}{4}\%$) per month, prorated for any portion thereof.

F. The Tax Administrator shall determine the eligibility of any person who asserts a right to exemption or suspension from, or a refund of, the tax imposed by this Chapter.

G. The Tax Administrator or the Town Manager, with the written approval of the Town Attorney, may compromise a claim pursuant to this Chapter where the portion of the claim proposed to be released is less than the amount set by ordinance or resolution of the Town Council relating to the settlement of general liability claims against the Town and, with the approval of the Town Attorney and the Town Council, may compromise such a claim where the portion proposed to be released is equal to or greater than the amount set by ordinance or resolution of the Town Council relating to the settlement of general liability claims against the Town by the Town Manager.

H. Notwithstanding any provision in this Chapter to the contrary, the Tax Administrator may waive any penalty or interest imposed upon a person required to collect and/or remit for failure to collect the tax imposed by this Chapter if the non-collection occurred in good faith. In determining whether the non-collection was in good faith, the Tax Administrator shall take into consideration industry practice or other precedence.

_____ .160 Records.

A. It shall be the duty of every person required to collect and/or remit to the Town any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he/she may have been liable for the collection of and remittance to the Tax Administrator, which records the Tax Administrator, or the Tax Administrator's designated representative, shall have the right to inspect at a reasonable time.

B. The Town may issue an administrative subpoena to compel a person to deliver, to the Tax Administrator, copies of all records deemed necessary by the Tax Administrator to establish compliance with this Chapter, including the delivery of records in a common electronic format on readily available media if such records are kept electronically by the person in the usual and ordinary course of business. As an alternative to delivering the subpoenaed records to the Tax Administrator on or before the due date provided in the administrative subpoena, such person may provide access to such records outside the Town on or before the due date, provided that such person shall reimburse the Town for all reasonable travel expenses incurred by the Town to inspect those records, including travel, lodging, meals, and other similar expenses, but excluding the normal salary or hourly wages of those persons designated by the Town to conduct the inspection.

C. The Tax Administrator, or the Tax Administrator's designated representative, is authorized to execute a non-disclosure agreement approved by the Town Attorney to protect the confidentiality of customer information pursuant to California Revenue and Tax Code Sections 7284.6 and 7284.7. The Tax Administrator, or the Tax Administrator's designated representative, may request from a person providing transportation services of gas or electricity to service users within the Town a list of the names and addresses, and other pertinent

Incorporation of the Town of San Martin

information, of its transportation customers within the Town pursuant to Section 6354(e) of the California Public Utilities Code.

D. If a service supplier uses a billing agent or billing aggregator to bill, collect, and/or remit the tax, the service supplier shall: i) provide to the Tax Administrator the name, address and telephone number of each billing agent and billing aggregator currently authorized by the service supplier to bill, collect, and/or remit the tax to the Town; and, ii) upon request of the Tax Administrator, deliver, or effect the delivery of, any information or records in the possession of such billing agent or billing aggregator that, in the opinion of the Tax Administrator, is necessary to verify the proper application, calculation, collection and/or remittance of such tax to the Town.

E. If any person subject to record-keeping under this section unreasonably denies the Tax Administrator, or the Tax Administrator's designated representative, access to such records, or fails to produce the information requested in an administrative subpoena within the time specified, then the Tax Administrator may impose a penalty of five hundred dollars (\$500) on such person for each day following: i) the initial date that the person refuses to provide such access; or, ii) the due date for production of records as set forth in the administrative subpoena. This penalty shall be in addition to any other penalty imposed under this Chapter.

_____.170 Refunds. Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter, it may be refunded as provided in this section:

A. The Tax Administrator or Town Manager may refund any tax that has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the Tax Administrator under this Chapter, provided that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor or administrator has submitted a written claim, under penalty of perjury, to the Tax Collector. The period for filing a claim for refund shall be one year from the time the tax was paid or erroneously or illegally collected; provided however, that in no event shall the period to file such claim expire prior to the shortest period allowable for filing a tax refund claim under Title 1, Division 3.6, Part 3, Section 911.2 of the California Government Code. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto, and must clearly set forth the facts and legal theories under which the claimant believes he or she has right to a refund. Nothing herein shall permit the filing of a refund claim on behalf of a class or group of taxpayers. Where the amount of any individual refund claim is in excess of the amount set by ordinance or resolution of the Town Council relating to the settlement of general liability claims against the Town by the Tax Administrator or Town Manager, Town Council approval shall be required.

B. The filing of a written claim pursuant to Government Code Section 935 is a prerequisite to any suit thereon. Any action brought against the Town pursuant to this section shall be subject to the provisions of Government Code Sections 945.6 and 946.

C. Notwithstanding the notice provisions of subsection (A) of this section _____.170, a service supplier that has collected any amount of tax in excess of the amount of tax imposed by this Chapter and actually due from a service user (whether due to overpayment or erroneous or illegal collection of said tax), may refund such amount to the service user, or credit to charges

Incorporation of the Town of San Martin

subsequently payable by the service user to the service supplier, and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns to the Tax Administrator, provided such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous or illegal collection of said tax. The Tax Administrator shall determine the validity of the service user's claim of credit, and the underlying basis for such claim.

D. Notwithstanding the notice provisions of subsection (A) of this section _____.170, in the event that a service supplier, or a person required to self-impose a tax imposed by this Chapter, remits a tax to the Town in excess of the amount of tax imposed by this Chapter, said service supplier, or a person required to self-impose a tax imposed by this Chapter, may claim credit for such overpayment against the amount of tax which is due upon any other monthly returns to the Tax Administrator, provided such credit is claimed in a return dated no later than one year from the date of overpayment of said tax, and provided that the Finance Director shall first determine the validity of the service user's claim of credit, and the underlying basis for such claim.

_____.180 Appeals.

A. The provisions of this section apply to any decision (other than a decision relating to a refund pursuant to Section _____.170 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator. Any person aggrieved by any decision (other than a decision relating to a refund pursuant to Section _____.170 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator, shall be required to comply with the appeals procedure of this section. Compliance with this section shall be a prerequisite to a suit thereon. [See Government Code Section 935(b).] Nothing herein shall permit the filing of a claim or action on behalf of a class or group of taxpayers.

B. If any person is aggrieved by any decision (other than a decision relating to a refund pursuant to Section _____.170 of this Chapter), deficiency determination, assessment, or administrative ruling of the Tax Administrator; he or she may appeal to the Town Manager by filing a notice of appeal with the Town Clerk within fourteen (14) days of the date of the decision, deficiency determination, assessment, or administrative ruling of the Tax Administrator which aggrieved the service user or service supplier.

C. The matter shall be set for hearing no more than thirty (30) days from the receipt of the appeal. The appellant shall be served with notice of the time and place of the hearing, as well as any relevant materials, at least five (5) calendar days prior to the hearing. The hearing may be continued from time to time upon mutual consent. At the time of the hearing, the appealing party, the Tax Administrator, the Town Manager, and any other interested person may present such relevant evidence as he or she may have relating to the determination from which the appeal is taken.

D. Based upon the submission of such evidence and the review of the Town's files, the Town Manager shall issue a written notice and order upholding, modifying or reversing the determination from which the appeal is taken. The notice shall be given within fourteen (14) days after the conclusion of the hearing and shall state the reasons for the decision. The notice shall specify that the decision is final and that any petition for judicial review shall be filed within ninety (90) days from the date of the decision in accordance with Code of Civil Procedure

Incorporation of the Town of San Martin

Section 1094.6. If the Town Manager fails or refuses to act on a refund claim within the fourteen (14) day period, the claim shall be deemed to have been rejected by the Town Manager on the fourteenth (14th) day.

E. All notices under this section may be sent by regular mail, postage prepaid, and shall be deemed received on the third calendar day following the date of mailing, as established by a proof of mailing.

_____.190 No Injunction/Writ of Mandate. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this Town or against any officer of the Town to prevent or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected and/or remitted.

_____.200 Remedies Cumulative. All remedies and penalties prescribed by this Chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the Town shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

_____.210 Notice of Changes to Ordinance. If a tax under this Chapter is added, increased, reduced, or the tax base is changed, the Tax Administrator shall follow the notice requirements of California Public Utilities Code Section 799. Prior to the effective date of the ordinance change, the service supplier shall provide the Tax Administrator with a copy of any written procedures describing the information that the service supplier needs to implement the ordinance change. If the service supplier fails to provide such written instructions, the Tax Administrator, or his or her agent, shall send, by first class mail, a copy of the ordinance change to all collectors and remitters of the Town's utility users taxes according to the latest payment records of the Tax Administrator.

_____.220 Penalties. Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor or an infraction at the discretion of the Town Attorney.

_____.230 Future Amendment to Cited Statute. Unless specifically provided otherwise, any reference to a state or federal statute in this Chapter shall mean such statute as it may be amended from time to time.

_____.240 Independent Audit of Tax Collection, Exemption, Remittance, and Expenditure. The Town shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted in accordance with this Chapter, and properly expended according to applicable municipal law. The annual verification shall be performed by a qualified independent third party and the review shall employ reasonable, cost-effective steps to assure compliance, including the use of sampling audits. The verification shall not be required of tax remitters where the cost of the verification may exceed the tax revenues to be reviewed.

_____.250 Operative date. This chapter shall become effective immediately upon adoption by the Town Council as directed by the voters of the Town at the _____ Election of _____, 2009.

Exhibit C
Terms and Conditions

The Commission approves the proposed incorporation of the Town of San Martin subject to the following terms and conditions:

Town Boundaries

The boundaries of the Town of San Martin shall be as depicted in Figure 3. Within 14 calendar days of LAFCO adoption of this resolution, the proponents must submit to LAFCO, a map and legal description of the approved incorporation boundary. The legal description must be prepared by a licensed land surveyor to meet the standards of the State Board of Equalization. LAFCO will have the map reviewed by the County Surveyor for compliance with Government Code Section 56375 (l) and LAFCO of Santa Clara's policies.

General Law City

The Town of San Martin shall be incorporated as a general law city.

Name of City

The new city shall be the Town of San Martin

Terms of Office and Election of City Council members

The initial election of council members will be the same date as the vote on incorporation. The Town shall be governed by a five-member Town council elected at large. The terms of the five council members shall be subject to Government Code §57377 and §57378. Of the five elected members of the city council, the three receiving the lowest number of votes shall hold office until the first succeeding general municipal election held in the Town and until their successors are elected and qualified, and the two receiving the highest number of votes shall hold office until the second succeeding general municipal election held in the Town and until their successors are elected and qualified. If two or more members of the city council are elected by the same number of votes, the terms of each shall be determined by lot. The Town council members elected to succeed the members elected at the incorporation election shall hold office for four years from the Tuesday succeeding their election and until their successors are elected and qualified. Pursuant to Government Code §57118, the election shall be held within the entire territory of the proposed incorporation.

Appointment of City Staff

The Town council shall appoint a Town Manager, Town Clerk, Town Attorney and Town Treasurer.

Number of Registered Voters

Pursuant to Government Code §56375(f), the County Registrar of Voters determined that the number of registered voters within the territory proposed for incorporation was 2,824 as of the time of the last report of voter registration by the County elections official to the Secretary of State prior to the date the first signature was affixed to the petition.

Incorporation Fees and Costs

All required fees and costs of processing the incorporation application including the State Board of Equalization Fees, cost of preparing and / or reviewing the map and legal description of the approved incorporation boundary and all costs for staff time and expenses shall be paid by the proponents within 5 calendar days of LAFCO adoption of this resolution.

Incorporation of the Town of San Martin

Election Costs

The costs of the incorporation election and the election of Town council members shall be borne by the Town if the incorporation is ratified by the voters. If the election is unsuccessful, the election costs will be borne by the County pursuant to Government Code §57150 (b). Election costs shall be paid within 30 days of written request from the Santa Clara County Registrar of Voters, unless alternative payment arrangement is agreed to by the parties.

Effective Date

The effective date of the incorporation shall be July 1, 2009 or soon thereafter as specified in the Certificate of Completion.

Continuation of County Ordinances for 120 days

Pursuant to Government Code §57376, the Town of San Martin shall, immediately following its organization and prior to performing any other official act, adopt an ordinance providing that all County ordinances previously applicable shall remain in full force and effect as Town ordinances for a period of 120 days thereafter, or until the Town Council has enacted ordinances superseding them, whichever shall occur first. Enforcement of continuing county ordinances in the incorporated area shall be with the Town, except insofar as enforcement services are furnished in accordance with Government Code §57384.

Indemnification

Proponent agrees as a condition of approval of this proposal to enter into an indemnification agreement in a form approved by LAFCO Counsel to defend using counsel approved by LAFCO, indemnify, hold harmless, and release LAFCO, its officials, officers, employees, consultants and agents from any claim, action or proceeding brought against them, or any of them, to attack, set aside, void, or annul the approval of this proposal, any term or condition of the approval, or the environmental document which accompanies the approval. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney fees and expert witness fees that may be asserted by any person or entity, including the proponent, whether or not there is concurrent passive or active negligence on the part of LAFCO, its officials, officers, employees, consultants and agents. Proponents shall execute the indemnification agreement within three calendar days of LAFCO's adoption of the resolution approving the incorporation.

The Town will be bound by and subject to all of the defense, indemnification and hold harmless obligations set forth herein following incorporation.

In any litigation, arbitration or any other proceeding where LAFCO of Santa Clara County seeks to enforce the indemnification provisions set forth above, or seeks a declaration of rights and obligations pursuant to this provision, LAFCO of Santa Clara County shall be awarded reasonable attorney fees, together with any costs and expenses incurred to resolve the dispute and to enforce the provision, if LAFCO of Santa Clara County prevails.

Transfer of County Roads and Highways to the Town

Upon the effective date of incorporation, pursuant to Government Code §57385, all roads and highways or portions of a road or highway in the incorporation territory, which had been accepted into the County road system shall become Town streets.

Waive Detachment from County Lighting Service Area

In accordance with Government Code §56375 (n), waive automatic detachment from County Lighting Service Area based upon the following findings:

Incorporation of the Town of San Martin

- County Lighting Service Area provides lighting services through assessments to a portion of the incorporation territory
- Detachment would deprive the area's residents of lighting services needed to ensure their health, safety and welfare
- Waiving detachment will not affect the ability of the Town to provide any service

Detachment from the County Library Service Area

Concurrent with the effective date of the incorporation and in accordance with Streets and Highways Code §22613, the territory in the incorporation boundary will be automatically detached from the County Library Service Area. Library services to the Town will continue to be provided by the County Library Joint Powers Authority and funded by the Community Facilities District.

Williamson Act Contracts

Pursuant to Government Code §56889, the Town shall succeed to all Williamson Act Contracts that exist within the boundaries of the Town and the Town shall adopt the rules and procedures required by the Williamson Act, including but not limited to the rules and procedures required by Sections 51231, 51237 and 51237.5 of the California Government Code. The Town shall not provide services to the Williamson Act Contract properties for land uses or activities not allowed under the contract.

Continuation of Charges

Pursuant to Government Code §56886(t), the Town shall have the authority to continue the levying and collection of any previously authorized charge, fee, assessment or general or special tax levied within the subject territory by the County or other agency including fees or charges by County Service Areas or Community Facilities Districts.

Base Year Property Tax

The base year property tax transferred to the new Town from the County pursuant to Government Code §56810 shall be \$599,522, determined as follows:

- County Auditor's Ratio (Government Code §56810(c)(1): 57.33%
- Total Net Cost of Services Transferred by the County to the Town, as determined by the Commission (Government Code §56810(c)(2): \$1,045,827
- Calculation of Base Property Tax to be transferred to the Town §56810(c)(3): County Auditor's Ratio X Total Net County Cost = \$599,522

The County Auditor shall adjust the property tax amount to be transferred in accordance with state law and in proportion to the increase in assessed value from Fiscal Year 2006- 2007 to the effective date of incorporation.

Assessed Valuation

The Fiscal year 2006-2007 assessed valuation for property tax calculation purposes within the proposed incorporation boundaries is approximately \$1,021,447,543 and is estimated to be approximately \$1,173,276,629 in Fiscal Year 2009-2010. The CFA assumes a 5.87% annual growth (including inflation) in assessed value for the San Martin area.

Appropriations Limit

Pursuant to Government Code §56812(a), the provisional appropriations limit submitted for voter approval shall be \$3.8 million. The permanent appropriations limit of the Town shall be set at the first municipal election which is held following the first full fiscal year of operation and

Incorporation of the Town of San Martin

shall not be considered to be a change in the appropriations limit of the Town pursuant to Section 4 of Article XIII B of the California Constitution.

Transition Year Revenues

Pursuant to Government Code §57384, any revenues that are generated in the Town after incorporation, that are retained by the County, shall be applied to the County's cost of service to the area during the transition period, that is, the remainder of the fiscal year following the effective date of incorporation. If the revenue generated exceeds the cost of County provided services, the difference shall be transferred to the Town.

Continuation of County Services

In accordance with Government Code §57384, the County of Santa Clara shall continue to furnish all services provided to the area prior to the incorporation. Those services shall be furnished for the remainder of the fiscal year during which the incorporation becomes effective or until the new Town Council requests discontinuance of the services, whichever occurs first. The County shall be reimbursed for these services in accordance with Government Code §57384 (b). A continuation of County services to the Town beyond the first fiscal year, for full cost recovery and/or provision of an enhanced level of service, may be arranged pursuant to an agreement between the two parties.

Revenue Neutrality Mitigation Payments

Total Obligation

The Town shall pay the County a total of \$10,296,398 in revenue neutrality payments based on a 10 year mitigation period. This revenue neutrality obligation is based on the County's annual deficit amount of \$872,000, as calculated in the CFA and includes a 3% inflation rate.

Payment Schedule

A minimum annual revenue neutrality mitigation payment of \$500,771 shall be made by the Town to the County for 25 years following the incorporation. The net present value of payments shall equal \$8,720,000 calculated using a 3% discount rate. Any delinquent payments would accrue interest at the rate of 3% annually. Interest shall continue to accrue on the outstanding prior year's balance until it has been paid in full. The Town may pre-pay any amount due under this obligation on terms mutually agreed upon by the Town and the County.

Town Appropriation

The Town shall appropriate on an annual basis sufficient funds to meet its obligations. The County and the Town, upon incorporation, shall negotiate and execute any additional legal documents necessary to implement the provisions under the "Revenue Neutrality Mitigation payments" and, if required to affect a direct transfer of payments due hereunder. A direct transfer is a transfer from either the State Board of Equalization or the County Auditor-Controller to the County without the necessity of an intermediate transfer to the Town. Until an agreement for direct transfer of such funds is completed, the Town Council shall appropriate on an annual basis, sufficient funds to meet its obligations hereunder.

Morgan Hill Sphere of Influence Amendment

Concurrent with the effective date of the incorporation, the Morgan Hill Sphere of Influence shall be amended to exclude a portion of the proposed incorporation area, as more specifically depicted in Figure 4. The Commission adopts the following Statement of Determinations for the amendment of the sphere of influence of Morgan Hill:

Incorporation of the Town of San Martin

STATEMENT OF DETERMINATIONS FOR AMENDMENT OF THE SPHERE OF INFLUENCE FOR THE CITY OF MORGAN HILL

1. Present and planned land uses in the area, including agricultural and open-space lands
The area is currently designated Rural Residential and is developed with single family homes. The area does not include agricultural and open-space lands

2. Present and probable need for public facilities and services in the area
The area is unincorporated and located outside Morgan Hill's urban service area. The area receives water service from West San Martin Water Works. The properties rely on septic systems for sewage disposal similar to surrounding properties proposed for inclusion into San Martin boundaries.

3. The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.

The incorporation proposal does not propose to provide any new services or to change the level of services currently provided to the area. Additionally, there will be no change in service providers providing water or sewer facilities. The Town will contract with the County, other public agencies or private providers for services.

4. Existence of any social or economic communities of interest in the area, if LAFCO determines that they are relevant to the agency.

Even though the area is currently in the SOI of Morgan Hill, the area relates more with San Martin due to its topography, rural character, development patterns and its public access.

Sphere of Influence for the Town of San Martin

The Commission adopts a sphere of influence for the Town of San Martin that is coterminous with the boundary of the Town and adopts the following Statement of Determinations for the establishment of the Sphere of Influence for the Town of San Martin:

STATEMENT OF DETERMINATIONS FOR ESTABLISHMENT OF SPHERE OF INFLUENCE FOR THE TOWN OF SAN MARTIN

1. Present and planned land uses in the area, including agricultural and open-space lands
San Martin's population is estimated in the CFA to be 6,900. The area includes approximately 12 square miles. The proposed Town of San Martin is located between the cities of Morgan Hill and Gilroy along Highway 101. Its proposed boundaries and sphere of influence to the north and south are coterminous with the SOI of Morgan Hill and Gilroy respectively. Its boundaries to the east are along the eastern foothills and to the West the boundaries are along Watsonville Road and include the gated communities of Cordevalle Golf Club/ residential development and Hayes Lane Subdivision. San Martin is a rural residential community, predominantly non-urban and residential in nature. Currently, the County General Plan designates the land uses in the area which include Agriculture Medium Scale, Hillside, Major Public Facilities, Other Public Lands, Ranchlands, Existing Roadside Services, Transportation and Rural Residential.

This incorporation and SOI boundary include much vacant land and agricultural land. The proponents have stated that they intend to maintain the rural residential nature of the area. Additionally, no new services or development is proposed for the new Town as part of the incorporation proposal. It is expected that the County General Plan would be adopted upon incorporation and no change in land use is proposed. Upon incorporation, the Town Council will be required to immediately adopt all current County ordinances for a 120-day period, or until the

Incorporation of the Town of San Martin

Town Council has enacted ordinances superseding them, whichever occurs first. It is also expected that the Town would initially adopt the County's General Plan.

2. Present and probable need for public facilities and services in the area

The San Martin area has significant groundwater quality issues with high levels of nitrates and perchlorate contamination. The water produced at individual and shared wells frequently does not meet drinking water quality standards. The State Department of Health is not in favor of point-of-use treatment systems and so there is and will continue to be a need for expanded treated water facilities managed by public water agencies.

Sewer services are not provided in the community. Sewage treatment in the area is through individual septic systems. Given the ageing systems in use in San Martin's core area, the changing regulations for wastewater disposal and the groundwater quality issues, it is likely that there will be a need for sewage treatment and disposal systems in the area.

The incorporation proposal does not include any new services or any changes in service levels.

3. The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.

Water service is provided by the San Martin County Water District and the West San Martin Water Works to certain portions of San Martin. Both providers rely on groundwater extracted from the Llagas sub-basin. This source is contaminated with perchlorate and nitrates and must be treated. It appears that the two providers have adequate treatment (for perchlorate) and storage capacity to serve present needs within their boundaries. Additional capacity may be required to meet the needs for expanded water treatment facilities in the area.

The cities of Morgan Hill and Gilroy, through the South County Regional Wastewater Authority (SCRWA), a JPA, jointly own and share capacity allocations at the wastewater treatment plant and sewer. To address sewer needs in San Martin, the new Town may seek capacity from SCRWA or construct new wastewater facilities. In either case, it will require significant resources for planning and implementation.

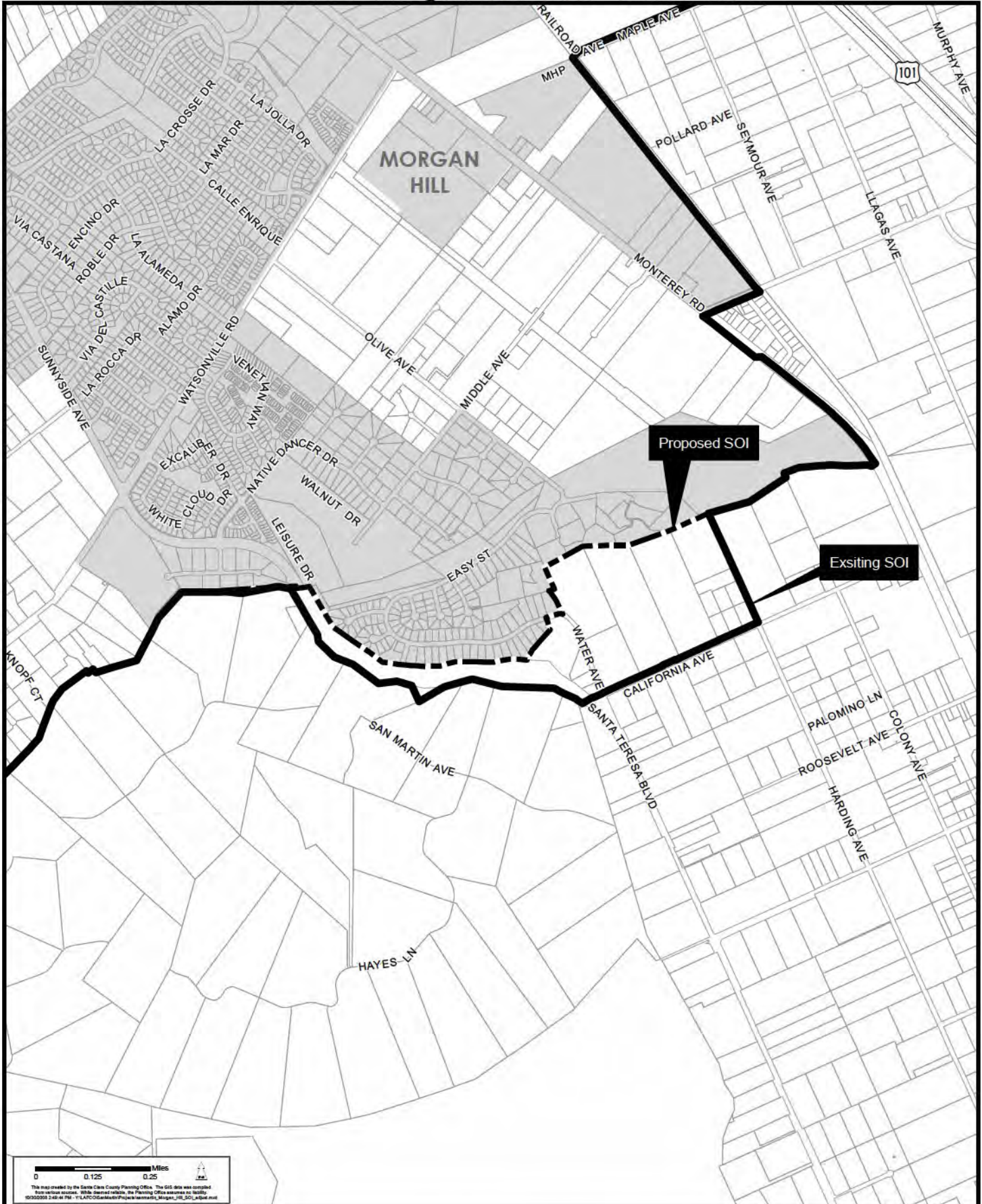
4. Existence of any social or economic communities of interest in the area, if LAFCO determines that they are relevant to the agency.

The proposed new Town is bordered on the north and the south by the spheres of influence of Gilroy and Morgan Hill. San Martin is a rural residential community. Although the community and residents interact with the neighboring cities, the community is characterized by a unique rural identity.

