

LAFCO MEETING AGENDA

**Wednesday, April 16, 2008
1:15 p.m.**

**Board of Supervisors' Chambers
70 West Hedding Street, First Floor
San Jose, CA 95110**

**CHAIRPERSON: Pete Constant • VICE-CHAIRPERSON: Susan Vicklund-Wilson
COMMISSIONERS: Blanca Alvarado, Don Gage, John Howe
ALTERNATES: Sam Liccardo, Pete McHugh, Al Pinheiro, Terry Trumbull**

The items marked with an asterisk (*) are included on the Consent Agenda and will be taken in one motion. At the beginning of the meeting, anyone who wants to discuss a consent item should make a request to remove that item from the Consent Agenda.

Disclosure Requirements

1. Disclosure of Campaign Contributions

If you wish to participate in the following proceedings, you are prohibited from making a campaign contribution of more than \$250 to any commissioner or alternate. This prohibition begins on the date you begin to actively support or oppose an application before LAFCO and continues until three months after a final decision is rendered by LAFCO. No commissioner or alternate may solicit or accept a campaign contribution of more than \$250 from you or your agent during this period if the commissioner or alternate knows, or has reason to know, that you will participate in the proceedings.

If you or your agent have made a contribution of more than \$250 to any commissioner or alternate during the twelve (12) months preceding the decision, that commissioner or alternate must disqualify himself or herself from the decision. However, disqualification is not required if the commissioner or alternate returns the campaign contribution within thirty (30) days of learning both about the contribution and the fact that you are a participant in the proceedings. For disclosure forms and additional information see:

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

2. Lobbying Disclosure

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

3. Disclosure of Political Expenditures and Contributions Regarding LAFCO Proceedings

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

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

1. ROLL CALL

2. 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.

3. APPROVE MINUTES OF FEBRUARY 6, 2008 LAFCO MEETING

4. PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

4.1 Withdrawal of Legal Counsel from Representation of LAFCO on the San Martin Incorporation Proposal

Possible Action: Authorize staff to select and retain alternate legal counsel for the San Martin Incorporation Proposal through an informal selection process and delegate authority to the LAFCO Executive Officer to enter into an agreement with the most qualified candidate in an amount not to exceed \$60,000.

4.2 Analysis of Potential Conflict of Interest Issues for the LAFCO Executive Officer

Possible Action: Consider and address as necessary, any potential conflict of interest issues for the LAFCO Executive Officer to work on the San Martin Incorporation Proposal.

4.3 Public Hearing on the Revised Initial Study and Negative Declaration for the Proposed Incorporation of the Town of San Martin

Possible Action: Accept and consider comments on the Revised Initial Study and Proposed Negative Declaration and direct staff to make any necessary revisions to the document in preparation for potential adoption by LAFCO at a future public hearing.

4.4 Public Hearing on Draft Comprehensive Fiscal Analysis and Plan for Services for the Proposed Incorporation of the Town of San Martin

Possible Action: Accept and consider comments on the Public Hearing Draft Comprehensive Fiscal Analysis and Plan for Services for the Proposed Incorporation of the Town of San Martin and direct staff to respond to comments and make any necessary revisions to the document.

4.5 Revised Schedule for the Proposed Incorporation of the Town of San Martin

Possible Action: Consider the revised incorporation schedule and provide direction to staff as necessary.

4.6 Invoices for LAFCO Staff Costs

Possible Action: Consider the invoices for staff costs and clarify payment schedule in light of the revised incorporation schedule.

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

A petition by landowners for annexation of seven parcels (APNs 510-25-030, 510-25-033, 510-25-034, 510-60-001, 510-60-002, 510-60-004 & 510-60-005) with a total area of approximately 29.78 acres, located on Canon Drive, to the West Valley Sanitation District.

Possible Action: Consider the petition for annexation to West Valley Sanitation District and staff recommendation.

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

Possible Action:

- a. Adopt the Proposed LAFCO budget for Fiscal Year 2009.
- b. Authorize staff to transmit the Proposed Budget adopted by the Commission, as well as the notice for public hearing on the adoption of the Final Budget for Fiscal Year 2009, to the County, the Cities Association and each of the cities.

7. COMMISSIONERS' REPORTS

8. EXECUTIVE OFFICER'S REPORT

8.1 Report on the 2008 CALAFCO Staff Workshop Hosted by Santa Clara LAFCO

Information only.

9. PENDING APPLICATIONS

10. WRITTEN CORRESPONDENCE

11. NEWSPAPER ARTICLES

12. ADJOURN

Adjourn to the next regular meeting on Wednesday, June 4, 2008.

NOTE TO COMMISSIONERS: Upon receipt of this agenda, please contact Emmanuel Abello, LAFCO Clerk, at (408) 299-6415, if you are unable to attend the LAFCO meeting.

In compliance with the Americans with Disabilities Act, those requiring accommodation for this meeting should notify the LAFCO Clerk 24 hours prior to the meeting at (408) 299-6415, or at TDD (408) 993-8272, indicating that message is for the LAFCO Clerk.

**LOCAL AGENCY FORMATION COMMISSION OF
SANTA CLARA COUNTY
MINUTES
WEDNESDAY, FEBRUARY 6, 2008**

1. ROLL CALL

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 6th day of February at 1:21 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California, with the following members present: Chairperson Pete Constant, Vice Chairperson Susan Vicklund-Wilson, and Commissioners Blanca Alvarado, Don Gage and John Howe. Alternate Commissioners Al Pinheiro and Terry Trumbull are also present.

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

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

2. NEW ALTERNATE COMMISSIONERS: SAM LICCARDO (SAN JOSE) AND AL PINHEIRO (CITIES)

Chairperson Constant announces the appointment of Mayor Al Pinheiro, City of Gilroy, as the new Alternate Commissioner representing the cities. He likewise announces the reappointment of Councilmember Sam Liccardo as Alternate Commissioner representing the City of San Jose.

3. ADOPTION AND PRESENTATION OF RESOLUTION COMMENDING GINNY MILLAR FOR HER SERVICES TO LAFCO

On Commission consensus, there being no objection, it is unanimously ordered that the Resolution be adopted commending Ginny Millar, LAFCO Surveyor, for her 17 years of service to LAFCO. Chairperson Constant presents the resolution to Ms. Millar and expresses the Commission's gratitude for her many years of service and numerous contributions to LAFCO.

4. PUBLIC PRESENTATIONS

There are no public presentations.

5. APPROVE MINUTES OF OCTOBER 3, 2007 MEETING

On motion of Commissioner Howe, seconded by Commissioner Alvarado, it is unanimously ordered on a vote of 5-0 that the minutes of October 3, 2007 meeting be approved, as corrected.

6. APPROVE MINUTES OF DECEMBER 5, 2007 MEETING

On motion of Commissioner Gage, seconded by Commissioner Howe, it is unanimously ordered on a vote of 5-0 that the minutes of December 5, 2007 meeting be approved, as submitted.

7. SAN JOSE URBAN SERVICE AREA AMENDMENT 2007 AND RIVERSIDE NO. 52

This being the time and place set to consider the request by the City of San Jose to expand its urban service area (USA) and approve the reorganization of Riverside No. 52, the Chairperson declares the public hearing open.

The Chairperson requests the staff report. Ms. Palacherla reports that the City of San Jose proposes to expand its USA boundary to include a portion of APN 678-09-013 located at 715 Piercy Road. This expansion involves approximately 3.2 acres of land located within the City's urban growth boundary (UGB) and which is below the 15 percent slope line. The proposal also includes annexation of the entire parcel to allow San Jose to maintain a permanent open space designation on the portion of the parcel remaining outside the USA. Additionally, in order to avoid creating an island, the City proposes to annex APN 678-09-005, located at 725 Piercy Road, which is outside the City's USA and UGB. LAFCO approval is required because the City is proposing to annex areas outside its USA.

Ms. Palacherla reports that staff has evaluated the proposal and finds that the USA amendment and reorganization do not impact agricultural or open space lands, because the area is within the City's UGB and contiguous to existing city limits and USA boundary. The City has established a pre-zoning designation that prohibits development

on the property that is outside of the USA. The City is able to provide services to the proposed residential uses without impacting the level of service being provided to residents in other parts of the City. The City has indicated that there is only 2.8 years supply of vacant residential land within its USA. The proposal has no significant fiscal impact on the County. For these reasons, staff is recommending approval of the proposed expansion of San Jose's USA boundary, Riverside No. 52 reorganization, including annexation to San Jose, and detachment from Santa County Fire Protection District and the County Library Service Area.

The Chairperson determines that there are no requests from the public to speak on the item and orders that the public hearing be closed.

On motion of Commissioner Gage, seconded by Commissioner Howe, it is unanimously ordered on a vote of 5-0 that Resolution No. 07-01 be adopted, approving the USA amendment and reorganization of Riverside No. 52.

8. CORRECTION TO POLICIES IMPLEMENTING ASSEMBLY BILL 745

The Chairperson requests the staff report. Ms. Palacherla reports that AB 745, which became effective on January 1, 2008, requires disclosure of political contributions and expenditures related to LAFCO proceedings. The disclosure policies adopted by the Commission on December 5, 2007 only apply to proposals initiated by petition. Staff is proposing adoption of corrections to policies because the statute applies to all types of applications to LAFCO.

On motion of Commissioner Alvarado, seconded by Commissioner Howe, it is unanimously ordered on a vote of 5-0 that corrections be made to policies implementing AB 745.

Commissioner Wilson informs that CALAFCO is supporting a bill in the State legislature that would pass this responsibility to the Fair Political Practices Commission.

9. PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

9.1 PRESENTATION OF THE DRAFT COMPREHENSIVE FISCAL ANALYSIS

The Chairperson requests the staff report. Ms. Palacherla advises that LAFCO has retained Economic Planning Systems (EPS), to prepare the comprehensive fiscal analysis

(CFA) for the proposed incorporation of the Town of San Martin. Ms. Palacherla then introduces Richard Berkson, Principal, EPS, to present the draft CFA. Mr. Berkson informs that EPS is an urban economics firm based in Berkeley, California, specializing in government reorganizations for over 25 years. EPS has been working on San Martin CFA project since the summer of 2007.

Mr. Berkson informs that the CFA has been prepared consistent with the guidelines issued by the State Office of Planning and Research (OPR) and LAFCO policies. The CFA evaluates the feasibility of cityhood, its impact on affected agencies, and calculates revenue neutrality. He explains that the CFA report will be the basis for some of the findings and determinations that the Commission is required to make. Mr. Berkson then informs that the Commission is required to establish the amount of property tax to be transferred from the County to the new town in its first year; establish a plan for services; find that revenue neutrality is achieved or mitigated through some form of agreement; find that revenues are sufficient to cover costs to establish fiscal feasibility of a new town; and find that the new town can establish adequate reserves.

He informs that the CFA is based on the County's 2006-07 budget, stating that assumptions and methodology include a conservative projection of municipal costs and revenues over a ten-year horizon. He informs that the CFA report follows the guidelines of OPR and LAFCO, and is the result of extensive consultation with County and LAFCO staff, and the proponents.

Mr. Berkson then directs attention to a flow chart illustrating the process, stating that EPS first submitted data requests to County departments for information relating to current services and costs in the San Martin area. EPS then initiated a discussion on initial boundary alternatives. The responses to data requests provided the basis for calculating the amount of property tax to be transferred from the County to the new town. The responses likewise provided information to determine potential impact to the County and to create a budget forecast for the new town. The proponents and representatives of the County started to meet in December 2007 to for revenue neutrality negotiations. He

informs that this draft report is the fourth reiteration after LAFCO staff review of administrative drafts.

Mr. Berkson continues his report by summarizing the key findings in the draft CFA report. First, the new town's general fund will have a surplus of about \$650,000 to \$850,000 a year, which will grow over time as revenues exceed expenditures. He indicates, however, that this does not account for potential fiscal mitigation of impacts to the County. Second, the future town's Road Fund would experience a shortfall of about \$600,000 to \$700,000 per year due to a combination of factors. Third, alternatives could be feasible, subject to the boundary and cost of fiscal mitigation. Fourth, the County General Fund is likely to experience a negative impact estimated at about \$870,000 a year as a result of revenues that the County will lose; however, the County's Road Fund is likely to benefit from the shift of road maintenance cost. He reminds that these findings will change based on the result of revenue neutrality negotiations.

Mr. Berkson then directs attention to two tables – the first illustrating the financial feasibility of the future town and the second illustrating the impacts to the County and proceeds to discuss the development of these tables.

Mr. Berkson continues by outlining the next steps in the CFA process, informing that the ongoing revenue neutrality negotiation may come to an agreement that includes fiscal mitigation. The CFA report will then be revised to reflect the cost of mitigation as a line item in the future town's budget. A Final Draft CFA report, which includes input from the County, the proponents and the public during the public review period, and information on the boundary alternatives, will be brought to a public hearing. The Final CFA will incorporate all the changes and decisions made during the hearing.

In response to an inquiry by Commissioner Howe, Mr. Berkson advises that the projected growth in sales tax revenues would go up by inflation in six years, based on 2007 amount, would go up with inflation; however, there will be no real revenue increase over and above inflation during that period because it is estimated that the area will have minimum population growth. In response to another inquiry by Commissioner Howe, Mr. Berkson informs that the expenditures are not costs for the County transferred over to the

CFA report. In fact, the report indicates the new town can lower road expenditures because the County has recently been spending more in the area. The consultant has interviewed staff from the County and some small cities and has determined that the annual cost equivalent to maintain the pavements is slightly less than \$4,000 per lane mile, a figure that is much lower than that used by the County. He informs that the County's increased spending in the year before the filing of application for incorporation is due to an injunction and a need to comply with integrated pest management requirement, and adds that expenditures in the year prior to that has been much lower. In response to a follow up inquiry by Commissioner Howe, Mr. Berkson indicates that the \$4,000 per lane mile per year, using a less expensive slurry seal, is a reasonable amount for comparable cities. Commissioner Gage states that road maintenance services could be contracted outside. Ms. Palacherla advises that one of the basic requirement is the level of services provided by the new town should not be lower than the current level of services. The plan for services and financing of those services must be based on the current level of services that the community receives. While it could be higher, the intention of the incorporation is not to change the level of services. Commissioner Gage indicates that he has not seen street sweeping performed in the area.

Commissioner Alvarado notes that while the County has never been in a position to provide a high level of service in the South County; however, that has improved recently because of anticipation for increased traffic due to Coyote Valley Specific Plan and that the CFA should consider that. She expresses concern that the CFA does not provide for expenditures to implement the Habitat Conservation Plan (HCP) which is being done in partnership with Morgan Hill and Gilroy nor does it indicate what the cost would be to the County and these two cities if San Martin does not participate because it is located right in the middle. She then indicates that revenues and expenditures, the latter should include staffing and other costs, must include accurate projections so that the new town will not end up on the verge of bankruptcy or fiscal peril. State law gives the responsibility to the Commission to ensure that there will be funds available to establish the new town and to take care of its people. Mr. Berkson indicates that more research will be done on

HCP. Ms. Palacherla advises that the CFA presentation is a very broad overview of detailed information included in the CFA. The appendix further explains the revenues and expenditures shown in Table 1 and costs for salaries and services have been taken into account. Table 3 on page 42 depicts about the impact to the County.

Commissioner Constant notes that the amount of property tax lost by the County does not match the property tax gained by city and inquires how would the level of services remain the same when costs are different. In response to this, Mr. Berkson explains that the impact to the County is based on Fiscal Year 2006-07 calculation of property tax to be transferred based on cost of services provided by the County, multiplied by auditor's ratio of 57 percent. The number for the new city is slightly different because these are projections over the next two years and assumes that new homes will be built. The sheriff's cost is lower in the County because CHP currently provides traffic patrol or enforcement services; however, the new town will have to provide that service and its contract cost with County Sheriff's Office would increase due to additional hours for traffic enforcement and traffic incidents investigation. In response to a follow-up inquiry by Commissioner Constant, Mr. Berkson informs that the \$796,000 reduction in County spending includes the animal shelter service currently available to unincorporated residents and which would not be available to residents of the new town. In response to another inquiry by Commissioner Howe, Mr. Berkson states that personnel costs increase over time with a cost of living inflator.

Chairperson opens the public comments period for this item.

Richard van'tRood, SMNA spokesperson, expresses appreciation to the consultant and staff because most of the concerns raised by the proponents regarding the initial draft have been addressed in the CFA report. He notes, however, that the \$300,000 allocated in the first three years for creating a new General Plan would not be necessary because the County's General Plan will transfer to the town and, given the goal to maintain a rural residential character, the County General Plan could be amended to be the town's General Plan. He notes the proposed incorporation of Oakhurst has only \$30,000 for its General Plan while some of the largest incorporations in the State allocate \$300,000 for that

purpose. In addition, he notes that the TOT revenue is leveled off for 10 years and proposes that a 10-year history be used rather than just the last two or three years.

Brian Schmidt, Committee for Green Foothills, expresses concerns that the San Martin CFA could have issues similar to Coyote Valley Specific Plan (CVSP) with regard to assumptions. The Coyote Valley project assumed that home prices and property tax revenues would go up 3 percent above inflation every year for 57 years while staffing cost will merely increase by 1 percent over the same period. He requests clarification as to what assumptions have been used in San Martin CFA, stating that an annual increase in home prices and property tax revenues of 2 percent above inflation may no longer be realistic because of the current situation of the housing market, and proposes that a 0.5 to 1 percent above inflation be used because it is more realistic.

In response to Chairperson Constant's inquiry, Mr. Berkson indicates that the assumptions for San Martin have been delineated in the CFA report.

On Commission consensus, there being no objection, it is unanimously ordered that status report on the CFA be accepted.

9.2 INITIAL STUDY/NEGATIVE DECLARATION AND ALTERNATIVE BOUNDARY DISCUSSION

9.2A COMMENTS ON INITIAL STUDY/NEGATIVE DECLARATION

The Chairperson requests the staff report. Ms. Noel reports that the Commission discussed the Initial Study (IS) and Negative Declaration (ND) for the proposed incorporation of the Town of San Martin on December 5, 2007. During hearing, comments have been made by Brian Schmidt, Committee for Green Foothills; Jim Foran, a resident of Santa Clara County; and, Richard Van'tRood, a proponent for incorporation.

Ms. Noel continues her report by stating that, in addition to comments at hearing, staff also received written comments from Morgan Hill, County Parks and Recreation Department, County Planning Office, State Department of Conservation, and Santa Clara Valley Transportation Authority (VTA).

In response to these comments, Ms. Noel indicates that because incorporation is a unique project, the only feasible mitigation for LAFCO at this time is to reduce the

incorporation area consistent with the LAFCO-cities-County policies. Ms. Noel continues by stating that Morgan Hill has indicated it would support the IS/ND if San Martin's boundary includes less land, excludes agricultural lands, and the boundary is consistent with LAFCO-cities-County policies. Ms. Noel informs that Morgan Hill has expressed concern about the area north of Middle Avenue and requested the Commission not to adopt the IS/ND until San Martin's city limits, and its USA and SOI boundaries have been determined. Additionally, Morgan Hill has requested that IS/ND be amended to require mitigation and address inconsistencies with the policies of LAFCO, the County and other cities.

Ms. Noel adds that staff has proposed at the December 5, 2007 meeting to modify the boundaries being proposed by the proponents by including Area 2 and excluding six other areas. Area 2, which has been analyzed in IS/ND, would be included to avoid the creation of an unincorporated island. With this change, the project description must be revised to include this area and additional environmental analysis must be conducted. This modification requires removal of this area from Morgan Hill's SOI. The revised IS and CEQA recommendations will be re-circulated for public review and comment. Ms. Noel continues by stating that information on the Commission's preferred incorporation boundary alignments, which is Item 9.2b on the agenda, would be included in the revised IS/ND.

Ms. Noel states that staff had recommended at the December 5, 2007 meeting the adoption of the Negative Declaration for the project. However, staff cannot determine at this time whether a Negative Declaration would remain appropriate after the Initial Study has been revised to include additional environmental analysis. In this regard, staff recommends that the Commission (1) direct staff to (a) revise the project description to allow the inclusion of Area 2 and amend Morgan Hill's SOI boundary, (b) address comments on Initial Study and Negative Declaration received from various stakeholders, and (c) include information on a preferred incorporation boundary if provided by the Commission; and (2) set April 16, 2008 as the date for a public hearing to accept comments on the revised IS and the proposed CEQA recommendation.

The Chairperson opens the public comment period for this item.

Richard Van't Rood, San Martin Neighborhood Alliance (SMNA) spokesperson, states that the comment letters by the proponents on IS/ND have not been included in the staff report. He likewise informs that Steve Tate, Mayor of Morgan Hill, and Kathy Molloy-Previsich, Community Development Director of Morgan Hill, have indicated to him that the intent of Morgan Hill's comment letter is to neither oppose the incorporation nor remove Area 4 from the proposed boundaries. Mr. Van'tRood also states that said Morgan Hill officials have impressed upon him the inequity in the application of LAFCO's agricultural mitigation policies. He then requests the Commission to respond to SMNA's comment letters. He concludes by stating that the IS finds no negative impact on the environment.

Brian Schmidt, Committee for Green Foothills, states that the IS/ND and the proposed boundaries are two related issues. He informs that the Initial Study finds no negative impact on the proposed boundaries because the incorporation proposal does not include a change in policies and because the future town would adopt the County's General Plan. If agricultural lands are included in the boundary without applying the agricultural mitigation policies, that is a change in policy and there should be an environmental analysis. However, the potential environmental impacts would be reduced if areas 4 and 5 are removed from the boundary.

Freddie Comprechio, a proponent for incorporation, states that the staff report does not include SMNA's November 26, 2007 comment letter on IS/ND as well as the comments made by two speakers at the December 5, 2007 meeting. Providing the Commission with a copy of a map illustrating Williamson Act properties in San Martin, she states that the staff report discussion on Williamson Act is misleading. She states that only 38 parcels in Area 4 will remain under contract, while only 245 parcels will remain in Area 5. She directs attention to Table 2 of the staff report and informs that of the 1,301 acres under Williamson Act contract, over 800 acres have already been developed. She cites as an example the subdivision approved by the Board of Supervisors of a 100-acre

parcel into 19 lots. Additional reduction includes a 20-acre County government center, a 15-acre roadside services area and the soon to be acquired 100-acre airport safety zone.