Urban Service Area for the Town of San Martin

The Commission adopts an Urban Service Area for the Town of San Martin that is coterminous with the boundary of the Town

EXHIBIT D: Morgan Hill SOI Amendment

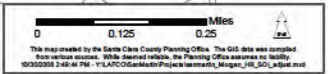


Proposed SOI

Existing SOI

MORGAN HILL

101



Existing SOI for Morgan Hill

Proposed SOI for Morgan Hill

Morgan Hill City Limits

LAFCO
Local Agency Formation Commission of Santa Clara County

ATTACHMENTS B and C
HAVE BEEN PREVIOUSLY PROVIDED
TO THE MEMBERS OF THE COMMISSION AND ARE
AVAILABLE ON THE LAFCO WEBSITE AT
www.santaclara.lafco.ca.gov under the “What New?”
section.

Proposed Incorporation of the Town of San Martin: Revised Initial Study and Revised Negative Declaration

Prepared for:

Santa Clara Local Agency Formation Commission (LAFCO)
70 West Hedding Street
East Wing, 11th Floor
San Jose, California 95110

Contact: Ms. Neelima Palacherla
Executive Officer
(408) 299-5127

Prepared by:

Michael Brandman Associates
11060 White Rock Road, Suite 150
Sacramento, California 95670

Contact: Stephen Jenkins
Project Director/Project Manager
(916) 383-0944

March 11, 2008

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
1.0 Introduction	3
2.0 Project Description	5
3.0 Environmental Setting and Background	11
3.1 Consistency With LAFCO and Local Policies	12
4.0 Overview of Incorporation Process	21
5.0 Environmental Checklist and Initial Study	22
6.0 Report Preparers	85
7.0 References	86

Table

2.1 Current and Proposed Service Providers in San Martin	9
--	---

Exhibits

2.1 Proposed Incorporation Boundaries and Vicinity Map	8
2.2 Service Providers in San Martin	10
3.1 Potential Modifications to the Proposed Incorporation Boundary	20
5.1 2006 Important Farmlands within San Martin	29
5.2 Williamson Act Contracts within San Martin	30
5.3 Santa Clara County General Plan Designations	64
5.4 Local Circulation System and Traffic Counts	77

Appendices

A. Rare, Threatened and Endangered Species	
B. Environmental Data Resources Inc. Report Summary	
C. Santa Clara County General Plan Policies	

SECTION 1: INTRODUCTION

Revisions to Draft Initial Study

On November 5, 2007, LAFCO released an Initial Study and Proposed Negative Declaration for a 30-day public review and comment period. During this period, LAFCO received several comment letters requesting that LAFCO clarify issues and include additional information in the Initial Study. On February 6, 2008, LAFCO identified a preferred alternative boundary for the proposed San Martin Incorporation. Please see "Project Description" Section for information on LAFCO's preferred alternative incorporation boundary.

In order to address these comments and to include new information, the Initial Study has been revised to include:

- Analysis of the project's consistency with State law, and LAFCO, Cities, and County policies,
- Clarification of current and future provision of park and recreation services within the project area,
- Clarification of the current and future role of County Services Areas within the project area, and
- An amendment of Morgan Hill's Sphere of Influence Boundary and inclusion of Area 2 to the proposed incorporation boundary (see "Project Description" Section).

Purpose of the Initial Study

This Initial Study (IS) is an informational document intended to assess and disclose the potential environmental affects of the proposed incorporation of an approximately 10,473-acre area located in southern Santa Clara County, as a new city, to be called the Town of San Martin. The information, analysis, and conclusions contained in this IS are the basis for deciding whether a Negative Declaration (ND) or Mitigated Negative Declaration (MND) is to be prepared, or if preparation of an Environmental Impact Report (EIR) is required to further analyze impacts. Additionally, if preparation of an EIR is required, the Initial Study is used to focus the EIR on the effects determined to be potentially significant.

Pursuant to §15367 of the State CEQA Guidelines, the Local Agency Formation Commission of Santa Clara County (LAFCO) is the lead agency for the project. The lead agency is the public agency that has the principal responsibility for carrying out or approving the project that may have a significant effect upon the environment. LAFCO, as lead agency, has authority for project approval and certification of the accompanying environmental documentation.

Summary of Findings

Based on the environmental checklist form and supporting environmental analysis, the proposed incorporation of San Martin would have no impact or less than significant impact in the following areas: aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology/soils, hazards and hazardous materials, hydrology/water quality, land use, noise, population/housing, public services, recreation/ mineral resources, transportation/ traffic and utilities/service systems.

The proposed project does not involve any new development or provision of new services or change in the level of current services. The County General Plan, Zoning Ordinance and other policies, regulations and ordinances affecting the area would be adopted by the new town after the necessary CEQA analysis. Any development projects proposed following incorporation would be subject to specific environmental review by the new city. According to CEQA

Guidelines, it is appropriate to prepare a Negative Declaration for the proposed project because no environmental impacts would occur as a result of the incorporation of the Town of San Martin.

Acknowledgement of Responsible Agencies and Trustee Agencies

Section 21069 of CEQA defines a “responsible agency” as being a public agency, other than the Lead Agency, which has responsibility for carrying out or approving a project, LAFCO has not identified any responsible agencies that must act on the Proposed Incorporation.

Section 21070 of CEQA indicates that a “trustee agency” is a state agency that has jurisdiction by law over natural resources affected by a project, that are held in trust for the people of the State of California. LAFCO has not identified any trustee agencies that must act on the Proposed Incorporation.

SECTION 2.0: PROJECT DESCRIPTION

The Project is the incorporation of a new city to be called the Town of San Martin located in southern Santa Clara County between the cities of Morgan Hill and Gilroy. The incorporation, if approved by LAFCO and supported by a majority vote of registered voters in the area, would transfer general governance and jurisdiction over service provision and land use decisions from the County of Santa Clara to the new Town of San Martin. The project also involves the establishment of planning boundaries such as the urban service area and sphere of influence for the new Town of San Martin. No new development or new services are associated with the proposed project.

Purpose and Objectives of the Incorporation

The underlying purpose of the incorporation and objectives sought by the Proponents in proposing the incorporation of the Town of San Martin, include:

- To create a locally accountable governing body that is more visible and accessible
- To have local control of land use, growth, planning policy and other governmental activities
- To maintain the rural residential character and small-scale agricultural activities of the Town
- To maintain the existing public services and service levels.

Proposed Boundaries of the Incorporation

The proposed incorporation boundary of the Town of San Martin, as submitted by the Proponents, roughly encompasses a 10,473-acre area bounded by Maple Avenue on the north, New Avenue on the east, Masten Avenue on the south, and Watsonville Road on the west. Please see **Exhibit 2.1** for a map of the proposed incorporation boundaries. LAFCO is required to consider alternative boundaries and is empowered to modify boundaries in its review of proposals in accordance with Government Code Section 56668 and Section 56375 (a) & (l) and LAFCO Policies.

For the purposes of preparing a comprehensive environmental document, it is assumed that any other planning boundaries if adopted by LAFCO at this time (i.e. Urban Service Area Boundary and Sphere of Influence Boundary) will be coterminous with the proposed incorporation boundary. This Initial Study analyzes a broadly defined incorporation area and this will allow LAFCO to use this environmental document for any potential reductions in the proposed boundaries.

Preferred Alternative Incorporation Boundary Identified by LAFCO

On February 6, 2008, LAFCO identified a preferred alternative incorporation boundary for the proposed incorporation. Final action on the boundaries will be taken at the LAFCO public hearings on the incorporation scheduled for May 2008. LAFCO's preferred alternative incorporation boundary excludes Areas 1 & 6 and includes Areas 4, 5, and 7 (see **Exhibit 3.1**). LAFCO also directed staff to obtain confirmation on the City of Morgan Hill's position on Areas 2 and 3 (see **Exhibit 3.1**). LAFCO expressed support for including Area 2 within the proposed incorporation boundary and therefore exclusion of Area 2 from Morgan Hill's sphere of influence. Area 3 is currently located within the proposed incorporation boundary. If LAFCO decides to exclude Area 3 from the incorporation boundaries, LAFCO would also have to include Area 3 within Morgan Hill's sphere of influence. LAFCO has requested that the City of Morgan Hill clarify and confirm their preference on Areas 2 and 3. As of the time of the writing of the Revised Initial Study, the City of Morgan Hill has not clarified or confirmed their preference. In order to ensure that LAFCO has an adequate environmental document, this Initial Study has been revised to include all of these potential inclusions, exclusions, and any required amendments to the City of Morgan Hill's Sphere of Influence boundary.

General Plan and Zoning

Government Code Section 65360 provides a period of up to thirty months following incorporation for the development and adoption of a new City General Plan. During that period, a new city is not required to have a General Plan or have its decisions be consistent with the general plan provided certain conditions are met. Research has shown that recently incorporated cities typically adopt the existing County General Plan. It is

reasonable to conclude that San Martin will adopt the current Santa Clara County General Plan until such time as the city adopts its own General Plan in accordance with Government Code Section 65360. The new city will comply with the appropriate CEQA requirements at the time the new city adopts its General Plan.

It should be noted that the Santa Clara County General Plan also includes several countywide park and recreation plans and master plans, such as the Coyote Lake - Harvey Bear Ranch County Park Master Plan and Natural Resources Management Plan and the Santa Clara County Countywide Trails Master Plan.

Government Code Section 57376 requires the new city to immediately adopt an ordinance providing that all Santa Clara County ordinances shall continue as the new city's ordinances for 120 days or until superseded by ordinances adopted by the new city. Therefore, it is assumed that the County's land use policies and regulations would serve as the new city's policies following incorporation, until the new city adopts its own policies. It is not uncommon for new cities to keep County zoning ordinances and the General Plan in effect for at least a year or more until they have the time and funds to prepare and certify a new city General Plan. Any proposed changes to the General Plan, Zoning Ordinance, or adoption of any other plans, policies, guidelines, or regulations to regulate development would be subject to environmental review at the time any such change is proposed, as required by the California Environmental Quality Act (CEQA).

Government Reorganizations

The Project does not include any changes in adjacent cities' (Morgan Hill and Gilroy) or affected special districts' boundaries (i.e. San Martin County Water District, Lion's Gate Community Services District, and South Santa Clara County Fire Protection District) at this time, except in the case of the County Lighting Service Area (CLSA) and the County Library Service Area. Both the County Library Service Area and the County Lighting Service Area include lands within the proposed incorporation boundary. Pursuant to Government Code Section 25210.90, the County Service Areas will be automatically detached upon incorporation unless LAFCO can make certain findings to waive the detachment.

In the case of the County Lighting Service Area, the proponent's Plan for Service includes continued service from the County Lighting Service Area. Therefore a detachment of the incorporation from the County Lighting Service Area is not anticipated. The purpose of the County Library Service Area was to provide financing for library services through the levying of benefit assessments. In June 2005, the County Library Service Area's authority to levy benefit assessments expired and now the District no longer serves any purpose. In May 2005, the voters approved continued funding of library services through a community facilities district. Therefore, the area proposed for incorporation will continue to receive library services from the County Library, and detachment from the County Library Service Area may proceed without any negative impacts.

Municipal Services

Incorporation, if the process succeeds, includes the election of a Town Council and transfer of specific service obligations from the County to the new city. The proposed incorporation does not involve a change in the type or level of services that are currently being provided and no new services are proposed.

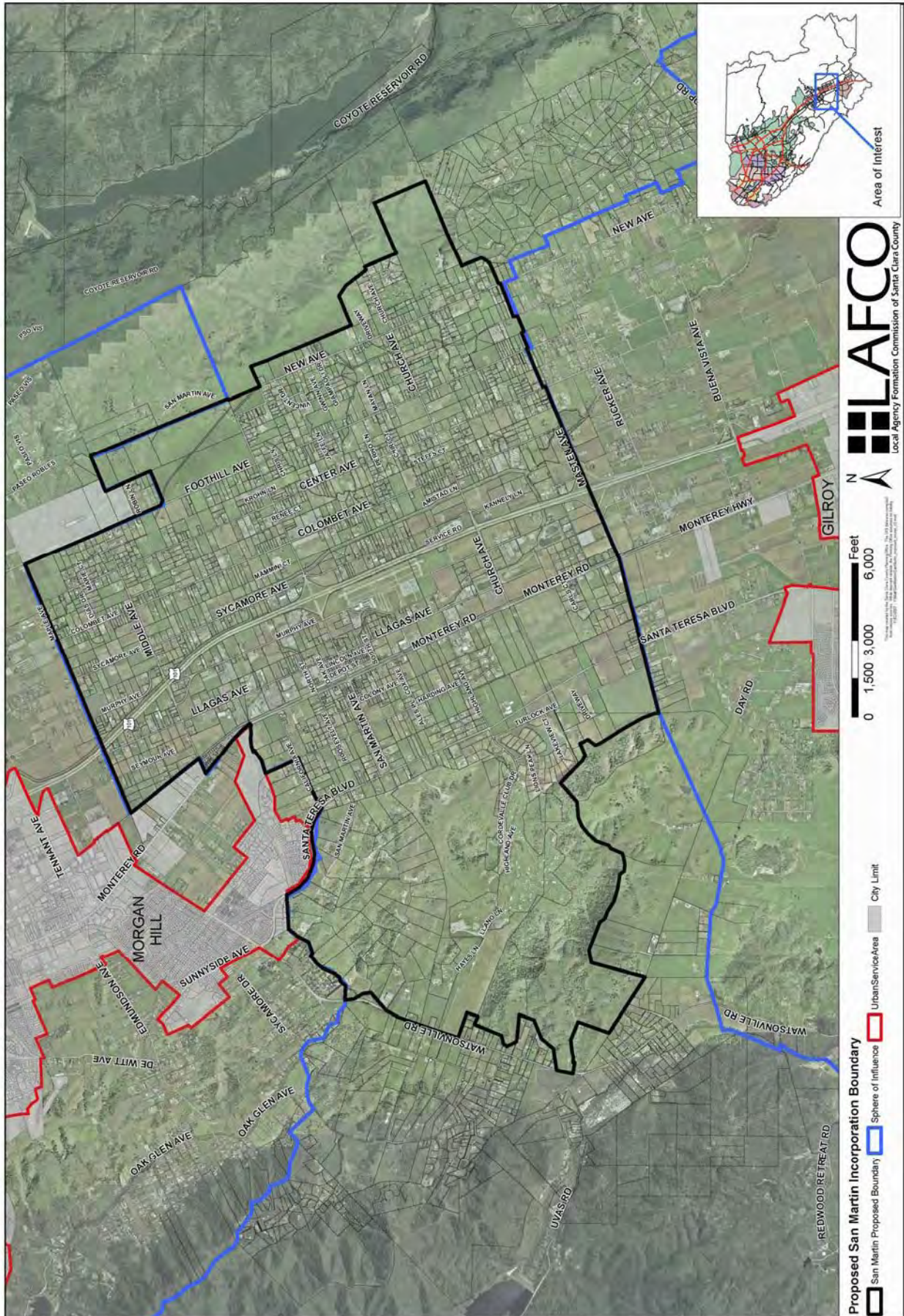
The Project area is unincorporated and currently receives minimal/limited levels of municipal services (see **Table 2.1**) that are provided by the County of Santa Clara, and other public or private entities. Initially, the new city may contract with the County or other appropriate public or private entities to provide these services. Over time, these services may be provided directly by the city subject to future decisions by the City Council. The level of municipal services that the community receives from the County of Santa Clara and other entities is currently being documented in the Comprehensive Fiscal Analysis study. See **Exhibit 2.2** for a map of current service providers in the San Martin area.

Financial Characteristics

As mentioned earlier, LAFCO is conducting a Comprehensive Fiscal Analysis for the incorporation that will identify revenues, taxes, assessments, fees and charges that are collected within the proposed boundaries of the Town of San Martin and will demonstrate whether the proposed new city is fiscally viable, as required by State law and LAFCO Policies.

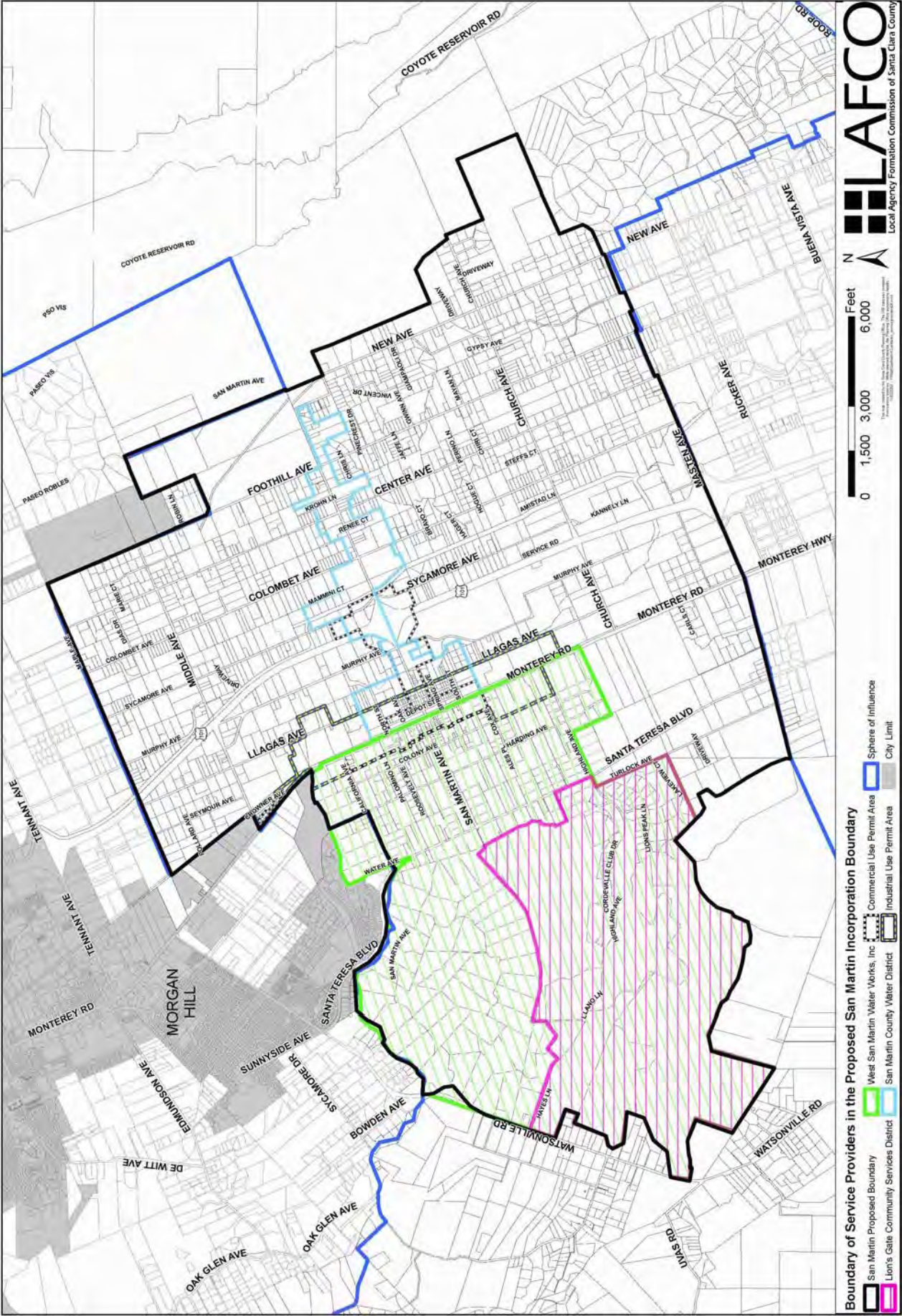
Discretionary Approvals

This Initial Study and Negative Declaration are intended to serve as the primary environmental document for all actions associated with the incorporation of San Martin within the County of Santa Clara, including all discretionary approvals requested or required to implement the project.



**TABLE 2.1
CURRENT AND PROPOSED SERVICE PROVIDERS TO SAN MARTIN**

MUNICIPAL SERVICE	CURRENT PROVIDER	PROPOSED SERVICE PROVIDER
Administrative/ General government	County	New city will assume responsibility
Airport (South County)	County	County (No Change)
Animal Control	County	New city will assume responsibility. Options include: <ul style="list-style-type: none"> • Contract with County / city • Contract with other service provider • Form a city department
Building Inspection	County	New city will assume responsibility. Options include: <ul style="list-style-type: none"> • Contract with the County /city • Contract with a private consultant • Form a city department
Fire Protection and Paramedics	South Santa Clara County Fire Protection District	South Santa Clara County Fire Protection District (No change)
Flood Control Service	Santa Clara Valley Water District	Santa Clara Valley Water District (No Change)
Land Use and Planning	County	New city will assume responsibility. Options include: <ul style="list-style-type: none"> • Contract with the County /city • Contract with a private consultant • Form a city department
Law Enforcement	County Sheriff	New city will assume responsibility. Options include: <ul style="list-style-type: none"> • Contract with County / city • Contract with other service provider • Form a city department
Library	County Library	County Library is funded through a Community Facilities District. The County Library Service Area will automatically be detached upon the incorporation of San Martin.
Mosquito and Vector Control	Santa Clara County Vector Control District	Santa Clara County Vector Control District (No Change)
Parks and Recreation	County	City will assume responsibility for future parks and recreation services within the Town. The County Park will continue to be owned and operated by the County.
Road Maintenance, Traffic Enforcement, Engineering, Drainage, Street Sweeping, Etc.	County	New city will assume responsibility. Options include: <ul style="list-style-type: none"> • Contract with the County /city • Contract with a private consultant • Form a city department
Street Lighting	County Lighting Service Area	County Lighting Service Area (Assuming specific findings are made by LAFCO)
Schools	Morgan Hill Unified School District and Gilroy United School District	Morgan Hill Unified School District and Gilroy United School District (No Change)
Sewer Service	Private Septic Systems/ Lion's Gate Community Services District	Private Septic Systems/Lion's Gate Community Services District (No Change)
Solid Waste Trash Collection and Disposal	County currently has a franchise agreement with South Valley Disposal and Recycling, Inc.	New city may choose to franchise garbage collection service
Transit and Paratransit	Valley Transportation Authority	Valley Transportation Authority (No Change)
Water Service	San Martin County Water District, West San Martin Water Company, individual and shared wells, Mutual water companies	San Martin County Water District, West San Martin Water Company, individual and shared wells, Mutual water companies (No Change)



SECTION 3.0: ENVIRONMENTAL SETTING & BACKGROUND

Environmental Setting

The unincorporated community of San Martin is located in the southern end of Santa Clara County. Regional access to the project area is provided by U.S. Highway 101 (US 101) which divides the community and runs in a north-south direction. The area west of the freeway is more intensively developed and supports most of the commercial and industrial uses in the community. The area east of US 101, which is the more rural part of the community, is characterized by low to medium-density, single family residences and various land uses.

The "San Martin Village" or community core is centered at the intersection of Monterey Road and San Martin Avenue. This community core consists of single-family lots and most of the commercial and industrial uses within the community. The community core is characterized by a predominance of small lots, a village atmosphere, and higher population density than the remainder of the community. In general, the unincorporated lands consist of the following land uses: rural residential estate type development that is either clustered on smaller lots or is located on larger lots, an airport, a semi-private/public golf club, a winery, and permanently protected open space.

Background

The desire to incorporate as a new city is not new position for residents or business owner/operators in the community of San Martin. Incorporation has been considered a couple of times over the past four decades. Although these earlier efforts were not successful, the desire to be self governing has remained.

LAFCO of Santa Clara County received a petition and application requesting incorporation of the Town of San Martin. The proposal was submitted by the San Martin Neighborhood Alliance, Inc. (Proponents or Project Applicant) in February of 2007 and was signed by approximately 31% of the 2,824 registered voters within the proposed incorporation boundaries. In addition to conducting this environmental review for the incorporation, LAFCO is currently preparing a Comprehensive Fiscal Analysis in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH) and Santa Clara LAFCO policies regarding incorporations.

Prior to submitting the request for incorporation of the Town of San Martin, the Proponents evaluated various alternatives to incorporation and submitted them to LAFCO in September 2004. The Proponents concluded that none of the government structure alternatives evaluated would fulfill the underlying purpose and objectives which they sought and, as a result, the Proponents filed an application with LAFCO for the proposed incorporation of the Town of San Martin.

SECTION 3.1: CONSISTENCY WITH LAFCO and LOCAL POLICIES

The following discusses the consistency of the proposed project with the relevant State law, and local and regional plans and policies, specifically the proposed project's consistency with the following:

- Cortese Knox Hertzberg Act
- LAFCO Incorporation Policies
- LAFCO Agricultural Mitigation Policies
- LAFCO Urban Service Area Policies
- LAFCO Sphere of Influence Policies
- Santa Clara County General Plan
- City of Morgan Hill General Plan
- City of Gilroy General Plan

Cortese Knox Hertzberg Act (excerpts)

Section 56720: LAFCO shall not approve or conditionally approve any proposal that includes an incorporation, unless the commission finds based on the entire record, that:

(a) The proposed incorporation is consistent with the intent of this division, including, but not limited to, the policies of Sections 56001, 56300, 56301, and 56377.

Section 56001: *LAFCO's mandate is to encourage orderly growth and development, discourage urban sprawl, preserve open space and prime agricultural lands, promote the efficient provision of government services and encourage the orderly formation of local agencies.*

Section 56300: *It is the intent of the Legislature that each commission, not later than January 1, 2002, shall establish written policies and procedures and exercise its powers pursuant to this part in a manner consistent with those policies and procedures and that encourages and provides planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space and agricultural lands within those patterns.*

Section 56301: *Among the purposes of a commission are discouraging urban sprawl, preserving open-space and prime agricultural lands, efficiently providing government services, and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances. One of the objects of the commission is to make studies and to obtain and furnish information which will contribute to the logical and reasonable development of each county and to shape the development of local agencies so as to advantageously provide for the present and future needs of each county and its communities.*

Section 56377: *In reviewing and approving or disapproving proposals which could reasonably be expected to induce, facilitate, or lead to the conversion of existing open-space lands to uses other than open-space uses, the commission shall consider all of the following policies and priorities:*

- Development or use of land for other than open-space uses shall be guided away from existing prime agricultural lands in open-space use toward areas containing nonprime agricultural lands, unless the action would not promote the planned, orderly, efficient development of an area.*
- Development of existing vacant or nonprime agricultural lands for urban uses within the existing jurisdiction of a local agency or within the sphere of influence of a local agency should be encouraged before any proposal is approved which would allow for or lead to the development of existing open-space lands for non-open-space uses which are outside of the existing jurisdiction of the local agency or outside of the existing sphere of influence of the local agency.*

Consistency Analysis: The preferred incorporation boundary includes substantial amounts of prime agricultural lands (over 2,000 acres). This boundary also includes substantial amounts of undeveloped lands (approximately 2,552 acres) and is not compact, as it includes all lands between the spheres of influence of the cities of Morgan Hill and Gilroy. The incorporation proponents have stated that the intent of the incorporation is to maintain the current rural character of the community. However the town upon

incorporation would have the land use jurisdiction to designate future land uses and would have the authority to provide urban type services to lands within its boundaries. Any changes that involve the provision of new urban services or more intensive development could result in the premature conversion of agricultural lands or impact adjacent agricultural lands. The project is not entirely consistent with Section 56300 of the CKH Act, as it is inconsistent with many of LAFCO's adopted written policies as discussed in detail in Section 3.1. Similarly, the project is not entirely consistent with Sections 56001, 56301, and 56377 of the CKH Act. Modifying the incorporation boundary is the primary means by which LAFCO could better implement the intent of the CKH Act and eliminate or reduce policy conflicts.

LAFCO Incorporation Policies (excerpts)

Incorporation Boundaries Policy 3e

An area proposed for incorporation must be compact and contiguous, and possess a community identity.

Consistency Analysis: On February 6, 2008, LAFCO identified a preferred alternative boundary for the proposed San Martin incorporation. The preferred boundary roughly encompasses an 8,659-acre (13.5 square miles) area bounded by Maple Avenue to the north, New Avenue on the east, Masten Avenue on the south, and Watsonville Road on the west. The project area has a rural residential and agricultural identity. The northern portion of the proposed incorporation boundary is coterminous with the City of Morgan Hill's Sphere of Influence and the southern portion of the proposed incorporation boundary is conterminous with the City of Gilroy's Sphere of Influence and therefore includes all lands between the spheres of influence of the adjacent cities. Approximately 2,552 acres of the 8,659-acre area is undeveloped. For these reasons the project is not entirely consistent with Incorporation Boundaries Policy 3e.

Incorporation Boundaries Policy 3f

The proposal boundaries and alternatives shall not create islands or areas that would be difficult to serve.

Consistency Analysis: On February 6, 2008, LAFCO identified a preferred alternative boundary for the proposed San Martin incorporation. The LAFCO preferred alternative incorporation boundary includes Area 2 (see "Project Description" Section and Exhibit 3.1) in order to avoid creating an unincorporated island. Area 2 is currently within Morgan Hill's Sphere of Influence and outside of Morgan Hill's Urban Service Area. If Area 2 is included in the incorporation boundary, then the project will be consistent with Incorporation Boundaries Policy 3f. Otherwise the project will be inconsistent with Policy 3f.

Incorporation Boundaries Policy 3g

Areas included within the proposed incorporation boundaries should consist of existing developed areas and land, which are planned for development.

Consistency Analysis: Of the 8,659-acres located within the LAFCO preferred alternative incorporation boundary, approximately 2,552 acres are undeveloped lands. The inclusion of undeveloped lands is discouraged because it could lead to the premature conversion of agricultural lands, discourage orderly growth and development and result in the inefficient provision of municipal services. Furthermore, these undeveloped lands consist of lands zoned "RR" (Rural Residential), "A" (Exclusive Agriculture, Medium Scale), "HS" (Hillsides) and "RS" (Roadside Services). It is the general understanding that when lands are designated as "A" (Exclusive Agriculture), they are not planned for urban development. Lands designated "A" include those having Class I, II, and III soils, which generally have been in agricultural production and where agricultural uses are most appropriate. The "HS" designation applies to mountainous lands and foothills unsuitable and/or unplanned for annexation and urban development. Therefore this project is not entirely consistent with Incorporation Boundaries Policy 3g.

Incorporation Boundaries Policy 3h

Inclusion of agricultural and open space lands within the boundaries of a proposed city is discouraged.

Consistency Analysis: On February 6, 2008, LAFCO identified a preferred alternative boundary for the San Martin incorporation. This boundary excludes Areas 1 & 6 (see Exhibit 3.1). Area 1 consists of County of Santa Clara Parklands and lands designated "Ranchlands" in the Santa Clara County General Plan. Area 6 consists of land under an open space conservation easement which is held by the County of Santa Clara.

According to the California Department of Conservation's Important Farmland Map, the project includes approximately 2,132 acres of Prime Farmland, 577 acres of Farmland of Statewide Importance, and 257 acres of Unique Farmland. Lands considered "Prime Farmland" include Class I and II soils and meet the Cortese Knox Hertzberg Act's (CKH Act's) definition of "prime agricultural land."

Additionally, the incorporation boundary includes approximately 180 properties (over 1,800 acres) that are under the Williamson Act. Upon incorporation, the new city would succeed to the Williamson Act contracts. The incorporation proponents have stated that the intent of the incorporation is to maintain the current rural character of the community. However, the town upon incorporation would have the land use jurisdiction to designate future land uses and would have the authority to provide urban type services to lands within its boundaries. Changes in land use and service levels for lands adjacent to Williamson Act properties could negatively impact Williamson Act properties and lead to their premature conversion. For these reasons the project is not entirely consistent with Incorporation Boundaries Policy 3h.

Incorporation Boundaries Policy 3i

Incorporation boundaries should be drawn so that community based special districts are wholly included within or excluded from the incorporation area, unless the Commission determines that there is either an overriding benefit to dividing the district or that there is no negative impact from dividing the district.

Consistency Analysis: On February 6, 2008, LAFCO identified a preferred alternative boundary for the San Martin incorporation. The LAFCO preferred alternative boundary excludes Area 6 (see Exhibit 3.1). Area 6 consists of 733 acres of land zoned "HS" (Hillsides). These lands are currently under an open space conservation easement which is held by the County of Santa Clara as part of the development approval of the Cordevalle golf course and residential development. Upon incorporation, the open space conservation easement will continue to be held by the County. Area 6 is located within the boundary of the Lion's Gate Community Services District which was formed as part of the Cordevalle Development. With the exclusion of Area 6 from the incorporation boundary, the boundaries of the Lion's Gate Community Services District will not be wholly included within the proposed incorporation area. However, there is no negative impact from dividing the district. For these reasons the project is consistent with Incorporation Boundaries Policy 3i.

LAFCO Agricultural Mitigation Policies (excerpts)

General Policies

- 1. LAFCO recommends provision of agricultural mitigation as specified herein for all LAFCO applications that impact or result in a loss of prime agricultural lands as defined in Policy #6. Variation from these policies should be accompanied by information explaining the adequacy of the proposed mitigation.*
- 2. LAFCO encourages cities with potential LAFCO applications involving or impacting agricultural lands to adopt citywide agricultural mitigation policies and programs that are consistent with these policies.*

Mitigation Recommendations

- 10. Because urban/non-agricultural uses affect adjacent agricultural practices and introduce development pressures on adjacent agricultural lands, LAFCO encourages cities with LAFCO proposals impacting agricultural lands to adopt measures to protect adjoining agricultural lands, to prevent their premature conversion to other uses, and to minimize potential conflicts between the proposed urban development and adjacent agricultural uses.*

Consistency Analysis: LAFCO's Agricultural Mitigation Policies recommend the provision of agricultural mitigation for all LAFCO applications that impact or result in a loss of prime agricultural lands as defined in the Policy #6 and encourage cities with potential LAFCO applications involving or impacting agricultural lands to adopt citywide agricultural mitigation policies and programs. The proposed incorporation boundary includes:

- "Prime agricultural land" and "agricultural land" as defined in the CKH Act.
- Lands zoned "A" (Exclusive Agriculture, Medium Scale) by the County of Santa Clara, and
- Lands identified on the CA Department of Conservation's Important Farmland Map as "prime farmlands," "farmland of statewide importance," and "farmland of local importance."

The incorporation area is bounded on the north and south by agricultural lands that are currently being farmed and/or are planned for agricultural use. As indicated in Policy #10, urban/non-agricultural uses can affect adjacent agricultural practices and introduce development pressures on adjacent agricultural lands. No buffer is being proposed to reduce the potential for conflict to occur between the uses in the proposed incorporation area and the planned agricultural use of the unincorporated areas to the north and south of the incorporation.

The incorporation does not propose to provide new urban services such as sewer or water that could result in the conversion of farmland to non-agricultural uses. As such, the project would not result in any greater conversion of agricultural lands to non-agricultural uses than what would occur under the existing county jurisdiction since the incorporation proposal does not include a change in land use, no new service(s) would be provided, and the County General Plan and Zoning Ordinance and other ordinances would be adopted by the new city. Therefore, the project will not result in the conversion of agricultural lands. For these reasons LAFCO's Agricultural Mitigation Policy does not directly apply to this project.

Although the objective of the incorporation as stated by the proponents is to maintain the rural residential character of the town and maintain the small-scale agricultural related activities, the town upon incorporation, would have the land use jurisdiction to designate future land uses and would have the authority to provide urban type services to lands within its boundaries. Any changes that involve the provision of new urban services or more intensive development could result in the premature conversion of agricultural lands or impact adjacent agricultural lands. To address this and other issues, LAFCO could consider a reduced incorporation boundary that would include fewer agricultural lands in the boundary, that would allow for the establishment of buffers or community separators between south county cities and that would reduce development pressures on adjacent agricultural lands.

LAFCO Urban Service Area Policies

Consistency Analysis: Although LAFCO's Urban Service Area (USA) Policies address USA expansions, these policies are applicable to the establishment of a new city as the new city will have the independent authority to provide urban services within its city limits. Therefore, the city boundary and USA boundary will at a minimum be coterminous with each other. The incorporation boundary includes substantial amounts of undeveloped land and is not compact. Furthermore, the incorporation boundary includes substantial amounts of agricultural lands and the project does not include any demonstrated measures to protect the agricultural and open space status of these lands. For these reasons, this project is not entirely consistent with LAFCO's Urban Service Area Policies.

LAFCO Sphere of Influence (SOI) Policies (excerpts)

Adoption and Amendment Policies for SOI [Policy B]

1. *LAFCO will require consistency with city/county general plans and SOIs of affected local agencies when adopting or amending a SOI. Joint City/County Specific Plans and factors such as density policies, development standards, geology, and future uses will be considered by the Commission when establishing Sphere of Influence. [Policy B(1)]*
2. *Pursuant to Government Code Section 56425, LAFCO will consider and make written finding regarding the following, in adopting or amending a SOI for a local agency:*

- a. *The present and planned land uses in the area, including agricultural and open space lands,*
- b. *The present and probable need for public facilities and services in the area,*
- c. *The present capacity of public facilities and adequacy of public services, which the agency provides or is authorized to provide, and*
- d. *The existence of any social or economic communities of interest in the area if the Commission determines that they are relevant to the agency.*

[Policy B(2)]

3. *Sphere of Influence for cities and special districts may overlap when both agencies expect to provide different service to the area. [Policy B(5)]*
4. *LAFCO will discourage duplications in service provision in reviewing new or amended SOI proposals. Where a special district is coterminous with, or lies substantially within, the boundary or SOI of a city which is capable of providing the service, the special district may be given a zero sphere of influence which encompasses no territory. [Policy B(7)]*

Consistency Analysis: LAFCO may either approve a Sphere of Influence boundary (SOI) for a new city at the time of LAFCO's hearing on the proposed incorporation or postpone consideration of the SOI for up to one year (Government Code Section 56426.5) after voter approval. The LAFCO preferred alternative incorporation boundary includes an amendment to Morgan Hill's Sphere of Influence boundary in order to exclude Area 2 (see Exhibit 3.1) from the Morgan Hill's Sphere of Influence boundary. This will facilitate the inclusion of Area 2 into the proposed incorporation boundary. For the purposes of CEQA analysis, it is assumed that the new city's Sphere of Influence boundary would be coterminous with its city limits. In Santa Clara County, a SOI for a city serves multiple purposes including:

- A long-range planning tool to help LAFCO evaluate USA boundary changes and annexation requests,
- The area designated as a city's planning area or area covered by a city's General Plan,
- Areas that will not necessary be annexed by a city or will not necessarily receive services from the city, but are areas in which the County and a city may have shared interested in preserving non-urban levels of land use,
- Areas where a city and a county have significant interaction, and
- Areas that contain social or economic communities of interest to a city.

The project is not entirely consistent with LAFCO SOI Policy (B1) because it is not consistent with the County General Plan (i.e. the South County Joint Area Plan), nor the general plans of the City of Morgan Hill and Gilroy. These inconsistencies are discussed in greater detail throughout this entire Section of the Initial Study.

The project includes lands that are also located within the boundaries of special districts. However, the project is consistent with LAFCO SOI Policies (B5) and (B7) because the proposed new town and the existing special districts provide different services to the area. Therefore, the existing special districts will continue to serve the area and a zero sphere of influence for the districts would not be appropriate.

Additionally, prior to establishing a SOI boundary for the new town or amending an existing SOI boundary, LAFCO must make the written findings required by Section 56425 of the CKH Act as part of the LAFCO review process to establish a SOI boundary.

Santa Clara County General Plan 1995-2010 (excerpts)

South County Joint Area Plan Policies (Book B, Part 5, Santa Clara County General Plan)

SC 14.11

In order to separate agricultural from urban activities, and to minimize the land use conflicts, buffers, should be established between viable agricultural areas and urban expansion areas. Activities in

these buffer zones should be limited to uses which are compatible with both agricultural and urban activities. Specific uses should be defined through an open intergovernmental process.

SC 16.0

The wide variety of open space areas in the South County should be preserved and maintained. Greenbelts should delineate and provide contrast to the urban areas of the South County cities.

SC 16.13

Greenbelts should define the urban areas of the South County Cities. The northern boundary of Morgan Hill should be defined by a Coyote Valley greenbelt comprised of agricultural uses, rural estates and the Coyote Park chain. A similar area should be maintained between Morgan Hill and Gilroy to maintain community identity.

SC 16.22

The South County Cities and the County together should:

- a. establish policies and implementation plans for greenbelts between cities, and*
- b. identify and help establish a viable source of funding for acquiring and developing regional parks and pathways, and open space.*

SC 17.9

Consistent with Preservation 2020 Program,

- a. consideration should be given to land uses that will result in permanent preservation of substantial areas of open space;*
- b. new land uses should be consistent with programs which the three jurisdictions develop to maintain greenbelts between Morgan Hill, San Martin, and Gilroy.*
- c. the three jurisdictions should further define the appropriate land uses for greenbelts and methods of implementation that address conflicts between private property rights and public objectives.*

SC 18.16

If, in the future, changes in the level of development or form of governance are recommended for San Martin, a special area plan and an implementation program should be prepared for the San Martin area. This plan should be prepared with input from the Cities of Gilroy and Morgan Hill, and the San Martin Planning Committee

Consistency Analysis: The South County Joint Area Plan Policies were jointly adopted by the County, the City of Morgan Hill and the City of Gilroy, as part of the South County Joint Area Plan in 1989 and updated in 1991. According to the Santa Clara County General Plan, "the South County Joint Area Plan is a mutual statement of policies for community development and environmental management. It is intended to achieve harmony and cooperation among the South County three jurisdictions, and consistency between their adopted policies." Various policies (see above) in the South County Joint Area Plan call for the establishment of greenbelts, buffers, and community separators between cities in South County in order to maintain community identity, avoid encroachment into agricultural lands, and to minimize land use conflicts. These greenbelts, buffers, and community separators are anticipated to consist of lands located outside of the city limits and to be located "between" cities. Both the Cities of Morgan Hill and Gilroy include unincorporated lands within their respective spheres of influence which could function as community separators.

However, the proposed incorporation boundary for San Martin to the north is coterminous with Morgan Hill's Sphere of Influence and to the south is coterminous with Gilroy's Sphere of Influence. If approved as such, the new town's Sphere of Influence would be coterminous with its city limits and thus would not include the potential for the provision of buffers, greenbelts, and community separators. For these reasons the project is not entirely consistent with the identified policies.

City of Morgan Hill General Plan

Open Space and Conservation (excerpts)

Policies regarding Creation of the Greenbelt

2b. Greenbelt areas should distinguish the urban area of Morgan Hill from San Jose and San Martin. The northern and southern boundaries of the city shall be defined by greenbelts to maintain community identity. (SCJAP 16.13)

Actions regarding Creation of the Greenbelt

2.4 Work with San Jose, Gilroy and Santa Clara County to implement plans for the preservation of greenbelts between the cities. (SCJAP 16.22)

Regional Coordination (excerpts)

San Martin Development

2p. If, in the future, changes in the level of development or form of governance are recommended for San Martin, a special area plan and an implementation program should be prepared for the San Martin area. This plan should be prepared with input from the Cities of Gilroy and Morgan Hill, and the San Martin Planning Committee. (SCJAP 18.16)

Joint Land Use Planning

4h. Consistent with Preservation 2020 Program,

- a. consideration should be given to land uses that will result in permanent preservation of substantial areas of open space;
- b. new land uses should be consistent with programs which the three jurisdictions develop to maintain greenbelts between Morgan Hill, San Martin, and Gilroy.
- c. the three jurisdictions should further define the appropriate land uses for greenbelts and methods of implementation that address conflicts between private property rights and public objectives.
(SCJAP 17.9)

Consistency Analysis: The City of Morgan Hill General Plan includes substantially the same policies that are found in the Santa Clara County General Plan due to the fact that the South County Joint Area Plan was adopted jointly by the County, and the Cities of Morgan Hill and Gilroy. According to the Santa Clara County General Plan, "the South County Joint Area Plan is a mutual statement of policies for community development and environmental management. It is intended to achieve harmony and cooperation among the South County three jurisdictions, and consistency between their adopted policies." For reasons already presented in this Section, under the project's consistency with Santa Clara County General Plan, the project is not entirely consistent with the aforementioned policies of the Morgan Hill General Plan.

City of Gilroy General Plan 2002-2020

Community Resources and Potential Hazards: Open Space and Habitat Areas (excerpts)

Policy 20.05

Greenbelts. Designate protected open space areas in conjunction with agricultural lands to create significant natural buffers, or "greenbelts," between Gilroy and surrounding communities, helping to retain the city's semi-rural, small town quality. Land uses within a greenbelt should be determined by joint planning activities of the South County cities and the County, but might include very low density residential development; public parks and recreation areas; privately operated recreation areas; and agriculture. Of special concern is the area separating the northern part of the Gilroy Planning Area from the community of San Martin. If an adequate greenbelt cannot be established in the area north of Masten and Fitzgerald Roads, then the Gilroy General Plan Land Use Map should be amended to include a greenbelt strip in the northern part of the Planning Area.

Action 20.E

Greenbelt Definition and Protection. Work with the other South County communities and Santa Clara County to define a greenbelt of open spaces and agricultural areas separating Gilroy from adjoining communities. Ensure that this greenbelt area is protected from urban development through the policies of the South County Joint Area Plan and the general plans of each planning entity. Work with the South County Joint Planning Advisory Committee to define allowed land uses for the greenbelt area.

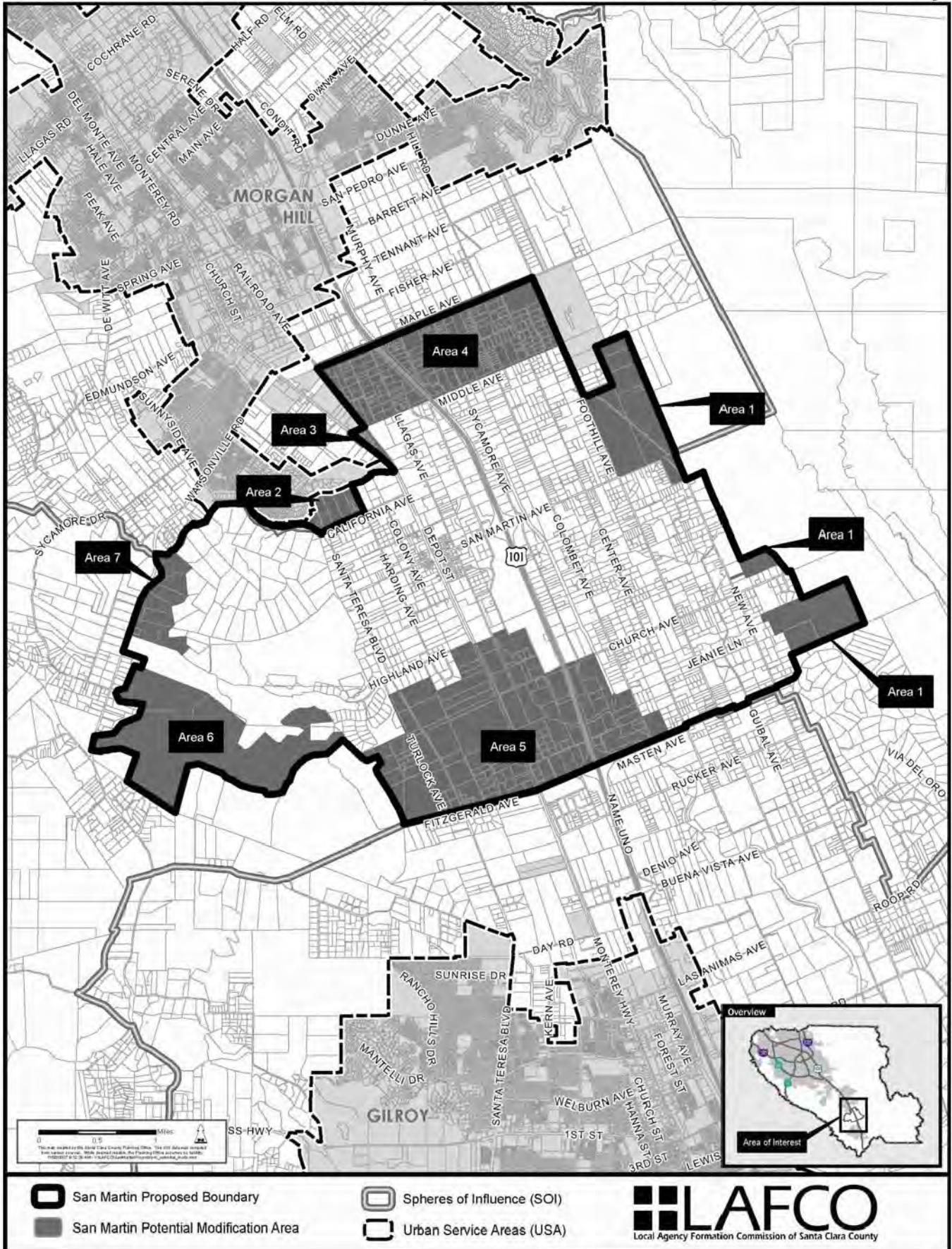
Action 20.F

Gilroy-San Martin Greenbelt. If a greenbelt cannot be defined in the area north of Masten and Fitzgerald Roads to separate the projected build-out area of Gilroy from the community of San Martin, amend the Gilroy General Plan Land Use Map to provide such a greenbelt in the area just south of Masten and Fitzgerald Roads.

South County Joint Area Plan Policies
(please see section on Santa Clara County Policies)

Consistency Analysis: The City of Gilroy General Plan includes substantially the same policies that are found in Santa Clara County General Plan due to the fact that the South County Joint Area Plan was adopted jointly by the County, and the Cities of Morgan Hill and Gilroy. According to the Santa Clara County General Plan, “the South County Joint Area Plan is a mutual statement of policies for community development and environmental management. It is intended to achieve harmony and cooperation among the South County three jurisdictions, and consistency between their adopted policies.” Additionally, the City of Gilroy’s General Plan also includes some additional policies concerning the City’s intent to establish greenbelts between San Martin and itself. For reasons already presented in the section on the project’s consistency with Santa Clara County General Plan, the project is not entirely consistent with the aforementioned policies of the Gilroy General Plan.

Potential Modifications to the Proposed San Martin Incorporation Boundary



SECTION 4.0: OVERVIEW OF INCORPORATION PROCESS

Key steps of the process for incorporation include:

- Proponent submits the petition and application for incorporation to LAFCO (February 2007)
- LAFCO staff prepares preliminary and final Comprehensive Fiscal Analyses (Draft available November 2007, Final available April 2008)
- LAFCO staff prepares necessary environmental documentation (Draft available late October 2007, Final available April 2008)
- The County and the incorporation proponents negotiate a revenue neutrality agreement (December 2007 through February 2008)
- LAFCO staff conducts required governmental review and develops recommendations (on-going, but to be completed by Spring 2008)
- LAFCO public hearing to consider and approve or deny the proposed incorporation (expected Spring 2008)
- If LAFCO approves the application, the Board of Supervisors will be requested to place the incorporation on the November 2008 Ballot (Summer 2008)
- Election by registered voters within the area to be incorporated. A majority vote is required to approve the incorporation (November 2008).

SECTION 5.0: ENVIRONMENTAL CHECKLIST and INITIAL STUDY

This section provides an overview of the environmental setting and an evaluation of potential environmental impacts that could result as a result of the implementation of the Project. Consistent with the requirements of CEQA, the discussion of each resource topic includes a brief setting description to sufficiently characterize existing conditions. The setting discussion is presented from site, local, sub-regional and/or regional perspectives, as appropriate, to capture existing conditions for each environmental topic.

The environmental effects of the Project are defined as changes to the environmental setting that are attributable to the Project, as described in Section 1. Based on the lead agency's evaluation of those actions outlined in Section 2.0 of this document, the environmental factors checked below would be potentially affected by the Project.

Environmental Factors Potentially Affected:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is still a "Potentially Significant Impact" (after any proposed mitigation measures have been adopted) as indicated by the checklist on the following pages.

- | | | |
|---|--|--|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agricultural Resources | <input type="checkbox"/> Air Quality |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology / Soils |
| <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology / Water Quality | <input type="checkbox"/> Land Use |
| <input type="checkbox"/> Noise | <input type="checkbox"/> Population / Housing | <input type="checkbox"/> Public Services |
| <input type="checkbox"/> Recreation / Mineral Resources | <input type="checkbox"/> Transportation / Traffic | <input type="checkbox"/> Utilities / Service Systems |
| <input type="checkbox"/> Mandatory Findings of Significance | | <input checked="" type="checkbox"/> None |

This environmental checklist identifies the potential impacts of the Project, based on actions described in Section 2 of this document. The environmental checklist discussion focuses on the physical direct and indirect changes that the Project would have on existing environmental conditions. Where appropriate, mitigation measures are identified to reduce the identified impact below a level of significance. For this environmental checklist, the following impact classifications are used:

Potentially Significant Impact. Adverse environmental consequence that has the potential to be significant according to the threshold criteria identified for each resource, even after mitigation strategies are applied. This classification also applies to adverse effects that could be significant and for which no mitigation has been identified. If any potentially significant impacts are identified, an Environmental Impact Report (EIR) must be prepared to meet CEQA requirements.

Less than Significant Impact with Mitigation. Adverse environmental consequence that has the potential to be significant, but can be reduced to less-than-significant levels through the application of identified mitigation strategies.

Less than Significant Impact. Adverse environmental consequence that has been identified; however, the level of significance does not meet or exceed the significance threshold for that resource.

No Impact. No adverse environmental consequences have been identified for the resource or the consequences are negligible, undetectable and/or not applicable.

Mitigation measures identified in this IS are characterized as those that have been determined to be feasible and are necessary to reduce the identified impact below a level of significance. Where implementation of more than one mitigation measure is needed to reduce an impact below a level of significance, this is noted and other mitigation measures may be cross-referenced. Mitigation measures described in this IS are required over and above other measures that have been incorporated into the Project Description or regulatory or policy considerations that will reduce the potential for significant environmental affects.