Reggie Bravo, landowner in San Martin area, requests that Area 4 be included in San Martin boundary, explaining that he had surveyed all farms and talked to some farmers in that area and finds that lands there have not been farmed in the last 60 years because farming small parcels is not profitable. He states that farming should be done in Mexico because of scarcity of land in South County and since profitable farms require 500 to 600 acres of land. He informs that LJB Farms and processing plants along Maple and Foothill avenues no longer farm in San Martin because water is scarce. He then states that, except for a few parcels, areas 4 and 5, are filled with homes.

The Chairperson determines that there are no other members of the public who wish to speak on the item.

Commissioner Wilson moves for the approval of staff report with direction to staff to clarify Morgan Hill's position in view of Mr. Van't Rood's conversation with Morgan Hill officials. Commissioner Gage proposes to amend the motion to direct staff to include SMNA's comment letters in the staff report. Commissioner Wilson accepts amendment to the motion. Ms. Noel advises that staff will include public comments in the report.

Commissioner Gage then seconds the motion.

Commissioner Alvarado comments that the staff recommendation is very clear and consistent with County and LAFCO policies. She proposes that the Commission's decision consider the County's General Plan policies and allow the future elected town council to determine whether areas 4 and 5 are included in San Martin. She enjoins the Commission to stay consistent with existing policies because, ultimately, the future town council will have the authority and ability to act in accordance with the prevailing political landscape at that time. Commissioner Alvarado then states that her role as LAFCO Commissioner is centered upon LAFCO policies and the County General Plan. She indicates that while there are lots of issues to be resolved, being consistent with the policies is one step in the incorporation process. She concludes that unless the Commission follows these policies, there will be questions of whether or not it is doing what it is required to do.

In response to an inquiry by Commissioner Howe, Commissioner Wilson informs that her motion includes items 1, 1a, 1b, 1c and 2 of the staff recommendation, with direction to staff to clarify Morgan Hill's position relating to San Martin boundary.

The Chairperson calls the question.

It is unanimously ordered on a vote of 5-0 that staff recommendation be approved and staff be directed to clarify Morgan Hill's position on San Martin boundary.

9.2B INITIAL STUDY/NEGATIVE DECLARATION AND DISCUSSION ON ALTERNATIVE BOUNDARIES

The Chairperson requests the staff report. Ms. Palacherla reports that the proponents submitted the petition for incorporation that includes a map illustrating their proposed boundary. In compliance with State law requiring the Commission to consider alternative boundaries, staff presented at the December 5, 2007 meeting potential modifications to the proposed boundary. She then directs attention to a map that excludes areas 1, 3, 4, 5, 6 and 7, and includes Area 2. She informs that these modifications are recommended because the boundary proposed by SMNA is inconsistent with the Cortese-Knox-Hertzberg (CKH) Act and LAFCO incorporation policies relating to compact and contiguous boundaries (Policy 3e), inclusion of lands that are undeveloped or not planned to be developed (Policy 3g), and inclusion of agricultural and open space lands (Policy 3h).

She reports that the Commission had agreed at the December 5, 2007 meeting to exclude Area 1; include Area 2; directed staff to further study areas 4, 5, 6 and 7; and to seek Morgan Hill's support to include Area 3 into its SOI and exclude it from the proposed boundary. She informs that after the meeting, staff worked to clarify Morgan Hill's position on Area 3 and resolve the issues raised by the proponents.

Regarding Area 6, Ms. Palacherla advises that while staff recommendation to exclude this area splits Lion's Gate Community Services District between the County and San Martin, there appears to be no negative impact by splitting that special district, or by allowing the Cordevalle open space easement to remain in the County. She adds that the proponents concur with this exclusion because it keeps this area under the State's fire-fighting responsibility.

With regard to Area 7, she reports that the proponents have requested the inclusion of this area because the property owners desire to be part of the new town and since the farmlands, which have been classified in the County's General Plan as Agriculture Medium-Scale, have not been farmed for many years. Ms. Palacherla advises that staff has recommended excluding this area because of its remoteness, accessible only from Watsonville Road and also because it is prime farmland and is designated as Agricultural land in the County's General Plan.

Relating to areas 4 and 5, Ms. Palacherla advises that staff has recommended the exclusion of these two areas. The proponents have previously stated that excluding these two areas will create unincorporated islands and disenfranchised residents. In response, Ms. Palacherla directs attention to a map illustrating similar lands in the SOIs of Morgan Hill and Gilroy. She then proposes that areas 4 and 5, be placed in the SOI of San Martin. On the proponents' statement that the County General Plan does not require buffers, Ms. Palacherla directs attention to Attachment D of the staff report, which is Book B, Part 5 of the Santa Clara County General Plan, entitled "South County Joint Area Plan Policies." She then informs that Gilroy and Morgan Hill have expressed concerns that the proposed boundaries do not include buffers. Further, she states that areas 4 and 5 are different from other areas in San Martin not only because of their General Plan designations but because they contain much larger, undeveloped parcels compared to other areas in San Martin. Ms. Palacherla adds that the State Department of Conservation identifies much of these two areas as prime or important farmlands and LAFCO policies provide that agricultural lands be excluded from the boundary. She also states that agricultural lands within the SOIs of Gilroy and Morgan Hill could be impacted if these two areas are included in San Martin city limits. Relating to inquiries by some stakeholders on how the inclusion of agricultural lands in San Martin would be mitigated, Ms. Palacherla informs that the proponents do not intend to provide new services or change the County's General Plan or the zoning designations. CEQA does not allow speculation of future city council action. However, that is a consideration for LAFCO. Thus, she concludes that reducing the boundary to keep out agricultural lands as much as possible is the best way to mitigate.

Relative to concerns expressed that the town may not be fiscally feasible if areas 4 and 5 are excluded, Ms. Palacherla indicates that the completed CFA shows that the alternative boundaries are feasible.

With regard to the request of the proponents not to establish USA boundary for San Martin because it will force urbanization, Ms. Palacherla recommends that USA be made co-terminus with the town limits. She adds that once lands are within the city limits, the city has authority over land use and services within its boundaries. She notes that USA boundary is a very important concept because it is the basis of Santa Clara County's long range planning, staged urban development and managed growth.

Ms. Palacherla advises that the boundary as proposed by the proponents is inconsistent with several LAFCO policies, particularly with regard to compact boundary, exclusion of open space and agricultural lands, need for buffers between cities in South County, and premature conversion of adjacent agricultural lands. These concerns could be addressed by reducing the amount of undeveloped lands within the boundary, by reducing Williamson Act lands within the boundary, by keeping a majority of prime and important farmlands out of the boundary, and establishing urban separators/buffers between the new town and Morgan Hill. She adds that excluding areas 4 and 5 while keeping them in the SOI of San Martin would create a more compact boundary and could allow future annexation, is a practical solution to unknown factors. She comments that even if the intent of incorporation as stated by proponents is to maintain the rural residential character of San Martin, the future town will face challenges and development pressures and that the future town council will have the authority over land use. Therefore, it is prudent to have a smaller incorporation boundary with provisions for future annexations. The new town may consider expansion after it becomes more stable and its elected officials and community has developed a vision for growth and development, and established goals and objectives in cooperation with surrounding jurisdictions. Finally, she concludes that staff recommendation has not changed from the December 5, 2007 meeting, except for Area 3 for which staff is proposing to exclude depending on Morgan Hill's position.

Chairperson Constant requests staff to identify each map with a number.

The Chairperson opens the public comment period for this item and requests speakers to focus their discussion on areas of disagreement.

Richard Van't Rood, SMNA Spokesperson, expresses agreement with staff recommendation to remove areas 1, 2 and 6 from the incorporation boundary and expresses disagreement over exclusion of areas 3, 4, 5 and 7. He states that 170 of the 1,000 people who signed the petition are from areas 4 and 5, and excluding these two areas would disenfranchise them from voting for incorporation. He continues that if these two areas are left unincorporated, their residents would remain a minority in the 450,000 people living in Supervisorial District 1 and would not have a voice on land use issues. Relating to buffers and separators, Mr. Van'tRood states that the County General Plan policy does not apply to incorporation. He notes that the County policy on greenbelt involves a scheme for acquiring funds and, therefore, no greenbelt project has been implemented. He states that the requirement for urban separators could be delegated later to the town's General Plan similar to that in Gilroy's General Plan; and that the future town will work with other towns to come up with a prudent General Plan. With regard to the need for a compact boundary, he states that the proponents are proposing a compact boundary, clean and organized because an illogical boundary is hard to police and manage. He states that contrary to the staff report, there are not much Williamson Act lands remaining under contract, because Area 4 has 40 acres less than what is indicated in the staff report, while Area 5 has 100 acres less. He indicates that most existing contracts no longer qualify and should not be included as viable agricultural lands. He expresses the opinion that the State Department of Conservation map classifying agricultural lands is misleading; citing that half of his own property could not be developed because it is classified as Agricultural Land of Statewide Significance even if it has not been farmed for 50 years. Mr. Van't Rood informs that there is a 100-acre parcel agricultural land that has been approved for subdivision by the County and most of the developed parcels are lands of statewide agricultural significance. He states that the State Department of Conservation map on important farmlands was created a long time ago by people who do not live in the

area and is updated by those who do not visit these lands. Lastly, he expresses an opinion that since CEQA finds no negative impact in including these lands in San Martin, staff is merely proposing exclusion of these lands in order to maintain control of the area and to retain the ability to apply LAFCO's agricultural mitigation policies. He ends by stating that CEQA would apply to the decisions of the future town and replacing one group of decision makers with another group does not eliminate need for CEQA.

Brian Schmidt, Committee for Green Foothills, states that his organization and other environmental organizations, representing thousands of people in the County, support the desire of San Martin residents to incorporate in order to maintain a rural residential community and will assist the future town develop the most environmentally-friendly General Plan possible. He states that there are people in San Martin doing the right thing as in the case of San Martin County Airport expansion. He notes some people, through "defensive incorporation," try to protect their communities from inappropriate development by maximizing the size of their cities. However, this strategy has had mixed results in California because proponents sometimes do not always tell what they want to do. He then expresses support for a smaller boundary with provisions for expansion and annexation in the future because it is in line with the residents' desire to preserve their rural community. Their rural community can be further protected through a general plan or a citizen's initiative; and when these are done, San Martin will get a lot of support from the community. He reiterates support for the staff recommendation and informs that Michelle Beasley, Greenbelt Alliance, has provided a letter to the Commission supporting the staff recommendation. In response to a statement made by Mr. Van't Rood, Mr. Schmidt comments that while CEQA would apply when the new town brings in lands in the future, CEQA and LAFCO's agricultural mitigation policies are two different things. He states that including agricultural lands in the boundary today without applying LAFCO's mitigation policies may potentially change the way agricultural lands brought into a city are mitigated.

The Chairperson determines that there are no members of the public who wish to speak on the item.

Commissioner Gage expresses support to include areas 4 and 5 because these are composed of smaller residential parcels. He adds that the reason for the incorporation is because the residents do not want the County to make land use decisions for them. In addition to areas 4 and 5, he proposes that areas 2 and 7 be included, and that Area 3 be excluded, contingent on Morgan Hill's support. He expresses agreement to exclude areas 1 and 6. Commissioner Gage then moves to include areas 1, 2, 4, 5, 7 in the boundary and, contingent on Morgan Hill's support, include Area 3; and to exclude areas 1 and 6. Commissioner Howe seconds the motion. Chairperson Constant invites discussion.

Chairperson Constant expresses agreement with the motion, and directing attention to a map, states that the southeastern part of Area 4 has smaller parcels sizes that are virtually identical to the rest of San Martin. He likewise comments that excluding Area 5 would create a jagged jurisdictional boundary that is difficult to administer services from the perspective of both the residents and public agencies.

Commissioner Wilson enjoins the Commission to ask questions about the staff analysis. She informs that contrary to a statement made by Mr. Van't Rood that the USA boundary promotes urbanization, it is determined in the CKH that USA promotes orderly growth. In response to inquiry by Commissioner Wilson, Ms. Palacherla informs that staff advises that the town's city limits and USA boundary be made co-terminus. In response to a follow-up question by Commissioner Wilson, Ms. Palacherla informs that staff is advising to exclude areas 4, 5 and 7 from the town limits and to place them within San Martin's SOI for potential future annexation. Commissioner Wilson comments that the original SMNA proposal did not include areas 4, 5 and 7 and adding them at this time is premature. If these areas are of interest to the future town, these could be included in the SOI. She enjoins the Commission to follow the CKH Act and LAFCO policies, stating that land use should not be fiscalized. She proposes that the Commission should consider the boundaries of neighboring cities, and preserve agricultural lands and open space. Since these areas include agricultural lands, Commissioner Wilson states that it is more prudent for the commissioners to follow LAFCO policies and the CKH Act by not including areas 4, 5 and 7 in the boundary and to place them in the SOI. She reiterates that the original

SMNA proposal did not include these areas. She reminds that the tour of the area in January showed that farming occurs in the area, such as by LJB Farms, and adds that even if some parcels are not consistently farmed, the fact remains that the soil is agricultural. She expresses concern that there would not be any more agricultural lands or open space left in Santa Clara County if the Commission goes along with the proponents' argument. Finally, she enjoins the Commission to follow the CKH Act and consider the staff recommendation to place areas 4, 5 and 7 in the SOI instead of the town limits.

Commissioner Alvarado agrees with Commissioner Wilson, stating that staff recommendation is a well thought analysis based on LAFCO policies. She recalls the enormous amount of time spent listening to all types of arguments in developing the agricultural mitigation policies, as well as the time spent in encouraging Gilroy to establish their agricultural mitigation policies. Since then, Gilroy has adopted an agricultural mitigation policy and the Commission has been able to support their applications. She comments that LAFCO policies have been developed over time and have not been made in a vacuum. She expresses the opinion that it is inappropriate for the proponents to accuse staff of wanting to maintain land use control in areas 4 and 5, indicating that it is not the desire of staff, rather, it is the role given to LAFCO by the State legislature. She expresses concern that the Commission is getting involved in the politics of the new town while its role is to provide orderly growth, and preserve open space and agricultural lands. She expresses the opinion that the Commission seems to be on a verge of making a decision that is contrary to the responsibilities of LAFCO commissioners.

In response to the inquiry by Commissioner Alvarado, Ms. Kretchmer advises that the future town is required to adopt and apply all County ordinances for 120 days or until the new town council adopts its own ordinances. While there are no requirements that the future town adopt the County's General Plan, most new cities in the State do so and the proponents have indicated that they are going to follow that practice as well.

Commissioner Alvarado continues by stating that the County General Plan explains why buffers between viable agriculture and urban areas must be established, which is why excluding areas 4 and 5 is very important. She adds that for San Martin, it is

important to have SOI boundary with unincorporated areas that could be annexed in an orderly manner, with LAFCO oversight and with mitigation for agricultural lands. She informs that this is a reasonable compromise consistent with the proponents desire to maintain a rural enclave in San Martin even if only on paper because the future town council will ultimately determine the town's destiny. She informs that USA boundary promotes orderly growth and management of lands in the cities and the County. She states that while the desire of San Martin to carve out its own destiny should not be denied, the Commission should be consistent with LAFCO policies and respectful of neighboring cities' well-being. The Commission should be consistent with democratic rule by leaving it up to the future elected town council to decide how they want their boundary to be. She indicates that the motion made by Commissioner Gage prevents the future town council from performing this process. She states that as a LAFCO Commissioner, she is not concerned about losing LAFCO control over lands in San Martin but doing what is in the best interest of both San Martin and the County. She expresses concern about the motion made by Commissioner Gage, considering that staff has presented a very thoughtful recommendation that takes into account all input that the Commission has received as well as the long process to establish the LAFCO policies. She notes that the motion rejects the LAFCO policies. She adds that even if the staff recommendation is approved, there will be all kinds of opportunities in the future for San Martin to be what it intends to be rather than what it promises to be. She expresses concern about Mr. Van't Rood's statement relating to the Commission's desire to control lands in San Martin and indicates that she would be voting against the motion.

Chairperson Constant responds by stating that a significant number of residents who signed the petition for incorporation live in areas 4 and 5 and, in a democratic rule, the wishes of these residents to be incorporated cannot be ignored. Additionally, he states that LAFCO policies are not absolute because they use the words "discourage" and "encourage" and, as such, it is the discretion of the Commission to interpret them. He continues by stating that while the Commission cannot base its environmental determinations on speculation about the future actions of the town, many arguments

being made at the meeting are speculations. He expresses agreement in part with Commission Wilson's comments not to fiscalize land use; however, he points out that one of the Commission's responsibilities in the incorporation process is to look at the CFA and determine the fiscal impact of the future town and its operation. Chairperson Constant then calls on Commissioners Gage and Howe to comment.

In response to an inquiry by Commissioner Howe, Ms. Palacherla informs that staff has discussed Area 3 with Brian Stott, Assistant to Morgan Hill City Manager. He indicated that the City is not in support of adding the area into Morgan Hill's SOI. Staff has received the same response from David Bischoff, a consultant designated by Morgan Hill to work on San Martin incorporation issues. Therefore, staff is requesting authorization that the Commission send a letter to Morgan Hill requesting further clarification in this regard. Commissioner Howe requests to amend the motion to include direction to staff to send a letter to Morgan Hill requesting their final response. Commissioner Gage indicates that his motion includes that direction to staff to report back to the Commission. In response to another inquiry by Commissioner Howe, Ms. Kretchmer advises that the argument regarding a possible violation of the policies is articulated in the staff report. In response to the inquiry by Commissioner Howe whether there is a potential violation of LAFCO policies as it relates to Item 9.2A on the agenda, Ms. Kretchmer advises that the motion addresses the boundaries that are not in compliance with existing policies. In response to a follow-up inquiry by Commissioner Howe, Ms. Kretchmer maintains that the motion violates Santa Clara County General Plan's SC 14.11 and SC16.0 in addition to LAFCO's incorporation policies. Commissioner Gage responds that these policies use the word "should" and not "must." He continues by saying that the future town council could not change land use designations in San Martin arbitrarily given proposals in the last 11 years for a dumpsite and facility of a trucking company among others, have been turned down by the residents. In addition, he states that it is unimaginable for San Martin to be entirely developed over the next 40 years because the town would need to provide services like water and sewer. He states that the local residents deserve a chance to manage their own growth because they

complain about many things such as the dumpsite and the airport. The land around the airport will no longer be developed as it is being acquired for a flight safety zone. San Martin has a lot of small, developed parcels and it is unimaginable for residents to further split five-acre parcels into one-acre parcels. With regard to urban buffers, Commissioner Gate states that these already exist between San Martin and the cities of Gilroy and Morgan Hill. For instance, all lands beyond Area 5 are within Gilroy's SOI. He states that residents of San Martin, like those in the 15 cities in Santa Clara County, want to incorporate, elect their town council and decide land use issues within their boundaries. He informs that his motion is not violating the law in any way and, in approving the motion, the Commission is doing a service to residents of San Martin. Currently, he states that a five-member County Board of Supervisors, whose members are not familiar with the area, is making land use decisions for San Martin. That is why, it is appropriate for residents of San Martin to manage their own city. He goes on to say that with his 11 years experience in the area and based on how the local residents reacted against the dumpsite and the trucking facility, there could be no single interest or persuasion that would prevail in the future town council.

At the request of the Chairperson, Commissioner Howe directs attention to the County General Plan policies on buffers as well as to a map illustrating the proposed boundaries and requests staff to locate Morgan Hill's SOI boundary. Ms. Palacherla informs that the proponents are proposing a boundary that goes all the way to Morgan Hill's SOI. She continues that staff is recommending exclusion of Area 4 so there will be some unincorporated lands left between the city limits of San Martin and the SOI boundary of Morgan Hill. Commissioner Gage notes that unincorporated lands in the SOI of Morgan Hill already serve as buffer. Ms. Palacherla proposes that San Martin should also share the responsibility in maintaining unincorporated lands within its SOI to serve as buffer and not extending its city limits all the way to Morgan Hill's SOI. Commissioner Howe notes that staff is saying it is alright for the SOIs of Morgan Hill and San Martin to touch but not their city limits. Ms. Palacherla advises that the future town could come back to LAFCO about the intended use for the surrounding unincorporated lands and the

best way to do that is to place these lands in the San Martin's SOI. In response to an inquiry by Commissioner Howe, Ms. Palacherla advises that while LAFCO has no control over land use, it considers land use when it makes decisions. Commissioner Howe expresses appreciation to staff; however, he expresses the opinion that San Martin residents want to include that unincorporated area and they should have control of their land use, and these completely comply with the policies and the Commission is not voting for something that is illegal nor against policies.

Commissioner Alvarado reiterates that no one on the Commission is against incorporation. She then inquires why the proponents do not want Area 3 and what needs to be done if Morgan Hill does not want it in its SOI. In response to this, Commissioner Gage states his motion includes direction for staff to work with Morgan Hill; if Morgan Hill does not want it, it would be included in San Martin. Commissioner Howe expresses agreement and Commissioner Wilson requests clarification from staff. Ms. Palacherla advises that Area 3 is an area composed of small parcels with sanitation issues. Staff has recommended on December 5, 2007 that it should be included in Morgan Hill because that city has urban services close to the area. However, since Morgan Hill has indicated that it is not interested in having responsibility for this area, staff is recommending that Area 3 remain in San Martin because it cannot be left out as an island. Commissioner Alvarado comments that staff recommendation is very thoughtful and has explored all the opportunities and obstacles, and if Morgan Hill does not want it, San Martin would have to take it. Commissioner Gage states that this is included in the motion. Commissioner Howe expresses agreement. Commissioner Gage then restates his motion relating to Area 3.

Commissioner Wilson informs that there is a difference between the CFA for incorporation and fiscalization of land use, explaining that fiscalization of land use is allowing the conversion of agricultural lands to other uses because of purely fiscal considerations, such as the profitability of farming. However, the Commission has agreed that the soil is still agricultural and LAFCO should not fiscalize land use. Chairperson Constant states he is not arguing the statement.