Determination: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

- I find that the proposed project **COULD NOT** have a significant effect on the environment, and a **NEGATIVE DECLARATION** will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A **MITIGATED NEGATIVE DECLARATION** will be prepared.
- I find that the proposed project **MAY** have a significant effect on the environment, and an **ENVIRONMENTAL IMPACT REPORT** is required.
- I find that the proposed project **MAY** have a “potentially significant impact” or “potentially significant unless mitigated” impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An **ENVIRONMENTAL IMPACT REPORT** is required, but it must analyze only the effects that remain to be addressed.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or **NEGATIVE DECLARATION** pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or **NEGATIVE DECLARATION**, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.



Signature

03/11/2008

Date

NEELIMA PALACHERLA

LAFCO of Santa Clara County

Printed name

For

A. AESTHETICS				
WOULD THE PROJECT:	IMPACT			
	YES			NO
	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially damage scenic resources along a designated scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) If subject to ASA, be generally in non-compliance with the Guidelines for Architecture and Site Approval?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) If subject to Design Review, be generally in non-compliance with the Guidelines for Design Review Approval?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Be located on or near a ridgeline visible from the valley floor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

1.1 - SETTING

Visual Character. The area of the Proposed Incorporation is located within the southern Santa Clara Valley, with the Coast Range mountains providing a topographic backdrop from many vantage points. Views from the surrounding ridgelines include built, agricultural, and rural residential developments within the Valley. Riparian vegetation is noted along the various natural and engineered drainages that cross the Project area. Prominent on-site visual features include agricultural-rural residential settings with several County parks located along the eastern and western boundaries of the Project area.

Views From Off-Site Areas. There are several major public roads in the vicinity and, therefore, there are many opportunities to view the Project area. These roadways include State Highway 101, which bisects the Project area, and Middle Avenue, San Martin Avenue, Church Avenue, Masten Avenue, New Avenue, Foothill Avenue, Monterey Highway and Watsonville Road.

Scenic Roadways. State Highway 101 in the vicinity of the Town of San Martin is not designated by the State as a scenic highway (Caltrans, 2007). However, Santa Clara County (County) has identified Route 101, the South Valley Freeway, as an eligible stretch for inclusion in the State’s scenic highway program (Santa Clara County General Plan, 1994). The General Plan states the “South Valley Freeway, which is one of the major transportation arteries between northern and southern California, passes through lands that remain primarily in agricultural and rural residential uses. State scenic designation and land use protection by the County and the cities of Gilroy, Morgan Hill, and San Jose can help preserve the scenic character of this corridor as future development occurs.”

Scenic Vistas, Public Views, and Sensitive Receptors. Travelers on State Highway 101 are offered uninterrupted views of the general Project area, and of the Coastal Range. The Coastal Range viewshed, with ridgelines extending up on both the eastern and the western side of the Project area, constitutes a significant scenic resource present in the background.

Regulatory. The Santa Clara County General Plan specifies several implementation guidelines in relation to visual quality, landscaping, and design review for the San Martin community. These specific implementing measures include the following:

Implementing Measure R-TR(i) 15. Develop design guidelines for the San Martin community which address landscaping, setbacks and scenic preservation along County roads.

Implementing Measure R-TR(i) 16. Explore the applicability of the San Martin design guidelines to other areas of the county.

Implementing Measure R-TR(i) 17. The County should continue to prepare environmental assessments which address but are not be limited to natural resource and scenic impact(s) of proposed roadway projects. These assessments should identify mitigations available to reduce any impacts to a less than significant level. Identified mitigation measures should be incorporated into project design.

1.2 - IMPACT DISCUSSION

Would the project:

a.) *Have a substantial adverse effect on a scenic vista?*

No Impact. As described more fully in Section 2, immediately following its organization and prior to performing any other official act, the new Town must adopt an ordinance providing that all County ordinances (including the County Zoning Ordinance and all other land use regulations and County General Plan land use designations) previously applicable to the former unincorporated area of the Proposed Incorporation shall remain in full force and effect as ordinances of the Town for a period of 120 days after incorporation, or until the Town Council has enacted ordinances superseding the County ordinances, whichever occurs first. As a result, the act of incorporating the Town will not involve any change in land use or other development activities that might result in substantial adverse physical impacts on existing scenic vistas or the existing land use pattern within the area of the Proposed Incorporation.

b.) *Substantially damage scenic resources along a designated state scenic highway?*

No Impact. State Highway 101 in the vicinity of the Town of San Martin is not designated by the State as a scenic highway (Caltrans, 2007). However, the County has identified Route 101, the South Valley Freeway, as an eligible stretch for inclusion in the State's scenic highway program (Santa Clara County General Plan, 1994). The General Plan states the "South Valley Freeway, which is one of the major transportation arteries between northern and southern California, passes through lands that remain primarily in agricultural and rural residential uses..." Although the County General Plan encourages the eligibility of the South Valley Freeway for the state scenic highway program, the State's Scenic Highway Master Plan can only be changed by State legislative action and it is reasonable to assume that such an action could occur with or without the Project. In this context, the impact of the Proposed Incorporation is not significant.

c.) *Substantially degrade the existing visual character or quality of the site and its surroundings?*

No Impact. Because the Project does not propose any physical development, and because any future development proposals would be subject to further environmental and design reviews by the Town in keeping with the current County Zoning Ordinance and all other land use regulations and County General Plan land use designations, it is reasonable to conclude that the Project would not substantially

degrade the existing visual character or quality of the site and its surroundings. Further, continued implementation of the San Martin Integrated Design Guidelines will help ensure that visual character of development is consistent with San Martin's rural residential character even after approval of the proposed Project.

d.) *Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area?*

No Impact. Nighttime lighting is extensively used within the Project area. The Proposed Incorporation involves no physical improvements that would result in any new sources of daytime glare or nighttime lighting. Any future development proposals would be subject to further environmental and design reviews by the Town in keeping with the current County Zoning Ordinance and all other land use regulations and County General Plan land use designations, it is reasonable to conclude that the Project would not adversely affect any day or nighttime views in the area.

e.) *If subject to ASA, be generally in non-compliance with the Guidelines for Architecture and Site Approval?*

No Impact. The Proposed Incorporation does not involve a formal development application and, therefore, is not subject to the County Guidelines for Architecture and Site Approval. Any future development proposals would be subject to further environmental and design reviews by the Town in keeping with the current County Zoning Ordinance and all other land use regulations and County General Plan land use designations.

f.) *If subject to Design Review, be generally in non-compliance with the Guidelines for Design Review Approval?*

No Impact. The Project does not include the construction on any structures that would be subject to County Guidelines for Design Review Approval. Any future development proposals would be subject to further environmental and design reviews by the Town in keeping with the current County Zoning Ordinance and all other land use regulations and County General Plan land use designations.

g.) *Be located on or near a ridgeline visible from the valley floor?*

No Impact. The area of the Proposed Incorporation is generally located on the Valley floor, and no change in land use is proposed on or near a ridgeline visible from the valley floor. Any future development proposals would be subject to further environmental and design reviews by the Town in keeping with the current County Zoning Ordinance and all other land use regulations and County General Plan land use designations.

B. AGRICULTURAL RESOURCES				
WOULD THE PROJECT:	IMPACT			
	YES			NO
	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Convert farmland to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with existing zoning for agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with an existing Williamson Act Contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

SETTING

Farming operations in the project area are diverse and consist of small to medium-scale, inter-row cropping systems on the Valley floor, ornamental nurseries, and rangeland in the lower slopes of the adjoining foothills. Crops cultivated in the project area may include a combination of leaf vegetables, bean crops, grapes, ornamentals and wildflowers flowers, and/or grains on any given year. Irrigated and non-irrigated pasture for cattle grazing is also present.

In 2006, Santa Clara County's production of agricultural goods earned \$244,460,880 for the economy of the State of California; a three percent reduction from 2005 (Santa Clara County Crop Report 2007). Nursery crops remained the top commodities in Santa Clara County producing over \$87 million in the year 2006. Mushrooms and peppers were the next two largest commodities generating \$57.7 million and \$12.6 million, respectively, for Santa Clara County.

The California Department of Conservation, under the Division of Land Resource Protection, has set up the Farmland Mapping and Monitoring Program which monitors the conversion of the state's farmland to and from agricultural use. The program also produces a biannual report on the amount of land converted from agricultural to non-agricultural use. The program maintains an inventory of state agricultural land and updates its "Important Farmland Series Maps" every two years (Department of Conservation, 2004). A review of the 2006 Important Farmland Maps indicates that the area of the Proposed Incorporation includes 2,132 acres of Prime Farmland, 257 acres of Unique Farmland, and 577 acres of Farmland of Statewide Importance (FMMP 2006). See Exhibit 5.1 for a map showing the Important Farmlands within the proposed incorporation boundaries.

Regulatory. The policies and provisions of the County's General Plan, zoning ordinance and other land use regulations would be formally adopted by the Town upon incorporation. These existing policies support continued agricultural use in the Project area and acknowledge that the remaining supply of highly valuable agricultural lands is not only of great economic importance, but also provides:

- productive use of lands not intended for urban development

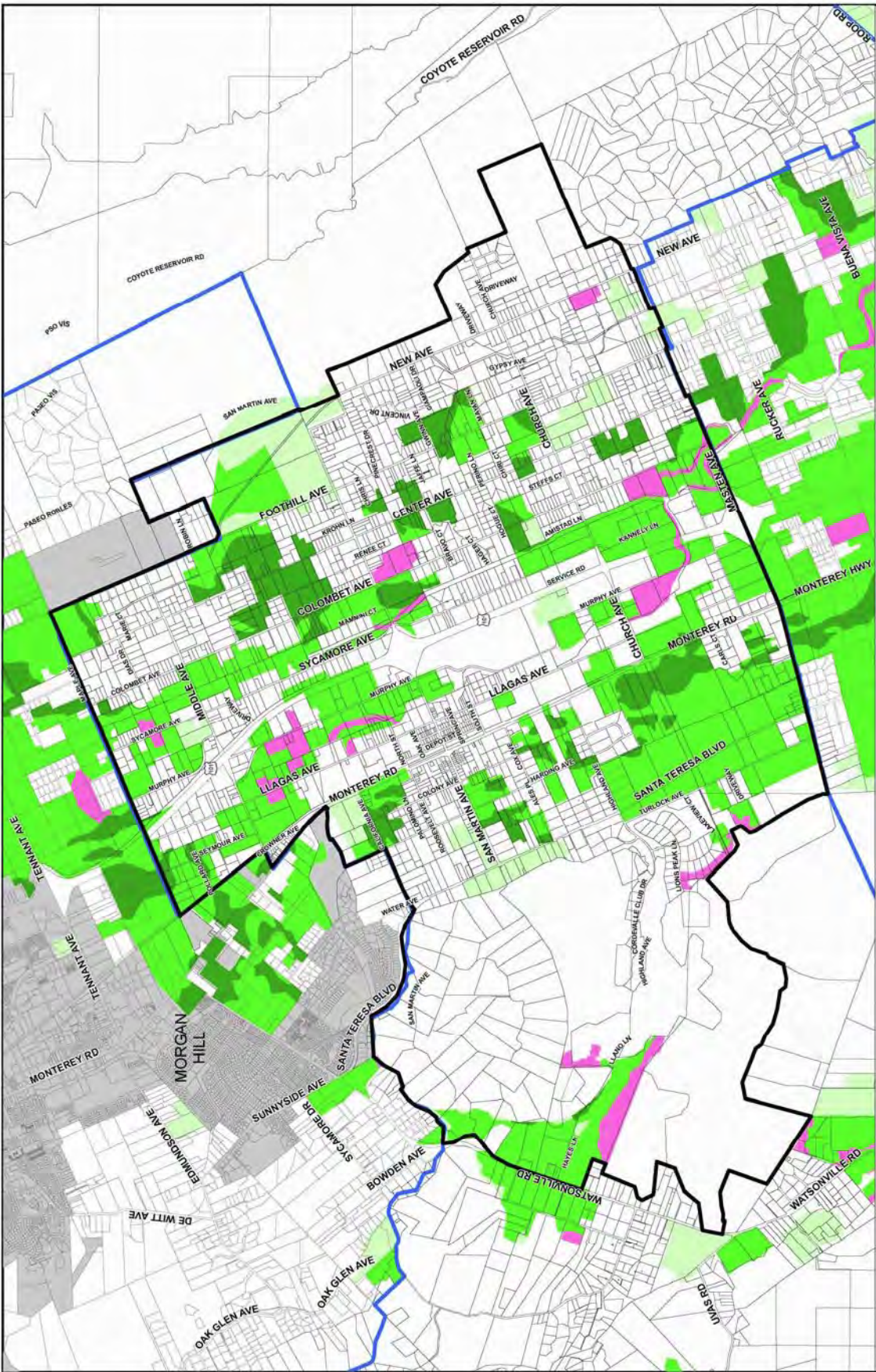
- an inexpensive, locally-grown supply of many types of food, close to a growing urban area of 1.5 million consumers;
- scenic relief from the monotony of continuous urban development; and
- diminished threat to life and property in areas prone to flood hazards.

The County General Plan acknowledges the need to identify the areas of greatest importance for preservation, and that a variety of means be employed as appropriate to solidify the land use basis for continuing agricultural land uses. In general, the General Plan identifies areas of the South County generally south and east of Gilroy, as well as areas in vicinity of Morgan Hill including the Project area, as representing the last remaining areas of large scale agriculture in Santa Clara County. The applicable policy framework for this Initial Study discussion topic is contained in the County's General Plan as shown in **Appendix C** if this Initial Study and will be carried forward and adopted by the Town upon incorporation.

Land Conservation Act. Under the provisions of the Williamson Act (California Land Conservation Act 1965, Section 51200), landowners contract with the County to maintain agricultural or open space use of their lands in return for reduced property tax assessment. The contract is self-renewing and the landowner may notify the County at any time of intent to withdraw the land from its preserve status. Withdrawal involves a ten-year period of tax adjustment to full market value before protected open space can be converted to urban uses. Consequently, land under a Williamson Act Contract can be in either a renewal status or a non-renewal status. Lands with a non-renewal status indicate the farmer has withdrawn from the Williamson Act Contract and is waiting for a ten-year period of tax adjustment for the land to reach its full market value.

Pursuant to Government Code section 56754, the new city must succeed to the rights, duties and powers of the County in administering any Williamson Act contracts. Within the proposed incorporation boundaries, there are currently 187 properties under the Williamson Act totaling approximately 2,200 acres. In 2006, the County revised its policies and practices relating to administering the Williamson Act in order to meet County goals and comply with state statute. Following this study, the County filed and recorded notices for non-renewal on 126 of the 187 properties, as they did not meet the minimum acreage requirement and / or the requirement for having a commercial agricultural operation on the property. These 126 contracts are set to expire in the years 2016 or 2017. The remaining 61 properties under Williamson Act are scattered throughout the area of the proposed boundaries for San Martin. Please see **Exhibit 5.2** for a map showing the parcels under the Williamson Act contract and indicating those currently with a non-renewal status.

EXHIBIT 5.1

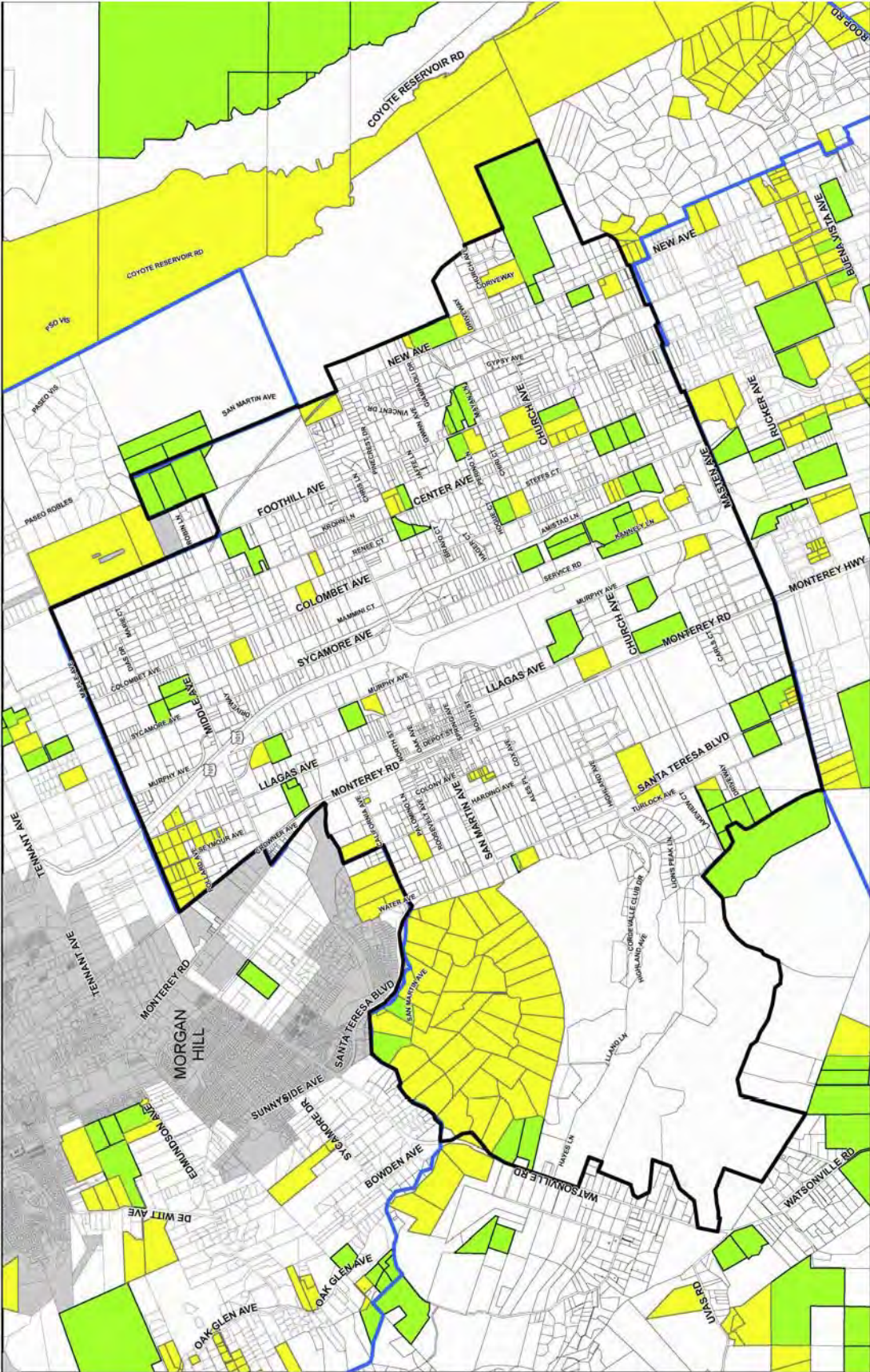


Important Farmlands from 2006 within the Proposed San Martin Incorporation Boundary

- City Limit
- San Martin Proposed Boundary
- Sphere of Influence
- Farmland of Local Importance
- Farmland of Statewide Importance
- Prime Farmland
- Unique Farmland

Scale: 0 1,500 3,000 6,000 Feet

LAFCO
Local Agency Formation Commission of Santa Clara County



Williamson Act Contracts within the San Martin Proposed Incorporation Boundary

San Martin Proposed Boundary
 Sphere of Influence
 City Limit
 Williamson Act Nonrenewal (County Planning Office 2007)
 Williamson Act Parcels (County Assessor's Data 2005)

LAFCO
 Local Agency Formation Commission of Santa Clara County

N
 0 1,500 3,000 6,000 Feet

Williamsons Act Parcels (County Assessor's Data 2005)
 Williamson Act Nonrenewal (County Planning Office 2007)
 City Limit
 Sphere of Influence
 San Martin Proposed Boundary

IMPACT DISCUSSION

Would the project:

a.) *Convert farmland to non-agricultural use?*

No Impact. Important Farmland Maps prepared for Santa Clara County indicate that the area of the Proposed Incorporation includes 2,132 acres of Prime Farmland, 257 acres of Unique Farmland, and 577 acres of Farmland of Statewide Importance. However, the Project proposes no new physical development as part of the incorporation proposal. The policies and provisions of the County's General Plan, zoning ordinance and other land use regulations would be formally adopted by the Town upon incorporation. As a result, the Project would not result in the direct conversion of Prime Farmland, Unique Farmland, or Farmland of Statewide Importance to non-agricultural use and no impact is expected.

b.) *Conflict with existing zoning for agricultural use?*

No Impact. The project area includes approximately 1,004 acres of land designated Agricultural Medium Scale, almost all of it located in the area north of Middle Avenue. As noted in Section 2.0, one of the objectives of the Proposed Incorporation is to maintain the small-scale agricultural activities of the Town. The Project involves no changes to existing agricultural land uses, General Plan land use designations or County agricultural zoning standards. As a result, the Project would not conflict with existing agricultural zoning for agricultural use.

c.) *Conflict with an existing Williamson Act Contract?*

No Impact. The proposed incorporation area contains parcels that are currently covered under the provisions of an active Williamson Act contract. The Project will not alter the cancellation or non-renewal status of any of these existing contracts. Several properties are under non-renewal with the contracts set to expire in 2016 or 2017. With the Town's adoption of the provisions of the County General Plan, zoning ordinance and land use regulations no change in the existing land use patterns are proposed that would result in a change in or result in the cancellation of Williamson Act contracts as compared to existing conditions. Pursuant to Government Code section 56754, the new city must succeed to the rights, duties and powers of the County in administering the contracts. The County General Plan, zoning and other ordinances, policies and regulations will be adopted by the new city. The proposed incorporation does not include any change in land use or provision of new services.

Furthermore, as stated in Section 2.0, one of the Project's objectives is to maintain the small-scale agricultural activities within the area of the proposed incorporation. Any land use decisions by the future Town Council in relation to future Williamson Act policy would be speculative now and require subsequent environmental review at that time based on the nature of the action(s) being proposed. In this context, the Project would not conflict with existing zoning or with the provisions of an existing Williamson Act contract, and no impact would occur.

d.) *Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?*

Less than Significant Impact.

The incorporation does not propose to provide new urban services such as sewer or water that could result in conversion of farmland to non-agricultural uses. As such, the project would not result in any greater conversion of agricultural lands to non-agricultural uses than what could occur under existing county jurisdiction since the incorporation proposal does not include a change in land use, no new services would be provided and the County General Plan and Zoning Ordinance and other ordinances would be adopted by the new city. Therefore the project would have no direct impacts.

Although the objective of the incorporation as stated by the proponents is to maintain the rural residential character of the town and maintain the small-scale agricultural related activities, the town upon incorporation, would have the land use jurisdiction to designate future land uses and would have the authority to provide urban type services to lands within its boundaries.

Any changes that involve conversion of farmland to non-agricultural uses or provision of new urban services that could result in more intensive development could impact adjacent agricultural lands located outside the proposed city's boundaries. However, it is premature and speculative at this time to predict the potential future legislative decisions of the new town. Any such changes if and when they are proposed, will be subject to CEQA and the environmental analysis for those actions will be conducted by the new town at that time.

C. AIR QUALITY

Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations.

WOULD THE PROJECT:	IMPACT			
	YES			NO
	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create objectionable odors or dust affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SETTING

The Project is located in Santa Clara County at the southern end of the San Francisco Bay Area Air Basin (Basin), which consists of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Santa Clara counties and the western portion of Solano County and the southern portion of Sonoma County. This area falls within the jurisdiction of the Bay Area Air Quality Management District (BAAQMD). The entire Basin is characterized by complex terrain consisting of coastal mountain ranges, inland valleys, and bays. Elevations of 1,500 feet are common in the higher terrain of this area.

The wind patterns in the Valley are influenced greatly by the terrain, resulting in a prevailing flow roughly parallel to the Valley's northwest-southeast axis with a north-northwesterly sea breeze extending up the valley during the afternoon and early evening, and a light south-southeasterly drainage flow occurring during the late evening and early morning. In summer, a convergence zone is sometimes observed in the southern end of the Valley between Gilroy and Morgan Hill, when air flowing from the Monterey Bay through the Pajaro Gap gets channeled northward into the south end of the Santa Clara Valley and meets with the prevailing north-northwesterlies. Speeds are greatest in the spring and summer, and least in the fall and winter seasons. Nighttime and early morning hours have light winds and are frequently calm in all seasons, while summer afternoon and evenings are quite breezy. Strong winds are rare, coming only with an occasional winter storm.

The air pollution potential of the Santa Clara Valley is high. The valley has a large population and the largest complex of mobile sources in the Bay Area making it a major source of carbon monoxide, particulates, and photochemical air pollution (ozone). In addition, photochemical precursors (nitrogen oxides and reactive organic gases) from San Francisco, San Mateo, and Alameda counties can be

carried along by the prevailing winds to the Santa Clara Valley making it also a major ozone receptor. Geographically, the valley tends to channel pollutants to the southeast with its northwest/southeast orientation, and concentrate pollutants by its narrowing to the southeast. Meteorologically, on high-ozone low-inversion summer days, the pollutants can be recirculated by the prevailing northwesterlies in the afternoon and the light drainage flow in the late evening and early morning, increasing the impact of emissions significantly. On high particulate and carbon monoxide days during late fall and winter, clear, calm, and cold conditions associated with a strong surface based temperature inversion prevail.

Regulatory. Regulation of air pollution is achieved through both federal and state ambient air quality standards and emission limits for individual sources of air pollutants. An “ambient air quality standard” represents the level of air pollutant in the outdoor (ambient) air necessary to protect public health. As required by the federal Clean Air Act, the Environmental Protection Agency (EPA) has identified criteria pollutants and established National Ambient Air Quality Standards (NAAQS or national standards) to protect public health and welfare. NAAQS have been established for ozone, carbon monoxide (CO), nitrogen dioxide (NO₂), sulfur dioxide (SO₂), inhalable particulate matter (PM₁₀), fine particulate matter (PM_{2.5}), and lead. These pollutants are called “criteria” air pollutants because standards have been established for each of them to meet specific public health and welfare criteria. Criteria air pollutants of concern in the Project area include ozone, CO, and particulate matter (both PM₁₀ & PM_{2.5}).

Pursuant to the 1990 Federal Clean Air Act Amendments, the EPA classifies air basins (or portions thereof) as “attainment” or “nonattainment” for each criteria air pollutant, based on whether or not the NAAQS had been achieved. Under the federal Clean Air Act Amendments of 1990, ozone nonattainment areas are further classified as marginal, moderate, serious, severe, or extreme, depending upon the severity of peak ozone concentrations in the area. In 1988, the State Legislature passed the California Clean Air Act, which is patterned after the federal Clean Air Act to the extent that areas are required to be designated as “attainment” or “non-attainment”; however, area designations that have been made under the California Clean Air Act correspond to the state standards, rather than the national standards. Thus, areas in California have two sets of area designations: one set with respect to the national standards and another set with respect to the state standards. **Table 5-1** provides the current attainment status of the project area for each of the criteria pollutants.

Table 5-1: Bay Area Air Basin Attainment Status

Pollutant	Averaging Time	State Status	National Status
Ozone	1-hour	Nonattainment	Not Applicable ¹
	8-hour	Unclassified	Nonattainment ²
Carbon Monoxide	1-hour; 8-hour	Attainment	Attainment ³
Nitrogen Dioxide	1-hour	Attainment	No federal standard
	Annual	No state standard	Attainment
Sulfur Dioxide	24-hour; 1-hour	Attainment	Attainment
PM ₁₀	24-hour	Nonattainment	Unclassified
	Annual	Nonattainment	No federal standard ⁴
PM _{2.5}	24-hour	No state standard	Unclassified
	Annual	Nonattainment	Attainment

Source: BAAQMD 20071

1 BAAQMD 2007. Ambient Air Quality Standards & Bay Area Attainment Status, Bay Area Air Quality Management District. http://www.baaqmd.gov/pln/air_quality/ambient_air_quality.htm. Accessed August 21, 2007

Notes: ¹ The national 1-hour ozone standard was revoked by EPA on June 15, 2005.

² In June 2004, the Bay Area was designated as a marginal nonattainment area of the national 8-hour ozone standard.

³ In April 1998, the Bay Area was redesignated to attainment for the national 8-hour carbon monoxide standard.

⁴ EPA revoked the annual PM₁₀ standard on September 21, 2006.

Constituent gases of the Earth's atmosphere called atmospheric greenhouse gases (GHG) play a critical role in the Earth's radiation budget by trapping infrared radiation emitted from the Earth's surface, which would otherwise have escaped into space. Prominent GHG contributing to this process include carbon dioxide (CO₂), methane (CH₄), ozone, water vapor, nitrous oxide (N₂O), and chlorofluorocarbons (CFCs). This phenomenon, known as the "Greenhouse Effect," is responsible for maintaining a habitable climate. Anthropogenic emissions of these GHGs in excess of natural ambient concentrations are responsible for the enhancement of the Greenhouse Effect and have led to a trend of unnatural warming of the Earth's climate, known as global warming or climate change. Global warming is a global problem, and GHGs are global pollutants, unlike criteria air pollutants and TACs, which are pollutants of regional and local concern.

In September 2006, Assembly Bill (AB) 32, the California Global Warming Solutions Act of 2006 was adopted. AB 32 established regulatory, reporting, and market mechanisms to achieve quantifiable reductions in GHG emissions and a cap on statewide GHG emissions, and it is the first of its kind worldwide. AB 32 applies to major stationary sources of emissions only but acknowledges the urgency of this potential threat to the environment. At the time of writing, no air districts within California, including BAAQMD, have a recommended emission threshold for determining significance associated with GHGs from development projects.

The BAAQMD is one of the most progressive air districts in the State concerning GHGs and climate change issues. In 2005, the Bay Area Air District initiated a Climate Protection Program, and on June 1, 2005, the District Board of Directors adopted a resolution establishing a Climate Protection Program, acknowledging the link between climate protection and programs to reduce air pollution in the Bay Area. A central element of the District's climate protection program is the integration of climate protection activities into existing District programs. In addition, the District's climate protection program emphasizes collaboration with ongoing climate protection efforts at the local and State levels, public education and outreach, and technical assistance to cities and counties. In November 2006, the District prepared a District-wide Source Inventory of Bay Area Greenhouse Gas Emissions.

While neither the CEQA Guidelines Appendix G, nor any judicial decision, CEQA regulation, or statute specifically require an evaluation of a project's impact on greenhouse gases, consistent with the public policy rationale underlying AB 32, this report has analyzed the potential for the Project to increase greenhouse gas emissions.

IMPACT DISCUSSION

Would the project:

a.) *Conflict with or obstruct implementation of the applicable air quality plan?*

No Impact. The Proposed Incorporation would involve the transfer of municipal authority and services from the County of Santa Clara to a newly formed Town of San Martin. The policies and provisions of the County's General Plan, zoning ordinance and other land use regulations would be formally adopted by the Town upon incorporation. As a result, the Project would not have any direct physical impacts related to air quality or greenhouse gas emissions because the proposal does not involve the movement of earth or creation of new emission sources. Similarly, the proposed transfer of municipal authority would not affect current air quality regulations as adopted by the BAAQMD, and would have

no affect on the implementation of the 2005 Bay Area Ozone Strategy or the 2000 Clean Air Plan, or the Climate Protection Program. The new Town of San Martin is located within the San Francisco Bay Area Air Basin and would continue to be subject to current regulations related to emissions within the Basin. As such, the Project will not conflict with or obstruct implementation of the applicable air quality plans.

b.) *Violate any air quality standard or contribute substantially to an existing or projected air quality violation?*

No Impact. The Proposed Incorporation would not have any direct physical impacts related to air quality or greenhouse gas emissions because the proposal does not involve the movement of earth or creation of new emission sources. In this context, the Project would not create any new emission sources beyond existing conditions and, therefore, the Project would not violate any air quality standard, or contribute substantially to an existing or projected air quality violation. Additionally, the proposed transfer of municipal authority and continuation of the policies and provisions contained within the existing County General Plan, zoning ordinance and other existing land use regulatory measures would not contribute to global warming.

c.) *Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors)?*

No Impact. As previously indicated, the Project would not result in the creation of any new emission sources when compared to existing conditions and, therefore, it is reasonable to conclude that the Project would not result in a cumulatively considerable net increase of any criteria pollutant. Additionally, the proposed transfer of municipal authority will not create a cumulatively considerable increase in greenhouse gases.

d.) *Expose sensitive receptors to substantial pollutant concentrations?*

No Impact. As previously indicated, the Project would not involve the operation of any new temporary or permanent emission sources or create substantial air pollutant concentrations which could adversely affect nearby sensitive receptors.

e.) *Create objectionable odors or dust affecting a substantial number of people?*

No Impact. As previously indicated, the Project would not result in any changes to existing land use patterns or to the current baseline conditions with regard to existing sources of odors.

D. BIOLOGICAL RESOURCES				
WOULD THE PROJECT:	IMPACT			
	YES			NO
<i>*Questions relating to the California Department of Fish & Game "no effect determination" for the CEQA Filing Fee Exemption are listed in italics.</i>	<u>Potentially Significant Impact</u>	<u>Less Than Significant With Mitigation Incorporated</u>	<u>Less Than Significant Impact</u>	<u>No Impact</u>
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or US Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Have a substantial adverse effect on federally protected wetlands as defined by section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) or tributary to an already impaired water body, as defined by section 303(d) of the Clean Water Act through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Have a substantial adverse effect on oak woodland habitat as defined by Oak Woodlands Conservation Law – (conversion/loss of oak woodlands)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Conflict with any local policies or ordinances protecting biological resources:				
i) Tree Preservation Ordinance [Section C16]?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Wetland Habitat [GP Policy, R-RC 25-30]?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii) Riparian Habitat [GP Policy, R-RC 31-41]?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SETTING

Methods. The following information sources were reviewed for this analysis:

- Aerial photography of the incorporation area (Google Earth 2007);

- A Natural Resource Conservation Service soils map of the area of the Proposed Incorporation (Soil Survey Staff undated);
- California Department of Fish and Game (CDFG) California Natural Diversity Data Base (CNDDDB) records for the Gilroy, California 7.5-minute topographic quadrangle and the surrounding eight quadrangles (CNDDDB 2007) (see **Appendix A**);
- CDFG California Wildlife Habitat Relationship System (CWHR) (CDFG 2005);
- U.S. Fish and Wildlife Service (USFWS) list of endangered and threatened species that may occur, or be affected by project, in the Gilroy, California quadrangle (USFWS 2007) (see **Appendix A**);
- The California Native Plant Society (CNPS) online Inventory of Rare and Endangered Vascular Plants of California records for the Gilroy, California 7.5-minute topographic quadrangle and the surrounding eight quadrangles (CNPS 2007) (see **Appendix A**);
- Pertinent literature including: the Jepson Manual, Higher Plants of California (Hickman 1993); Amphibian and Reptile Species of Special Concern in California (Jennings and Hayes 1994); California Birds: Their Status and Distribution (Small 1994); Bird Species of Special Concern in California (Remsen 1978); and Mammalian Species of Special Concern in California (Williams 1986);
- National Oceanic and Atmospheric Administration (NOAA) Fisheries species accounts of marine and anadromous fish listed under the federal Endangered Species Act (ESA) (available at <http://www.nmfs.noaa.gov/pr/species/fish/>).

Vegetation Communities. Vegetation communities arise from a complex interaction between climate and geology, as well as smaller-scale influences such as slope and aspect. For the purposes of this study, vegetation communities are classified according to the CWHR (Mayer and Laudenslayer 1988). This classification scheme maps communities at a fairly coarse scale; it was developed to support the CWHR System, a wildlife information system and predictive model for California's regularly-occurring birds, mammals, reptiles and amphibians. For this reason, it allows for an analysis of wildlife species likely to occur within a given area by coupling habitat type with associated wildlife species. According to CWHR, there are three habitat types that occur within the San Martin area: blue oak-foothill pine, montane hardwood, and valley oak woodland. However, the Department of Fish and Game indicates that the primary habitat type in the incorporation area is non-native grassland/disturbed area. Valley oak woodland is the original underlying habitat type and still exists in pockets. The blue oak-foothill pine and montane hardwood habitats are not found within the incorporation area. Nevertheless, these three habitat types are described below because they are listed in the CWHR:

Blue oak-foothill pine habitat forms a narrow and discontinuous ring around the Central Valley at elevations between 500 and 3,000 feet. This habitat is dominated in the overstory by blue oak (*Quercus douglasii*), with foothill pine (*Pinus sabiniana*) as a smaller component. Associated overstory species include coast live oak (*Q. agrifolia*), valley oak (*Q. lobata*), and California buckeye (*Aesculus californica*). Shrubs tend to occur in patches and can include a variety of ceanothus (*Ceanothus* sp.) and manzanita (*Arctostaphylos* sp.) species, California coffeeberry (*Rhamnus californica*), poison-oak (*Toxicodendron diversilobum*), California redbud (*Cercis californica*), gooseberry (*Ribes* sp.), elderberry (*Sambucus mexicana*), bush lupine (*Lupinus albifrons*), and yerba santa (*Eriodictyon californica*). The understory is typically a diverse assemblage of native and non-native annual and perennial species. There are approximately 354 acres of blue oak-foothill pine habitat within the area of the Proposed Incorporation. It is restricted to three small patches at the eastern edge at the base of the Diablo Range.

Montane hardwood habitat is characterized by a pronounced hardwood tree canopy and occurs at elevations between 300 and 9,000 feet. It is more widespread than the blue oak-foothill pine habitat, and common in the North Coast Range and the Sierra Nevada Mountains. Common overstory species include Douglas-fir (*Pseudotsuga menziesii*), tanoak (*Lithocarpus densiflorus*), Pacific madrone (*Arbutus menziesii*), California bay, black oak (*Quercus kelloggii*), knobcone pine (*Pinus attenuata*), foothill pine, and coast live oak. Because the overstory tends to be dense, understory shrubs, grasses, and forbs tend to be sparse; species composition is similar to that of blue oak-foothill pine. There are approximately 3,110 acres of montane hardwood habitat within the area of the Proposed Incorporation. It occurs in the west where the area of the Proposed Incorporation and extends into the Santa Cruz Mountains.

Valley oak woodland habitat is restricted primarily to the Sacramento Valley and the Coast Range, where it is common in valley soils and along drainages. This habitat type is dominated in the overstory by valley oak, and can range from very dense to more open savannah-like stands. Associated overstory species include California sycamore (*Platanus racemosa*), California black walnut (*Juglans californica*), interior live oak (*Quercus wislizenii*), boxelder (*Acer negundo*), blue oak, foothill pine, and coast live oak. Understory shrub species include poison-oak, elderberry, California wild grape (*Vitis californica*), toyon (*Heteromeles arbutifolia*), California coffeeberry, and Himalayan blackberry (*Rubus discolor*). Valley oak woodland is the dominant habitat type within the area of the Proposed Incorporation, and is mapped as covering approximately 7,009 acres. However, this acreage includes the town of San Martin and surrounding agricultural areas, so the actual acreage is expected to be substantially less.

Special-Status Species. For the purpose of this analysis, special-status species are those species:

- Listed as threatened or endangered under the ESA and those species formally proposed or candidates for listing;
- Listed as threatened or endangered under California ESA (CESA) or candidates for listing;
- Designated as endangered or rare pursuant to California Fish and Game Code (§1901);
- Designated as fully protected pursuant to California Fish and Game Code (§3511, §4700, §5050);
- Designated as a species of special concern by CDFG;
- Plants listed as rare under the California Native Plant Protection Act or considered by CNPS as List 1A, 1B, 2, or 3 species.

Special-Status Plant Species. The special-status plant species considered for review in this document are included in a table provided in **Appendix A**. This list was compiled based upon query results from CNDDDB and the CNPS on-line inventory as well as a list obtained from USFWS. Several regionally occurring species were determined not to have potential to occur within the area of the Proposed Incorporation either because the distribution range of the species does not extend into the area, or because the habitat and/or microsite conditions (e.g., serpentinite soils, mesic sites) required by the species are not present.

Based upon results of the species review, there are 27 special-status plant species with at least some potential to occur within the assessment area. The table in **Appendix A** lists these species, their regulatory status, general habitat requirements, likelihood of occurrence within the area of the Proposed Incorporation, and the period during which they are identifiable.

Special-Status Wildlife Species. The special-status wildlife species considered for review in this document are also included in the table provided in **Appendix A**. This list was compiled based on the USFWS list, and query results from CNDDDB and CWHR. CWHR is a predictive model that lists species likely to occur in a given location under certain habitat conditions. It also predicts the suitability of those conditions for reproduction, cover, and feeding for each modeled species. Information fed into the model for this project includes location (Monterey County) and habitat type (blue oak-foothill pine, valley oak woodland, and montane hardwood forest). CWHR does not include any information on plants, fish, invertebrates, or rare natural communities.

Several regionally occurring species were determined not to have potential to occur within the assessment area, either because the distribution range of the species does not extend into the area, or because the habitat or habitat elements (e.g., caves, tall snags) required by the species are not present.

Based upon results of the species review, there are 38 special-status wildlife species with at least some potential to occur within the assessment area. The table in **Appendix A** lists these species, their regulatory status, general habitat requirements, likelihood of occurrence within the area of the Proposed Incorporation, and the period during which they are most identifiable.

Regulatory. The regulations applicable to the protection and conversation of special-status species and sensitive biological resources are outlined below.

Federal Endangered Species Act. The USFWS administers the federal ESA, which provides a process for listing species as either threatened or endangered, and methods of protecting listed species. The ESA defines as “endangered” any plant or animal species that is in danger of extinction throughout all or a significant portion of its known geographic range. A “threatened” species is a species that is likely to become endangered. A “proposed” species is one that has been officially proposed by USFWS for addition to the federal threatened and endangered species list.

Under Section 9 of the ESA, “take” of threatened or endangered species is prohibited. The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct. Take can include disturbance to habitats used by a threatened or endangered species during any portion of its life history. The presence of any federally threatened or endangered species in a project area generally imposes severe constraints on development, particularly if development would result in “take” of the species or its habitat. Under ESA regulations, USFWS may authorize “take” when it is incidental to, but not the purpose of, an otherwise lawful act.

California Endangered Species Act. CDFG administers CESA, which considers an “endangered” species one whose prospects of survival and reproduction are in immediate jeopardy. A “threatened” species is one present in such small numbers throughout its range that it is likely to become an endangered species in the near future in the absence of special protection or management. A “rare” species is one present in such small numbers throughout its portion of its known geographic range that it may become endangered if its present environment worsens. The rare species designation applies to California native plants. State threatened and endangered species are fully protected against take, as defined above. The term “species of special concern” is an informal designation used by CDFG for some declining wildlife species that are not state candidates for listing. This designation does not provide legal protection, but signifies that these species are recognized as sensitive by CDFG.

CEQA Guidelines Section 15380. Threatened and endangered species are protected by specific federal and state statutes. In addition, CEQA Guidelines Section 15380 provides that a species not listed on the federal or state lists of threatened or endangered species may be considered rare or endangered under CEQA review if the species can be shown to meet certain specified criteria. This section was included in the CEQA Guidelines primarily to deal with situations in which a public agency is reviewing a project that may have a significant impact on for example, a “candidate species” that has not yet been listed under FESA or CESA. Therefore, CEQA provides an agency with the ability to protect a species from a project’s potential impacts until the respective government agency has an opportunity to formally designate the species as protected, if warranted.

Sensitive plant species are afforded protection under CEQA through the CNPS inventory of rare, threatened, and endangered plants of California. CNPS is a California resource conservation organization that has developed an inventory of California's sensitive plant species. This inventory summarizes information on the distribution, rarity, and endangerment of California's vascular plants. The inventory is divided into four lists based on the rarity of the species. In addition, CNPS provides an inventory of plant communities that are considered sensitive by state and federal resource agencies, academic institutions, and various conservation groups. The level of sensitivity is determined by the number and size of remaining occurrences as well as recognized threats.

Migratory Bird Treaty Act. The Migratory Bird Treaty Act (MBTA) protects all common wild birds found in the United States (U.S.) except the house sparrow, starling, feral pigeon, and resident game birds such as pheasant, grouse, quail, and wild turkey. Resident game birds are managed separately by each state. The MBTA makes it unlawful for anyone to kill, capture, collect, possess, buy, sell, trade, ship, import, or export any migratory bird including feathers, parts, nests, or eggs. In addition, disturbance to an occupied nest is considered "take" under this act.

California Fish and Game Code - Section 3503 and Section 3511. CDFG administers the California Fish and Game Code. Under Section 3503 of the Code, it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird that is protected under MBTA. The Code Section 3503.5 further protects all birds in the orders Falconiformes and Strigiformes, birds of prey such as hawks and owls, and their eggs and nests from any form of take. Code Section 3511 lists fully protected bird species for which CDFG is unable to authorize the issuance of permits or licenses to take these species.

California Oak Woodlands Conservation Act. Recognizing the importance of oak woodlands and the critical role private landowners having in the conservation of oaks, the Legislature created in 2001 the Oak Woodlands Program with the expressed intent of accomplishing the following:

- Support and encourage voluntary, long-term private stewardship and conservation of California oak woodlands by offering landowners financial incentives to protect and promote biologically functional oak woodlands;
- Provide incentives to protect and encourage farming and ranching operations that are operated in a manner that protect and promote healthy oak woodlands;
- Provide incentives for the protection of oak trees providing superior wildlife values on private land, and;
- Encourage planning that is consistent with oak woodlands conservation.

With the passing of the Act, local government agencies must now determine whether or not a project may result in a conversion of oak woodlands that will have a significant effect. If there may be a significant effect, they must employ one or more of the following mitigation measures: conserving oaks through the use of conservation easements; planting and maintaining an appropriate number of trees either onsite or in restoration of a former oak woodlands (tree planting is limited to half the mitigation requirement); contributing funds to the Oak Woodlands Conservation Fund for the purpose of purchasing conservation easements; or other mitigation measures developed by the county.

Santa Clara Valley Habitat Conservation Plan / Natural Communities Conservation Plan. The County of Santa Clara, Santa Clara Valley Water District, Santa Clara Valley Transportation Authority, and the cities of Gilroy, Morgan Hill, and San Jose have initiated a collaborative process to prepare and implement a joint Santa Clara Valley Habitat Conservation Plan (HCP/NCCP) to promote recovery of endangered species while accommodating planned development and infrastructure. These entities, in association with the U.S. Fish and Wildlife Service, California Department of Fish and Game, and NOAA-National Marine Fisheries Service, are developing a long-range plan to protect and enhance ecological diversity and function on more than 500,000 acres of Santa Clara County.

Currently, certification of the environmental review and completion of the final HCP/NCCP is anticipated to occur in mid-2009. At that time, incidental take permits will be issued for a list of identified projects likely to occur during the permit term. These activities are expected to include urban and rural development activities that are consistent with current city and County land use plans; maintenance

and development of public infrastructure (water, transportation, etc.); activities within streams; and management and monitoring activities within habitat reserve lands. Approval of the HCP/NCCP will ensure that there are adequate mitigations for impacts to biological resources associated with the various identified project activities. According to Ken Schreiber, Program Manager for the Santa Clara Valley HCP/NCCP, the Plan will contain a provision that will allow participation in the Plan by new jurisdictions such as the new Town of San Martin. If the new town could not participate in the HCP, it would be subject to all the permit requirements that are otherwise in place.

County of Santa Clara General Plan. The Santa Clara County General Plan contains several policies that recognize the need to identify and protect sensitive natural resources. The Resource Conservation portion of the General Plan has in place strategies and policies for maintaining and enhancing habitat and biodiversity within the county. They include:

Strategy #1: Improve current knowledge and awareness of habitats and natural areas.

Strategy #2: Protect the biological integrity of critical habitat areas.

Strategy #3: Encourage habitat restoration.

Strategy #4: Evaluate effectiveness of environmental mitigations.

There is also a provision for riparian and freshwater habitats. It recommends that buffer areas remain around all streams still largely in their natural states, and provides guidance on incorporating natural riparian flood plains and habitat into flood control designs. There are also several policies to protect freshwater habitats including wetlands, creeks, and streams during development of new roads, recreation areas, and residential units.

In addition, the General Plan recognizes the importance of maintaining wildlife migration corridors and habitat linkages. It recommends identification and protection of these areas, and encourages cluster development as a way of incorporating these areas into future growth.

County of Santa Clara Tree Preservation and Removal Ordinance. Santa Clara County has adopted a Tree Preservation and Removal Ordinance to protect property values, preserve and protect scenic beauty, prevent soil erosion and floods, enhance air quality, and provide wildlife habitat. In designated areas of the County, the Ordinance requires a permit for removal of any tree having a main trunk or stem measuring 12 inches or greater diameter at breast height (dbh), or having multiple trunks measuring 24 inches or more dbh. The permit application requires in part a replanting and/or revegetation plan for all trees to be removed.

Federal Clean Water Act - Section 404. USACE administers Section 404 of the federal Clean Water Act (CWA). This section regulates the discharge of dredge and fill material into waters of the U.S. USACE has established a series of nationwide permits that authorize certain activities in waters of the U.S., if a proposed activity can demonstrate compliance with standard conditions. Normally, USACE requires an individual permit for an activity that will affect an area equal to or in excess of 0.5 acre of waters of the U.S. Projects that result in impacts to less than 0.5 acre or 300 feet of stream channel can normally be conducted pursuant to one of the nationwide permits, if consistent with the standard permit conditions. Use of any nationwide permit is contingent on the activities having no impacts to endangered species.

Clean Water Act - Section 401. Per Section 401 of the CWA, "any applicant for a Federal permit for activities that involve a discharge to waters of the State, shall provide the Federal permitting agency a certification from the State in which the discharge is proposed that states that the discharge will comply with the applicable provisions under the Federal Clean Water Act." Therefore, before USACE will issue a Section 404 permit, applicants must apply for and receive a Section 401 water quality certification from their RWQCB.

Porter-Cologne Water Quality Act. RWQCBs regulate actions that would involve "discharging waste, or proposing to discharge waste, within any region that could affect the waters of the state" (Water Code Section 13260(a)), pursuant to provisions of the Porter-Cologne Water Quality Act. "Waters of the State" are defined as "any surface water or groundwater, including saline waters, within the boundaries of the state" (Water Code Section 13050 (e)).

California Fish and Game Code - Section 1600 to Section 1603. The CFG Code mandates that "it is unlawful for any person to substantially divert or obstruct the natural flow or substantially change the

bed, channel, or bank of any river, stream, or lake designated by the department, or use any material from the streambeds, without first notifying the department of such activity." CDFG jurisdiction includes ephemeral, intermittent, and perennial watercourses, including dry washes, characterized by the presence of hydrophytic vegetation, a definable bed and bank, and the presence of existing fish or wildlife resources.

Furthermore, CDFG jurisdiction is often extended to habitats adjacent to watercourses, such as oak woodlands in canyon bottoms or willow woodlands that function as part of the riparian system. Historic court cases have further extended CDFG jurisdiction to include watercourses that seemingly disappear, but re-emerge elsewhere. Under the CDFG definition, a watercourse need not exhibit evidence of an OHWM to be considered jurisdictional. However, CDFG does not regulate isolated wetlands; that is, those that are not associated with a river, stream, or lake.

IMPACT DISCUSSION

Would the project:

a.) *Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?*

No Impact. There are many special-status plant and wildlife species with potential to occur within the area of the Proposed Incorporation, and several that are known to occur. Under existing conditions, any project planned within the area of the Proposed Incorporation and requiring a discretionary permit is reviewed under CEQA by the County with potential impacts to special-status species identified and mitigation prescribed where appropriate. With the implementation of the Project, future projects planned within San Martin would continue to be subject to review and, if necessary, mitigation under CEQA. Alternatively, San Martin, once incorporated, may choose to participate in the HCP/NCCP and mitigate any potential impacts to covered species through participation. The six special-status species known to occur within the area of the Proposed Incorporation are the Bay checkerspot butterfly, Metcalf Canyon jewelflower, most beautiful jewelflower, Santa Clara Valley dudleya, smooth lessingia, California tiger salamander, and are all covered under the HCP/NCCP. In addition, many of the species with potential to occur within the assessment area are also covered. However, given that the Project would not result in any changes to existing land use or the existing regulatory framework adopted for the protection of biological resources, no substantial, direct or indirect adverse effects to these species are anticipated.

b.) *Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or US Fish and Wildlife Service?*

No Impact. The Project would not have any direct or indirect adverse effects on local riparian habitat or other sensitive natural communities. Currently, any permitted activities within the area of the Proposed Incorporation with potential to affect these habitats and communities require review under CEQA and subsequent permitting, if necessary. This process would continue as part of the Project. In addition, the new Town would be bound by existing County General Plan provisions that require the identification and protection of these habitats and communities. In this context, no impact would occur.

c.) *Have a substantial adverse effect on federally protected wetlands as defined by section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) or tributary to an already impaired water body, as defined by section 303(d) of the Clean Water Act through direct removal, filling, hydrological interruption, or other means?*

No Impact. The Project involves no ground disturbing activities or direct removal, fill, or interruption of existing wetland features.

d.) *Have a substantial adverse effect on oak woodland habitat as defined by Oak Woodlands Conservation Law – (conversion/loss of oak woodlands)?*

No Impact. The Project involves no ground disturbing activities and would have no substantial adverse effect on existing oak woodland habitat. Currently, oak woodlands within the area of the Proposed Incorporation are afforded protection under the County's Tree Preservation and Removal Ordinance. Should the Proposed Incorporation occur, these resources would continue to be protected under the Ordinance until such time that a new local plan is adopted.

e.) *Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?*

No Impact. The Project involves no physical direct or indirect impacts to local waterway and, therefore, it is reasonable to conclude that the Project would not interfere with the movement of any native resident or migratory fish or wildlife species or with established wildlife corridors, nor impede use of any nursery sites.

f.) *Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional or state habitat conservation plan?*

No Impact. The Project is not expected to conflict with the Santa Clara Valley HCP/NCCP, which is currently under development. Current and future land use designations within the San Martin area, as prescribed by the County General Plan, have been incorporated into the provisions of the HCP/NCCP during the development process. Because any growth and development within the area of the Proposed Incorporation would continue to be consistent with the provisions of the County General Plan zoning ordinance and land use regulations, the Proposed Incorporation would not conflict with the growth assumptions used in developing the mitigation requirements for HCP/NCCP.

g.) *Conflict with any local policies or ordinances protecting biological resources:*

i) *Tree Preservation Ordinance [Section C16]?*

ii) *Wetland Habitat [GP Policy, R-RC 25-30]?*

iii) *Riparian Habitat [GP Policy, R-RC 31-41]?*

No Impact. As previously indicated, the Project would involve the adoption of applicable County General Plan policies and ordinances following the incorporation. In this context, the Project is not expected to conflict with any local policies or ordinances adopted for the purpose of tree preservation or protection of wetland and riparian habitats.