Commissioner Wilson enjoins the Commission not to ignore comments made by Morgan Hill, Gilroy, and the County Parks and Recreation Department, stating that LAFCO's decision must have the support of other jurisdictions. She comments that while working relationship between the County and San Martin area has not been very good, as stated by Commissioner Gage, 170 signatories out of 1,000 signatures is only 17 percent. She notes that it is premature to include these two areas at this time because it is not an orderly growth pattern, contrary to preservation of agricultural and open space lands, and fails the buffer policies. She then informs that she will not vote for the motion. In response to this, Commissioner Gage states that the residents will vote on the incorporation and they can decide if they want to incorporate. This has been done three times and failed. The LAFCO decision is a preparatory process that will be presented at an election and decided upon by a majority that is 50 percent plus one. Commissioner Wilson adds that the vote does not go on an area-by-area basis. Commissioner Gage states that, in general, if there is a group of people who opposes incorporation that will happen because incorporation has already failed three times and there is no guarantee that there will be any difference this time.

Chairperson Constant states that there is a big difference between the words "should" and "shall" in LAFCO policies. He directs attention to the map and states that there is a buffer existing between San Martin and Morgan Hill and that the Commission is potentially holding San Martin to a policy that a buffer has to be equal in both cities where there is no such policy. Chairperson Constant then calls the question.

It is ordered on a 3-2 vote, with Commissioners Alvarado and Wilson voting against, that areas 1 and 6 be excluded, areas 4, 5 and 7 be included, and that staff get clarification from Morgan Hill regarding areas 2 and 3.

9.3 INVOICES FOR LAFCO STAFF COSTS

The Chairperson requests the staff report. Ms. Palacherla directs attention to invoices for actual staff costs for December 2007 and January 2008.

Mr. Van't Rood states that some items in the invoices may not be necessary; however, SMNA will go through and comment on these invoices in the future.

Commissioner Wilson requests SMNA to address any billing concerns as invoices are received because it will be administratively difficult to look back to old bills. Chairperson Constant requests SMNA to comment on previous invoices in writing, and indicates that future invoices may be reviewed at the meeting.

10. UPDATE ON PENDING LEGISLATION: SB 301 (VEHICLE LICENSE FEE LAW)

The Chairperson requests the staff report. Ms. Palacherla recommends that the Commission send a letter of support for SB 301. AB 1602, a law allocating vehicle license fee (VLF) funding to newly incorporated cities, will expire on July 1, 2009. SB 301, which extends VLF allocation for another five years, has been passed by the Senate and will go to the Assembly with a possible modification of completely eliminating the sunset provision. She informs that there is no known opposition to the bill.

With regard to how this bill may affect the processing of the San Martin incorporation, Ms. Palacherla notes that even with the passage of the bill, the schedule should remain the same because the State law requires that the CFA use data from the fiscal year prior to filing of application for incorporation. The Commission must have hearings in May and June 2008 to ensure that the fiscal data would not be outdated.

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

Commissioner Alvarado leaves at 3:55 p.m.

11. LAFCO BUDGET

The Chairperson requests the staff report. Ms. Palacherla informs that a LAFCO Budget Subcommittee, composed of two commissioners and staff, is established every year to develop the LAFCO budget for the next fiscal year. The subcommittee meets twice between the months of March and June 2008. The budget hearings will be held on April 16, 2008 and June 4, 2008.

On Commission consensus, there being no objection, it is ordered that Commissioners Gage and Howe be designated to the LAFCO Budget Subcommittee.

12. 2008 CALAFCO STAFF WORKSHOP IN SAN JOSE (APRIL 2-4, 2008)

On motion of Commissioner Gage, seconded by Commissioner Howe, it is ordered on a vote of 4-0, with Commissioner Alvarado absent, that staff be authorized to attend the 2008 CALAFCO workshop.

13. COMMISSIONERS' REPORTS

There are no commissioners' reports.

14. WRITTEN CORRESPONDENCE

The Chairperson takes note of the January 2008 issue of The Sphere.

15. NEWSPAPER ARTICLES

There are no newspaper articles.

16. ADJOURN

On the order of the Chairperson, there being no objection, the meeting is adjourned at 3:55 p.m.

The next regular LAFCO meeting is scheduled to be held on Wednesday, April 16, 2008 at 1:15 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California.

Pete Constant, Chairperson
Local Agency Formation Commission

ATTEST:

Emmanuel Abello, LAFCO Clerk

LAFCO Meeting: April 16, 2008
TO: LAFCO
FROM: Neelima Palacherla, LAFCO Executive Officer
SUBJECT: Withdrawal of Legal Counsel from Representation of LAFCO
on the San Martin Incorporation Proposal
Agenda Item # 4.1

STAFF RECOMMENDATION

Authorize staff to select and retain alternate legal counsel for the San Martin incorporation proposal through an informal selection process and delegate authority to the LAFCO Executive Officer to enter into an agreement with the most qualified candidate in an amount not to exceed \$60,000.

BACKGROUND

The County Counsel's Office provides legal services to LAFCO in accordance with the legal services agreement between the Office of the County Counsel and LAFCO. The legal services agreement addresses the issue of conflict of interest for County Counsel staff to represent LAFCO on the San Martin incorporation proposal. Pursuant to the agreement, LAFCO acknowledged and waived the conflict based on the County taking appropriate steps to create ethical walls within the County Counsel's Office. The County has established separation between the staff representing the County and staff representing LAFCO on the incorporation proposal. However, since the proponents of the incorporation and the County were unable to reach agreement with regard to revenue neutrality resulting in the responsibility for imposing revenue neutrality terms and conditions shifting to LAFCO, the County Counsel's office provided notification on April 7th of their withdrawal from representing LAFCO on the San Martin incorporation proposal unless or until such time as a revenue neutrality agreement is reached between the two parties in order to avoid any potential conflict. Please see Attachment A for the memo from the County Counsel's Office providing notice of withdrawal. County Counsel's Office will continue to represent LAFCO on all matters other than the San Martin incorporation proposal.

HIRE ALTERNATE LEGAL COUNSEL TO REPRESENT LAFCO ON THE SAN MARTIN INCORPORATION PROPOSAL

Government Code §56384(b) states that if LAFCO's legal counsel is subject to a conflict of interest on a matter before the commission, the commission shall appoint alternate legal counsel to advise it.

Staff is seeking authorization to select and enter into a service agreement with an alternate legal counsel to provide ongoing counsel to LAFCO on all matters involving the San Martin incorporation proposal. The alternate legal counsel will be hired in lieu of the attorney from County Counsel's Office and will provide legal counsel to LAFCO on the San Martin incorporation proposal. The cost of the alternate counsel will be borne by the proponents.

The selection of the alternate legal counsel will be through an informal selection process and will be based on the attorney's experience with LAFCO and incorporations, availability to complete work with a quick turnaround and the cost of service.

ATTACHMENT

Attachment A: April 7, 2008 Memorandum to LAFCO from the Office of the County Counsel regarding Representation of LAFCO for San Martin Incorporation Proposal

Hand delivered on April 10, 08

**OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA**

70 West Hedding Street, 9th Floor
San Jose, California 95110-1770
(408) 299-5900
(408) 292-7240 (FAX)



Ann Miller Ravel
COUNTY COUNSEL

Winifred Botha
Robert C. Campbell
Lori E. Pegg
ASSISTANT COUNTY COUNSEL

MEMORANDUM

**ITEM NO. 4.1
ATTACHMENT A**

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

FROM: *Ann M Ravel*
Ann Miller Ravel, County Counsel
Winifred Botha, Assistant County Counsel *WB*
Kathy Kretchmer, Deputy County Counsel *KK*

RE: Representation of LAFCO for San Martin Incorporation Proposal

DATE: April 7, 2008

This memorandum addresses the legality of the Office of the County Counsel's representation of LAFCO to date with respect to the proposed incorporation of San Martin, and serves as notice to LAFCO that the Office of the County Counsel must now withdraw from representation of LAFCO on the incorporation proposal unless or until such time as the County and the proponents execute a revenue neutrality agreement. The Office of the County Counsel will continue to serve as LAFCO Counsel on all other matters.

As background information, the Office of the County Counsel provides legal services to the Local Agency Formation Commission (LAFCO) pursuant to an Agreement, a copy of which is included as Attachment One to this memorandum. This arrangement is common among LAFCOs throughout the state. Section 6 of the Agreement addresses Conflicts of Interest and specifically calls out the present issue regarding the proposal for the incorporation of San Martin. It states that the incorporation proposal has direct financial consequences for the County and that the Office of the County Counsel is representing the County in this matter. It further provides that the Office will take appropriate steps to create ethical walls within the Office and will ensure the confidentiality of LAFCO information and attorney-client communications. By entering into the Agreement, the County and LAFCO acknowledged and specifically waived the conflict based on appropriate steps to be taken by the Office of the County Counsel.

An incorporation is a complicated lengthy process. For example, LAFCO must evaluate numerous factors including the sufficiency of the petition and application, compliance with the

Memo to Honorable LAFCO Commissioners
Re: Representation of LAFCO for San Martin Incorporation Proposal
April 7, 2008
Page 2

California Environmental Quality Act, compliance with LAFCO policies, the financial feasibility of the town, and the mitigation on any fiscal effect of the proposal on the County. The process involves revenue neutrality discussions between the proposed city and the county. In almost all instances throughout the State, revenue neutrality has been achieved through agreement between the proposed city and the affected county. However, the County of Santa Clara and the proponents of the proposed Town of San Martin have not reached agreement. LAFCO must now consider the issue of revenue neutrality and has authority to impose terms and conditions to mitigate any negative fiscal effect and may take a position contrary to the County. Accordingly, the ethical wall within the Office of the County Counsel may no longer be sufficient to address the potential conflict of interest of the County Counsel's Office in its representation of LAFCO.

California Rule of Professional Conduct 3-310(C) provides that an attorney shall not represent more than one client in a matter in which the interest of the clients conflict without the informed written consent of each client. A public law office's representation of clients with conflicts with the client's informed consent and the creation of ethical walls has been upheld by the courts. *Howitt v. Superior Court* (1992) 3 Cal.App.4th 1575, 1579. Here, LAFCO and the County have given informed written consent as established by the Agreement for Legal Services, and the Office of the County Counsel has followed its office policies in establishing an ethical wall between the attorney representing LAFCO and attorneys representing the County on the San Martin incorporation. These policies are included as Attachment Two to this memo.

Up until this time, representation of the interests of LAFCO, a State created commission independent of the County, and representation of the interests of the County could sufficiently be separated by an ethical wall in the Office of the County Counsel. LAFCO Counsel's line of reporting was shifted to an Assistant County Counsel not involved in advising the County on the incorporation, support staff have been separated, the attorneys have no access to each other's files, offices are separated and all legal activities are kept completely separate.

Now, LAFCO's role in making a determination regarding revenue neutrality may place LAFCO in a position potentially at odds with the position of the County. In the event LAFCO's action is legally challenged, the Office of the County Counsel may represent opposite parties in the litigation. Because LAFCO is an independent commission with independent authority over matters within its jurisdiction, and a possibility of litigation may put the County and LAFCO in conflicting positions, the Office of the County Counsel withdraws from representation of LAFCO on this issue to avoid any potential conflict.

Attachments:

- 1) Agreement for Legal Services between the County and LAFCO
- 2) County Counsel's Office Policy regarding Ethical Walls

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

This Agreement ("Agreement") is made effective July 1, 2007, by and between the County of Santa Clara ("COUNTY") and the Local Agency Formation Commission of Santa Clara County ("LAFCO") so that the COUNTY may provide legal services to LAFCO.

LAFCO desires to engage COUNTY through the Office of the County Counsel to provide legal services; and

COUNTY has experience and expertise necessary to provide such services;

THEREFORE, the parties agree as follows:

1. Nature of Services.

COUNTY, through the Office of the County Counsel, will provide legal services for LAFCO including, but not limited to, research and general advice as requested by LAFCO.

2. Term of Agreement.

This Agreement is effective from July 1, 2007, to and including June 30, 2008, unless terminated earlier in accordance with Section 4.

3. Compensation.

A. Pursuant to the Memorandum of Understanding Between the Local Agency Formation Commission of Santa Clara County and the County of Santa Clara dated June 5, 2001, COUNTY will be compensated for services provided under this Agreement at the County Counsel's intra-county hourly rate established annually and for reimbursable expenses and costs incurred. COUNTY's intra-county hourly rates are revised annually. No less than thirty days prior to the beginning of the fiscal year to which any new fee schedule will apply, COUNTY will provide LAFCO with a new rate schedule. The intra-county rate for Fiscal Year ending June, 2008 is \$198/hour for attorneys and \$78/hour for paralegals.

B. COUNTY will invoice and bill LAFCO directly via intra-county payment vouchers on a quarterly basis. The invoice shall be accompanied by a detailed summary of activities undertaken over the course of the preceding quarter.

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C. LAFCO will provide the Office of the County Counsel with an estimate of the number of hours of general advice service required annually. Any necessary defense of litigation would be in addition to these hours.

4. Termination.

A. LAFCO may terminate this Agreement at any time, either in whole or in part, by giving 7 days written notice specifying the effective date and scope of the termination. COUNTY may terminate this Agreement at any time, either in whole or in part, by giving 30 days written notice specifying the effective date and scope of the termination. However, if COUNTY elects to terminate this Agreement, LAFCO's rights under any pending matter arising from COUNTY's services hereunder will not be prejudiced due to such termination as required by the Rules of Professional Conduct of the State Bar of California

B. In the event of termination, COUNTY will deliver to LAFCO copies of all documents and other work performed by COUNTY under this Agreement and upon receipt thereof, COUNTY will be paid for services performed and reimbursable expenses incurred to the date of termination.

5. Project Managers.

COUNTY designates Kathy L. Kretchmer, Deputy County Counsel, as COUNTY's Project Manager for the purpose of performing the services under this Agreement. As provided in the Memorandum of Understanding Between the Local Agency Formation Commission of Santa Clara County and the County of Santa Clara dated June 5, 2001, the County Counsel shall consider the input from LAFCO and the Executive Officer in assigning the attorney to represent LAFCO.

LAFCO designates Neelima Palacherla, LAFCO Executive Officer, as its Project Manager for the purpose of managing the services performed under this Agreement.

6. Conflicts of Interest.

COUNTY acknowledges that it has both present and potential interests which do or may conflict with the performance of services. The present conflict is by virtue of the petition to LAFCO for the incorporation of San Martin. The incorporation proposal has direct financial consequences for the COUNTY and the Office of the County Counsel is representing the COUNTY in this matter. COUNTY agrees to take appropriate steps to create ethical walls within the office and to ensure the confidentiality of LAFCO information and attorney-client communications. In accepting this Agreement, LAFCO acknowledges and specifically waives this conflict based on COUNTY's taking appropriate steps as indicated above.

LAFCO also acknowledges that it is aware of potential conflicts of interest by virtue of the County's representation of certain fire and school districts, certain sanitation and sanitary districts,

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

7. Insurance.

Each party is self-insured and, during the term of this Agreement shall maintain in force (i) a commercial general liability insurance or program of self-insurance which provides limits of no less than one million dollars (\$1,000,000.00) per occurrence or two million (\$2,000,000.00) per annual aggregate; (ii) a policy of workers' compensation providing statutory coverage; (iii) such other insurance or self-insurance as shall be necessary to insure it against any claim or claims for damages arising under the Agreement. The policy shall require the insurer to provide to the other party a thirty (30) day written notice of any cancellation or reduction of such insurance or the insured party shall provide such written notice under its self-insurance plan. Each party agrees to provide the other with a certificate of insurance upon request.

8. Indemnification.

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the Parties pursuant to Government Code section 895.6, or any other statute, regulation or rule that may otherwise affect the terms of this Agreement, the Parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the COUNTY and LAFCO agree to the following:

A. Claims Arising From Sole Acts or Omissions of COUNTY.

The COUNTY agrees to defend and indemnify LAFCO, its agents, officers and employees (hereinafter collectively referred to as "LAFCO") from any claim, action or proceeding against LAFCO, arising solely out of the acts or omissions of the COUNTY in the performance of this Agreement. At its sole discretion, LAFCO may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve the COUNTY of any obligation imposed by this Agreement. LAFCO shall notify COUNTY promptly of any claim, action or proceeding and cooperate fully in the defense.

B. Claims Arising from the Sole Acts or Omissions of LAFCO.

LAFCO agrees to defend and indemnify the COUNTY, its agents, officer and employees (hereinafter collectively referred to as "COUNTY") from any claim, action or proceeding against COUNTY, arising solely out of the acts or omissions of LAFCO in the performance of this

Agreement. At its sole discretion, COUNTY may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve LAFCO of any obligation imposed by this Agreement. COUNTY shall notify LAFCO promptly of any claim, action or proceeding and cooperate fully in the defense.

C. Claims Arising From Concurrent Acts or Omissions.

COUNTY agrees to defend itself and the LAFCO agrees to defend itself, from any claim, action or proceeding arising out of the concurrent action or omissions of COUNTY and LAFCO. In such cases, COUNTY and LAFCO agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs except as provided in section E below.

D. Joint Defense.

Notwithstanding paragraph C above, in any case where COUNTY and LAFCO agree in writing to a joint defense, COUNTY and LAFCO may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of LAFCO and COUNTY. Joint defense counsel shall be selected by mutual agreement of the COUNTY and LAFCO. COUNTY and LAFCO agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in section E below. COUNTY and LAFCO further agree that neither party may bind the other to a settlement agreement without the written consent of both COUNTY and LAFCO.

E. Reimbursement and/or Reallocation.

Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, COUNTY and LAFCO may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

9. Notices.

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing in accordance with this section:

To LAFCO:

Local Agency Formation Commission of Santa Clara County
70 West Hedding Street, 11th Floor, East Wing
San Jose, CA 95110
Attn: Neelima Palacherla, LAFCO Executive Director

To the COUNTY:

Office of the County Counsel
County of Santa Clara
70 West Hedding Street, Ninth Floor, East Wing
San Jose, CA 95110
Attn: Kristen Wong Baker, Deputy County Counsel

10. Governing Law.

This Agreement has been executed and delivered in, and will be construed and enforced in accordance with, the laws of the State of California.

11. Relationship of Parties; Independent Contractor.

COUNTY will perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of LAFCO. None of the provisions of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between the parties other than that of independent parties contracting with each other for purpose of effecting the provisions of this Agreement. The parties are not, and will not be construed to be in a relationship of joint venture, partnership or employer-employee. Neither party has the authority to make any statements, representations or commitments of any kind on behalf of the other party, or to use the name of the other party in any publications or advertisements, except with the written consent of the other party or as is explicitly provided herein.

12. Amendments.

This Agreement may be amended only by an instrument signed by the parties.

13. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

14. Severability.

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

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15. Waiver.

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing, and shall apply to the specific instance expressly stated.

IN WITNESS WHEREOF, COUNTY and LAFCO have executed this Agreement as follows:

LOCAL AGENCY FORMATION
COMMISSION OF SANTA CLARA
COUNTY

COUNTY OF SANTA CLARA

Blanca Alvarado
Name: BLANCA ALVARADO
Title: Chairperson
Date: 6/6/07

Ann Miller Ravel
ANN MILLER RAVEL
County Counsel
Date: 6/12/07

ATTEST:

OFFICE OF THE COUNTY EXECUTIVE

E. Abello
LAFCO CLERK Emmanúel Abello

Lucy Gray
Name:
Title:
Date: 6/11/07

APPROVED AS TO FORM
AND LEGALITY

APPROVED AS TO FORM
AND LEGALITY

Kathy Kretchmer
KATHY KRETCHMER 5/17/07
Deputy County Counsel
Date:

Kristin Baker 5/17/07
KRISTIN BAKER
Deputy County Counsel
Date:

**County of Santa Clara
Office of the County Counsel
Office Administrative Policies**

6.14 Ethical Walls

This Office serves as the County's legal representative in all civil matters, including the representation of boards, commissions and districts within the County. See e.g. Gov. Code § 27642; Santa Clara County Ordinance Code § A22-16. With respect to representation of different County departments, agencies, and officials, the County is the client, acting through the Board of Supervisors which is the body with ultimate decision-making authority. See Rule 3-600 of the Rules of Professional Conduct. However, in some instances, such as the representation of elected officials or quasi-judicial administrative bodies, the County is not the client, as the ultimate decision-making authority on a given issue lies with that elected official or quasi-judicial body.

In cases in which the Office represents different clients, the potential for conflicts of interest may arise between the County and the other clients represented by the Office. Examples of circumstances in which conflicts may arise are those in which a labor attorney represents departments before the Personnel Board while another attorney in the Office represents the Personnel Board, or in cases where one attorney in the office represents the Assessor while another attorney represents the Assessment Appeals Board. The latter conflict is specifically authorized under Gov. Code § 31000.7, which allows individual attorneys in a county counsel office to represent the Assessor and the Appeals Board "as long as the same individual does not represent both parties."

In cases where the Office represents multiple clients, Rule 3-310 of the Rules of Professional Conduct provides that attorneys cannot, without the informed written consent of each client, accept representation of more than one client in a matter in which the interests of the clients potentially or actually conflict. In such circumstances, the Office has a duty to obtain a written waiver from the clients as to continued representation of both clients by this Office; additionally, the Office has a duty to erect an "ethical wall" between the attorneys representing these clients in order to avoid any violations of the attorney-client privilege and the ethical duties each attorney owes his or her respective clients.

In order to ensure that the ethical wall is maintained and that written consent is obtained from clients where there is either a potential or actual conflict of interest, each attorney in the office is expected to be aware of, and inform the County Counsel of such conflicts among the

different clients as soon as the potential or actual conflict arises. Further, the following procedure must be followed in order to ensure clients are adequately informed of, and waive, any potential or actual conflicts of interest, and to ensure that appropriate screening mechanisms are in place:

- This Office may provide advice to multiple agencies, even where a potential or actual conflict of interest exists, as permitted by statute, case law, and Attorney General opinions.
- In cases where an actual or potential conflict of interest exists, clients must be advised of the actual or potential conflict as soon as possible and give written consent to continued representation by the Office. In some situations in which there is an inherent potential or actual conflict of interest among clients, e.g. between clients such as the Assessor and Assessment Appeals Board, and the County and the Personnel Board, a one-time waiver of the recurring conflict will be sufficient to meet this obligation.
- In cases in which written waivers of actual or potential conflicts of interest are obtained and this Office continues multiple representation of clients, the attorneys for each of these clients shall maintain the confidences of their respective clients and shall respect the attorney's duty of loyalty to his or her individual clients, and shall report to separate supervisors. In order to maintain such confidences and the duty of loyalty, an "ethical wall" shall be erected between attorneys representing clients with conflicting interests. The ethical wall shall include, but not be limited to, the following measures:
 - As soon as an attorney becomes aware of a potential or actual conflict between his or her client and another client represented by the Office, he or she shall notify his or her Assistant and discuss whether such a potential or actual conflict does exist.
 - If the Assistant concurs in the existence of the potential or actual conflict, the attorney shall send written notification to all staff of the existence of the potential and/or actual conflict and the need for client confidentiality to be respected as to each client represented by the Office.
 - Attorneys representing clients with conflicts of interest shall report to a different Lead and/or Assistant. The Lead and/or Assistant of each attorney shall then report only to the County Counsel, who will not take sides on the matter, but may give administrative guidance to each Lead and/or Assistant and/or attorney.
 - An attorney representing a client with a conflict of interest with another client represented by this Office shall not access any files containing information regarding the subject matter of the conflict, whether computerized or hard copy files.