E. CULTURAL RESOURCES				
WOULD THE PROJECT	IMPACT			
	YES			NO
	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Cause a substantial adverse change in the significance of a historical resource pursuant to §15064.5 of the CEQA Guidelines?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource as defined in §15064.5 of the CEQA Guidelines?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Change or affect any resource listed in the County Historic Resources Database?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SETTING

Archaeology. Research and investigations performed by King and Hickman (1973) and Hildebrandt and Mikkelsen (1993) provide a general description of prehistoric habitation characteristics in the southern Santa Clara Valley region of the project area. Based on a database of approximately 50 prehistoric sites, King and Hickman identified the following sequence for subsistence and settlement patterns for the prehistoric inhabitants of the region:

Millingstone Period (7000-4000 years before the present [B.P.]): This period consists of initial settlement of the project area.

Middle Period (4000-1500 B.P.): This period is considered the peak of sedentary settlement development with reliance on a subsistence economy, using storage of foods such as acorns, and with interregional exchange, warfare, and population pressure.

Protohistoric Period (1500-400 B.P.): The Protohistoric Period consists of an adaptive shift to more mobile settlement patterns and the dissemination of population concentrations.

Recent research performed by Hildebrandt and Mikkelsen (1993) has resulted in the general development of the following cultural chronology:

Early Period (4500-2500 B.P.): This period is characterized by a high degree of mobility and a wide array of faunal remains in the coast and inland areas.

Middle Period (2500-850 B.P.): The Middle Period is identified by a lower degree of mobility with fewer marine shells, more structures and indications of year-round occupation, and a higher variety of tools.

Late Period (post 850 B.P.): This period is characterized by a reduction in territorial base, a lack of marine shell, and more usage of local resources.

Ethnography. The ethnographically documented aboriginal inhabitants of the project area were part of the Ohlone, or Costanoan, language group, which extended from the San Francisco Bay area south to the southern Monterey Bay and lower Salinas River areas. Ethnographic information regarding people in this group is obtained from records of early Spanish explorers, documents maintained at missions, the works of ethnographers and linguists, and from Native American descendants. The Ohlone/Costanoan languages belong to the Utian family, of the Penutian language stock (Shipley 1978). Ohlone/Costanoan languages were spoken in a large area extending from the San Francisco Bay area, southward along the coast to Point Sur, and inland to the Diablo Range and portions of the northern San Joaquin Valley.

Four groups are noted within the project area: Tiuvta, Unijaima, Motsun, and Ausaima (Milliken et al., 1993). The Tiuvta were a tribelet within the Calendruc tribe that occupied the Pajaro River, Elkhorn Slough, and lower Salinas River areas. The Unijaima lived in the mountains and plains of southwestern Santa Clara Valley, north of the Pajaro River, while the Motsun lived in the San Juan Valley and in the mountains southwest of the valley. The Ausaima lived in the eastern portion of the San Felipe Sink and the hills on the west side of Pacheco Pass.

The history of the Monterey Bay and the southern Santa Clara Valley regions can be divided generally to three periods: Spanish arrival and colonization, Mexican independence and the ranchos, and Anglo-American expansion.

Spanish Arrival and Colonization. Colonization by the Spanish in what was then known as Alta California occurred in the late 1700s. Captain Gaspar de Portola led the earliest land expedition along the coast in 1769 (Hoover et al., 1990), followed by Pedro Fages in 1770 and 1772, Fernando Javier de Rivera in 1774, and Juan Bautista de Anza in 1776. All except Portola's expedition traveled on the east side of the Santa Cruz Mountains, along a route later to become known as El Camino Real. Soon after the first of these expeditions, Missions San Carlos de Borromeo (1770), Santa Clara (1777), and Santa Cruz (1791) were founded.

Mexican Independence and Ranchos. A process of land granting was instituted soon after the mission system began (the first grant was made in 1775) (Hoover et al., 1990). Granting of land, called ranchos, continued throughout the Spanish Period and created the beginning of the cattle industry in California. Within a few years, ranchos occupied large tracts in the vicinity of the missions, and a pastoral economy involving the missions, the rancheros, and the neophytes was established.

With the declaration of Mexican independence in 1821, Spanish control of Alta California ceased. Political change did not begin in earnest until mission secularization in 1834, when the native peoples were freed from missionary control, and mission lands were granted to private individuals.

During this time period, cattle hides and tallow were the medium of exchange in local business transactions and with international trading ships. The Mexican population continued to grow and the native population continued to decline. Anglo-Americans began to settle in Alta California, often marrying into Mexican families, becoming Mexican citizens, and receiving land grants.

Anglo-American Expansion. After the Mexico-U.S. War, the 1848 Treaty of Guadalupe Hidalgo formalized Mexico's capitulation, and Alta California was annexed by the United States. News of the gold strike in the Sierra Nevada mountains that same year sparked a huge migration into California, beginning the Anglo-American occupation of California. Due to a combination of Gold Rush-related immigration and land ownership disputes resulting from the transition from Mexican to U.S. authority, the project area began to change rapidly.

The latter half of the 19th century saw a continued Anglo-American immigration into the project area, and consequent changes in the culture and economy of the area. Anglo-American culture steadily became the predominant culture in California, though the Hispanic culture continued to exist. Dispersed farmsteads slowly replaced the immense Mexican ranchos. The farming of wheat, sugar beets, and other specialized crops slowly replaced cattle ranching as the primary economic activity in the project area. These uses eventually transition to orchards, truck farms, flower nurseries, and other family owned agricultural enterprises. In the 1960's, Highway 101 was extended through southern Santa Clara County, and more urbanized uses encroached into the agricultural setting.

Regulatory. As part of the incorporation process, the Town would adopt existing County General Plan policies, including those intended to minimize the impacts of future development on historical and archaeological resources. The applicable policy framework for this Initial Study discussion topic is contained in the County's General Plan as shown in **Appendix C** of this Initial Study and will be carried forward and adopted by the Town upon incorporation:

IMPACT DISCUSSION

Would the project:

a.) *Cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5 of the CEQA Guidelines?*

No Impact. The Project involves no physical improvements or change to the environment that would carry the potential to result in substantial, adverse changes in the significance of a historical resource.

b.) *Cause a substantial adverse change in the significance of an archaeological resource as defined in Section 15064.5 of the CEQA Guidelines?*

No Impact. As previously indicated, the Project would not include any physical ground disturbance and, therefore, it is reasonable to conclude that the Project would not cause a substantial, adverse change in the significance of a previously recorded or undiscovered archaeological resource.

c.) *Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?*

No Impact. The Project does not involve any physical land disturbance and, therefore, it is reasonable to conclude that the Project would not destroy, either directly or indirectly, a unique paleontological resource or site, or geological feature.

d.) *Disturb any human remains, including those interred outside of formal cemeteries?*

No Impact. As previously indicated, no physical impacts are proposed part of the Proposed Incorporation. Upon incorporation, the Town would adopt existing County Ordinance(s), which would include those adopted for the purposes appropriately notifying the County Coroner and the California Native American Heritage Commission.

e.) *Change or affect any resource listed in the County Historic Resources Database?*

No Impact. The Project involves no physical improvements that could result in a change or adverse affect to resources listed in the County Historic Resources Database.

F. GEOLOGY AND SOILS				
WOULD THE PROJECT:	IMPACT			
	YES			NO
	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on expansive soil, as defined in the report, <i>Soils of Santa Clara County</i> , creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Cause substantial compaction or over-covering of soil either on-site or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Cause substantial change in topography or unstable soil conditions from excavation, grading, or fill?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SETTING

Local Geology. The Project area is located in southern Santa Clara County, along Llagas Creek, and west of Coyote Lake. Santa Clara County is located within the Coast Range physiographic province, which consists of a series of parallel northwest-trending mountain ridges and intervening valleys of varying sizes.

Seismicity. The northern Coast Ranges contains both active and potentially active faults and is considered a region of high seismic activity. Major active faults in the immediate project area include the San Andreas, Hayward, and Calaveras Faults. The San Andreas Fault, one of the principle fault features in central California, has generated significant earthquakes in the past, including events in 1836, 1868, 1908, and 1989. Current estimates suggest that the peninsula segment of the San Andreas Fault is capable of producing a moment magnitude 7.2 earthquake resulting a horizontal acceleration of 0.4 g (ABAG 2001).

San Andreas Fault. The San Andreas fault is a major northwest-trending, right-lateral, strike-slip fault. The fault extends for about 600 miles from the Gulf of California in the south to Cape Mendocino in the north. The San Andreas is not represented by a single trace, but by a system of active faults that diverge from the main fault south of San Jose. Regional faults that are subparallel to the San Andreas fault, such as the Hayward, Calaveras, and San Gregorio, are within the broader San Andreas Fault System.

The San Andreas fault has repeatedly provided evidence of large surface fault rupture events and is designated as an earthquake fault zone under the Alquist-Priolo Act. The Peninsula segment of the San Andreas fault is estimated to have a 15 percent probability of producing a Richter magnitude 6.7 earthquake in the period between 2000 and 2030 (USGS, 1999). Because a significant amount of stress was released during the 1989 Loma Prieta earthquake, the Santa Cruz Mountains segment is assigned a 10 percent probability of producing a similar magnitude earthquake in the same 30-year period.

Calaveras Fault. The Calaveras fault, a major right-lateral, strike-slip fault, extends for about 100 miles from Dublin to Hollister, where it merges with the San Andreas fault. The Calaveras fault is most active on the southern segment. The Richter magnitude 6.2 Morgan Hill earthquake (April 1984) originated on the Calaveras fault. Creep has been documented along the fault in the vicinity of Hollister. The Calaveras fault is designated as an earthquake fault zone under the Alquist-Priolo Act.

The Santa Clara County Seismic Stability maps identify County liquefaction and landslide geologic hazard zones within the area of the Proposed Incorporation.

Soil Resources. The southern Santa Clara Valley is underlain by alluvium, resulting in the formation of deep, fertile soils that facilitate agricultural production. These soils are generally greater than 60 inches in depth and characterized by a low to moderate permeability. Some local soils contain clay minerals that have expansive properties and expand when wet and shrink when dried. Local soils may also have low pH or high sulfate concentration or other chemical characteristics that can create a corrosive environment to uncoated steel or concrete. Soils within the project area could also be moderately to highly corrosive.

Regulatory. The California Building Code is another name for the body of regulations known as the California Code of Regulations (CCR), Title 24, Part 2, which is a portion of the California Building Standards Code (California Building Standards Commission, 2001). Title 24 is assigned to the California Building Standards Commission, which, by law, is responsible for coordinating all building standards. Under state law, all building standards must be centralized in Title 24 or they are not enforceable.

Published by the International Conference of Building Officials, the Uniform Building Code is a widely adopted model building code in the United States. The California Building Code incorporates by reference the Uniform Building Code (UBC) with necessary California amendments. About one-third of the text within the California Building Code has been tailored for California earthquake conditions.

The applicable policy framework for this Initial Study discussion topic is contained in the County's General Plan as shown in **Appendix C** of this Initial Study and will be carried forward and adopted by the Town upon incorporation:

IMPACT DISCUSSION

Would the project:

a.i.) *Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:*

i) *Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.*

No Impact. A review of Special Publication 42 indicates that the eastern border of the area of the Proposed Incorporation is located within an Alquist-Priolo Earthquake Fault Zone for the Calaveras Fault (CGS Special Publication 42, 1999). However, the Project would not involve the construction of any new habitable structures within a mile of the fault rupture zone and, therefore, it is reasonable to conclude that the Project would not expose people or structures to potential substantial adverse effects as a result of rupture along a known earthquake fault.

a.ii.) *Strong seismic ground shaking?*

No Impact. The Project is located in the San Francisco Bay Area, which, because of the presence of the San Andreas Fault System, is a region of significant seismic activity. The 1997 Uniform Building Code (UBC) locates the entire Bay Area within Seismic Risk Zone 4. Areas within Zone 4 are expected to experience maximum magnitudes and damage in the event of an earthquake. The U.S. Geological Survey (USGS) Working Group on California Earthquake Probabilities has evaluated the probability of one or more earthquakes of Richter magnitude 6.7 or higher occurring in the San Francisco Bay Area within the next 30 years. The result of the evaluation indicated a 70 percent likelihood that such an earthquake event will occur in the Bay Area between 2000 and 2030 (USGS, 2003). In this context, the risk of ground shaking as a result of a large earthquake during the life of the Project is an unavoidable hazard.

In response to these inherent risks, State and local building and grading codes regulate structural design. The UBC requires use of seismic parameters that allow structural engineering analysis for structures to be based on soil profile types and the anticipated peak ground acceleration. However, given that the Project involves no structural improvements and that UBC requirements are integrated into Title 24, which is State law, the act of incorporation is expected to have no impact.

a.iii.) *Seismic-related ground failure, including liquefaction?*

No Impact. Based on a review of Liquefaction Hazard maps produced by the County, the area of the Proposed Incorporation contains several large liquefaction hazard areas. Development within these zones generally requires a site-specific geologic investigation and report prior to approval. In this context and given that no new development is proposed as part of the Proposed Incorporation, the Project is not expected to expose people and/or structures to potential substantial adverse effects associated with liquefaction.

a.iv.) *Landslides?*

No Impact. The area of the Proposed Incorporation is generally characterized by level topography with the western and eastern portions of the Project transitioning into the toe slopes of the Coast Range. Several large areas within the eastern and western portions of the area of the Proposed Incorporation are identified as landslide hazard zones in the County's Geologic Hazard Map (Plate 60) based on the composition of the underlying geology further up-slope. However, given that the Project proposes no alterations to existing topography or no new development within these hazard zones no impact is anticipated.

b.) *Result in substantial soil erosion or the loss of topsoil?*

No Impact. The Project proposes no ground-disturbing activities that could result in increased water runoff rates and/or concentrate flows that may result in accelerated erosion. All County General Plan policies and ordinances would be adopted as part of the Project, including those related to soil conservation and erosion control. In this context, it is reasonable to conclude that the Project would not result in substantial soil erosion or the loss of topsoil.

c.) *Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?*

No Impact. The Project proposes no new development or land alteration that could otherwise render an existing geologic or soil unit as unstable. In this context, it is appropriate to conclude that the Project would not add to existing geologic hazards related to on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse.

d.) *Be located on expansive soil, as defined in the report, Soils of Santa Clara County, creating substantial risks to life or property?*

No Impact. Expansive soil materials can result in physical damage to pipeline facilities, foundations of aboveground structures, and concrete slabs. The expansion and contraction associated with soils when subjected to repeated wetting and drying may exert enough pressure on the structures to result in cracking, settlement, and uplift. No new structures, which could be susceptible to expansive soil materials, are proposed as part of the Project. As a result, no impact would occur.

e.) *Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of waste water?*

No Impact. No new on-site wastewater treatment systems are proposed as part of the Project and, therefore, no impact is expected.

f.) *Cause substantial compaction or over-covering of soil either on-site or off-site?*

No Impact. The Project involves no grading and/or cut and fill activities that could cause substantial compaction or over-covering of existing soil either on-site or off-site. For this reason, no impact is expected.

g.) *Cause substantial change in topography or unstable soil conditions from excavation, grading, or fill?*

No Impact. As previously indicated, no grading or physical land disturbance is proposed as part of the Project. In this context, it is reasonable to conclude that the Project would not cause substantial changes in topography or unstable soil conditions from excavation, grading, or fill.

G. HAZARDS & HAZARDOUS MATERIALS

WOULD THE PROJECT	IMPACT			
	YES			NO
	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within 1/4 mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan referral area or, where such a plan has not been adopted, within two miles of a public airport or public use airport, or in the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Expose people or structures to a significant risk of loss, injury or death involving wildland fires including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Provide breeding grounds for vectors?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Proposed site plan result in a safety hazard (i.e., parking layout, access, closed community, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Involve construction of a building, road or septic system on a slope of 30% or greater?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
k) Involve construction of a roadway greater than 20% slope for a distance of 300' or more?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SETTING

Airports. South County Airport is owned in fee by the County of Santa Clara. The day-to-day operation and management of the Airport is the responsibility of the County's Roads and Airports Department. Policy decisions affecting the Airport are made by the five-member Board of Supervisors. The Santa Clara County Airports Commission serves in an advisory capacity to the Board of Supervisors and staff on matters involving County-managed airports.

The Airport encompasses 179 acres and consists of a single runway and two parallel taxiways on either side of the runway. A large building area, containing nearly all of the airport buildings, is located west of Runway 14-32. A full-length apron edge taxiway serves the building area. The runway protection zone (RPZ) for Runway 14-32 are 250 feet wide at its inner end, 1,000 feet long, and 450 wide at its outer end. About half of the RPZ area for Runway 14 lies on airport property. The balance of the RPZ area falls within the right-of-way of the West San Martin Avenue interchange. About 90 percent of the RPZ area for Runway 32 is on airport property. The balance encompasses the county's animal shelter. Although a new draft master plan has been prepared for the South County Airport, it is not expected to be formally adopted until early 2009. The Draft South County Airport Master Plan indicates that it remains possible to acquire sufficient property to protect approaches to the runway and buffer adjacent areas from the effects of airport operations.

Hazards Materials Regulation. A material is considered hazardous if it appears on a list of hazardous materials prepared by a federal, state, or local agency, or if it has characteristics defined as hazardous by such an agency. Title 22 of the CCR defines a hazardous material as:

“a substance that, because of physical or chemical properties, quantity, concentration, or other characteristics, may either (1) cause an increase in mortality or an increase in serious, irreversible, or incapacitating illness; or (2) pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported or disposed of, or otherwise managed” (CCR, Title 22, Division 4.5, Chapter 10, Article 2, Section 66260.10).

Hazardous wastes are defined in the same manner. Hazardous wastes are hazardous materials that no longer have practical use, such as substances that have been discarded, discharged, spilled, contaminated, or are being stored prior to proper disposal. According to Title 22 of the CCR, hazardous materials and hazardous wastes are classified according to four properties: toxic, ignitable, corrosive, and reactive (CCR, Title 22, Chapter 11, Article 3).

A limited regulatory agency records search was performed for areas within the Project area. The records search included the CVRWQCB's List of Spill and Leak Sites (SLIC) (CVRWQCB, 2004a); the CVRWQCB's List of Leaking Underground Storage Tank (LUST) (CVRWQCB, 2004b); and the State of California's Cortese list maintained by the California Department of Toxic Substances Control (DTSC). These lists are a compilation of information from various sources listing potential and confirmed hazardous waste and hazardous substances sites in California. The regulatory agency database search (EDR, 2007) conducted for the Project revealed the presence of numerous sites with documented hazardous material concerns on or within the vicinity of the project study area. A list of these properties is provided in **Appendix B**. The complete EDR Report is available for review at LAFCO's main office during normal business hours.

Regulatory. The applicable policy framework for this Initial Study discussion topic is contained in the Health and Safety portion of the County's General Plan as shown in **Appendix C** of this Initial Study and will be carried forward and adopted by the Town upon incorporation:

IMPACT DISCUSSION

Would the project:

a.) *Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?*

No Impact. The Proposed Incorporation would not involve the increased delivery, storage, or use of hazardous materials. As a result, no impacts are expected.

b.) *Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?*

No Impact. The Proposed Incorporation does not include the use, storage, or transport of hazardous materials and/or substances. In this context, the Project would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.

c.) *Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within 1/4 mile of an existing or proposed school?*

No Impact. The Proposed Incorporation does not involve the operation of any new facilities that could emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within 1/4 mile of an existing or proposed school.

d.) *Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?*

No Impact. As provided in the setting discussion, the area of the Proposed Incorporation includes numerous sites identified on various agency databases (see **Appendix B** for a comprehensive list). However, the Project involves no physical disruption of these existing sites and, as a result, it is reasonable to conclude that the Project would not create or increase existing hazards to the public or the environment when compared to existing conditions.

e.) *For a project located within an airport land use plan referral area or, where such a plan has not been adopted, within two miles of a public airport or public use airport, or in the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?*

No Impact. The area of the Proposed Incorporation includes lands within two miles of the South County Airport. However, given that no change in existing land use is proposed as part of the Project, the Proposed Incorporation would not result in new or increased a safety hazards for people currently residing or working in the project area.

f.) *Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?*

No impact. As described in Section 2, the Project proposes that the Town of San Martin provide or contract for services currently provided by the County Department of Environmental Health (DEH) Consumer Protection and Hazardous Materials Control Divisions, Household Hazardous Waste Program, the County Integrated Pest Management Program, the County Integrated Waste Management Program, and the Green Business Program. These services would continue to be provided by municipal or contracted staff and, therefore, it is reasonable to conclude that the Project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.

g.) *Expose people or structures to a significant risk of loss, injury or death involving wildland fires including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?*

No Impact. Although the threat of wildland fires exists within the area of the Proposed Incorporation, especially in those areas where wildlands are adjacent to urbanized areas or where residences are inter-mixed with wildlands, the Project would not involve the placement of any new structures within a

wildfire hazard zone that were not already contemplated or authorized by the County General Plan or zoning ordinances.

h.) *Provide breeding grounds for vectors?*

No Impact. The Project does not involve the creation of any ponds or excavation and therefore is not expected to create a new breeding ground for vectors.

i.) *Proposed site plan result in a safety hazard (i.e., parking layout, access, closed community, etc.)?*

No Impact. No site development is proposed as part of the Project and therefore, the Project would not result in a new safety hazard as a result of parking, access, closed community, etc.

j.) *Involve construction of a building, road or septic system on a slope of 30% or greater?*

No Impact. The Project does not involve the construction of a building, road or septic system.

k.) *Involve construction of a roadway greater than 20% slope for a distance of 300' or more?*

No Impact. The Project does not involve the construction of a roadway on a slope of greater than 20 percent for a distance of 300 feet or more.

H. HYDROLOGY AND WATER QUALITY				
WOULD THE PROJECT:	IMPACT			
	YES			NO
	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site? (Note policy regarding flood retention in watercourse and restoration of riparian vegetation for West Branch of the Llagas.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create or contribute increased impervious surfaces and associated runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Place within a 100-year flood hazard area structures that would impede / redirect flood flow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Be located in an area of special water quality concern (e.g., Los Gatos or Guadalupe Watershed)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
k) Be located in an area known to have high levels of nitrates in well water?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
l) Result in a septic field being constructed on soil where a high water table extends close to the natural land surface?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
m) Result in a septic field being located within 50 feet of a drainage swale; 100 feet of any well, water course or water body or 200 feet of a reservoir at capacity?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SETTING

Watershed. A review of the California Watersheds (2001) dataset indicates that the area of the Proposed Incorporation includes lands that are located within the Llagas Creek Watershed, which is part of the larger Pajaro River Watershed (USGS Cataloging Unit No. 18060002). Other major streams within the Livermore drainage unit are the Little Llagas Creek, the West Branch of Llagas Creek, and Uvas Creek all of which drain the eastern slope of the Santa Cruz Mountains. These waterways are tributaries to the Pajaro River to the north of the Pajaro Valley. The storm water system that serves the unincorporated San Martin area is a rural style system of inlets, ditches, swales, culverts, discharge points, and creeks that ultimately drain to tributaries of the Pajaro River, and then to Monterey Bay.

Flooding. According to the Q3 GIS dataset produced by the Federal Emergency Management Agency (FEMA) based on Flood Insurance Rate Maps (FIRM), the area of the Proposed Incorporation contains approximately 1,100 acres of land that reside within a delineated 100-year flood plain. As a result, portions of the Project area are currently at risk of flooding during a 100-year storm intensity.

Water Quality. Water quality data for other streams in the valley are limited and vary according to land use in the surrounding watershed. For example, in areas where agricultural uses are adjacent to a stream, runoff into the stream likely contains sediments and contaminant nutrients (from fertilizers, pesticides, and livestock). In areas characterized by urban development (residential, commercial, and industrial uses, roadways, parking lots, and landscape areas), runoff likely contains elevated levels of oil, grease, nutrients, sediments, and heavy metals.

Groundwater. The Project is situated at the northern end of the Llagas groundwater subbasin, which occupies a northwest trending structural depression. The subbasin extends from the groundwater divide at Cochran Road near the town of Morgan Hill in the north to the Pajaro River in the south (DWR, 2006). The dominant geohydrologic feature is an inland valley that is drained to the south by tributaries of the Pajaro River, including Uvas and Llagas Creeks.

The water-bearing formations of the Llagas subbasin include Pliocene to Holocene age continental deposits of unconsolidated to semi-consolidated gravel, sand, silt and clay (DWR 2006). These include the Santa Clara Formation and the valley fill materials (alluvial and alluvial fan deposits) which

constitute the principal water producing formations (DWR 2006). The depth of alluvial fill and the underlying Santa Clara Formation varies from about 500 feet at the northern divide to greater than 1,000 feet at its south end. The Purissima Formation underlies the southern end of the subbasin beneath the younger alluvial deposits. The SCVWD estimates the operational storage capacity of the Llagas subbasin to be between 150,000 and 165,000 acre-feet (af) (SCVWD UWMP, 2005).

Recharge to the Llagas subbasin occurs from a variety of sources: natural recharge from streams, principally Uvas and Llagas Creeks; percolation of precipitation and surplus irrigation waters; seepage along canals; subsurface inflow; and artificial recharge (DWR 2006). A number of artificial recharge facilities enhance natural recharge to the Llagas subbasin including the Madrone Channel, Main Ave Percolation Ponds, and a number of percolation ponds along Uvas and Llagas Creeks. Recharge within the Llagas subbasin is estimated to range from 7,000 to 31,000 af per year and averages 19,000 af per year (DWR 2006).

Groundwater Impairments. The Santa Clara Valley Water District (SCVWD) created a Nitrate Management Program in October 1991 to investigate and remediate increasing nitrate concentrations in the Llagas subbasin (DWR 2006). Since 1997 more than 600 wells in south Santa Clara County including the Llagas and Coyote sub basins have been tested for nitrate. More than half exceed the federal safe drinking standard for nitrate (DWR 2006). It is important to note however that these nitrate concentrations in excess of federal standards were found only in private wells, all public wells within the county meet drinking water standards (DWR 2006).

In addition to nitrate concerns, the SCVWD-led Perchlorate Working Group Cleanup—a partnership of the Santa Clara Valley Water District, the cities of Morgan Hill and Gilroy, and Santa Clara County—was developed to in response to perchlorate contamination within the local aquifer. The strategy includes several remedial measures by Olin Corp., whose former road flare-manufacturing firm in south Morgan Hill is responsible for the contamination. The strategy proposes containment of a 10-mile-long plume of perchlorate stretching from south Morgan Hill to the border between Santa Clara and San Benito counties, long-term replacement of the community's water supply, and a cost-recovery plan for the Water District and City of Morgan Hill, which have spent nearly \$5 million to clean up perchlorate. The State Water Resources Control Board (SWRCB) adopted Order WQ 2005-0007 (Order) on May 19, 2005, which amends the Central Coast RWQCB's Cleanup or Abatement Order No. R3-2004-0101 (CAO R3-2004-0101) to establish a perchlorate trigger level at which Olin Corporation is required to supply alternative water to affected well owners, conduct groundwater cleanup, and provide well-water treatment. Existing elevated concentrations of perchlorate have been detected in the Llagas subbasin beneath the San Martin area.

Regulatory. The County currently has Clean Water Program that provides services that include complaint investigation, annual report writing, annual work plan writing, coordinating staff education, coordinating public outreach, and providing liaison and guidance to County departments. Local responsibility for the drainage systems is coordinated as follows:

- (a) The County Department of Roads and Airports maintains the storm drainage inlets, ditches, swales, culverts, and discharge points in the road right of ways.
- (b) The Santa Clara Valley Water District (SCVWD) maintains the creeks in areas where it has fee title ownership, a right-of-way, or an easement. For areas outside the SCVWD jurisdiction, private property owners are responsible for creek maintenance and regulatory compliance on their own property.
- (c) The County Clean Water Program is responsible for reporting on NPDES Permit compliance. The south county unincorporated area, including the proposed area of the Proposed Incorporation, has a Phase II NPDES Storm Water Discharge Permit application that has been pending before the Central Coast Regional Water Quality Control Board (CC-RWQCB) staff

since March 10, 2003. The permit application may receive final review and may be issued at any time, depending on CC-RWQCB staff workload.

The applicable policy framework for this Initial Study discussion topic is contained in the County's General Plan as shown in **Appendix C** of this Initial Study and will be carried forward and adopted by the Town upon incorporation:

SCVWD Groundwater Management Plan 2001. The goal of the SCVWD's groundwater management program is to ensure that local groundwater resources are sustained and protected. Groundwater management encompasses activities and programs that prevent contamination, identify and mitigate contamination threats to the groundwater basin, replenish and recharge groundwater supplies, prevent groundwater overdraft and land subsidence, and sustain storage reserves. District programs to sustain and protect groundwater resources, are described in detail in the District's Groundwater Management Plan of 2001.

IMPACT DISCUSSION

Would the project:

a.) *Violate any water quality standards or waste discharge requirements?*

Less than Significant Impact. According to a July 18, 2007 letter provided to LAFCO by the County's Planning and Development Department (which is responsible for implementing the County's Clean Water Program), unincorporated County lands including the area of the Proposed Incorporation are currently included within a pending Phase II NPDES Storm Water Discharge Permit application before the Central Coast RWQCB. With the approval of the Project, the Town would be required to become a signatory as a co-permittee and would be responsible for the initial cost of writing and submitting a Storm Water Management Plan to the RWQCB in order to comply with the NPDES Phase II Permit. In addition, the Town would be required to pay the annual NPDES Permit fee and for staff resources associated with the implementation of the County's Clean Water Program. The Town would have the option to provide NPDES compliance services and activities directly, contract for them, or use a combination approach. Given that compliance with the Permit will be required once adopted per State and Federal law, the act of incorporation is not expected to result in violations of water quality standards and/or waste discharge requirements. Because of the potential learning curve required to get up to speed in implementing the new program by this Town, this is a Less than Significant Impact.

b.) *Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?*

No Impact. Incorporation of the area of the Proposed Incorporation is not expected to result in any direct increase in groundwater consumption. Similar to existing conditions, the SCVWD would continue to actively manage its conjunctive water use program to optimize the use and management of local water supply sources, including groundwater. Conjunctive use management is an important tool that allows the groundwater basin to be pumped more in drier years and then replenished (or recharged) during wet and average years. A portion of the SCVWD's surface water supplies would continue to be banked in local sub basins through managed recharge so that groundwater can be withdrawn, when needed. The conjunctive use program would also continue to help protect the local groundwater basin from overdraft, land subsidence, and saltwater intrusion and provide critical groundwater storage reserves for use during droughts or outages. In addition to existing conjunctive use activities, the SCVWD has also identified the following strategies as part of its integrated water resources planning (IWRP) process related to groundwater to ensure the long-term protection of this key component of the District's water supply.

Expand Groundwater Recharge Capacity. Implement the “No Regrets” Portfolio for near-term reliability. This includes 20,000 af/year of additional groundwater recharge capacity, consisting of approximately 13,000 af/year in South County and 7,000 af/year in North County.

Aggressively Protect and Sustain Groundwater Resources. The District relies on groundwater for a significant portion of its water supply. Continuation of the District’s proactive groundwater management programs is critical to sustaining and protecting groundwater resources from land subsidence and contamination.

Expand Conjunctive Water Management. The local groundwater sub basins provide an emergency reserve for droughts or outages. Development of additional facilities must be undertaken to better utilize this resource during emergencies, particularly outages to the treated water system.

Safeguard existing supplies. Sustain water supplies and infrastructure by maintaining and protecting the local groundwater sub basins.

With no changes proposed in relation to the SCVWD’s existing conjunctive use program and a continuation of existing land use as part of the Project, the proposed incorporation is not expected to result in increased depletion of existing groundwater supplies or interfere substantially with groundwater recharge. In this context, it is reasonable to conclude that the Project would not directly lead to increased rates of groundwater pumping, which could not support existing or planned land uses within the Project area.

c.) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on- or off-site?

No Impact. The Project involves no new physical alterations to existing land surfaces and waterways. In this context, it is reasonable to conclude that the Project would not substantially alter existing drainage patterns nor would it require the alteration of a stream or river course in a manner that could result in substantial erosion or siltation either on- or off-site.

d.) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site? (Note policy regarding flood retention in watercourse and restoration of riparian vegetation for West Branch of the Llagas.)

No Impact. The area of the Proposed Incorporation includes approximately 1,100 acres of land within the FEMA-designated 100-year flood plain. As previously indicated, the Project involves no new development that would result in alterations to existing drainage patterns. In addition, the Project would involve the adoption of the County General Plan, zoning ordinance and land use regulations which currently discourage urban-forms of development within delineated floodplains. As a result, it is reasonable to conclude that the Project would not result in substantial increases in the rate and amount of new surface runoff in a manner that would result in flooding within or outside the Project area.

e.) Create or contribute increased impervious surfaces and associated runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?

Less than Significant Impact. The Project does not involve any new forms of development that would create or contribute to increased impervious surfaces and associated runoff water, which would exceed the capacity of existing or planned stormwater drainage systems. In addition, the new Town will be subject the RWQCB’s NPDES Phase 2 requirements, which requires the preparation of a SWMP and, therefore, it is reasonable to conclude that compliance with the SWMP would ensure that the Project

does not indirectly lead to substantial additional sources of polluted runoff. However, because of the potential learning curve required to get up to speed in implementing the new program by this Town, this is a Less than Significant Impact.

f.) *Otherwise substantially degrade water quality?*

No Impact. Given that the Project would not involve any direct impacts to water quality (e. g. construction-related erosion, use of industrial chemicals, etc.) or any reasonably foreseeable indirect impact, the Project would not otherwise substantially degrade existing water quality.

g.) *Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?*

No Impact. The Project will retain existing County General Plan land use designations and zoning ordinance provisions and, therefore, would not result in the construction or placement of new housing within delineated 100-year floodplains. Consequently, no impact is expected.

h.) *Place within a 100-year flood hazard area structures that would impede or redirect flood flows?*

No Impact. The Project will retain existing County General Plan land use designations and zoning ordinance provisions and, therefore, would not result in the placement of any structures within a waterway or a designated 100-year flood hazard area structures.

i.) *Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?*

No Impact. No significant dam impoundments are located up-stream of the Project area. The Project would not encroach into an existing levee structure.

j.) *Be located in an area of special water quality concern (e.g., Los Gatos or Guadalupe Watershed)?*

Less Than Significant Impact. The Project will retain existing County General Plan land use designations and zoning ordinance provisions, but is located within an area of special water quality concern in relation to nitrate and perchlorate groundwater contamination. However, these sources of contamination are part of the existing condition and the Project is not expected to impede efforts to address these existing issues. However, because of the existing groundwater contamination and on-going remediation efforts, this is a Less than Significant Impact.

k.) *Be located in an area known to have high levels of nitrates in well water?*

Less Than Significant Impact. As previously indicated, the Project area includes pre-existing nitrate groundwater contamination as a result of the application of agricultural fertilizers within the Valley. However, the Project is not expected to result in the increased application of nitrogen-based fertilizers nor would it obstruct current efforts to address the pre-existing contamination. However, because of the existing groundwater nitrate contamination, this is a Less than Significant Impact.

l.) *Result in a septic field being constructed on soil where a high water table extends close to the natural land surface?*

No Impact. The Project will retain existing County General Plan land use designations and county ordinance provisions and does not involve the construction of a septic system and/or disposal field.

m.) Result in a septic field being located within 50 feet of a drainage swale; 100 feet of any well, water course or water body or 200 feet of a reservoir at capacity?

No Impact. The Project will retain existing County General Plan land use designations and county ordinance provisions and does not involve the construction of a septic system and/or disposal field.

I. LAND USE				
WOULD THE PROJECT:	IMPACT			
	YES			NO
	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

SETTING

Existing Land Use. San Martin is a rural residential community which is characterized by a unique rural identity. The community of San Martin has been the subject of several incorporation efforts in the past with much of the impetus on a desire for more direct local control of land use and planning decisions. Proponents have stated that their intent is to maintain the rural residential character of the community after incorporation. The County's current General Plan generally states that in order to best preserve future options for the San Martin community and environs, San Martin should remain a rural community, predominantly non-urban and residential in nature.

Santa Clara County Land Use Designations. The Santa Clara County General Plan designates land uses within the Project area as shown in **Exhibit 5.3**. County General Plan Land Use designations identified within the Project area include Agriculture Medium Scale, Hillsides, Major Public Facilities, Other Public Open Lands, Ranchlands, Regional Parks, Existing Roadside Services, Transportation, and Rural Residential. Additional descriptions for each of the General Plan Land Uses are identified below:

The County General Plan states that lands designated as *Agriculture* include those having Class I, II, and III soils which generally have been in agricultural production and where agricultural uses are most appropriate. The Project area includes approximately 1,004 acres of land designated Agriculture Medium Scale, the majority of it is located in the area north of Middle Avenue. The Agriculture-Medium Scale land use designation requires that minimum parcel sizes shall be no less than 20 acres.

According the County General Plan policy R-LU 16, the *Hillsides* land use designation applies to mountainous lands and foothills unsuitable and/or unplanned for annexation and urban development. Policy R-LU 18 further states that all allowable uses must be consistent with the basic intent of the 'Hillside' designation. In this context, the range of allowable uses shall be limited to: a. agriculture and grazing; b. mineral extraction; c. parks and low-density recreational uses and facilities; d. land in its natural state; e. wildlife refuges; f. very low density residential development; and/or g. commercial, industrial, or institutional uses, which by their nature 1) require remote, rural settings; or 2) which support the recreational or productive use, study or appreciation of the natural environment. Preliminary

estimates indicate that the Project area includes approximately 2,510 acres of land designated as Hillside located on the western side of the proposed boundary consisting of the Cordevalle Golf Course and residential development and the Hayes Lane large lot residential subdivision.

According to the General Plan Policy R-LU 72, the *Major Public Facilities* designation is applied to County government centers, United States government lands used for defense and other research installations, and other large scale facilities of the state, federal or local governments. This designation applies to approximately 20 acres within the area of the Proposed Incorporation.

Based on a review of General Plan Policy R-LU 53, the *Other Public Open Lands* designation is applied to lands in Open Space, which are owned by various public agencies for purposes other than public parks and general recreational use. Approximately 59 acres of land within the proposed area of the Proposed Incorporation are under this designation and are owned by the Santa Clara Valley Water District.

The proposed area of the Proposed Incorporation contains approximately 356 acres of land designated as *Ranchlands*. According to General Plan Policy R-LU 35 Ranchlands are predominantly used as ranches in rural unincorporated areas of the county, remote from urbanized areas and generally less accessible than other mountain lands. Important resources include reservoir watersheds for regional water supply, grazing lands, mineral resources, forests and wildlife habitat, rare or locally unique plant and animal communities, historic and archeological sites, and recreational and scenic areas of importance that also serve to define the setting for the urban areas.

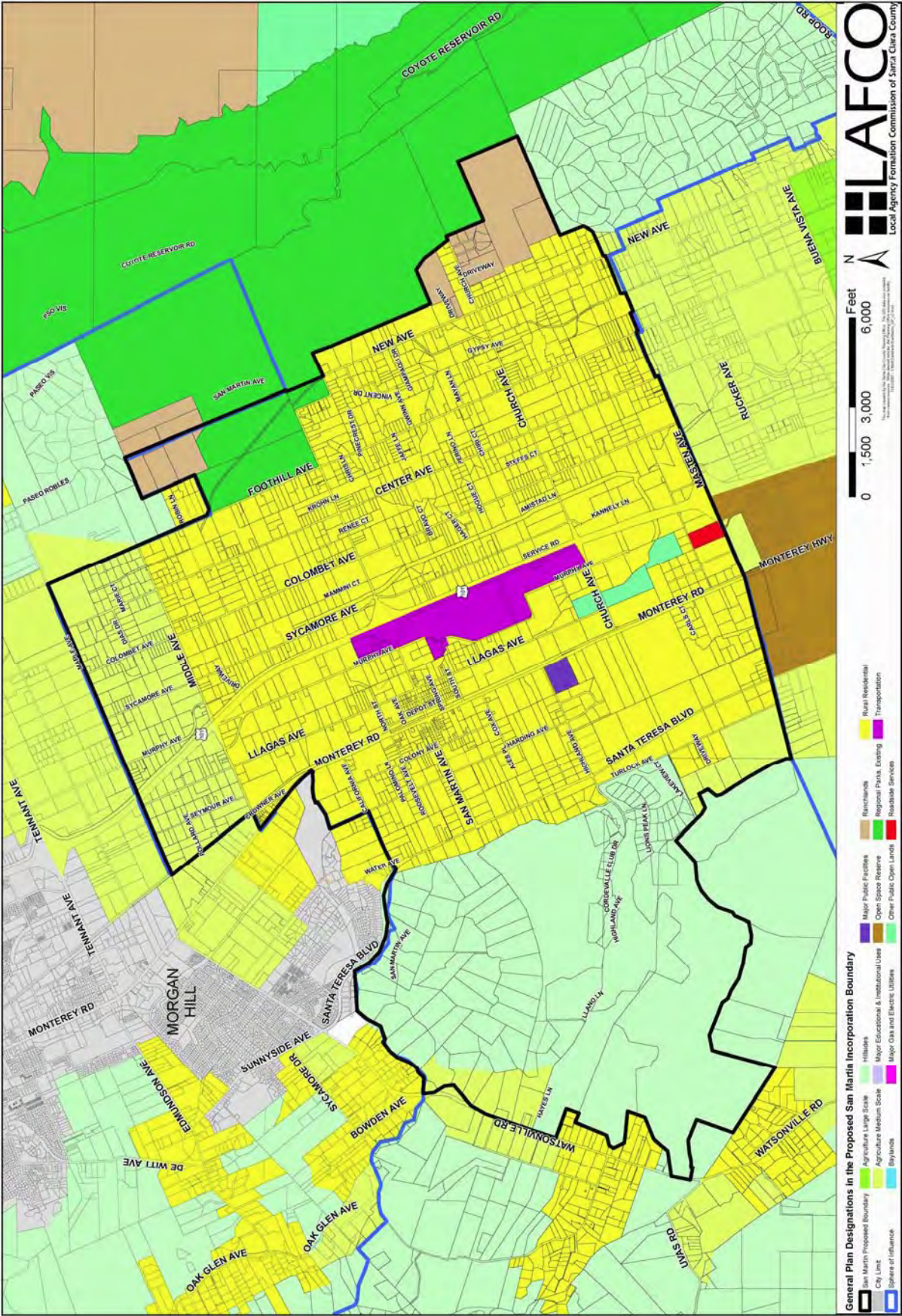
The *Regional Parks* designation is applied to parklands administered by the County, Cities, State of California, and United States government agencies which serve a region-wide population. According to Policy R-LU 52, policies pertaining to these lands are outlined in the Parks and Recreation chapter of the General Plan. Approximately 253 acres of land within the Project area are currently under this designation and are part of the Coyote Lake Harvey Bear Ranch County Park.

The *Roadside Services* General Plan designation is applied to approximately 14 acres and intended for a limited number of private facilities and businesses that serve the motoring public in dispersed locations. According to Policy R-LU 82, the number, type, and location of roadside services shall be limited in order to: a) protect scenic and environmental resources; b) prevent traffic hazards on rural roads; c) exclude uses which should more appropriately be located in cities; d) prevent strip commercial development; e) minimize demands for the provision of urban services in rural areas; and f) avoid incompatibilities with adjacent land uses. Allowable uses within this designation include: a) restaurants; b) motels; c) recreational facilities which require a rural setting; d) wine tasting rooms; e) farmers markets; and f) gas stations.

According to County General Plan Policy R-LU 56, the *Rural Residential* designation applies to lands outside of city Urban Service Areas where: a) there is an established pattern of small, primarily developed parcels assembled in aggregations large enough to be considered more than simple clusters of rural development; b) residential density generally exceeds one dwelling unit in ten acres; c) the use of the land is primarily for residential purposes; and d) the land that is not planned by cities for future inclusion in Urban Service Areas. This designation accounts for the largest fraction of acreage within the Project area, totaling approximately 6,024 acres. The density of development for lands designated Rural Residential within the San Martin Area is determined by the "5-20 acre variable slope density formula."

The *Transportation Facilities* designation is applied to airports, bus facilities, and storage yards for road maintenance equipment and supplies. The Project area includes approximately 233 acres of this designation with a majority of the land comprising the South County Airport.

Regulatory. The applicable policy framework for this Initial Study discussion topic is contained in the County's General Plan as shown in **Appendix C** of this Initial Study and will be carried forward and adopted by the Town upon incorporation.



LAFCO
 Local Agency Formation Commission of Santa Clara County

IMPACT DISCUSSION

Would the project:

a.) *Physically divide an established community?*

No Impact The proposed boundary is consistent with the sphere of influence of the adjacent cities of Morgan Hill and Gilroy and includes all of the unincorporated lands in between the sphere of influence of the two cities. The proposed incorporation will not physically divide an established community. On the contrary, the proposed boundary includes areas that are outside of the *San Martin Planning Boundary* as delineated by the County of Santa Clara and areas that are outside of the US Census' San Martin Census Designated Place.

b.) *Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?*

Less than Significant Impact. Since the County's Zoning Ordinance will be adopted by the new Town, land use entitlements, which have active conditions of approvals and mitigation measures associated with them, must be enforced by the new Town in accordance with the ordinances. The County Zoning Ordinance lays out the process for modifying the permit approval. Because of these requirements, no new environmental impacts associated with the potential alteration of previously adopted mitigation measures and conditions of approval for the project area are anticipated as a result of incorporation.

The Santa Clara County General Plan and the South County Joint Area Plan include policies to avoid environmental effects such as to avoid encroachment into agricultural land and to minimize land use conflicts between agricultural and urban land uses. The County General Plan and the Zoning Ordinance would be adopted by the new city and no changes in land use or service levels are included as part of this proposed project. The town upon incorporation would have the land use jurisdiction to designate future land uses and would have the authority to provide urban type services to lands within its boundaries even though the stated objective of the incorporation is to maintain the rural residential character of the town.

Any changes that involve conversion of farmlands to non-agricultural uses or that involve provision of new urban services and result in more intensive development could affect adjacent agricultural lands located outside the proposed city's boundaries. However, it is premature and speculative at this time to predict the potential future legislative actions of the new town council. Any such changes if and when they are proposed, will be subject to CEQA and the environmental analysis for those actions will be conducted by the new town at that time.

J. NOISE				
WOULD THE PROJECT:	IMPACTS			
	YES			NO
	<u>Potentially Significant Impact</u>	<u>Less Than Significant With Mitigation Incorporated</u>	<u>Less Than Significant Impact</u>	<u>No Impact</u>
a) Result in exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan referral area or, where such a plan has not been adopted, within two miles of a public airport or public use airport, or private airstrip would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SETTING

Environmental noise is usually measured in A-weighted decibels (dBA). Environmental noise typically fluctuates over time, and different types of noise descriptors are used to account for this variability. Typical noise descriptors include the energy-equivalent noise level (Leq), the daynight average noise level (Ldn), and the Community Noise Equivalent Level (CNEL). The Ldn and CNEL are commonly used in establishing noise exposure guidelines for specific land uses such as airports. In general, a change of 3 dBA is a noticeable change, and a change of 10 dBA is perceived as a doubling of noise.

CEQA does not define what noise level increase would be considered substantial and as general practice, this determination is made by the Lead Agency based on the provisions contained in the Noise Element of their adopted General Plan. Typically, in high noise environments, if the Ldn due to the project would increase by more than 3 dBA at noise sensitive receptors, the impact is considered significant. Where the existing noise level is lower, a somewhat higher increase (i.e., 5 dBA) can be tolerated before the impact is considered significant.

The County of Santa Clara has adopted a Noise Element as part of the General Plan and has an adopted noise ordinance which will be transferred to the new Town upon incorporation. The guidelines contained in the Noise Element of the Santa Clara General Plan state that a new project should not create noise levels which cause the Ldn at the nearest residential and open space noise sensitive receptors to exceed 55 dBA. Therefore, if noise levels generated by the project could cause the Ldn at the nearest residential and open space noise sensitive receptors to exceed 55 dB, the impact would be considered significant. In instances where the project involves the development of a school, library,

church, or hospital, a noise level of up to 60 dBA Ldn is considered satisfactory (County of Santa Clara, 1994).

IMPACT DISCUSSION

Would the project:

a.) *Result in exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?*

No Impact. The Project would not directly authorize the development of new noise-sensitive land uses. Existing sensitive receptors in the vicinity of the Project area would not experience any changes to the ambient noise environment as a result of the Project when compared to those permitted by existing General Plan and zoning ordinance provisions. Additionally, as described in Section 1, the Project would involve the adoption of all County policies related to noise and associated ordinances. As a result, the Project would not expose people to noise levels in excess of standards established in the local general plan or noise ordinance.

b.) *Result in exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?*

No Impact. The Project does not entail any ground disturbance or construction activity. As a result, the Project would not expose existing residences or structures to excessive groundborne vibration or groundborne noise levels.

c.) *Result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?*

No Impact. The Project involves no change in existing land use within the area of the Proposed Incorporation as compared to those permitted by existing General Plan and zoning ordinance provisions. As a result, it is reasonable to conclude that the Project would not result in a substantial permanent increase in the ambient noise environment.

d.) *Result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?*

No Impact. As previously indicated, the Project would not involve any construction activities or permanent structures that could result in a substantial temporary or periodic increase in ambient noise levels.

e.) *For a project located within an airport land use plan referral area or, where such a plan has not been adopted, within two miles of a public airport or public use airport, or private airstrip would the project expose people residing or working in the project area to excessive noise levels?*

No Impact. The Project would involve no operational changes at the South County Airport. As a result, the Project would not increase the exposure of people residing or working within the vicinity of the Airport to noise levels in excess of those already permitted by existing General Plan and zoning ordinance provisions.

K. POPULATION AND HOUSING				
WOULD THE PROJECT:	IMPACT			
	YES			NO
	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Induce substantial growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace substantial numbers of existing housing or people, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SETTING

The California Department of Finance estimates the 2005 population of the County of Santa Clara to be 1,759,585. In the 10 years between 1990 and 2000, the population of the County increased from 1,497,577 to 1,682,585, a total of 12.4 percent (County MSR, 2005). During the same 10-year period, the housing stock increased from 540,240 to 579,329 units. To the south of the Project area, the City of Gilroy has grown by 28 percent over the last decade from 31,487 residents in 1990 to 40,150 residents in 2000. Comparatively, the City of Morgan Hill has realized a 38 percent growth in population over the same 10-year period, from 23,928 in 1990 to 33,100 in 2000.

Growth Inducement Defined. The CEQA Guidelines (Section 15126.2 [d]) require that a Lead Agency consider whether a proposed project would have growth inducing effects. The CEQA Guidelines stipulate that such effects may be either direct or indirect. A proposed project could directly stimulate construction of new housing, population increases, and/or increases in employment in the vicinity of the project site itself. A proposed project could also induce growth by removing constraints; for example, a project that would substantially expand a major wastewater treatment plant might induce additional construction within the plant's service area. According to the CEQA guidelines, it must not be assumed that growth inducement in itself is "necessarily beneficial, detrimental, or of little significance to the environment" (CEQA Guidelines Section 15126.2[d]). Rather, it is the changes in environmental conditions caused by induced growth that have the potential to result in impacts, whether adverse or beneficial and significant or not. For example, a proposed project might induce population growth that requires construction of new community and public facilities, it is the construction and operation of the new facilities that could result in adverse environmental effects, perhaps to sensitive biological resources or water quality.

Growth inducement may constitute an adverse impact if the growth is not consistent with or accommodated by the land use plans and growth management plans and policies for the area affected. Local land use plans provide development patterns and growth policies that guide orderly urban development supported by adequate urban public services, such as water supply, roadway infrastructure, sewer services, and solid waste services. A project that would induce "disorderly" growth (i.e., conflict with the local land use plans) could directly or indirectly cause additional adverse environmental impacts and other public services impacts. An example of this would be the redesignation of property planned for agricultural uses to urban uses, possibly resulting in the development of services and facilities that encourage the transition of additional land in the vicinity to

more intense urban uses. Another example would be the extension of urban services to a non-urban site, thereby encouraging conversion of non-urban lands to urban lands.

IMPACT DISCUSSION

Would the project:

a.) Induce substantial growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

No Impact. The proposed incorporation of the Town of San Martin does not involve any change to the existing land use or to the County General Plan or Zoning ordinance which would transfer to the Town upon incorporation. The proposed project does not involve any new development or provision of any new urban services. Therefore there is no direct growth inducing impact. The Town upon incorporation, would have the land use jurisdiction to designate future land uses and would have the authority to provide urban type services within its boundaries that could have growth inducing impacts. However, it is not possible for CEQA analysis purposes to predict the new city's actions or forecast the actual effects of the actions as it would be premature and speculative at this time. Moreover, any such future city actions will require further CEQA analysis by the new city prior to adoption.

b.) Displace substantial numbers of existing housing or people, necessitating the construction of replacement housing elsewhere?

No Impact. The Project would not involve the physical removal of any existing residential or commercial structures. In this context, it is reasonable to conclude that the Project would not displace substantial numbers of existing housing or people, necessitating the construction of replacement housing elsewhere.

L. PUBLIC SERVICES				
WOULD THE PROJECT:	IMPACT			
	YES			NO
	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
i) Fire Protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Police Protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii) School facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
v) Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SETTING

The following section describes the proposed plan for municipal services which identifies those municipal services that will be provided by the new Town of San Martin, and those municipal services that will continue to be provided by other agencies after incorporation.