- An attorney representing a client with a conflict of interest with another client represented by this Office shall not discuss the subject matter of the conflict, whether verbally or in writing, with the attorney representing the other client with the conflict of interest.
 - An attorney representing a client with a conflict of interest with another client represented by this Office shall not share any staff with the attorney representing the other client with the conflict of interest.
 - An attorney representing a client with a conflict of interest with another client represented by this Office shall have an office sufficiently separate and apart from the attorney representing the other client with the conflict of interest to ensure client confidentiality is maintained.
 - The “ethical wall” procedures applicable to attorneys representing clients with conflicts of interest shall be applicable to all staff working with an attorney representing a client with a conflict of interest with another client represented by this Office.
 - All staff will be trained on this policy and shall be expected to ensure client confidences are maintained.
- In all cases in which the Office represents multiple clients with potential and/or actual conflicts of interest, the County Counsel shall be apprised of the situation. The County Counsel may decide that continued representation by this Office of clients which have a potential or actual conflict of interest is inappropriate. In every case, however, no agency within the County may secure independent legal counsel unless the County Counsel certifies in writing to the County Executive that the Office is unable to act on behalf of the County. Santa Clara County Ordinance Code § A22-16.

LAFCO Meeting: April 16, 2008
TO: LAFCO
FROM: Neelima Palacherla, LAFCO Executive Officer
SUBJECT: Analysis of Potential Conflict of Interest Issues for the
LAFCO Executive Officer
Agenda Item # 4.2

STAFF RECOMMENDATION

Consider and address as necessary, any potential conflict of interest issues for the LAFCO Executive Officer to continue working on the San Martin Incorporation Proposal.

BACKGROUND

The legal opinion dated April 7, 2008 provided to the San Martin Neighborhood Alliance raises the question of a potential conflict of interest for the LAFCO Executive Officer to work on the San Martin incorporation proposal. The LAFCO Executive Officer as well as other LAFCO staff including the analyst and the clerk are County employees. However, the LAFCO Executive Officer reports directly to LAFCO on substantive issues and does not receive policy direction from the County.

Legislation effective in January 2001 required LAFCOs to be independent agencies and required that LAFCOs hire their own staff or contract with other agencies for their staffing. The CKH Act has no requirement that precludes Executive Officers from being County employees. When the Act was amended in 2001 to require LAFCOs to be independent agencies, the legislature could have precluded county employees from serving as LAFCO staff. No such language was added to the statute. The Report of the Commission on Local Governance for the 21st Century, *Growth Within Bounds*, on which the 2001 amendments were based, states on page 44 that a LAFCO is not precluded from using county staff, as long as "staff is accountable to the LAFCO under some formal arrangement, such as a contract. Allowing LAFCO, rather than the county, to make staffing decisions should allay any perceived bias."

The County and LAFCO entered into a Memorandum of Understanding in June 2001 which set forth the terms upon which the County will provide staffing and services to LAFCO. The MOU includes provisions establishing the independence of the LAFCO Executive Officer. Specifically it states that "The Executive Officer shall work at the direction of LAFCO and shall report directly to LAFCO on all commission matters. The Executive Officer shall report to the County Executive's Office on all personnel and administrative matters. Should a conflict arise between the Executive Officer's duties as a County employee and duties as the LAFCO Executive Officer, Executive Officer shall promptly advise the County Executive's Office and LAFCO of the issue so that it may be resolved by the two entities."

Despite the provisions in the MOU, the issue of a potential conflict of interest for the Executive Officer has been raised by the proponents. The Commission should therefore consider the issue and take action as needed. If the Commission concurs that there is potential for a conflict of interest, then immediate action must be taken to address the issue by selecting and hiring an alternate Executive Officer to work on the San Martin incorporation proposal.

Government Code §56384(a) states that if the executive officer is subject to a conflict of interest on a matter before the commission, the commission shall appoint alternate executive officer. The conflict of interest as referenced in this code section specifically pertains to conflicts as defined in the Political Reform Act that are financial conflicts. That is not the case here. The Executive Officer has no monetary interest in the incorporation of San Martin.

Given the protections in the contract between LAFCO and the County for staffing, and the lack of any Political Reform Act conflict, there is no basis on which the Executive Officer should have to withdraw working on the incorporation proposal.

ATTACHMENT

Attachment A: 2001 Memorandum of Understanding between LAFCO and the County of Santa Clara

MEMORANDUM OF UNDERSTANDING BETWEEN THE
LOCAL AGENCY FORMATION COMMISSION OF SANTA CLARA COUNTY
AND THE COUNTY OF SANTA CLARA

This Memorandum of Understanding ("MOU") is between the Local Agency Formation Commission of Santa Clara County (LAFCO) and the County of Santa Clara (County). The purpose of this agreement is to set forth the terms and conditions upon which the County will provide staffing, facilities and support services to LAFCO.

RECITALS

WHEREAS, since the inception of LAFCO from approximately 1963 to the present, the County has fully funded LAFCO including furnishing the Commission with the necessary quarters, equipment, supplies and staffing from the Offices of the County Executive, County Counsel, County Clerk, County Surveyor, and the County Planning Department; and

WHEREAS, new legislation has been passed effective January 1, 2001, which requires LAFCOs to be independent bodies and to contract for personnel and facilities (Government Code sections 56380 and 56384); and

WHEREAS, on February 6, 2001, the LAFCO and the County entered into an interim MOU to allow for the continuation for the current staffing levels and office arrangement through June 30, 2001 to assist LAFCO during the transition to independent operation; and

WHEREAS, LAFCO has done an assessment of its needs for the next fiscal year, 2001/2002, based on the demands of the new legislation and has developed a corresponding budget; and

WHEREAS, County is willing and able to provide and LAFCO with its own budget is willing and able to retain personnel and services to fulfill LAFCO's goal of independent staffing and autonomy under the terms and conditions set forth herein; and

WHEREAS, both County and LAFCO recognize and acknowledge that although the County shall pursuant to this MOU provide staff support, space and services to LAFCO, LAFCO is an independent commission and the County shall have no ability to control or influence any LAFCO action or staff recommendation; and

WHEREAS, LAFCO requested on February 6, 2001, and the Board of Supervisors approved in concept, to continue assistance and support to LAFCO on the basis that the costs for such services will be reimbursed by LAFCO, and that a formal Memorandum of Understanding outlining the terms and provisions for the continuation of the services would be developed.

The parties therefore agree as follows.

AGREEMENT

1. EFFECTIVE DATE

This MOU shall commence on July 1, 2001.

2. STAFFING

2.1 LAFCO EXECUTIVE OFFICER SERVICES

The County Executive's Office shall designate a full-time unclassified code entitled LAFCO Executive Officer at broad pay salary range equivalent to the Program Manager I to Program Manager II level. The position shall be subject to all normal labor contract provisions, Merit System Rules and County ordinances as applicable. The County shall recruit the Executive Officer through the County's standard process subject to LAFCO approval. The Executive Officer shall perform the duties as specified in the Cortese-Knox-Hertzberg Local Government Reorganization Act and shall do and perform all functions necessary or advisable to manage and conduct the business of LAFCO. The Executive Officer shall work at the direction of LAFCO and shall report directly to LAFCO on all Commission matters. The Executive Officer shall report to the County Executive's Office on all personnel and administrative matters. Should a conflict arise between the Executive Officer's duties as a County employee and duties as the LAFCO Executive Officer, Executive Officer shall promptly advise the County Executive's Office and LAFCO of the issue so that it may be resolved by the two entities.

2.2 LAFCO ANALYST SERVICES

The County Executive's Office shall designate a full-time unclassified code serving as LAFCO Analyst and alternately staffed at the Management Analyst / Sr. Management Analyst level. The position shall be subject to all normal labor contract provisions, Merit System Rules and County Ordinances as applicable. The Analyst shall be recruited through the County's standard process, but final candidates shall be interviewed with approval for hiring by the Executive Officer. The Analyst shall take work assignments and direction from the Executive Officer. The Executive Officer shall have full supervisory responsibility over the Analyst.

2.3 LAFCO COUNSEL SERVICES

The Office of the County Counsel shall designate an attorney as LAFCO Counsel to represent LAFCO, provide legal advice and provide defense of litigation. County Counsel shall consider the input from LAFCO and the Executive Officer in assigning the attorney to represent LAFCO. The LAFCO Counsel services shall be provided as requested by LAFCO and shall be invoiced and billed directly via intra-county payment voucher on a quarterly

basis at the County Counsel's intra-county hourly rate established annually. LAFCO shall provide the Office of the County Counsel with an estimate of the number of hours of general advice service required annually. Any necessary defense of litigation would be in addition to these hours.

2.4. LAFCO CLERK SERVICES

The Office of the Clerk of the Board shall designate a full-time code entitled LAFCO Clerk alternately staffed at the Board Clerk I/II level. The LAFCO clerk shall take all workload direction from the LAFCO Executive Officer and the LAFCO Analyst. The Clerk shall report to the Office of the Clerk of the Board on all personnel and administrative matters. The estimated cost for this position including overhead shall be established by the Clerk of the Board's office annually and billed directly to LAFCO on a quarterly basis via intra county payment voucher.

2.5 LAFCO SURVEYOR SERVICES

The County Surveyor shall provide services to LAFCO on an as needed basis to check maps and legal descriptions, to maintain jurisdictional boundaries, and to staff LAFCO meetings. Services shall be invoiced at the surveyor's intra-county hourly rate updated annually and billed directly to LAFCO on a quarterly basis via intra county payment voucher.

3. SERVICES

County shall provide the following services to LAFCO. LAFCO will be subject to the normal County administrative fees / costs charged in consideration for these services either directly or through the County's Cost Allocation Plan.

3.1 ACCOUNTING AND BANKING SERVICES

The County Controller-Treasurer Department shall provide all banking and accounting services for LAFCO. Interest earned on LAFCO funds, shall be based on LAFCO's average daily cash balance in the Treasury and on the Treasury's pooled earnings rate net of administrative costs. Such interest earnings shall be calculated and paid quarterly into the LAFCO account. The Controller shall provide accounting and reporting on both budget and actual transactions.. Additionally, the Controller shall use the final budget as provided by LAFCO to determine the cities' and County's share of costs. The Controller shall bill and collect payments from the cities and the County, depositing these payments to LAFCO's account in the County Treasury.

3.2 OFFICE SPACE, EQUIPMENT AND SUPPLIES

The County shall provide space suitable for LAFCO offices. The County shall allow the use of the County Board chambers and other meeting rooms for Commission / staff meetings, subject to availability. County shall provide purchasing services for LAFCO, including solicitation and evaluation of proposals for goods and services, issuance of purchase orders and/or development of purchase agreements, and processing of payment upon receipt of the purchased goods/services.

3.3 PERSONNEL SERVICES

The County shall provide personnel services including recruitment, advertising, screening of applications, and development of hiring lists. The County shall provide payroll, benefits coordination and administration services and Labor Relations services.

3.4 GENERAL COMPUTER MAINTENANCE AND UPGRADES

The County shall provide technical assistance in setting up computers, networking, and Internet access services, including but not limited to, continued connection to the County computer network. These services shall be charged on an hourly basis at the Information Services Department's intra-county hourly rate established annually. These charges shall be invoiced and billed directly to LAFCO via the intra-county payment voucher on a quarterly basis.

3.5 PHONE SYSTEMS

The County shall provide connection to the County phone system and voice mail.

3.6 GIS SERVICES

The County shall provide access to the County Planning Office's GIS server and the data layers maintained by the Planning Office.

3.7 SUPPORT FUNCTIONS

All other support / administrative functions of a type currently provided to LAFCO or required to be provided by law.

4. RISK MANAGEMENT

County shall provide LAFCO with insurance coverage for general liability and automobile liability that is consistent with the rates and coverage provided to County departments.

5. TERM AND TERMINATION

This MOU shall continue until terminated by not less than five months written notice to the other party. Such termination shall be effective on July 1 of the next fiscal year after such notice is given.

6. GENERAL PROVISIONS

6.1 SIGNATURES

LAFCO hereby authorizes the Executive Officer or, his/her designee, to execute any documents to implement this MOU. The Board of Supervisors hereby authorizes the County Executive or his designee to execute any documents to implement this MOU.

6.2 ASSIGNMENT

Neither party may assign this MOU, nor any interest therein, without the other party's written consent.

6.3 NOTICES

All notices, demands and correspondence required or provided for under this MOU shall be in writing and delivered in person or dispatched by certified mail, postage prepaid, to the address below. Notice of any change of address shall be provided in the manner set forth above and delivered to the other party.

COUNTY OF SANTA CLARA:

County Executive
County of Santa Clara
70 W. Hedding Street
San Jose, CA 95110

LAFCO:

Executive Officer, LAFCO
County of Santa Clara
70 W. Hedding St.
San Jose, CA 95110

6.4 SEVERABILITY

The parties hereto agree that the provisions are severable. If any provision of this MOU is held invalid, the remainder of this MOU shall be effective and shall remain in full force and effect unless amended or modified by mutual written consent of the parties.

5. TERM AND TERMINATION

This MOU shall continue until terminated by not less than five months written notice to the other party. Such termination shall be effective on July 1 of the next fiscal year after such notice is given.

6. GENERAL PROVISIONS

6.1 SIGNATURES

LAFCO hereby authorizes the Executive Officer or, his/her designee, to execute any documents to implement this MOU. The Board of Supervisors hereby authorizes the County Executive or his designee to execute any documents to implement this MOU.

6.2 ASSIGNMENT

Neither party may assign this MOU, nor any interest therein, without the other party's written consent.

6.3 NOTICES

All notices, demands and correspondence required or provided for under this MOU shall be in writing and delivered in person or dispatched by certified mail, postage prepaid, to the address below. Notice of any change of address shall be provided in the manner set forth above and delivered to the other party.

COUNTY OF SANTA CLARA:

County Executive
County of Santa Clara
70 W. Hedding Street
San Jose, CA 95110

LAFCO:

Executive Officer, LAFCO
County of Santa Clara
70 W. Hedding St.
San Jose, CA 95110

6.4 SEVERABILITY

The parties hereto agree that the provisions are severable. If any provision of this MOU is held invalid, the remainder of this MOU shall be effective and shall remain in full force and effect unless amended or modified by mutual written consent of the parties.

6.5 ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This MOU constitutes the entire understanding and agreement of the parties. This MOU integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiation or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of or amendments to the provisions of this MOU must be in writing and signed by the appropriate authorities of LAFCO or of the County.

6.6 MUTUAL INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the Parties pursuant to Government code Section 895.6, the Parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the County and LAFCO agree that pursuant to Government Code Section 895.4, each party hereto shall fully indemnify and hold the other party, their officers, board/commission members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this MOU. No party, nor any officer, board/commission member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officer, board members, employees or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other party under this MOU.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding effective as of July 1, 2001.

LOCAL AGENCY FORMATION
COMMISSION of Santa Clara County

Donald F. Gage
DONALD F. GAGE
Chairperson, LAFCO
Date JUN 05 2001

ATTEST:
Ruth Marston
Ruth Marston, LAFCO Clerk
Local Agency Formation Commission
Approved as to Form and Legality:
Kathy Kretchmer
Kathy Kretchmer, LAFCO Counsel

COUNTY OF SANTA CLARA

James T. Beall, Jr.
JAMES T. BEALL, JR.
Chairperson, Board of Supervisors
Date JUN 05 2001

ATTEST:
Phyllis Perez
Phyllis Perez; Clerk
Board of Supervisors
Approved as to Form and Legality:
Ann Ravel
Ann Ravel, County Counsel

LAFCO Hearing: April 16, 2008

TO: LAFCO

FROM: Neelima Palacherla, Executive Officer
Dunia Noel, Analyst

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

Agenda Item #4.3

STAFF RECOMMENDATIONS

1. Open public hearing and receive testimony.
2. Close public hearing.
3. Direct staff to respond to comments and to make any necessary revisions to the Revised Initial Study and Revised Negative Declaration in preparation for potential adoption by LAFCO at a future public hearing.

BACKGROUND

Revision to Draft Initial Study and Proposed Negative Declaration

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 was 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.

The Revised Initial Study and Revised Negative Declaration were re-circulated in compliance with §15073.5 of the CEQA Guidelines.

Public Review Period for Revised Initial Study and Revised Negative Declaration Closed April 10th at 5:00 PM

LAFCO staff has prepared a Revised Initial Study for the project, and based upon substantial evidence in the record, finds that the proposed project could not have a significant effect on the environment. Therefore, LAFCO staff recommends that a Proposed Negative Declaration be approved for this project. A Notice of Intent to Adopt a Revised Negative Declaration (Attachment A) was distributed and posted in compliance with §15072 of the CEQA Guidelines. The Revised Initial Study and Revised Negative Declaration (Attachment A) were also submitted to the State Clearinghouse for review by state agencies.

A 30 day public review period of March 12, 2008 through April 10, 2008 (5:00 PM) was established for the Revised Initial Study and the Revised Negative Declaration in accordance with §15073 of the CEQA Guidelines. In reviewing the Revised Initial Study and the Revised Negative Declaration, affected public agencies and the interested public were directed to focus on the adequacy of the document in identifying and analyzing the potential impacts on the environment and ways in which the potentially significant effects of the project area are to be avoided or mitigated.

Public Hearing to Consider and Accept Comments on the Revised Initial Study and Revised Negative Declaration

As of the writing of this staff report, LAFCO staff has received written comments (see Attachment B) on the Revised Initial Study and Revised Negative Declaration from the following:

- Santa Clara County Parks Department,
- Santa Clara County Planning Department,
- Santa Clara Valley Transportation Agency,
- City of Morgan Hill,
- Committee for Green Foothills,
- Greenbelt Alliance, and
- San Martin Neighborhood Alliance

LAFCO staff recommends that LAFCO open the public hearing and accept comments. Following the close of the public hearing, LAFCO staff recommends that

LAFCO direct staff to respond to the comments and revise the Revised Initial Study and Revised Negative Declaration where appropriate.

At this time, no hearing is set for the adoption of the Negative Declaration. Prior to approving the incorporation, LAFCO must take the necessary environmental actions.

NEXT STEPS

LAFCO staff will respond to comments received during the public review period and make the comments and responses available on the LAFCO website (www.santaclara.lafco.ca.gov). Staff will bring the comments and responses back to LAFCO at their next meeting for their information.

ATTACHMENTS

- Attachment A: Notice of Intent to Adopt a Revised Negative Declaration and Revised Initial Study and Revised Negative Declaration (dated March 11, 2008)
- Attachment B: Comment Letters Received on Revised Initial Study and Revised Negative Declaration as of April 10, 2008.

County of Santa Clara

Department of Planning and Development
Planning Office

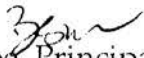
County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, California 95110-1705
(408) 299-5770 FAX (408) 288-9198
www.sccplanning.org

ITEM No. 4.3 ATTACHMENT B



April 10, 2008

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

From: Bill Shoe,  Principal Planner, for Michael M. Lopez, Manager

RE: San Martin Incorporation Proposal (SMIP), Revised Initial Study Comments

Thank you for the opportunity to comment further on the revised Initial Study for the San Martin Incorporation proposal. The SMIP Initial Study has been revised for various purposes, as stated on p. 3 of the Introduction, including additional analysis of the project's consistency with state law, and adopted policies of LAFCO, the cities, and the County.

Comments from the County of Santa Clara are focused on consistency of the proposed incorporation with applicable LAFCO and County policies, Section 3.1. Growth management-related County policies are intended to discourage the further urbanization of rural hillside and agricultural lands and the potential for associated environmental impacts. Per the CEQA Guidelines and as listed in the revised Initial Study, conflict with applicable land use plans and policies adopted for the purpose of avoiding an environmental impact would constitute a significant impact. Please find below specific comments regarding the project's consistency with these policies and thus its environmental impacts.

General Comments

The SMIP Initial Study has been revised for various purposes, as stated on p. 3 of the Introduction, including additional analysis of the project's consistency with state law, and adopted policies of LAFCO, the cities, and the County. Overall, staff finds the additional evaluations to be adequate in terms of scope and content. Specific comments are as follows.

P. 13 LAFCO Incorporation Policies 3g

Discussion: Under the County's Countywide Urban Growth Management Policies, only lands within an Urban Service Area are intended and planned for urban uses and development. Lands included within an USA should be used efficiently to meet urban population and development needs. Lands outside a city or its USA may only be considered for urban uses or development intensities upon inclusion within an USA by

LAFCO, when deemed appropriate and necessary to accommodate planned urban growth. Lands deemed unsuitable for urban development should remain outside USAs.

Comment: Outside the more densely developed community core of San Martin, any incorporation boundaries would inevitably include some percentage of undeveloped, or vacant lands. All of San Martin presently has County Land Use Plan designations of Rural Residential, Agriculture-Medium Scale, or other non-urban, resource conservation-related designations. Were incorporation limited to those areas having near-urban level densities and uses, it would be focused primarily on the village or community core area, plus some limited area of adjacent lands. That alternative would not necessarily be feasible, but less expansive boundaries would affect less open space lands.

P. 16, Santa Clara County General Plan Policies

Discussion: The purpose of the revised Initial Study is to provide a more complete assessment of policy consistency for the San Martin incorporation proposal. Consequently, it is appropriate to consider the policies of the Countywide Growth and Development Chapter regarding new city incorporations, in general. Specifically, two policies of the Countywide Growth & Development Chapter apply, policies C-GD 25 and C-GD 28, p. B-15 of Book A of the General Plan (attached). Certain subjects of these policies address issues that lie outside the scope of CEQA environmental review. However, policy C-GD 28, subsection (c) addresses “areas deemed generally unsuitable for urban development, such as those with natural hazards or critical resources.” The intent of subsection (c) is to ensure that incorporation proposals demonstrate that areas typically deemed unsuitable for urban development are not planned for development, or excluded from incorporation proposals, consistent with policies intended to exclude similar lands from city Urban Service Areas.

With regard to non-valley lands in and around the San Martin Planning Area that are included in the SMIP, a number of modifications have been made to exclude Ranchlands-designated areas, County-owned park lands, and dedicated open space lands of CordeValle. However, portions of those dedicated open space lands of CordeValle to the north of CordeValle Golf Club are contained within the proposed SMIP boundaries, as are the low-density hillside subdivisions of Hayes Lane and West San Martin Avenue. The latter lie outside the San Martin Planning Area.

Comment: For internal consistency and consistency with countywide growth management policies discouraging further annexation and urbanization of hillside lands, the Initial Study or Executive Officer’s report should address more explicitly whether all such non-valley lands should be excluded, particularly all the CordeValle lands dedicated to the County as open space, and those that lie outside of the San Martin Planning Area.

P. 16-17, South County Joint Area Plan Policies, Part 5, Book B, County General Plan

Discussion: These policies address issues such as agricultural buffers, greenbelts, or urban buffers between the South County cities, and adequate consideration for open space preservation generally for South County. The proposed incorporation boundaries

include all lands up to the Sphere-of-Influence (SOI) of Morgan Hill at Maple Avenue to the north, and all lands to Gilroy's SOI at Masten Avenue/Fitzgerald Avenue to the south. If approved as proposed, all unincorporated lands that most logically would relate to the designation and conservation of urban buffers within the San Martin Planning Area would become incorporated.

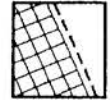
San Martin would be initially guided and governed by the existing Santa Clara County General Plan, including applicable South County Joint Area Plan policies. Although SMIP proponents assert there is no desire to change land use policies for the areas in question, upon incorporation, the Town of San Martin would become the sole arbiter of future land use planning for those areas and would be ultimately required to adopt its own general plan.

Comment: The Planning Office concurs with the overall assessment of policy consistency provided in the revised Initial Study regarding the South County Joint Area Plan policies. In light of that assessment, and some of the long term regional implications of the proposed incorporation boundaries for the growth management of South County cities, either the Initial Study or Executive Officer's overall report should specifically address the merits and demerits of less expansive boundaries for consistency with countywide growth management policies and South County Joint Area Plan policies. The proposed incorporation boundaries are more appropriate to the new town's Sphere-of-Influence, in comparison to the current Sphere boundaries of the South County cities.

Attachment:

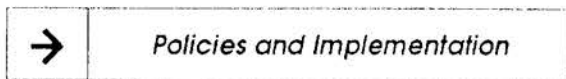
P. B-15, Book A, Santa Clara County General Plan, Growth & Development Chapter

CC: Sylvia Gallegos, Deputy County Executive



■ New City Incorporations

Incorporation is the formal term used to describe the creation of a new city. Although in the 1990s and beyond there are few if any unincorporated communities which have potential to incorporate as new cities, the same basic criteria apply as those which govern special district formation. The most critical factor involved for approval of incorporation is the ability to generate tax revenues sufficient to provide the full complement of needed urban services and facilities. In addition, new cities should not be created on lands that would not generally be deemed suitable for urban development at any urban density. The cities' Urban Service Areas have already been established to generally exclude natural hazard and resource areas. Potential new city incorporations should also avoid such areas for urban development.



C-GD 23

Annexation to cities should take precedence over annexation to or formation of a special district. Proposals for the formation of a new special district must demonstrate that the need for services cannot be better met through annexation to a city or an existing special district.

C-GD 24

Any proposal to provide urban services by means of a special district should be evaluated to ensure:

- a. that the area has been designated for development compatible with the types and intensity of the proposed urban service or facility, and
- b. that the service plan is consistent with the applicable general plans of the County and affected city(s).

C-GD 25

Proposals for the formation of a special district or new city incorporation should not be approved unless proponents can demonstrate that there is a sufficient revenue base to support the new services without diminishing the tax base of existing governmental entities.

C-GD 26

The formation and activities of special districts should be consistent with adopted urban development policies of the Local Agency Formation Commission, the cities, and the County.

C-GD 27

Consolidation of special districts should be encouraged in order to assure cost-effective public service provision and eliminate unnecessary duplication of governmental entities.

C-GD 28

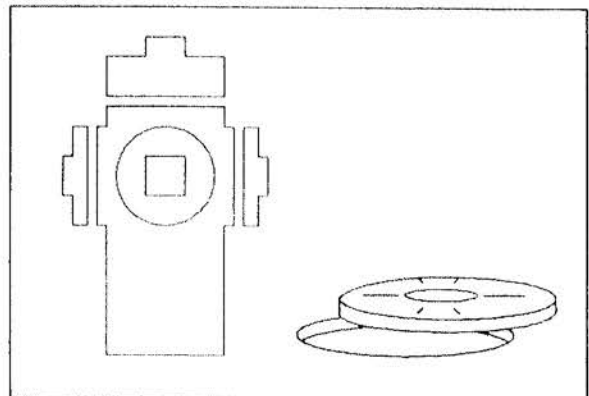
Proposals for incorporation must demonstrate that:

- a. the need for municipal services or control cannot be better satisfied by an existing city or the County;
- b. the proposed new city will be able to raise sufficient revenues to fund required services at the desired level; and
- c. areas deemed generally unsuitable for urban development, such as those with natural hazards or critical resources, are not planned for development.

Implementation Recommendations

C-GD(i) 6

Undertake periodic review of the effectiveness of locally adopted LAFCO guidelines and policies. Amend LAFCO guidelines and policies for improved consistency with County policies regarding special districts, if necessary.





April 10, 2008

Dunia Noel
Santa Clara County LAFCO

**Re: Comments on the IS/ND for the proposed Incorporation of new city of San Martin
SCH#2007112017**

Dear Dunia;

As stated at the February 6, 2008, the Committee for Green Foothills believes an Initial Study is inadequate for the proposed incorporation of San Martin so long as the Areas 4 and 5 are included in the incorporation area. In the absence of an EIR, LAFCO cannot legally approve the incorporation proposal.

The removal of Areas 4 and 5 from areas subject to LAFCO's Agricultural Mitigation policies mean a change in policies that apply to those lands. The stated reason for why no EIR is necessary is that no change in policies would occur, as the new City of San Martin would have the same initial General Plan that now applies to it as an area under Santa Clara County jurisdiction. This stated reason is contradicted by the loss of a policy for reducing the impact of lost agricultural land.

Furthermore, as the IS/ND itself notes, the proposed incorporation is inconsistent with LAFCO policy and enabling legislation. ISND at 12-14. Specifically, the inclusion of 2,000 acres of prime agricultural lands and 2,550 acres of open space lands contradict LAFCO provisions for compact and orderly growth. The following statements from the IS/ND simply indicate that it cannot be legally approved with the current boundaries:

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.

The project is not entirely consistent with Incorporation Boundaries Policy 3e.

Therefore this project is not entirely consistent with Incorporation Boundaries Policy 3g.

The project is not entirely consistent with Incorporation Boundaries Policy 3h.

This project is not entirely consistent with LAFCO's Urban Service Area Policies.

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.

The above represents only a few of the inconsistencies noted in the IS/ND. Inconsistencies with an agency's policies at least suggest a significant impact, and the "fair argument" standard for when an EIR is required is very low.

We recognize that some of these problems may persist even if Areas 4 and 5 were removed from the incorporation boundaries, but those two areas represent the most severe risk of environmental impact.

For all the above reasons, LAFCO cannot legally approve the IS/ND as the basis of approving the proposed incorporation of San Martin including Areas 4 and 5.

Please contact us if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Brian Schmidt". The signature is written in a cursive style with a long horizontal stroke at the end.

Brian A. Schmidt
Legislative Advocate, Santa Clara County



San Martin Neighborhood Alliance

"Together We Make A Difference"

April 10, 2008

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

RE: Proposed Incorporation of the Town of San Martin

Dear Neelima:

We have reviewed the Proposed Incorporation of the Town of San Martin: Revised Initial Study and Revised Negative Declaration and have the following comments.

Notice of Intent to Adopt a Revised Negative Declaration:

We concur that the proposed project could not have a significant effect on the environment.

We would appreciate Local Agency Formation Commission (LAFCO) forwarding any other comments received on the Revised Initial Study and Revised Negative Declaration to the San Martin Neighborhood Alliance (SMNA), the proponents, as soon as they are received by LAFCO by April 10, 2008 so that we can review them in advance of the April 16, 2008 Public Hearing.

We note that LAFCO may adopt the proposed Revised Negative Declaration at the May 7, 2008 LAFCO Public Hearing. This is contrary to Page 10 of the original Initial Study which indicated an April 2008 date for adoption and we would like to know why it will take so long to adopt the Negative Declaration.

The Proposed San Martin Incorporation Boundary shown on the exhibit attached to the Notice of Intent does not show the revised boundary to add Area 2 along California Drive. This was the primary reason for having to revise the Initial Study.

Notice of Completion

Present Land Use/Zoning/General Plan Use – This text is incorrect, misleading and inconsistent with Page 13 and Exhibit 5.3 of the Initial Study. The text should say "The San Martin Community is zoned and planned as a rural residential and agricultural area and not as a "rural agricultural and residential area".

Neelima Palacherla, Executive Officer, LAFCO
April 10, 2008
Page 2

Revised Initial Study and Revised Negative Declaration:

The SMNA provided comments on the original Initial Study on November 26, 2007. This was mentioned at the December 5, 2007 public hearing on the original Initial Study. In addition, on February 6, 2008, we told LAFCO that these comments were still not included in the package sent to the LAFCO Commissioners for the February 6, 2008 meeting. In spite of these notifications, our November 26, 2007 comments have still not been included in the Comment Letters in the Revised Initial Study. We are concerned about the continued failure of LAFCO staff to coordinate with the proponents and the failure of LAFCO staff to include our comments in the Initial Study in violation of CEQA.

Page 5 – Need to add City of Morgan Hill response to LAFCO on Areas 2 and 3.

Page 6 – Why does San Martin get detached from the County Library Service Area? This is a County system not a City system. This is also contradictory to what is stated on Page 71.

Pages 12 to 19 – Section 3.1 - Consistency with LAFCO and Local Policies. This section has been added to the Initial Study. It is not clear why this section has been added as we understand it is not a CEQA requirement.

The Cover indicates the Initial Study was prepared entirely by Michael Brandman Associates. No where in the Initial Study is it disclosed that Section 3.1 was actually prepared by LAFCO staff and not the consultants.

Pages 12 and 13 – Cortese Knox Hetzberg Act – Consistency Analysis. It states “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 could result in the premature conversion of agricultural lands or impact adjacent agricultural lands”. This statement is misleading as the County already has the power to do this and the Board of Supervisors recently approved a 19 lot subdivision on a 100 acre parcel that includes areas designated as “Prime Farmland” and “Farmland of Statewide Importance”. The County is also proposing to acquire about 100 acres for expansion of the South County/San Martin Airport on “Farmland of Statewide Importance and Local Importance”. The County, not the Town of San Martin, also approved the John H. Boccardo Family Living Center, Santa Clara County Government Center, San Martin Transfer Station and other urban type uses.

It is not clear what the 2,552 acres of “undeveloped lands” includes. (See next comment on LAFCO Incorporation Boundaries Policies 3e and 3g).

Neelima Palacherla, Executive Officer, LAFCO
April 10, 2008
Page 3

Page 13 – LAFCO Incorporation Boundaries Policies 3e and 3g – Consistency Analyses:
The Initial Study says the area is 10,473 acres on Pages 3 and 5 but only 8, 659 acres on Page 13.

It is not clear what the 2,552 acres of “undeveloped lands” includes. An exhibit should be added to show the agriculture, hillside, roadside services and rural residential areas that are referred to as being included in the 2,552 acres.

The text references land zoned “A” (Exclusive Agriculture, Medium Scale). This appears to include about 880 acres of Exclusive Agriculture, Medium Scale land according to Exhibit 5.3. The area zoned for Exclusive Agriculture, Medium Scale is already primarily in Rural Residential use.

The 2,552 acres also refers to lands zoned “HS” (Hillsides). There appears to be about 1,880 acres designated Hillsides according to Exhibit 5.3. The Hillsides include about 780 acres of the Hayes Valley Estates and the entire Cordevalle residential and resort development of approximately 980 acres. (According to Exhibit 5.3, Hillsides also includes the 733 acres of the Cordevalle area that has been excluded from the modified Incorporation Boundary). The text says “the HS designation applies to mountainous lands and foothills unsuitable and/or unplanned for annexation and urban development.” This area already includes the developed Cordevalle residential and resort community and the Hayes Valley Estates previously approved by the County Board of Supervisors.

The “RS” (Roadside Services) area is a 15 acre parcel, out of the 2,552 acres referred to (or less than 1 percent), on Masten Avenue next to the U.S. 101 highway interchange – a prime location for such services.

The text says the 2,552 acres of undeveloped lands also includes lands zoned “RR” (Rural Residential). This is the zoning designation for most of San Martin as shown on Figure 5.3. Why is Rural Residential mentioned and included within the 2,552 acres referred to as “undeveloped lands” when most of San Martin is Rural Residential?

Page 14 – LAFCO Incorporation Boundaries Policy 3h – Consistency Analysis: The discussion of the Williamson Act land on Page 14 is misleading and inconsistent with the discussion of Williamson Act land under “Agriculture” on Pages 28 and 31 and as shown on Figure 5.2. On Page 28, it states that of the current 187 properties under the Williamson Act, the County has recently filed and recorded notices for non-renewal on 126 of the 187 properties that will expire in 2016 or 2017. In addition, on Page 28 the Initial Study states “The remaining 61 properties under Williamson Act are scattered throughout the area of the proposed boundaries for San Martin”. Of the 1,800 acres, about 780 acres are in the Hayes Valley Estates and the contracts will expire in the near future.

Neelima Palacherla, Executive Officer, LAFCO
April 10, 2008
Page 4

In addition, about 300 acres of Prime Farmland and Farmland of Statewide Importance are Williamson Act parcels that will not be renewed.

Page 71 – Parks and Recreation. Add “the originally proposed incorporation boundary for” before “San Martin” in the first sentence to avoid confusion.

Pages 71 and 75 – Need to change Exhibit? to Exhibit 3.1.

Pages 73 and 75 – Recreation and Mineral Resources, Impact e). This should be revised to “No Impact” instead of “Less than Significant Impact” as portions of the Coyote Lake/Harvey Bear Ranch County Park will be outside the Town boundary based on LAFCO’s February 6, 2008 decision.

Please call me at 408-529-2300 or email rvantrood@mindspring.com if you have any questions or require additional information.

Sincerely,

SAN MARTIN NEIGHBORHOOD ALLIANCE



Richard van't Rood
Chairman, SMNA Incorporation Committee

RVR/djk

cc: Sylvia Hamilton
Freddi Comperchio
Cleo Logan
Pete Keesling



April 9, 2008

Local Agency Formation Commission
Attn: Neelima Palacherla, Executive Officer
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

Re: Proposed Incorporation of the Town of San Martin: Revised Negative Declaration

Dear Ms. Palacherla:

Thank you for allowing Greenbelt Alliance to have the opportunity to comment on the Revised Initial Study and Negative Declaration on the proposed incorporation of the Town of San Martin. San Martin proponents are pursuing the incorporation of approximately 10,470 acres in between the communities of Morgan Hill and Gilroy in South Santa Clara County. The incorporation boundary, or city limits, will be coterminous with San Martin's Sphere of Influence and Urban Service Area. San Martin proponents are not planning to have urban services and intend to incorporate in order to preserve the rural character of their community and to have more local control.

Greenbelt Alliance has taken the position to oppose San Martin's incorporation. It is counterintuitive to think that incorporation will preserve a community's open space. While CEQA cannot speculate on what a future city council will do, it is reasonably foreseeable that San Martin will face enormous development pressure. The Negative Declaration states that the proposed project does not involve any new development nor the provision of new services, therefore no environmental impacts would occur.

Cities and towns provide services to their residents in the form of sidewalk repair, parks, libraries, garbage removal and so forth. These services come at a cost and property and sales tax revenues help to pay for basic services. Eventually, services provided by the County will need to be provided by San Martin. San Martin may need to grow in order to meet the needs of residents.

Additionally, San Martin's location along Highway 101 and Caltrain, on flat, easily developed land, makes it ripe for future development. The community also hosts an airport which is likely to see increased traffic. Creating a new community with

MAIN OFFICE • 631 Howard Street, Suite 510, San Francisco, CA 94105 • (415) 543-6771 • Fax (415) 543-6781
SOUTH BAY OFFICE • 1922 The Alameda, Suite 213, San Jose, CA 95126 • (408) 983-0856 • Fax (408) 983-1001
EAST BAY OFFICE • 1601 North Main Street, Suite 105, Walnut Creek, CA 94596 • (925) 932-7776 • Fax (925) 932-1970
SONOMA-MARIN OFFICE • 555 5th Street, Suite 300B, Santa Rosa, CA 95401 • (707) 575-3661 • Fax (707) 575-4275
SOLANO-NAPA OFFICE • 725 Texas Street, Fairfield, CA 94533 • (707) 427-2308 • Fax (707) 427-2315

INFO@GREENBELT.ORG • WWW.GREENBELT.ORG

expansive city boundaries opens the door for sprawling and inefficient land use patterns. Other communities, including Morgan Hill to the north and Gilroy to the south, have city limits and spheres of influence that are not coterminous. These, in addition to Urban Growth Boundaries, allow for cities to grow in a more orderly fashion so that resources and services are used more efficiently.

It is reasonably foreseeable that San Martin's need to provide services and its ideal location for development will foster an environment of intense development pressure. According to the Important Farmlands Map from 2006, San Martin has both Prime Farmland and Farmlands of Statewide Importance within its proposed boundaries. Once this area is within a city, it is fair game for development and will no longer be subject to LAFCO's recently adopted agricultural mitigation policies. Greenbelt Alliance is concerned that once this farmland is within city limits, its eventual loss to development will not be mitigated.

While it is understandable that jurisdictions want local control over how their communities grow, LAFCO was within its right to establish county-wide agricultural mitigation policies. Throughout California, the piecemeal development of local farmland has happened with little thought to the cumulative impact. LAFCO is helping to provide a regional context to the loss of this valuable resource.

- California has lost over 11 million acres of farmland since its peak in the 1950s.
- In 2004, the state's farmers and ranchers produced \$25.7 billion worth of goods.
- The California Department of Conservation reports that nearly 19,000 acres of farmland in five valley counties were converted to nonagricultural uses between 2002 and 2004, a 4,000-acre increase from the previous report.
- Between 1984 and 2004, Santa Clara County lost 33,288 acres of agricultural land to development, or 1,664 acres per year.
- California is the nation's largest food producer and the world's fifth largest supplier of food and agricultural commodities.

San Martin's desire to have local control, in part to preserve the rural setting, may mean that the community will lose sight of the bigger picture. Staff at Greenbelt Alliance have often heard South County residents claim that farming is no longer sustainable. However, the value of having locally grown fresh produce cannot be emphasized enough. Incorporating the entire valley floor sets in motion its eventual development. If this incorporation moves forward, Greenbelt Alliance urges LAFCO to modify the proposed boundaries to allow for tighter city limits that allow for city-centered growth.

Another point worth mentioning is that many cities, individuals and organizations are considering their carbon footprints as our global community faces climate change. Sprawling land use patterns that promote car dependence contribute heavily to greenhouse gas emissions. Compact developments near public transportation in a walkable and bikable setting is the direction that many cities in the Bay Area are

heading. San Martin, facing pressure to grow within its expansive city boundaries, may head in the opposite direction.

If CEQA cannot recognize these reasonably foreseeable issues, then Greenbelt Alliance must highlight very real concerns. Again, if incorporation for this new town moves forward, we encourage LAFCO to modify the proposed boundaries to allow for tighter city limits. This will encourage the type of compact development that will support the local CalTrain station, protect valuable farmlands and reduce greenhouse gas emissions.

Thank you for allowing us to comment, and please keep us informed of any upcoming meetings, reports and deadlines.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michele Beasley".

Michele Beasley
South Bay Field Representative



DEPARTMENT OF CONSERVATION

DIVISION OF LAND RESOURCE PROTECTION

801 K STREET • MS 18-01 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 324-0850 • FAX 916 / 327-3430 • TDD 916 / 324-2555 • WEBSITE conservation.ca.gov

April 8, 2008

VIA FACSIMILE (408) 295-1613

Neelima Palacheria
LAFCO of Santa Clara County
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

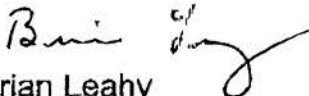
SUBJECT: Town of San Martin Incorporation Revised Negative Declaration
(Santa Clara County)
SCH#: 2007112017

Dear Ms. Palacheria:

The Department of Conservation's Division of Land Resource Protection (Department) has reviewed the Town of San Martin Incorporation Revised Negative Declaration.

The Department's comment to this project is essentially the same as the Town of San Martin Incorporation Negative Declaration comment letter dated December 4, 2007. If you require another copy of that letter, please contact Elliott Lum, Environmental Planner, at (916) 324-0869.

Sincerely,


Brian Leahy
Assistant Director

County of Santa Clara

Parks and Recreation Department

298 Garden Hill Drive
Los Gatos, California 95032-7669
(408) 355-2200 FAX 355-2290
Reservations (408) 355-2201
www.parkhere.org



April 7, 2008

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

**SUBJECT: Response to Notice of Availability for Draft Comprehensive Fiscal Analysis
for the Proposed Incorporation of the Town of San Martin**

Dear Neelima:

The County Parks and Recreation Department ("County Parks Department") appreciates the opportunity to review and submit comments on the Draft Comprehensive Fiscal Analysis (CFA) for the proposed incorporation of the Town of San Martin. The County Parks Department supports the County's recommendations to exclude County-owned parklands (portions of the West Flat Area of the Coyote Lake-Harvey Bear Ranch County Park) contained within the San Martin Potential Modification Area (known as "Area 1").