Administrative Services

Administrative and general government services are currently provided by the County of Santa Clara. After incorporation, the Town of San Martin will assume responsibility for administrative services, including hiring a City Manager, and all other positions as required by law.

Airport

The Project Area includes the South County Airport which is owned in fee by the County of Santa Clara. The day-to-day operation and management of the Airport is the responsibility of the County's Roads and Airports Department. Policy decisions affecting the Airport are made by the five-member Board of Supervisors. The Santa Clara County Airports Commission serves in an advisory capacity to the Board of Supervisors and staff on matters involving County-managed airports. After incorporation, the South County Airport will continue to be owned and operated by the County of Santa Clara.

Animal Control

Animal control services are currently provided by the Santa Clara County Animal Care and Control Department. After incorporation, the Town of San Martin will either have to provide these services or contract with the County or another city or agency for these services

Building Inspection

Building inspection services are currently provided by the County of Santa Clara. After incorporation, the Town of San Martin will be responsible for provision of these services. The new town may choose to contract these services out to the County or other cities or provide them directly.

Fire Protection and Paramedics

The proposed Town of San Martin will continue to be served by the South Santa Clara Fire Protection District which contracts with California Department of Forestry (CDF) for fire protection services and staffing. At present, there are no fire stations in San Martin. The closest fire stations are at 15670 Monterey Road, Morgan Hill and at 10810 No Name Uno Road, Gilroy. Paramedic and ambulance services will continue to be provided by American Medical Response (AMR). No change is proposed after incorporation.

Land Use and Planning Services

Land use, planning and environmental services are currently provided by the County of Santa Clara. After incorporation, the Town of San Martin must provide these services either directly or may choose to contract with the County or another city or a private consultant for these services.

Law Enforcement

Law enforcement is currently provided by the County of Santa Clara Sheriffs Department with an office at 80 Highland Avenue, San Martin. Traffic enforcement is the responsibility of the California Highway Patrol. After incorporation, the City of San Martin will either establish its own police department or contract with the County of Santa Clara Sheriffs Department to provide law enforcement services. The new town, or contracted agency, will be responsible for traffic enforcement on city streets after incorporation.

Library

Currently public library services are provided by the Santa Clara County Library, a library JPA and are funded through a Community Facilities District. There are no libraries in San Martin. Nearby libraries are located in Morgan and Gilroy. After incorporation, the County Library will continue to provide this service.

Lighting

The County Lighting Service Area provides lighting services to small non-contiguous unincorporated areas within the proposed incorporation boundaries. After incorporation, the area within the County Lighting Service Area will remain within the CLSA provided specific findings are made by LAFCO.

Mosquito and Vector Control

Mosquito and Vector Control services are currently provided by the Santa Clara County Vector Control District. After incorporation, the District will continue to provide these services.

Parks and Recreation

There are no local parks and recreation areas in San Martin except for a small portion of the Coyote Lake - Harvey Bear Ranch County Park operated by the Santa Clara County Parks and Recreation Department. On February 6, 2008, LAFCO made a preliminary decision on the preferred boundary for the proposed incorporation. Part of LAFCO's preliminary decision was to exclude Area 1, which includes lands within the Coyote Lake – Harvey Bear Ranch County Park, from the proposed incorporation boundary (see Exhibit ?). After incorporation, it is expected that the new Town will become responsible for future park and recreation services within the Town. The County Park will continue to be operated and owned by the County. In January 2004, the County adopted the Coyote Lake- Harvey Bear Ranch County Park Master Plan. At this time, no new park and recreation services are planned within the Town.

Road Maintenance, Engineering, Drainage

These services are currently provided by the County of Santa Clara. The County Roads and Airports Department has a maintenance facility at 13600 Murphy Avenue, San Martin. After incorporation, the

City of San Martin will be responsible for these services. Some of these services may be contracted out to either government or private entities.

Schools

The San Martin Gwinn Elementary School, at 100 North Street, is the only public school in San Martin and is part of the Morgan Hill Unified School District. The majority of San Martin, north of Church Avenue, is part of the Morgan Hill Unified School District and the southern part of San Martin, south of Church Avenue, is part of the Gilroy Unified School District. After incorporation, school district boundaries will not change. School district boundaries and administration are managed by the County Board of Education and area not subject to city/ LAFCO control.

Transit and Paratransit

Transit and paratransit bus and van service in San Martin is currently provided by the Santa Clara Valley Transportation Authority (VTA). The VTA is part of the Peninsula Corridor Joint Powers Board that provides Caltrain train service to San Martin. After incorporation, it is expected that transit service will remain the same.

IMPACT DISCUSSION

Would the project:

i.) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

a.i) Fire Protection?

No Impact. The South Santa Clara County Fire Protection District currently provides fire protection services to the Project area with three fire district stations serving the area of the Proposed Incorporation. Following the Proposed Incorporation, fire protection services would continue to be provided by the South Santa Clara Fire Protection District. In addition, the Project would not create new residential or commercial development that could adversely impact existing fire protection service ratios, response times, or other performance objectives.

a.ii) Police Protection?

No Impact. Following the Proposed Incorporation of San Martin, the Town would either contract with the County Sheriff's Department or a city police department for law enforcement service or establish its own police department. Based on this arrangement, the Project is not expected to result in substantial adverse physical impacts associated with the provision of law enforcement services.

a.iii) School facilities?

No Impact. The Proposed Incorporation does not involve any new growth that has not already been included in the existing County General Plan. As a result, the Project is not expected to generate a substantial number of new students and, therefore, no impact is expected.

a.iv) Parks?

No Impact. The Project would not generate a substantial number of new residences which could be potentially underserved by existing park facilities.

a.v) *Other public facilities?*

No Impact. No Library facilities are currently located within San Martin. However, nearby libraries operated by the County Library Department in the cities of Morgan Hill and Gilroy would continue to provide library services to the Project area following the incorporation.

M. RECREATION AND MINERAL RESOURCES				
WOULD THE PROJECT:	IMPACT			
	YES			NO
	<u>Potentially Significant Impact</u>	<u>Less Than Significant With Mitigation Incorporated</u>	<u>Less Than Significant Impact</u>	<u>No Impact</u>
a) Result in the loss of availability of a known mineral resource that would be of future value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally-important mineral resource recovery site as delineated on a local general plan, specific plan, or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Be on, within or near a public or private park, wildlife reserve, or trail or affect existing or future recreational opportunities?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Result in loss of open space rated as high priority for acquisition in the "Preservation 20/20" report?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SETTING

Parks. The proposed area of the Proposed Incorporation includes and/or is adjacent to several existing recreational areas. These facilities include Coyote Lake-Harvey Bear Ranch County Park, Chesbro Reservoir County Park, Chitactac-Adams Heritage County Park, Uvas Creek Park Preserve, and Uvas Reservoir. In addition, the Countywide Trails Master Plan identified several trail routes that are planned to serve the Project area:

- Juan Bautista de Anza National Historic Trail (R1-A)
- Juan Bautista de Anza National Historic Trail Northern California Bicycle Retracement Route (Regional Trail Route) (R1-A bike)
- Benito-Clara Regional Trail (R-3)
- Coyote Creek/Llagas Creek Sub-regional Trail (S-5)
- Morgan Hill Cross-Valley Sub-regional Trail (S-7)
- San Martin Cross Valley Connecting Trail (S-8)
- South Valley/San Martin Connecting Trail (C-27)
- Buena Vista Day Connector (C-31)
- West Valley Sub-regional Trail Route (S6)

Regulatory. The applicable policy framework for this Initial Study discussion topic is contained in the County's General Plan as shown in Appendix C and will be carried forward and adopted by the Town upon incorporation:

Mineral Resources. The California Geological Survey (CGS) classifies the regional significance of mineral resources in accordance with the California Surface Mining and Reclamation Act of 1975 (SMARA). Mineral Resource Zones (MRZ) have been designated to indicate the significance of mineral deposits. The MRZ categories are as follows:

- MRZ-1: Areas where adequate information indicates that no significant mineral deposits are present or where it is judged that little likelihood exists for their presence.
- MRZ-2: Areas where adequate information indicates significant mineral deposits are present, or where it is judged that a high likelihood exists for their presence.
- MRZ-3: Areas containing mineral deposits the significance of which cannot be evaluated from available data.
- MRZ-4: Areas where available information is inadequate for assignment to any other MRZ.

No MRZ zones are identified within the area of the Proposed Incorporation.

IMPACT DISCUSSION

Would the project:

a.) *Result in the loss of availability of a known mineral resource that would be of future value to the region and the residents of the state?*

No Impact. The Project would involve the incorporation of unincorporated County lands, which would involve the adoption of the County General Plan and the associated land use diagram. In this context, the Project would not affect existing land use patterns and, therefore, it is appropriate to conclude that the Project would not result in the loss of availability of known classified MRZ-2 by the State geologist that would be of value to the region and the residents of the state.

b.) *Result in the loss of availability of a locally-important mineral resource recovery site as delineated on a local general plan, specific plan, or other land use plan?*

No Impact. As previously indicated, the Project would not involve any changes to existing land use and therefore, as discussed in (a), the Project would be unlikely to result in the loss of availability of a locally important mineral resource deposit.

c.) *Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?*

No Impact. The Project does not involve any new forms of residential development beyond that permitted by the County General Plan and zoning ordinance that would result in an unanticipated increase in the local recreational user populations. In this context, it is reasonable to conclude that the Project would not increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated. If in the future, the new Town considers additional development, impacts to parks and recreational services would be evaluated in the accompanying CEQA analysis.

d.) *Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?*

No Impact. The Project does not include or require the development of any new recreational facilities.

e.) *Be on, within or near a public or private park, wildlife reserve, or trail or affect existing or future recreational opportunities?*

Less than Significant Impact. The Project includes the creation of new Town and, therefore, involves the creation of a new jurisdiction, which would include portions of the Coyote Lake/Harvey Bear Ranch County Park within its boundary. However, on February 6, 2008, LAFCO made a preliminary decision on the preferred boundary for the proposed incorporation. Part of LAFCO's preliminary decision was to exclude Area 1, which includes lands within the Coyote Lake – Harvey Bear Ranch County Park, from the proposed incorporation boundary (see Exhibit ?). Additionally, none of the proposed citywide trail routes have been implemented and there are no trail routes within the road right-of-way that the new City would maintain.

f.) Result in loss of open space rated as high priority for acquisition in the "Preservation 20/20" report?

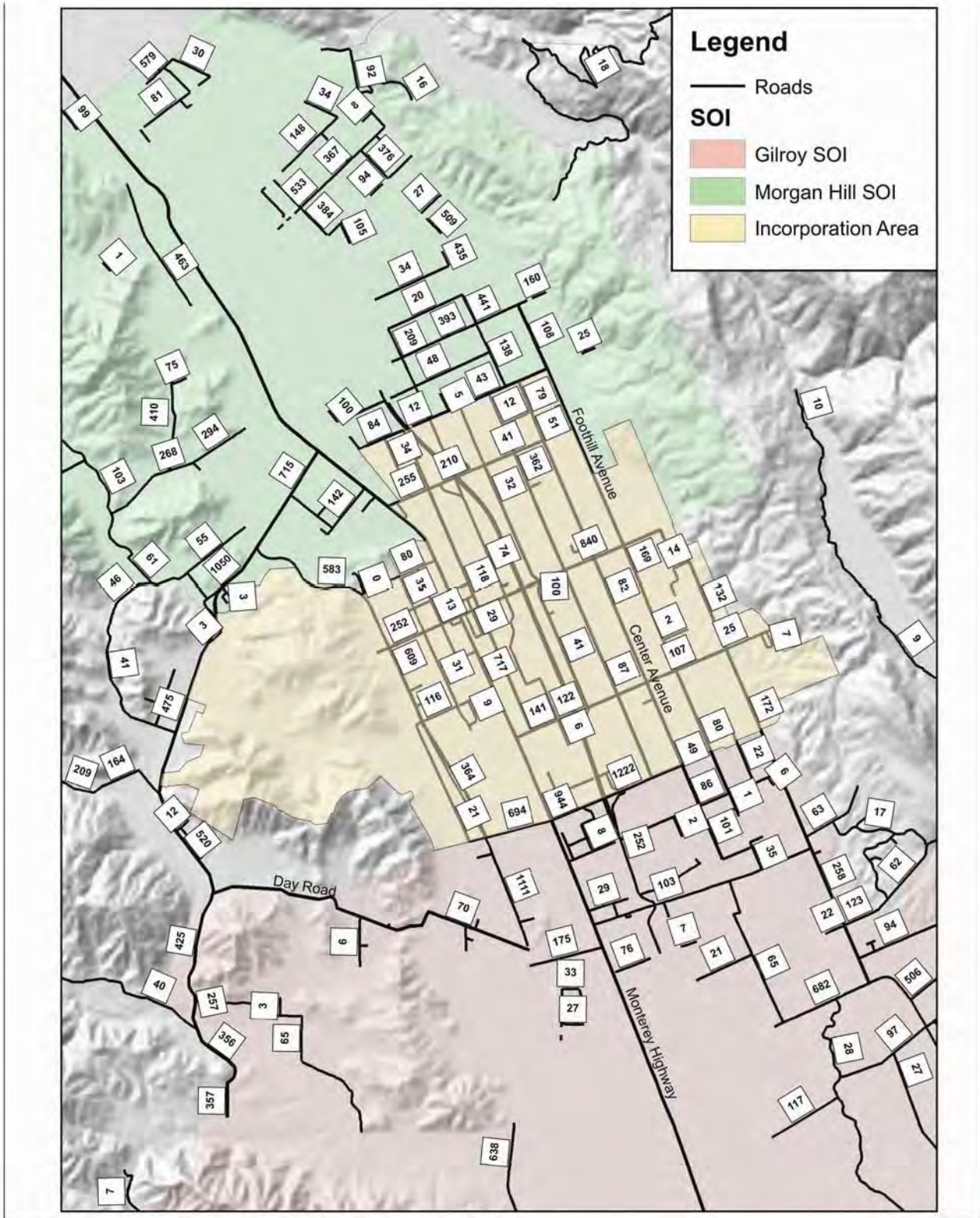
No Impact. The proposed project would not result in loss of open space rated as high priority for acquisition in the "Preservation 20/20" report.

N. TRANSPORTATION / TRAFFIC				
WOULD THE PROJECT:	IMPACT			
	YES			NO
	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio, or congestion at intersections)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Exceed, either individually or cumulatively, a level of service standard established by the County congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Result in inadequate parking capacity?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Not provide safe access, obstruct access to nearby uses or fail to provide for future street right of way?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SETTING

The Project area is served by a roadway network of state highways (including freeways) and county and local roads. Highway 101 serves as the primary north-south regional route to the project area, providing connection north to the San Francisco Bay Area and south to the Salinas Valley and beyond. Highway 101 is a four-lane divided freeway throughout the project area. Other local roadways include Masten Avenue, San Martin Avenue, Sycamore Avenue, Watsonville Road, and Foothill Avenue. Exhibit 5.4 illustrated the existing local road circulation system and traffic counts for various roadway segments and intersections within the area of the Proposed Incorporation.

Regulatory. The applicable policy framework for this Initial Study discussion topic is contained in the County's General Plan as shown in Appendix C of this Initial Study and will be carried forward and adopted by the Town upon incorporation:



Source:



Michael Brandman Associates

32810001 • 10/2007 | 5.2_existing_roads.cdr

Existing Roads and Traffic Counts

SANTA CLARA COUNTY LAFCO • SAN MARTIN INCORPORATION
INITIAL STUDY

IMPACT DISCUSSION

Would the project:

a.) *Cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio, or congestion at intersections)?*

No Impact. Approval of the proposed incorporation is not expected to generate increased traffic in the immediate project area beyond that previously authorized by the provisions of the County General Plan and zoning ordinance. Following the incorporation, traffic volumes would be similar to the existing conditions. As mentioned in Section 1, the Town would adopt the County General Plan, which would result in a general continuation of the existing land use pattern. In this context, the Project is not expected to result in any new traffic with respect to worker trips and/or deliveries to and from the Project Area. As a result, given no change in the existing condition, the Project would not impact existing traffic roadway capacities.

b.) *Exceed, either individually or cumulatively, a level of service standard established by the County congestion management agency for designated roads or highways?*

No Impact. As discussed above in (a), the Project would result in a continuation of the existing land use pattern and, thus, is comparable to existing conditions. In this context, it is reasonable to conclude that with no increases in traffic, the Project would not exceed, either individually or cumulatively, County level of service standards.

c.) *Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?*

No Impact. The Project does not involve use of air transit, nor is it expected to cause any change in air traffic patterns.

d.) *Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?*

No Impact. The Project would not include the design of any roadway improvements.

e.) *Result in inadequate emergency access?*

No Impact. As provided in Section 1, the Project involves no increases in vehicle trips or physical improvements to the roadway system. In this context, the Project would not result in any physical disruptions to existing emergency access.

f.) *Result in inadequate parking capacity?*

No Impact. The Project involves no construction activities and therefore, no additional parking for workers and equipment would be required. In addition, the Project involves no changes in existing land use, which could indirectly require additional parking.

g.) *Conflict with adopted policies, plans, or programs supporting alternative transportation?*

No Impact. As described in Section 1, local transit and para-transit bus and van service is provided by the Santa Clara Transportation Authority. The Project proposes no change in local means of alternative transportation and, therefore, the Project would not create conditions that could conflict with adopted policies supporting alternative transportation.

h.) *Not provide safe access, obstruct access to nearby uses or fail to provide for future street right of way?*

No Impact. The Project proposes no access improvements and, therefore, the Project would not obstruct access to nearby uses or fail to provide for future street right of way.

O. UTILITIES AND SERVICE SYSTEMS					
WOULD THE PROJECT:	IMPACT				SOURCE
	YES			NO	
	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact	
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1, 3, 5,
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1, 3, 5, 21a, 38
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1, 3, 5
d) Require new or expanded entitlements in order to have sufficient water supplies available to serve the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1, 3, 5, 21,
e) Result in a determination by the wastewater treatment provider that serves or may serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1, 3, 5
f) Not be able to be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	1, 3, 5
g) Be in non-compliance with federal, state, and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	5, 6

SETTING

The Project does not propose any change in the existing service providers or their respective existing levels of service that are currently provided to the Project area.

Sewer Service

Wastewater service is currently provided by private septic systems. The only exceptions are the South County Government Center and John H. Boccardo San Martin Family Living Center on Monterey Road, San Martin. These facilities are owned by Santa Clara County and are connected to the Morgan Hill-Gilroy sewer line that runs along Harding Avenue through San Martin to the sewage treatment facility in Gilroy operated by the South County Regional Wastewater Authority (SCRWA). The Lion's Gate Community Services District operates a package sewage treatment system for the Cordeville development in the western part of the proposed incorporation. After incorporation, no changes are expected to the level of sewer service provided to the area.

Solid Waste Trash Collection and Disposal

The County has a franchise agreement for this area and solid waste trash collection and disposal is currently provided by South Valley Disposal and Recycling, Inc. There is a transfer station at 14070 Llagas Avenue in San Martin. After incorporation, the Town of San Martin is likely to enter into a franchise agreement with the existing service provider.

Water Service

Municipal water service is currently provided in some areas of San Martin by the San Martin County Water District and by West San Martin Water Works, which is a private water company. The San Martin County Water District provides water service to the area east of Monterey Road and along San Martin Avenue east to New Avenue. West San Martin Water Works provides water service to the area west of Monterey Road and west to Watsonville Road. The ground water supply is managed by the Santa Clara Valley Water District and provided by private wells in other areas of San Martin. After incorporation, there will be no change in water service providers.

Flood Control Service

Flood control service is currently provided by the Santa Clara Valley Water District (SCVWD). After incorporation, it is expected that Santa Clara Valley Water District will continue to provide flood control services.

IMPACT DISCUSSION

Would the project:

a.) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?

No Impact. The Project proposes no changes in existing land uses that could otherwise result in increased demand for wastewater treatment; nor does it include the construction of any new wastewater treatment facilities. For this reason, the Project will not exceed wastewater treatment requirements of the Central Coast RWQCB and no impact is anticipated.

b.) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

No Impact. The Project would not result in the construction of additional or new water or wastewater treatment facilities to be served by this Project.

c.) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?

No Impact. As previously indicated in Section 2, the Project would result in no changes in the existing land use pattern. As a result, the Project would not require additional or expanded storm water conveyance facilities that could cause significant adverse environmental effects.

d.) Require new or expanded entitlements in order to have sufficient water supplies available to serve the project?

No Impact. As previously indicated in Section 1, the Project would result in no changes in the existing land use pattern. As provided in the Hydrology Section, the Project area generally relies of groundwater supplies to accommodate potable water demands. The SCVWD is responsible for managing the local groundwater basin, and based on the existing supplies available, sufficient water supplies and entitlements exist to serve the Project, which from a functional standpoint resembles existing conditions. Therefore, no new or expanded entitlements would be required to implement the Project.

e.) *Result in a determination by the wastewater treatment provider that serves or may serve the project that it has inadequate capacity to serve the project's projected demand in addition to the provider's existing commitments?*

No Impact. The Project would not generate any additional demand for wastewater treatment, and therefore, no impact is expected.

f.) *Not be able to be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?*

No Impact. Implementation of the Project would entail a continuation of existing land use and, therefore, would not generate any more quantities of solid waste than would otherwise be generated under existing conditions.

g.) *Be in non-compliance with federal, state, and local statutes and regulations related to solid waste?*

Less than Significant Impact. In 2004, the County achieved a solid waste diversion rate of 62 percent, thereby exceeding the 50 percent diversion requirements of the State. As part of the Project, the new Town would be subject to the 50 percent diversion requirement and, as a result, the Town would need to work with the permitted solid waste haulers to ensure compliance with existing State law. Because of the potential learning curve associated with the future implementation of this program, it is reasonable to assume that this is a less than significant impact.

P. MANDATORY FINDING OF SIGNIFICANCE

WOULD THE PROJECT:	IMPACT			
	YES			NO
	<u>Potentially Significant Impact</u>	<u>Less Than Significant With Mitigation Incorporated</u>	<u>Less Than Significant Impact</u>	<u>No Impact</u>
*Questions relating to the California Department of Fish & Game "no effect determination" for the CEQA Filing Fee Exemption are listed in italics.				
a) <i>Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the project have impacts that are individually limited, but cumulatively considerable ("Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Does the project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

IMPACT DISCUSSION

Does the project:

a.) *Have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?*

No Impact. In the context of the actions described herein, the Project would not substantially degrade the quality of the environment, reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory. Any impacts to these resources attributable to the Project, as described throughout the various section of this checklist, are not considered significant based on the continuation of existing land use patterns. No new development or additional new services are proposed as part of this Project and therefore results in no impact.

b.) *Have impacts that are individually limited, but cumulatively considerable ("Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?*

No Impact As previously indicated, the Project involves no changes to the existing land use pattern and will not result in any growth or development that was not already contemplated by the adopted County General Plan and Zoning Ordinance. The impact analysis included in this environmental checklist indicates that for all resource areas, the Project would have no significant impacts and therefore no cumulative impacts.

c.) Have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?

No Impact. As previously indicated, the Project involves no changes to the existing land use pattern. Based on the analysis provided in this checklist, the actions outlined in this IS would not directly or indirectly cause substantial adverse effects on human beings. The impact analysis included in this environmental checklist indicates that for all resource areas, the Project would have no significant impacts.

SECTION 6: REPORT PREPARERS

LEAD AGENCY

Local Agency Formation Commission of Santa Clara County

70 West Hedding Street

11th Floor, East Wing

San Jose, CA 95110

408.299.5127

408.295.1613 *Fax*

Executive Officer Neelima Palacherla

Analyst Dunia Noel, AICP

Clerk Emmanuel Abello

LEAD CONSULTANT

Michael Brandman Associates

11060 White Rock Road, Suite 150

Sacramento, CA 95670

Phone: 916-383-0944

Project Director/Project Manager Stephen L. Jenkins, AICP

Air Quality Joseph O'Bannon

Biology Brian Hoffmann and Deborah Stout

Other CEQA Clint Meyer

GIS Specialist Mike Serrano

SECTION 7: REFERENCES

- BAAQMD 2007. Ambient Air Quality Standards & Bay Area Attainment Status, Bay Area Air Quality Management District. http://www.baaqmd.gov/pln/air_quality/ambient_air_quality.htm. Accessed Aug 21, 2007
- California Building Standards Commission, 2001. California Building Standards Commission (CBSC), California Building Code, Title 24, Part 2, 2001.
- Caltrans, 2007. Caltrans Scenic Highway Program. List of Eligible and Officially Designated Routes for Santa Clara County. Website: ww.dot.ca.gov/hq/LandArch/scenic_highways/napa.htm.
- CDFG 2005. CDFG California Wildlife Habitat Relationship System (CWHR)
- CGS Special Publication 42, 1999. California Geological Survey.. Alquist-Priolo Earthquake Fault Zone Map.
- CNDDDB 2007. California Department of Fish and Game (CDFG) California Natural Diversity Data Base (CNDDDB) records for the Gilroy, California 7.5-minute topographic quadrangle and the surrounding eight quadrangles
- CNPS 2007. California Native Plant Society (CNPS) online Inventory of Rare and Endangered Vascular Plants of California records for the Gilroy, California 7.5-minute topographic quadrangle and the surrounding eight quadrangles
- County MSR, 2005. Santa Clara County Municipal Services Review
- County Geologic Hazard Map (Plate 60). County of Santa Clara, General Plan, updated 1995.
- California Department of Conservation, 2004. Santa Clara County Important Farmland 2004 Map.
- DWR 2006. Central Coast Hydrologic Region California's Groundwater, Bulletin 118. Groundwater Basin Number: 3-3.01 Gilroy-Hollister
- Hildebrandt and Mikkelsen (1993). Hildebrandt and Mikkelsen, Archaeological Test Excavations at Fourteen Sites Along Highways 101 and 152, Santa Clara and San Benito Counties, California, Volume 1, 1993.
- King and Hickman (1973). King, T.F., and P.P. Hickman, The Southern Santa Clara Valley: A General Plan for Archaeology, San Felipe Division, Central Valley Project, Report S-5222, On file Northwest Information Center, Sonoma State University, Rohnert Park, California, 1973.
- Santa Clara County Crop Report 2007. Prepared by the Santa Clara County Agricultural Commissioners Office,
- Santa Clara County General Plan, 1994. Adopted: December 20, 1994
- Shipley, 1978. Shipley, W. F., Native Languages of California, in California, R.F. Heizer, ed. Handbook of North American Indians, Vol. 8, pp. 80-90, Washington, D.C.: Smithsonian Institution, 1978.
- USFWS 2007. U.S. Fish and Wildlife Service (USFWS) list of endangered and threatened species that may occur in the Gilroy, California quadrangle

USGS, 1999. U.S. Geological Survey (USGS) Working Group on California Earthquake Probabilities, Earthquake Probabilities in the San Francisco Bay Region: 2000-2030 – A Summary of Findings, Open-File Report 99-517, 1999.

USGS, 2003. U.S. Geological Survey. 2003. Working Group '02 on California Earthquake Probabilities