As per staff discussions with you, we understand that there is mutual agreement between LAFCO staff, the Commission, and the San Martin Neighborhood Alliance to exclude Areas 1 and 6 (where Area 6 includes the open space easement area for Corde Valle) from the proposed project boundary for LAFCO's preferred alternative incorporation boundary. Since the Commission will not be taking final action to exclude Areas 1 and 6 from the incorporation boundary until May 7, 2008, the Parks Department would like to re-emphasize our support for the exclusion of Area 1 and that the project's Draft CFA would be revised with this modified incorporation boundary once the Commission takes action on the final project boundaries.

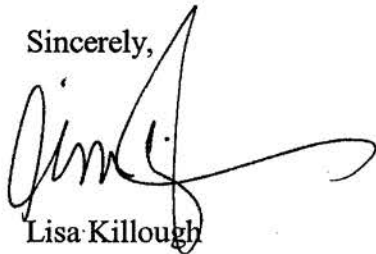
As discussed in the Planning and Development section in the Draft CFA, we understand that the new City would adopt the existing County General Plan and County Zoning Ordinance as land use policy by the first City Council. "It is assumed that by its second year, the City would begin to develop a new General Plan and Zoning Ordinance." The County Parks Department encourages the new City to consider implementation of planned countywide trail routes within the San Martin incorporation area. As per County General Plan Policy R-PR(i) 20.3, the County Parks Department would work with the City to "...encourage adoption of appropriate portions of the Countywide Trails Master Plan Map of the County's General Plan as part of local general plans, parks and open space master plans, and public facilities plans."



Board of Supervisors: Donald F. Gage, Blanca Alvarado, Peter McHugh, Ken Yeager, Liz Kniss
County Executive: Peter Kutras, Jr.

If you have any questions related to these comments, please call Julie Mark, Deputy Director, at (408) 355-2219, or Jane Mark, Senior Planner, at (408) 355-2237.

Sincerely,



Lisa Killough
Director

C: Julie Mark, Jim O'Connor, Jane Mark
Sylvia Gallegos, Deputy County Executive



Board of Supervisors: Donald F. Gage, Blanca Alvarado, Peter McHugh, Ken Yeager, Liz Kniss
County Executive: Peter Kutas, Jr.

County of Santa Clara

Parks and Recreation Department

298 Garden Hill Drive
Los Gatos, California 95032-7669
(408) 355-2200 FAX 355-2290
Reservations (408) 355-2201
www.parkhere.org



April 7, 2008

Local Agency Formation Commission of Santa Clara County (LAFCO)

Attention: Neelima Palacherla, Executive Officer

70 West Hedding Street

11th Floor, East Wing

San Jose, CA 95110

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

Dear Ms. Palacherla:

The County Parks and Recreation Department ("County Parks Department") appreciates the opportunity to review and submit comments on the Revised Initial Study and Revised Negative Declaration (IS/ND) for the Proposed San Martin Incorporation project. The County Parks Department submits the following comments for consideration by LAFCO.

SECTION 2.0 PROJECT DESCRIPTION

Proposed Boundaries of the Incorporation (Page 5)

It was noted in the previous comment letter, submitted on December 4, 2007, that the County Parks Department stated concerns regarding the project boundary as proposed for the City of San Martin's incorporation. Since LAFCO is required to analyze the proposed project boundaries as submitted by the San Martin Neighborhood Alliance, the current IS/ND states that LAFCO's preferred alternative incorporation boundary excludes Area 1, which would exclude the 253-acres within the West Flat Area of the Coyote Lake-Harvey Bear Ranch County Park. We understand that the LAFCO Commission will not be taking action to exclude the proposed modification Area 1 until May 7, 2008, therefore we recommend that Exhibit 3.1, map of the incorporation boundary, be updated to exclude Area 1 once the project boundary has been finalized.

TABLE 2.1 CURRENT AND PROPOSED SERVICE PROVIDERS TO SAN MARTIN (Page 9)

Under Table 2.1, the new City has been identified as assuming responsibility for future parks and recreation services within the City. The IS/ND states "at this time, no new park and recreation services are planned within the Town." However, the IS/ND should discuss the City's responsibility for any new local and neighborhood-serving parks and recreation programs in this area and how this would be



accomplished. The IS/ND should discuss potential recreational needs from the City residents to provide additional local and neighborhood-serving facilities and programs within the adjacent Coyote Lake-Harvey Bear Ranch County Park, which serves as a regional park facility for County residents and visitors.

LAND USE

Santa Clara County Land Use Designations (Page 62)

It was recommended in the previous comment letter that under the County policies discussions related to regional parks and trails, LAFCO should include a discussion related to the *Santa Clara County Countywide Trails Master Plan Update*, an element of the Parks and Recreation Section of the County General Plan, that the Board of Supervisors adopted on November 14, 1995. In addition, the Board approved the *Coyote Lake-Harvey Bear Ranch County Park Master Plan* and Natural Resources Management Plan on January 27, 2004, which outlines the future park development and resource management goals for the County Park facility. The Coyote Lake-Harvey Bear Ranch County Park Master Plan was listed in the IS/ND under "Parks and Recreation" on page 71. However there was no discussion of the future Master Plan improvements within the West Flat Area of the park, which would benefit County and local residents of the new City.

PUBLIC SERVICES

Law Enforcement (Page 71)

The IS/ND does acknowledge that the City will establish its own Police Department or contract with the County of Santa Clara Sheriffs Department. The previous comment letter recommended including a discussion on how law enforcement will be addressed within the interface areas between Coyote Lake-Harvey Bear Ranch County Park and the residential areas located along Foothill Avenue, San Martin Avenue and New Avenue. This was not addressed in the IS/ND and Parks Department recommends that it be included in the discussion.

Parks and Recreation (Page 71)

The Initial Study states, "[a]fter incorporation, it is expected that the new Town will be responsible for park and recreation services." However, it states at this time no new park and recreation services are planned within the City. The IS/ND should clarify whether there would be an expectation that the City residents would seek local and neighborhood-serving park and recreation facilities and programs within the adjacent Coyote Lake- Harvey Bear Ranch County Park.

Under impact discussion (c) on page 74, we understand that the IS/ND assumes that the existing 6,900 residents will continue using the nearby park's trails, staging areas, interpretive and recreational programs and other facilities, and that no additional population impacts would be expected. However, once a new General Plan is adopted by the City Council, there would be future development that would result in additional population growth. It is expected that additional CEQA review would be completed to address potential impacts on Coyote Lake-Harvey Bear Ranch County Park with future development activities within the new City.

As related to existing approved land use plans, the IS/ND should acknowledge the Parks Department's future goals for developing a golf course facility, events center, off-leash dog park, day use areas, staging areas and other programmed uses within the West Flat Area of the County Park. The IS/ND does not include a discussion on how the incorporation would potentially affect the future development of this County Park in accordance with the Board-approved planning policies.

Under impact discussion (e) on page 75, the IS/ND states "none of the proposed countywide trail routes have been implemented and there are no trail routes within the road right-of-way that the new City would maintain." The discussion should acknowledge the planned countywide trail network within the project area as future recreational opportunities for the City's implementation, operations and maintenance. The IS/ND does not address the residents' desires to use improved trail facilities within their City as a form of alternative transportation, which would result in an increased need for and use of the countywide trail system.

RECREATION AND MINERAL RESOURCES

SETTING

Parks (Page 73)

The IS/ND should correctly identify the San Martin Cross Valley Sub-Regional Trail Route (S8) as a Sub-Regional Trail, not a Connecting Trail. The West Valley Sub-Regional Trail Route is spelled incorrectly. The IS/ND should distinguish segments of the proposed trail route that are located within private property and would be considered for dedication when the landowner is a willing participant versus segments of the proposed trail route that is located within the road right-of-way. Future development potential for properties located adjacent to the proposed countywide trail routes should take into consideration trail dedication(s) as part of the new City's implementation of the *Countywide Trails Master Plan Update* and General Plan polices.

The IS/ND should include a discussion of the new City's responsibilities related to the implementation of these countywide trail routes within the proposed incorporation area.

If you have any questions regarding these comments, please contact me at (408) 355-2230 or at Kimberly.Brosseau@prk.sccgov.org.

Sincerely,



Kimberly Brosseau
Park Planner III

Attachment: County Parks Response Letter to LAFCO dated 12/4/07

cc: Lisa Killough, Director
Julie Mark, Deputy Director of Administration
Jim O'Connor, Deputy Director of Operations and Maintenance
Jane Mark, Senior Planner
Rachael Gibson, Policy Aide to Supervisor Don Gage,
District One Office of Board of Supervisors

County of Santa Clara

Parks and Recreation Department

298 Garden Hill Drive
Los Gatos, California 95032-7669
(408) 355-2200 FAX 355-2290
Reservations (408) 355-2201
www.parkhere.org



December 4, 2007

Local Agency Formation Commission of Santa Clara County (LAFCO)
Attention: Neelima Palacherla, Executive Officer
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

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

Dear Ms. Palacherla:

The County Parks and Recreation Department ("Parks Department") appreciates the opportunity to review and submit comments on the Initial Study and Negative Declaration (IS/ND) for the Proposed San Martin Incorporation project. The Parks Department submits the following comments for consideration by LAFCO.

SECTION 2.0 PROJECT DESCRIPTION
Proposed Boundaries of the Incorporation (Page 4)

The current project boundaries, as proposed for the Town of San Martin's incorporation, includes lands located within the western portion of Coyote Lake-Harvey Bear Ranch County Park, which is inconsistent with LAFCO's Incorporation Policies (adopted May 30, 2007) that discourages inclusion of agricultural and open space lands within the boundaries of a proposed city. The 4,595-acre Coyote Lake-Harvey Bear Ranch County Park is owned and operated by the Parks Department, where lands including Coyote Lake and contiguous to the lake are also under the jurisdiction of the Santa Clara Valley Water District.

The Parks Department understands that LAFCO is required to consider alternative project boundaries and has the authority to modify boundaries as part of the LAFCO incorporation process. As previously discussed with LAFCO staff in July 2007, we recommended that LAFCO modify the proposed incorporation boundaries to exclude the proposed 253-acre portion of Coyote Lake-Harvey Bear Ranch County Park. The Parks Department would be available for agency consultation to assist with LAFCO staff's development of alternative boundary recommendations for the staff report to the Commission.

It should be noted that by submitting the following comments, the Parks Department does not endorse the applicant's current project boundaries. We recognize that the project's boundary issue is not considered an environmental effect of the proposed incorporation and that the IS/ND



Under impact discussion (e) on page 64, the IS/ND does not address the residents' desires to use improved trail facilities within their City as a form of alternative transportation, which would result in an increased need for and use of the countywide trail system. The discussion should acknowledge the planned countywide trail network within the project area as future recreational opportunities for the City's implementation, operations and maintenance.

Although the discussion acknowledges the existing Coyote Lake-Harvey Bear Ranch County Park facility, the IS/ND does not acknowledge the future planned recreational uses that will be developed within the West Flat area of this County Park. As identified in the Board-approved Master Plan, the IS/ND should acknowledge the Parks Department's future goals for developing a golf course facility, events center, off-leash dog park, day use areas, staging areas and other programmed uses within the West Flat Area of the County Park. The IS/ND should discuss how this incorporation would potentially affect the future development of this County Park in accordance with the Board-approved planning policies.

A number of regional, sub-regional and connector trail routes identified in the *Countywide Trails Master Plan Update* (November, 1995) are located within the areas proposed for incorporation. Under the Park Setting discussion on page 63, two additional proposed trail routes, that are identified within road right-of-way and/or private property, should be included as part of the countywide trail system within the project area:

- **R1-A (bike)** - Juan Bautista de Anza National Historic Trail Northern Bicycle Retracement Route (Regional Trail Route)
- **S6** - West Valley Sub-Regional Trail Route

In addition, there should be additional clarification regarding the proposed **San Martin Cross Valley Sub-Regional Trail Route (S8)**. The IS/ND should distinguish segments of the proposed trail route that are located within private property and would be considered for dedication when the landowner is a willing participant versus segments of the proposed trail route that is located within road right-of-way. Future development potential for properties located adjacent to the proposed countywide trail routes should take into consideration trail dedication(s) as part of the new City's implementation of the *Countywide Trails Master Plan Update* policies.

The IS/ND should also include a discussion of related impacts associated with the new City's responsibilities for implementation of these countywide trail routes within the proposed incorporation area under Public Services (page 61).

If you have any questions, please contact me at (408) 355-2237 or at jane.mark@prk.sccgov.org.

Sincerely,



Jane F. Mark, AICP
Senior Planner

Attachment: County Parks Director's Letter to LAFCO (July 16, 2007)



Palacherla, Neelima

From: Kathy Molloy Previsich [Kathy.MolloyPrevisich@morganhill.ca.gov]
Sent: Thursday, March 20, 2008 11:54 AM
To: Palacherla, Neelima; Noel, Dunia
Cc: David Bischoff
Subject: San Martin boundary

Hello:

This email is to convey that the Morgan Hill City Council took action to state Morgan Hill's position regarding Areas 2 and 3. The Council took the following action:

- (1) Morgan Hill does support the inclusion of "Area 2" within the San Martin boundary, therefore would support amendment of Morgan Hill's sphere of influence to exclude Area 2 from Morgan Hill's sphere; and
- (2) Without a broader context for amending Morgan Hill's urban service area/city limits boundaries in the Monterey Road area of Morgan Hill's southerly sphere of influence boundary; Morgan Hill would not support the amendment of Morgan Hill's sphere in order to include "Area 3" (Crownier subdivision) within Morgan Hill's sphere, therefore Area 3 should remain within San Martin.

The one qualification the Council made was that it wanted to make sure that the new boundary for Area 2 was at the ridgeline.

Please let me know if you need anything further regarding this matter.

Kathy

*Attachment:
Morgan Hill City Council Staff Report*



CITY COUNCIL STAFF REPORT

MEETING DATE: March 19, 2008

Agenda Item #	31
Prepared By:	<i>Kemp</i>
Community Development Director	
Submitted By:	<i>[Signature]</i>
City Manager	

MORGAN HILL POSITION REGARDING BOUNDARIES FOR PROPOSED INCORPORATION OF TOWN OF SAN MARTIN

RECOMMENDED ACTION(S): That the City Council state the City's position regarding two specific geographical areas related to the proposed incorporation of San Martin, as follows:

- (1) Morgan Hill does support the inclusion of "Area 2" within the San Martin boundary, therefore would support amendment of Morgan Hill's sphere of influence to exclude Area 2 from Morgan Hill's sphere; and
- (2) Without a broader context for amending Morgan Hill's urban service area/city limits boundaries in the Monterey Road area of Morgan Hill's southerly sphere of influence boundary; Morgan Hill would not support the amendment of Morgan Hill's sphere in order to include "Area 3" (Crownier subdivision) within Morgan Hill's sphere, therefore Area 3 should remain within San Martin.

EXECUTIVE SUMMARY: LAFCO has requested that the City Council take a position on two specific boundary matters related to the proposed incorporation of San Martin. A large color aerial map defining "Area 2" and "Area 3" is attached. Informally, city staff previously indicated to LAFCO staff that Area 2 seemed to better relate to San Martin in terms of topography and character, and the City would likely support an amendment of its sphere to remove it. Conversely, staff had indicated that Area 3, the Crownier subdivision, seemed to relate more to San Martin, and the City would not likely support an amendment of Morgan Hill's sphere to add it, and it should probably remain within San Martin's proposed boundaries. The Crownier area consists of an older subdivision on septic systems, and the lots are smaller than desired for septic service. The area may need a solution to wastewater treatment sooner than the anticipated progression of Morgan Hill's Urban Service Area (USA). The Town of San Martin, the County, and/or the property owners have other options for addressing that potential situation. It would seem to be appropriate to consider the area for inclusion in Morgan Hill's sphere only if a greater area of Morgan Hill's southerly sphere area were being considered for expansion of the USA and city limits. If the City Council agrees with the above, then a motion to adopt the staff recommendation would be appropriate.

The City Council may be also be interested to know that LAFCO has recently released a revised Initial Study and Negative Declaration, based on the above assumptions that Area 2 is within San Martin and Area 3 is not. Areas 4 and 5, totaling over 2,000 acres currently designated for Agriculture by the County's General Plan, are also included within the incorporation boundaries. The CEQA document, as with the version released in November 2007, states that there are no potentially significant environmental effects, and no required mitigation measures. This conclusion is made based on that the project is a "boundary project" that itself will not cause environmental impacts because *"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."* The document does note that 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"*, but concludes that *"it would be 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."*

It is also relevant to note that 3 of the 5 LAFCO Commissioners apparently agreed with the position of Town proponents and others that the "agricultural" areas of Area 4 and 5 were not well-suited for long term agricultural use, but that in any event, the Town would be adopting the County's regulations for the first 2 -3 years of incorporation and so current uses would not change. Once incorporated, LAFCO will have no future jurisdiction within San Martin. This situation is interesting to contemplate for its potential application to Morgan Hill. It could be stated that, with its Residential Development Control System that prevents premature expansion of the USA for residential uses, along with the potential for Morgan Hill to itself designate land for agricultural and rural residential uses, Morgan Hill may be better situated than San Martin to regulate its own USA and land uses within a city limit line that extends to Morgan Hill's adopted Urban Limit Line, and LAFCO oversight/jurisdiction may not be needed.

FISCAL / RESOURCE IMPACT: None.



March 13, 2008

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

Attention: Neelima Palacherla

Subject: San Martin Incorporation

Dear Mr. Palacherla:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the Revised Negative Declaration for incorporation of San Martin. We have no comments at this time.

Thank you for the opportunity to review this project. If you have any questions, please call me at (408) 321-5784.

Sincerely,

A handwritten signature in black ink, appearing to read "Roy Molseed", written in a cursive style.

Roy Molseed
Senior Environmental Planner

RM:kh



SANTA CLARA Valley Transportation Authority

FAX COVER SHEET

Please deliver fax to: **Neelima Palacherla**

Name: LAFCO

Company:

Fax #: 295-1613

Phone #:

Subject:

Total pages including cover: 2

Original _____ will will not follow by mail.

From: Roy Molseed
Santa Clara Valley Transportation Authority
Environmental Planning
3331 North First Street, Bldg. B
San Jose, CA 95134-1906

OFFICE PHONE (408) 321-5789

OFFICE FAX (408) 321-5787

Memo:

If you do not receive all the pages indicated above, or have any problems with this transmittal, please call (408) 321-5789. (REV 6/14/99)

LAFCO Meeting: April 16, 2008
TO: LAFCO
FROM: Neelima Palacherla, LAFCO Executive Officer
**SUBJECT: Public Hearing on Draft Comprehensive Fiscal Analysis
and Plan for Services
Agenda Item # 4.4**

STAFF RECOMMENDATION

1. Open public hearing and receive testimony.
2. Close public hearing.
3. Direct staff to respond to comments and to make any necessary revisions to the Public Hearing Draft CFA and Plan for Services for the Proposed Incorporation of the Town of San Martin.

COMPREHENSIVE FISCAL ANALYSIS (CFA)

The Comprehensive Fiscal Analysis and Plan for Services (CFA) was prepared by Economic & Planning Systems Inc. and is based on requirements and guidelines for CFAs established by the Cortese Knox Hertzberg Act (CKH 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).

Following several versions of the Administrative Draft CFA which were reviewed by LAFCO staff, County staff and the proponents prior to and during the revenue neutrality negotiations, the revised Draft CFA was presented to LAFCO at its February 6th LAFCO meeting. Comments received on the Draft CFA were considered and further revisions were made to the document as needed. The Public Hearing Draft CFA and Plan for Services was released on March 7th for public review and is posted on the LAFCO website. A Notice of Availability of the Public Hearing Draft CFA was sent out to affected agencies,

proponents and other interested parties and published in the newspaper. The review and comment period for the Public Hearing Draft CFA ended on April 10th. This was also the 30 day period during which any interested person may request review of the fiscal analysis by the State Controller's Office. No request for State Controller's review was received during the period. Several comment letters on the document have been received during this period and are attached. (See Attachment B) They include:

- Legal Analysis from William D. Ross on behalf of the San Martin Neighborhood Alliance
- Letter from Santa Clara County Board of Supervisors along with County Administration's staff report and County Counsel's legal analysis
- Concerned Citizens Opposing Incorporation (April 10, 2008)
- Concerned Citizens Opposing Incorporation (April 7, 2008)
- Power Equipment Co.
- Mt. Green Nursery
- A-1 Saw & Lawnmower
- Boot Barn
- Committee for Green Foothills

Some of the comment letters refer to information in the Initial Fiscal Analysis (IFA) that was prepared in 2003 by EPS for the San Martin Neighborhood Alliance. LAFCO had no role in the preparation or analysis included within the IFA. The Public Hearing Draft CFA is an independent document which does not rely on data or analysis included in the IFA.

FINANCIAL FEASIBILITY FINDING

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. Several of these findings relate to the financial aspects of incorporation.

One of these findings that LAFCO is required to make prior to approving incorporation is that the new city could be fiscally feasible, that is, the new city could generate sufficient revenues to provide public services and facilities and a reasonable reserve during the first three 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. Therefore the CFA includes information on the proposed plan for services as well as an analysis of alternative boundaries. The CFA concluded that the incorporation may be fiscally feasible, depending on the

revenue neutrality mitigation payment negotiated between the County and the proponents.

REVENUE NEUTRALITY FINDING

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 responsibility for service delivery among the county, the proposed city and other affected agencies. In order to mitigate the negative impacts of the incorporation on the County, the proponents and the County entered into revenue neutrality negotiations on December 13, 2007 to negotiate a mitigation payment. LAFCO incorporation policies provide for a 90 day negotiation period and state that if the two parties are unable to reach agreement during that time period, then LAFCO staff will recommend to LAFCO the terms and conditions necessary to reach revenue neutrality. The two parties were unable to reach agreement during this period, therefore LAFCO staff must now draft the terms and conditions for LAFCO consideration. All recent incorporations in the state have had negotiated revenue neutrality agreements.

There exists no statutory methodology for determining revenue neutrality. The OPR Guidelines and the LAFCO Incorporation Policies provide some guidance in this regard. The County and the proponents each have different interpretations and legal opinions on the how the fiscal impact of the incorporation on the county must be evaluated. Both parties have submitted analysis from their legal counsel on their interpretation of the state law regarding revenue neutrality. The legal analysis provided by both the parties is included in the attachment. The County has taken a position to oppose the incorporation unless the new town is able to make the County's General Fund whole with mitigation payments.

LAFCO must now hire an outside legal counsel for the San Martin incorporation proposal and seek legal advice on the determination of revenue neutrality. Depending on the legal advice that LAFCO's alternate counsel provides, there may be an opportunity for the County and the proponents to reopen negotiations to reach agreement or LAFCO staff may have to draft terms and conditions.

ATTACHMENTS

- Attachment A: Notice of Availability and Public Hearing Draft CFA and Plan for Service for the Proposed Incorporation of the Town of San Martin
- Attachment B: Comment Letters received to Date on the Public Hearing Draft CFA

**ITEM No. 4.4
ATTACHMENT B**

William D. Ross
Kypros G. Hostetter
Karin A. Briggs

Chirag Shah
Of Counsel

**Law Offices of
William D. Ross**
A Professional Corporation
520 South Grand Avenue, Suite 300
Los Angeles, CA 90071-2610
Telephone: (213) 892-1592
Facsimile: (213) 892-1519

Palo Alto Office:

400 Lambert Street
Palo Alto, California 94306
Telephone: (650) 843-8080
Facsimile: (650) 843-8093

File No: 459/3

April 7, 2008

VIA ELECTRONIC MAIL
sylviaLRS@hotmail.com

Ms. Sylvia Hamilton, President and Officers
and Members of the San Martin Neighborhood Alliance
P.O. Box 886
San Martin, California 95046

Re: Proposed Incorporation of the Town of San Martin; Revenue Neutrality
Determination

Dear President Hamilton, Officers and Alliance Members:

This communication presents a legal analysis for the San Martin Neighborhood Alliance ("Alliance") of the County of Santa Clara's ("County") position regarding a revenue neutrality determination for the proposed incorporation ("Incorporation") of the Town of San Martin ("Town")¹ advanced by Staff of the Local Agency Formation Commission of Santa Clara County ("LAFCO" or "Commission").

I. SUMMARY OF CONCLUSION

We conclude the calculations of a draft Comprehensive Fiscal Analysis ("CFA") of the proposed incorporation are inaccurate and not accomplished consistent with the governing statutory scheme of LAFCO, the Cortese-Knox Hertzberg Local Government Reorganization Act of 2000 (Government Code section 56000, *et seq.*, the "Act").²

¹ This communication will refer to the proposed result of the Incorporation as "the proposed incorporation."

² All subsequent section references will be to the Government Code unless otherwise noted.

Ms. Sylvia Hamilton, President and Officers
and Members of the San Martin Neighborhood Alliance
April 7, 2008
Page 2

Additionally, there is an issue with respect to the existence of an actual or perceived conflict of interest with respect to the Office of County Counsel, which serves as LAFCO Counsel, who has taken a position on the matter. LAFCO should appoint alternate Counsel to fairly evaluate the matter and related issues directly involving the County.

II. FACTUAL BACKGROUND

We have been informed of the following with respect to the CFA,³ a document which has served as a basis for informal negotiations between the Alliance and the LAFCO Staff to address the issues required by the Act for the continued processing and consideration of the proposed incorporation by the Commission. Because the required negotiations involving the Alliance and LAFCO Staff have not lead to a Revenue Neutrality Agreement (LAFCO Policy 8.3), LAFCO has given notice of a public hearing on the CFA (LAFCO Policy 8.4) scheduled for April 16, 2008.

The CFA, among other things, calculated that the County would be subject to a \$872,240.00 annual general fund shortfall due its loss of revenue transferred to the proposed town less its service expenditures the proposed incorporation would now be responsible for after the transfer of the affected territory.⁴ If this "general fund" calculation is used under the Act, the proposed incorporation would be required to pay this shortfall to the County to comply with statutory revenue neutrality. When Alliance Officers analyzed the CFA revenue neutrality calculations (the "Neutrality Calculation"), they found the CFA omitted from its calculation *the service costs* accruing to the proposed incorporation (formerly the responsibility of the County) for road maintenance and other road costs (traffic engineering, signal maintenance, etc.) (collectively, "Road Maintenance"). The Alliance analysis claims that if the Road Maintenance costs were included in the fiscal neutrality calculations it would result in a net *gain* annually to the County General Fund of approximately \$749,995.00.

³ Section 56800 requires the preparation of a CFA. LAFCO has adopted policies to implement provisions of the Act effective August 1, 2007. It is assumed that the LAFCO Policies constitute the Commission's preliminary construction of the Act. The LAFCO Policies include provisions governing consideration of the draft CFA and final CFA.

⁴ The actual "footprint" of the proposed incorporation is sometimes referenced to as the "affected territory." See, Section 56015.

Ms. Sylvia Hamilton, President and Officers
and Members of the San Martin Neighborhood Alliance
April 7, 2008
Page 3

The County proposed to the Town proponents that to achieve its calculation of revenue neutrality the proposed incorporation retire a mitigation obligation of \$10.3 million based on a 10-year mitigation calculation, including interest and allowing the proposed incorporation up to 25 years to pay. Payments by the proposed incorporation to the County would total \$412,000.00 annually for the 25-year retirement of the described obligation. The CFA, while demonstrating that the proposed incorporation will be a viable governmental entity, also demonstrates that it is impossible for the proposed incorporation to consider an annual mitigation obligation payment that is three times the annual average net surplus recognized by the proposed incorporation. The County suggested a parcel tax for proposed incorporation residents to help retire the debt to the County. The proponents have rejected any proposed tax as a condition of revenue neutrality. Additionally, the CFA's calculations showed that under its original calculations there will be a \$14.8 million surplus to the County road fund over the same 10-year period that the County stated "could be used for roads elsewhere in the County." In subsequent informal discussions, the County and LAFCO Staff have refused to recognize any credit to the proposed incorporation as a result of the described surplus. Negotiations broke down on March 3, 2008, as the County's demands could not be met.

When the Alliance representatives raised with the County the fact that the revenue calculations incorrectly omitted the costs of Road Maintenance from the neutrality calculation, the LAFCO Executive Officer opined that it was entitled to omit the Road Maintenance expenditures from the Neutrality Calculation because the road maintenance had been paid out of County Road Fund revenues, which are exempt from the Neutrality Calculation.

The Deputy County Counsel, who also serves as LAFCO Counsel, indicated to the informal negotiations committee and representatives of the Alliance that the exclusion of road maintenance expenses as described was appropriate.

As the County, the Alliance and LAFCO Staff have been unable to reach agreement on the issue of revenue neutrality, the matter now must be decided by LAFCO at the scheduled April 16, 2008 public hearing.

Ms. Sylvia Hamilton, President and Officers
and Members of the San Martin Neighborhood Alliance
April 7, 2008
Page 4

III. ANALYSIS

A. Rules Of Statutory Interpretation

In analyzing the Act, we employ recognized principles of statutory interpretation. The “fundamental task in construing a statute is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. [Citations.]” *Day v. City of Fontana* (2001) 25 Cal.4th 268, 272. Analysis starts by examining the actual words of the statute, giving them their usual, ordinary meaning. (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476.) “If there is no ambiguity in the language, we presume the Legislature meant what it said, and the plain meaning of the statute governs. [Citations.]” (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1000; accord, *Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 519.)

Additionally, when the Legislature has expressly declared its intent, the courts must accept that declaration. *Ride out Hospital Foundation, Inc. v. County of Yuba* (1992) 8 Cal.App.4th 214, 221. The Legislature’s intent with regard to the Act, when not expressly set forth in the Act itself, was set forth in the document produced by the Commission on Local Governance for the 21st Century, entitled “*Growth Within Bounds: Planning California Governance For The 21st Century (“Growth Within Bounds”)*” see, *Placer County Local Agency Formation Com. v. Nevada County Local Agency Formation Com.* (2006) 135 Cal.App.4th 793, 817, which references the enabling Legislation of the Act, Chapter 761 Stats 2000, which in § 286 provides: :

Sec. 286. This act is intended to implement the recommendations of the Commission on Local Governance for the 21st Century, as transmitted to the Legislature as of January 20, 2000.

Additional rules of statutory construction which are applicable include that an administrative agency charged with carrying out a particular statute must adopt some preliminary construction of the statute as a basis on which to proceed. *Younger v. State of California* (1982) 137 Cal.App.3d 806, 812. Also, an Agency’s expertise with regard to a statute it is charged with enforcing entitles its interpretation of the statute or regulation to be given great weight unless clearly erroneous or unauthorized. *Hewlett v. Squaw Valley Ski Corp.* (1987) 54 Cal.App.4th 499, 526.

B. Role Of LAFCO In Determining Revenue Neutrality

LAFCO has authority to approve local government “changes of organization” including the incorporation of a new city. §§ 56043; 56375. “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.” §56301. When determining whether a proposed incorporation is appropriate, LAFCO must make a determination that the County that is losing the territory does not lose revenue when compared to the cost savings for the services that will now be provided by the new City. This determination is known as a determination of revenue neutrality⁵ and is governed by a specific comparison of revenues lost to the County and revenue saved by the County by the proposed incorporation assuming the costs of services within the incorporated territory:

Section 56815. (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 incorporation, 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

⁵ *Growth Within Bounds*, p. 188, Appendix E observes that “revenue neutrality” – provides that a LAFCO could not approve a proposal for incorporation unless it finds that the amount of revenues the new city takes from the County after incorporation would be substantially equal to the amount of savings the County would obtain from no longer providing services.

Ms. Sylvia Hamilton, President and Officers
and Members of the San Martin Neighborhood Alliance
April 7, 2008
Page 6

transferring the affected territory for those services *that*
will be assumed by the local agency receiving the
affected territory. (Emphasis added).⁶

The language of Section 56815(b)(2) dealing with the calculation of direct and indirect expenditures also appears in Section 56800 governing the preparation of a CFA by the executive officer who is to include “. . . all direct and indirect costs associated with the current provision of existing services in the affected territory.” Section 56800(a)(1).

LAFCO Policies dealing with the calculation of revenue neutrality *do not contain* comparable provisions implementing the substantive and procedural requirements of sections 56815 and 56800. *See* LAFCO Policy 10 pp. 9-10, a copy of which is attached as Exhibit A.

C. The County Is Not Harmed Fiscally By The Incorporation

The draft CFA maintains that the County suffers a general fund revenue shortfall of approximately \$872,240.00 annually through the Incorporation. LAFCO Staff claims that they are entitled to follow the CFA calculations, and instead have offered the proposed incorporation a tax mitigation proposal to pay the County back for their alleged shortfall which is fiscally unfeasible. Since the proposed incorporation patently cannot meet this obligation, County/LAFCO Staff allege the Incorporation is untenable.

Again, applying the plain meaning of Section 56815(b), the CFA Neutrality Calculation is incorrectly made and if accomplished consistent with the section would come to a different result. A detailed analysis of the proposed calculations' lack of statutory conformity follows.

⁶ The terms and words for which emphasis is added were added by Chapter 530, Stats. 2001 further clarifying the plain meaning obligation of section 56815. More directly, if the CFA is to exclude the Road Maintenance costs, they must be costs other than direct or indirect costs. We are unaware of any other costs that would be associated with a governmental service calculation than those of *direct and indirect costs*.

1. The Alleged Incorporation Revenue Neutrality Shortfall Is Caused By Omitting The Costs Of Road Maintenance From The Neutrality Calculation

Under the plain meaning of section 56815(b), the CFA Neutrality Calculation *should compare* revenues currently received by the County that, but for the Incorporation, would accrue to the proposed incorporation receiving the affected territory and offset the revenue loss with expenditures, *including direct and indirect expenditures*, currently made by the County transferring the affected territory for those services that will be assumed by the proposed incorporation receiving the affected territory.

The CFA Neutrality Calculation omits Road Maintenance from the Neutrality Calculation, as shown in the CFA Table 3 (enclosed as Exhibit "B."), which depicts expenditures for responsibilities that will be transferred to the proposed incorporation which include Animal Control, Land Use Planning, Inspection, Enforcement, Clean Water, Waste Management and the Sheriff. These services correspond to the municipal level services described in *Growth Within Bounds* at p. 13 figure 2-4, which includes roads as a municipal level expense. The omission of road maintenance as an expense results the alleged net County revenue deficit. The CFA estimates the Road Maintenance Costs at \$1,622,235.00 annually as depicted in the CFA Table 3 separate calculation of County Road Fund surplus or deficit, *a calculation separate from the Neutrality Calculation*. When this amount is correctly placed in the Neutrality Calculation category for Service Responsibilities, the Road Maintenance correctly changes the Neutrality Calculation into a net annual revenue benefit for the County of approximately \$749,995.00. *See* revised Table 3 produced by Alliance Officers with Road Maintenance costs placed correctly, enclosed as Exhibit "C."

2. The Plain Meaning Of Section 56815(b) Requires Road Maintenance Costs To Be Included In The Neutrality Calculation

When calculating the amount of revenue saved due to the proposed incorporation now providing service in the affected area to offset the revenue lost due to the affected area, Section 56815(b) specifies that "expenditures, including direct and indirect expenditures, currently made by the local agency" that will be undertaken by the new City are to be included – this would include Road Maintenance costs. *See also, Growth Within Bounds*, p. 13, figure 2-4.

Ms. Sylvia Hamilton, President and Officers
and Members of the San Martin Neighborhood Alliance
April 7, 2008
Page 8

The LAFCO Staff defense of the CFA Neutrality Calculation is that “restricted funds” are not to be included is not supported by applicable authority. More specifically, the County argues the County Road Fund is restricted, and exempt from the Neutrality Calculation, and because Road Maintenance is paid out of the this “Road Fund,” it too is not used in the Neutrality Calculation, and is hence not used in the Neutrality Calculation portion of Table 3. *See* Exhibit “C.”

There is no legal justification to omit the Road Maintenance costs from the Neutrality Costs or authority to treat it any differently than the Animal Control, Land Use Planning, Inspection, Enforcement, Clean Water and Waste Management costs that the County includes in the Neutrality Calculation.

County/LAFCO Staff ignore Section 56815 in maintaining:

Road maintenance is an expenditure currently made by the County that will be assumed by the new city. However, OPR Guidelines as well as Santa Clara LAFCO Incorporation Policies [Policy 10(c) bullet 1] state that fiscal impacts to restricted and unrestricted revenues should be evaluated separately. Therefore Table 3 in the CFA, evaluates them separately.

Electronic Mail From County LAFCO Executive Officer’s Office transmitted in March of 2008.⁷

A review of the State Office of Planning and Research Guidelines (“OPR”) contradict the stated LAFCO Staff position.

The OPR guideline County/LAFCO Staff reference to relates to *restricted revenues*. It states that restricted *revenues* are to be evaluated separately:

Restricted and unrestricted revenues should be evaluated separately. An agency could pay a portion of its annual

⁷ The Act authorized the Governor’s Office of Planning and Research in consultation with the State Controller’s Office to formulate Statewide Guidelines for the incorporation process. The Guidelines were to be advisory to Commissions in the review of incorporation proposals. Section 56815.2.

Ms. Sylvia Hamilton, President and Officers
and Members of the San Martin Neighborhood Alliance
April 7, 2008
Page 9

revenue neutrality payment with restricted funds if both agencies agree and a legally enforceable mechanism for payment can be created. (emphasis added)

State OPR LAFCO Incorporation Guidelines ("OPR Guidelines"), § V(C)(2)(b).

Similarly, LAFCO Policy 10(c), bullet one providing:

Fiscal impacts to restricted and unrestricted *revenues* should be evaluated separately. A city may pay a portion of its annual revenue neutrality payment with restricted funds if both agencies agree, and if a legal exchange mechanism can be created to do so. (emphasis added)

Nothing in the OPR Guidelines or the LAFCO Policy Incorporation Guidelines provide that Road Maintenance costs are not expenditures that are transferred to the proposed incorporation. Both clearly reference "revenues" not expenditures. Additionally, although it is true that the County LAFCO Guidelines add the phrase "Fiscal impacts to" to its version of the OPR Guidelines Section V(C)(2)(b) its plain meaning does not reference "expenditures" and certainly, the LAFCO Guidelines should not be read inconsistently with the OPR Guidelines, which are deemed to be consistent with the Act (§ 56815.2). The Road Maintenance costs are expenses not revenue. They do not require elimination of Road Maintenance from "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."

Finally, it is noted that a complete search of *Growth Within Bounds* reveals no reference to the term restricted or unrestricted funds. Accordingly, once again the issue is deviation from the plain meaning of sections 56815 and 56800 of the Act. If the Legislature wanted to designate specific funds as "exempt" from the determination of direct and indirect costs, it would have said so, or reflected that legislative intent in *Growth Within Bounds*. In the absence of such an intent, or language in the Act supporting the methodology of the County LAFCO Staff Analysis, we would conclude it is without legal support.

3. Even If The Road Maintenance Costs May Be Excluded From The Neutrality Calculation, The Prospective Proposed Incorporation Should Receive A Credit For The Resulting Increase In County Road Funds

The County position results in a windfall in the County's favor as omitting the Road Maintenance amount (contrary to the Section 56815 plain meaning) and placing it in a separate calculation of the effect on the County Road Fund results in a deficit in the Neutrality Calculation and a benefit of approximately \$1,463,498.00 annually to its Road Fund. *See* Exhibit "B." In essence, the prospective proposed incorporation must make an annual payment to the County for its alleged revenue deficit, yet does not receive a credit for the increase in the County Road Fund. Thus the County receives money from the proposed incorporation, yet reaps all the benefits of not having to pay expenditures for the roads which must now be maintained by the proposed incorporation.

If the LAFCO treats the Road Maintenance costs separately, then LAFCO must exercise its discretion to include the benefit to restricted funds as well. As noted above, the SCO opined that the LAFCO has the discretion to use Road Fund revenues in its Neutrality Calculation. If LAFCO ultimately permits the County to treat Road Maintenance expenditures separately in its alleged discretion, LAFCO should require the County to use County restricted revenues (including the Road Fund revenues) in its Neutrality Calculation to offset the deficit in general funds. It is only just. Here, the CFA indicates that the County's overall benefit from the Incorporation is about \$591,000 per year including the alleged County (\$872,240.00) deficit in unrestricted general fund revenue and the benefit to its Road Fund (\$1,463,498). The Incorporation is therefore revenue neutral and the Incorporation and should be approved without any revenue neutrality payments.

D. The Act's Purpose And Intent Dictates Financial Issues Should Not Solely Be Responsible For Disapproving An Incorporation

We are informed that in several conversations with LAFCO Staff and County representatives, it has been indicated that the prospective proposed incorporation could not make the payments demanded by the County due to an alleged lack of revenue neutrality, and thus the Incorporation is infeasible. This single-factor analysis is contrary to the multi-standard criteria provided for in making the incorporation decisions and is contrary to section 56815 admonition "that an incorporation should not occur primarily for financial reasons."

Ms. Sylvia Hamilton, President and Officers
and Members of the San Martin Neighborhood Alliance
April 7, 2008
Page 11

Assuming *arguendo* that the representation of the County and LAFCO Staff position is accurate, it is not consistent with provisions of the Act and should be reevaluated in view of all factors applicable to a change of organization in the form of an incorporation. Such an analysis must give deference to the primary purpose of a Local Agency Formation Commission which includes:

. . . 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 local agencies in 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. When the formation of a new government entity is proposed, a commission shall make a determination as to whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner.

§ 56301.

Here, the proposed incorporation fulfills those purposes. The CFA itself indicates that there is sufficient revenue for the new proposed incorporation to provide the same level of services that are currently provided by the County. CFA Section II at page 7 states that:

‘[Based on the projections in table 1a] this analysis [the CFA] demonstrates that most service levels can be maintained at a level equal to or greater than current services.’ Thus the CFA acknowledges that the Incorporation satisfies the standard of section 56720 (e) that ‘The proposed incorporation is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation. *See also*, § 56301.

Accordingly, it would be contrary to the purpose of the Act to find the Incorporation infeasible based solely for revenue neutrality purposes, where here, the County in fact reaps a net benefit under any calculation, and where the CFA demonstrates the proposed incorporation can meet or exceed services to its new territory.

Other LAFCOs have recognized this concept, including the LAFCO for Madera County which in its incorporation guidelines states:

Uncertainties in the interpretation of §56815 may impede incorporation of viable cities and/or invite inter-jurisdictional disputes following incorporation. These guidelines provide a framework for the development of terms and conditions related to the balancing of revenues and service responsibilities, otherwise known as “revenue neutrality,” and:

- 1) Provide a process to analyze and mitigate the fiscal impacts of incorporation on the county resulting in stable, predictable financial outcomes for both the county and the new city.
- * * *
- 1) Mitigate potential fiscal losses to the county without making incorporation impossible for local communities or precluding an adequate fiscal base for new cities.

Without the adoption of a comparable policy, LAFCO has no implementing procedure or preliminary construction for the application of the requirements of Sections 56800(c)(1) and 56815 to the revenue neutrality calculation.

E. Relationship Between LAFCO And County Staff

Section 56384 addresses the issue of LAFCO using County staff as LAFCO staff, including as the LAFCO Executive Officer and Counsel, but if specific staff have a conflict of interest regarding a specific matter, LAFCO must appoint alternative staff:

Section 56384. (a) The commission shall appoint an executive officer who shall conduct and perform the day-to-day business of the commission. If the executive

Ms. Sylvia Hamilton, President and Officers
and Members of the San Martin Neighborhood Alliance
April 7, 2008
Page 13

officer is subject to a conflict of interest on a matter before the commission, the commission shall appoint an alternate executive officer. The commission may recover its costs by charging fees pursuant to Section 56383.

(b) The commission shall appoint legal counsel to advise it. If the commission's counsel is subject to a conflict of interest on a matter before the commission, the commission shall appoint alternate legal counsel to advise it. The commission may recover its costs by charging fees pursuant to Section 56383.

* * *

(d) For purposes of this section, the term "conflict of interest" shall be defined as it is for the purpose of the Political Reform Act of 1974 and shall also include matters proscribed by Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1.

Given the facts as they have been described to was the issue of whether there is a conflict of interest with respect to the CFA calculations and the LAFCO executive officer positions supporting the calculations without explanation as to the plain meaning calculation requirement of sections 56815 and 56800.

Likewise, it is unclear why the issue of a claimed conflict of interest has not been raised by LAFCO Counsel who is also in member of the Office of the County Counsel. We respectfully note that there is no publically available "ethical wall" with respect to how the County Counsel's Office provides legal services to LAFCO when the primary client of that office is the County. *Ward v. Superior Court* (Cal.Ct.App. 1977) 70 Cal.App.3d 23, 35.

F. If LAFCO Staff Has A Conflict Of Interest LAFCO Must Appoint Alternative Staff

Alliance Officers have raised the concern that County/LAFCO Staff may have a conflict of interest in advising LAFCO regarding the Incorporation. For example, the Alliance was informed by the Deputy County Counsel (who serves as LAFCO Counsel) that under no condition would the Road Maintenance calculations be included in the

Ms. Sylvia Hamilton, President and Officers
and Members of the San Martin Neighborhood Alliance
April 7, 2008
Page 14

Neutrality Calculation. Additionally, it is reasonable to assume that the LAFCO Executive Officer and Staff rely upon the opinion of the LAFCO Counsel (a Deputy County Counsel) in rejecting the Alliance's position. As stated above, the County stands to benefit by the windfall if it forces the proposed incorporation to pay the large revenue mitigation payments under its flawed Neutrality Calculation. But LAFCO Staff may not have any such conflict of interest. The Commission on Local Governance for the 21st Century, in *Growth Within Bounds*, which as noted above is the declared legislative intent of the Act, specifically noted the problem:

The Commission is also concerned about possible conflicts of interest regarding use of county legal counsel or county staff, especially if the staff person also represents the county in jurisdictional negotiations. While existing laws regarding financial conflicts of interest apply to these individuals currently, commissioners believe that the Act should explicitly bar conflicts, to ensure that there is no ambiguity.

Growth Within Bounds, p. 44. To alleviate the problem *Growth Within Bounds* recommended the following:

The Commission recommends that LAFCO select its own executive officer and counsel. It may nevertheless opt to use staff provided by the county or another public or private entity. The Commission further recommends that conflict of interest provisions be specified for LAFCO staff.

* * *

The Commission recommends revisions to the definition of "Executive Officer" in conformance with the recommendation on LAFCO staff independence.

Growth Within Bounds, p. 45. Section 56384 memorializes this necessity for Staff Independence requiring alternate LAFCO Staff be appointed when they have a conflict of interest.

Because of the *potential* for a conflict of interest with regard to the recommended resolution by LAFCO Staff/Counsel to LAFCO, it is minimally recommended that the

Ms. Sylvia Hamilton, President and Officers
and Members of the San Martin Neighborhood Alliance
April 7, 2008
Page 15

Alliance formally request a conflict analysis with respect to both the Executive Officer and Legal Counsel with a stay of all applicable processing time frames until the issue is resolved.

III. CONCLUSION

The CFA Neutrality Calculation is unsupported by the plain meaning of the Act. LAFCO should reform the calculation to achieve consistency with the Act's standards. The Commission should also assure that LAFCO Staff and Counsel are independent and without a conflict of interest.

Very truly yours,


William D. Ross

WDR:lla

cc: Richard VantRood, Esq.

Kathy Kretchmer, Deputy County Counsel
County of Santa Clara

Ms. Sylvia Hamilton, President and Officers
and Members of the San Martin Neighborhood Alliance
April 7, 2008
Page 16

LIST OF EXHIBITS

- | | |
|-----------|---|
| Exhibit A | LAFCO Policy No. 10 (pp. 9-10) |
| Exhibit B | Comprehensive Fiscal Analysis Table 3 |
| Exhibit C | Revised Table 3 Produced by Alliance Officers |

EXHIBIT A

of the new city's repayment to the County for its first year services and 3) project the effects of foreseeable shifts in state subventions, etc.

- i. The CFA should include an annual appropriation in the new city budget for contingencies of 10% in each budget year evaluated. The CFA should include an additional reserve of 10% in any given year in the new city's budget projection.
- j. The CFA will calculate the estimated property tax transfer and the total net agencies' cost of providing service in the proposed incorporation area. The Commission makes the final determination of costs and the transfer of property taxes.
- k. Financial feasibility shall be based on the ability of the new city to maintain pre-incorporation service levels.
- l. The CFA will include revenue sources that are currently available to all general law cities. Projections will not be based on potential revenue sources not currently applicable in the area or new revenues which might become available through the discretionary actions of a future city council.

10. BASIS AND ASSUMPTIONS FOR REVENUE NEUTRALITY

Revenue neutrality intends 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 (§56815). Pursuant to Government Code §56815 LAFCO will make findings and/or impose conditions/mitigations to equalize the transfers of revenue and service.

- a. The revenue neutrality agreement or any proposal for LAFCO terms and conditions for revenue neutrality shall **include**:
 - A criteria and a process for modification by the affected agency and the city after incorporation
 - A description of methodologies and assumptions leading up to the terms of the agreement
 - Identifiable and recurring revenues and expenditures only
- b. The revenue neutrality agreement or any proposal for LAFCO terms and conditions for revenue neutrality shall **exclude**:

Revised August 1, 2007

- Anticipated or projected revenue growth or sources of revenue dependent on discretionary actions by a future city council
 - Services funded on a cost recovery basis (such as permits/building inspection) which are, by definition, revenue neutral
 - Costs of capital improvements
- c. The following additional policies apply to the revenue neutrality agreement or any proposal for LAFCO terms and conditions for revenue neutrality:
- Fiscal impacts to restricted and unrestricted revenues should be evaluated separately. A city may pay a portion of its annual revenue neutrality payment with restricted funds if both agencies agree, and if a legal exchange mechanism can be created to do so.
 - Fees charged by the county for services to other jurisdictions (such as property tax administration fees or jail booking fees) should be included as an off-setting county revenue in the calculation of fiscal effects on the county.
 - Countywide costs of regional services and general government, including the County Administration, Clerk of the Board, Auditor-Controller and other administrative government functions which are required to support county governance of both incorporated and unincorporated areas should not be included in defining services or revenues transferred to the new city.

11. EFFECTIVE DATE OF INCORPORATION

- a. The effective date of incorporation should be considered in revenue neutrality negotiations. LAFCO will establish the effective date. The effective date should be set to allow adequate initial account balances for the new city as it assumes service responsibilities, but should not otherwise conflict with the intent of fiscal neutrality or exacerbate County revenue losses.

Adopted May 30, 2007

Revised August 1, 2007

EXHIBIT B

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	\$89,414	Cnty avg/collector times 27 collector miles
Traffic Congestion Relief: 2182a [1] (B)	\$41,624	based on reduction in County maintained miles
Subtotal	\$158,737	
Expenditure Reductions (4)		
Road Maintenance	\$1,502,235	
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)	\$1,463,498	
Total General Fund and Road Fund Surplus or (Deficit)	\$591,258	

(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) Future city road maintenance expenditures shown in Table 1 are assumed to be lower than recent expenditures due to the improved condition of the roads upon transfer from the County to the new city.

EXHIBIT C

Table 3
Change in Revenues and Expenses to Santa Clara County
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AB 939 Fees	<u>\$10,237</u>	
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	<u>\$483,933</u>	
Road Maintenance	\$1,502,235	
Other Road Costs (traffic engineering, signal maint.)	\$120,000	
Subtotal	\$2,668,062	
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)	\$749,995	
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]	<u>\$208</u>	based on reduction in County maintained miles
Grants	\$89,414	Cnty avg/collector times 27 collector miles
Traffic Congestion Relief: 2182a [1] (B)	\$41,624	based on reduction in County maintained miles
Subtotal	\$158,737	
Total General Fund and Road Fund Surplus or (Deficit)	\$591,258	

(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.~~

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(4) Future city road maintenance expenditures shown in Table 1 are assumed to be lower than recent expenditures due to the improved condition of the roads upon transfer from the County to the new city.

BOARD OF SUPERVISORS
COUNTY OF SANTA CLARA

PETE McHUGH
CHAIR



April 10, 2008

Local Agency Formation Commission
(LAFCO) of Santa Clara County
70 West Hedding Street
East Wing – Eleventh Floor
San Jose, California 95110

Dear LAFCO Commissioners:

Subject: **The Proposed San Martin Incorporation**

This letter is to advise you that on April 8, 2008, the County of Santa Clara Board of Supervisors voted to oppose the incorporation of San Martin *unless* the proposed Town of San Martin is able to make the County's General Fund whole by mitigating lost revenue that pays for important countywide services. The Board also authorized County staff to file a Request for Reconsideration in the event LAFCO approves the incorporation.

The County met with the incorporation proponents in six meetings to negotiate revenue neutrality terms until the proponents ended the negotiations. Attached are the County Administration's staff report that presents the reasons for the County's position and County Counsel's legal analysis.

If you have any questions concerning the attached documents, you may contact Pete Kutras, our County Executive, at 299-5102 or Ann Ravel, our County Counsel, at 299-5902.

Sincerely,



Pete McHugh
Chair, Board of Supervisors

c: Board of Supervisors
Peter Kutras, Jr., County Executive
Ann Miller Ravel, County Counsel
Neelima Palacherla, LAFCO Executive Officer

County of Santa Clara
Office of the County Executive
Administration




CE08 040808

Prepared by: Sylvia Gallegos
Deputy County Executive

DATE: April 8, 2008

TO: Board of Supervisors

FROM: 
Peter Kutras Jr.
County Executive

SUBJECT: The County's Position on the Incorporation of San Martin

RECOMMENDED ACTION

Consider recommendations relating to the County's position on the incorporation of San Martin.

Possible action:

- a. Approve staff recommendation to oppose the San Martin incorporation unless the following conditions can be met:
 1. Make the County General Fund whole with mitigation payments from the proposed Town of San Martin.
 2. Cap the mitigation payment at a ten-year total and offer San Martin no more than a 25-year repayment period.
- b. Authorize staff to file, if necessary, a Request for Reconsideration, should LAFCO approve the San Martin incorporation.

- c. Provide direction to staff as to whether the town council candidates are to pay for the distribution of the candidate's statement to each voter or whether the County is to absorb this cost if the elections for the incorporation and town council candidates occur.

REASONS FOR RECOMMENDATION

In California, the establishment and revision of local government boundaries is governed by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (§56000 et seq.). The LAFCO of each of the fifty-eight counties in California is the designated agency responsible for approving or disapproving incorporation applications.

A LAFCO must consider numerous factors (§56668) when evaluating an application including the proposed boundaries and boundary alternatives, the effect of incorporation on others (county, special districts, etc.), the environmental effects per the California Environmental Quality Act (CEQA), and the fiscal effects including the financial feasibility of the town.

As part of this process, LAFCO staff has been preparing two significant incorporation studies as required by State law, the **Comprehensive Fiscal Analysis (CFA)** and the **Initial Study** (an environmental report) to study the long-term effects of the proposed town. One of the chief considerations to weigh in the evaluation of the incorporation is the proposed town's "fiscal feasibility," which is largely determined by comparing existing costs and revenues and levels of services expected after incorporation. The report that offers this analysis is the CFA.

Next Steps for the San Martin Incorporation

Consistent with LAFCO's adopted incorporation policies, the County met with the incorporation proponents in six meetings between December 13, 2007 and March 3, 2008 to discuss possible revenue neutrality terms. The 90-day window to negotiate a revenue neutrality agreement expired on March 12, 2008 without the parties reaching agreement.

LAFCO will convene on **April 16** to receive comments on the public hearing draft CFA and Initial Study (the environmental report). Because the CFA is incomplete without revenue neutrality terms, the LAFCO Executive Officer proposes to present the positions of the County and proponents with respect to revenue neutrality and seek direction from the commissioners concerning possible options.

The LAFCO Executive Officer hopes to release her Executive Officer Report and Recommendations concerning the proposed San Martin incorporation the week of **April 23**.

LAFCO will hold a public hearing to approve or disapprove the incorporation on **May 7** with possible additional meeting dates in May, if the hearing is continued.

Any affected person or agency may file a Request for Reconsideration of a resolution approving the incorporation. The request must be made within 30-days of the adoption of the resolution by LAFCO and it must offer new or different facts. If LAFCO receives such a request, it shall not take further action on the incorporation until the LAFCO commission acts on the request. LAFCO is tentatively scheduling a meeting on **June 18** to consider possible requests for reconsideration.

If LAFCO approves the incorporation, the agency will request that the Board of Supervisors place resolutions on the Board's **June 24** agenda to call for and hold elections for the incorporation and the candidates for the town council seats. These elections would be consolidated with the other elections scheduled for November 4, 2008. The Board must also adopt on June 24 regulations relating to whether the town council candidates would pay for the distribution of the candidate's statement to each voter or whether the County would absorb this cost.

Revenue Neutrality

The fiscal feasibility of the proposed town and its potential financial effects on the County are the principal concerns of this memorandum.

With regard to San Martin's fiscal feasibility, LAFCO must make a determination that the proposed city is expected to receive revenues sufficient to provide public services and facilities and to ensure adequate reserves. In addition to these considerations, LAFCO must find that the revenues the new city would receive from the county (and other affected agencies) after incorporation would be substantially equal to the amount of savings the county would attain from no longer providing services to the incorporated area (\$56815), which is the revenue neutral standard in the law. Incorporations that do not achieve a substantially equal exchange of revenues and savings require the parties to negotiate a revenue neutrality agreement.

State law was amended in 1992 to include a "revenue neutrality" provision to ensure that incorporations did not result in inequitable tax allocations. In the 1980s, certain unincorporated communities captured substantial situs revenues (property and sales taxes) by incorporating high tax generators into a new city, which deprived the county of necessary tax revenues that paid for, prior to incorporation, countywide services, such as, the criminal

justice system. Because local jurisdictions (counties and special districts) could no longer easily alter the property tax structure in the post-Proposition 13 era to compensate for lost revenue, it meant that counties had no practical alternative but to reduce countywide services and municipal services to the remaining unincorporated communities.

The March 5 draft of the San Martin CFA shows that the incorporation would have a negative financial impact on the County of Santa Clara's General Fund, and the following sections depict San Martin's financial capability to make mitigation payments to the County, as required by law.

Proposed San Martin Incorporation

The CFA (*Revised Table 1, dated Feb. 15, 2008, found in Attachment B.*) indicates that the proposed town's General Fund revenues would exceed its costs, and generate annual surpluses of \$622,000 to \$844,000 over the ten-year horizon of the study.

The town would be required, however, to use most of its General Fund surpluses to help pay for roads-related expenditures because its Road Fund expenditures *exceed* revenues by \$612,000 to \$698,000 annually over the same ten-year period.

The total annual surplus for both funds combined equal between \$9,700 and \$172,000 over the ten years. However, it is important to observe that the town's overall surpluses would not be sufficient to fully mitigate the County's General Fund annual shortfalls (\$872,000) resulting from the incorporation, as shown below.

Impact of the Incorporation on the County

In general terms, an incorporation results in a loss of revenue to a county because it accrues to the new city. Some or all of this lost revenue may be offset by a reduction in a county's expenditures. In other words, because the new city would be providing municipal services that were previously provided by the county, it means that the county has the option to reduce expenses commensurate with the cost of those municipal services. Or, new revenue could be identified.

General Fund

With regard to this proposed incorporation, it would result in an annual loss of \$1.9 million in General Fund revenue to the County using FY07 dollars.

Of this \$1.9 million in lost revenue, the CFA assumes that \$1.1 million of this amount can be offset through departmental expenditure reductions and/or by identifying new revenue; such as in the event the new town decides to contract with the County for certain municipal services the County currently provides. (See *Table 3 in Attachment C*).

Because the CFA assumes the County would lose \$1.9 million in revenue annually and would make \$1.1 million in ongoing cuts and/or receive offsetting revenue, it means that the incorporation would create an ongoing County General Fund deficit of \$872,000 using FY07 as a base year.

Road Fund

The CFA shows that the Road Fund could realize savings of \$1.5 million in FY07 dollars. (*Table 3 in Attachment C*). The Road Fund revenue loss (\$159,000) due to the incorporation is relatively small, but, at the same time, the Roads Department would no longer be responsible for maintaining 55 miles of San Martin roads, thereby creating the savings. It is important to note, however, that these savings would not be achieved unless expenditures (staff, etc.) were cut in the Roads Department.

Use of Savings in the Road Fund to Mitigate Losses in the General Fund

While State law is explicit that a county should not be harmed financially from an incorporation, the proponents contend that State law is not clear that the fiscal impacts on a county's general fund and restricted funds be considered separately. This is the crux of the dispute between the proponents and the County.

The proponents contend that the incorporation results in a benefit to the County in the amount of \$591,000. They reach this conclusion by combining the impact on the General Fund, a deficit of \$872,000, with the benefit to the Road Fund in the amount of \$1.463 million for a total County benefit of \$591,000 annually.

We contend that the financial benefit from combining the General Fund and Road Fund impacts is not real, and that even if savings did exist in the Road Fund, they are legally restricted revenues that cannot be used to offset the General Fund shortfall, and it is the protection of a county's general fund that was the very purpose of establishing revenue neutrality in State law in 1992 through SB 1559/AB 3027.

First, the Road Fund "savings" in the CFA are overstated. The Roads Department's expenditures in FY07 were unusual that year due to the availability of resources to help

address the backlog of pavement maintenance. The savings to the Roads Department would be, on an ongoing basis, half of the \$1.5 million shown in the CFA. The department's more typical long-term average expenditure for the area would be approximately \$800,000. This is consistent with the town's estimated annual road maintenance costs contained in the CFA. As a result, if the General Fund deficit of \$872,000 is combined with a typical year's savings in the Road Fund, which would be about \$641,000, the incorporation's combined impact to the County would be a deficit of about \$231,000 annually. Even when considering the combined impact, the County is financially harmed.

Furthermore, even if there were savings from not maintaining 55 miles of roads in San Martin, there are substantial outstanding roads-related capital needs and deferred maintenance of our expressway system and other unincorporated roads identified in our Five-Year Strategic Expenditure Plan that equal about \$540 million. The prudent course of action would be to re-deploy staff and resources to address these significant unmet needs.

Secondly, any savings in the Road Fund cannot be used to make the General Fund whole. Gas taxes and other restricted revenue finance the Road Fund, and they can only pay for roads-related expenditures. Because the County does not supplement the Road Fund with General Fund monies, it is not possible to transfer savings in the Road Fund to help make up the shortfall in our General Fund.

Thirdly, and most importantly, revenue neutrality was established to protect a county's general fund, which pays for countywide services that do not go away when a new city is created. When there is a substantial loss in the General Fund that cannot be offset by a potential surplus in a restricted fund---as in our case, it is reasonable to interpret the statutes to require that the adverse impact on the General Fund be considered separately from any positive impact on the Road Fund. Indeed, the State Office of Planning and Research's guidelines on incorporations, which our LAFCO has adopted as policy, are very clear that "*restricted and unrestricted revenues should be evaluated separately.*" Thus, for all of the reasons described above, LAFCO is required to ensure that our General Fund is protected; otherwise, it cannot approve this incorporation.

If LAFCO approves this incorporation without ensuring the County's General Fund is not financially harmed, it means, in effect, that residents who benefit from countywide services, such as the criminal justice system, or who receive municipal services in unincorporated areas would be harmed in so far as the County would have to reduce these services to make up for this additional shortfall.

Mitigation Payments

Table 1 (*Attachment B*) shows that San Martin does not have sufficient surpluses to make mitigation payments to address the County's \$872,000 General Fund shortfall. As stated previously, the town would generate surpluses between \$9,700 and \$172,000 annually in the first ten years, which is well short of the \$872,000 the town would be required to make in annual payments over a negotiated mitigation period to make the County General Fund whole.

Nevertheless, the County did endeavor to identify possible means by which San Martin could make the County's General Fund whole. To obtain a sense of the size of the total mitigation payment the County could seek, County staff made the following calculation: General Fund shortfall (\$872,000) plus an inflation factor of 3% per year multiplied by a *ten year* mitigation term. This calculation yields a total mitigation payment amount of \$10.3 million. It is important to note that it was a generous gesture by the County to limit the total mitigation payment amount based on a 10-year term. Other counties received payments based on a 25-year term, which would have generated a total mitigation payment amount that the town is utterly incapable of paying.

The County then considered the available San Martin surpluses (between \$9,700 to \$172,000 in the first ten years) plus an inflation factor of 3% multiplied by *a longer number of years* that would net us the mitigation payment of \$10.3 million. To make the annual mitigation payment to the County based only on San Martin's average annual surpluses (\$135,000), it would require payments for 77 years, which is well beyond any of the mitigation periods negotiated between other incorporated cities and their respective counties. It also means that the County would have to make annual cuts to the General Fund in the amount of \$895,000 to make up the difference between the \$10.3 million shortfall and the mitigation payment amount ($\$135,000 \times 10\text{-yrs} = \1.35 million) over the first ten years.

Mitigation Period

In reviewing eleven revenue neutrality agreements, it is apparent that there is no standard for establishing the number of years to receive mitigation payments. The terms ranged from a low of nine years to as long as twenty-five years, with one town, Goleta, making a component of its payments in perpetuity. LAFCO's CFA consultant, Richard Berkson of Economic and Planning Systems, affirms that there is no prevailing approach to deciding the number of years.

Because other counties sought a total mitigation payment based on a longer mitigation period (up to twenty-five years), it would be reasonable for the County to seek a total mitigation payment amount that corresponds to a longer period than the ten years the County proposed.

This analysis speaks to the fact that the proposed incorporation is not fiscally feasible because the town cannot make adequate mitigation payments to the County to hold us financially harmless as required by law.

Other Considerations

It is important to also highlight that by Board policy, the County's transient occupancy tax (TOT) supports the Arts Council of Santa Clara County. In FY07, the County's TOT actual revenue was \$424,000. In that same year, it is estimated that San Martin would generate \$221,000 of that amount. This means that the incorporation would result in an estimated loss of 52% of the Arts Council's funding. It would be a policy decision of the Board to make up that shortfall with other General Fund revenue or to have the Arts Council absorb this loss.

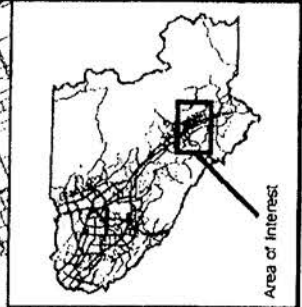
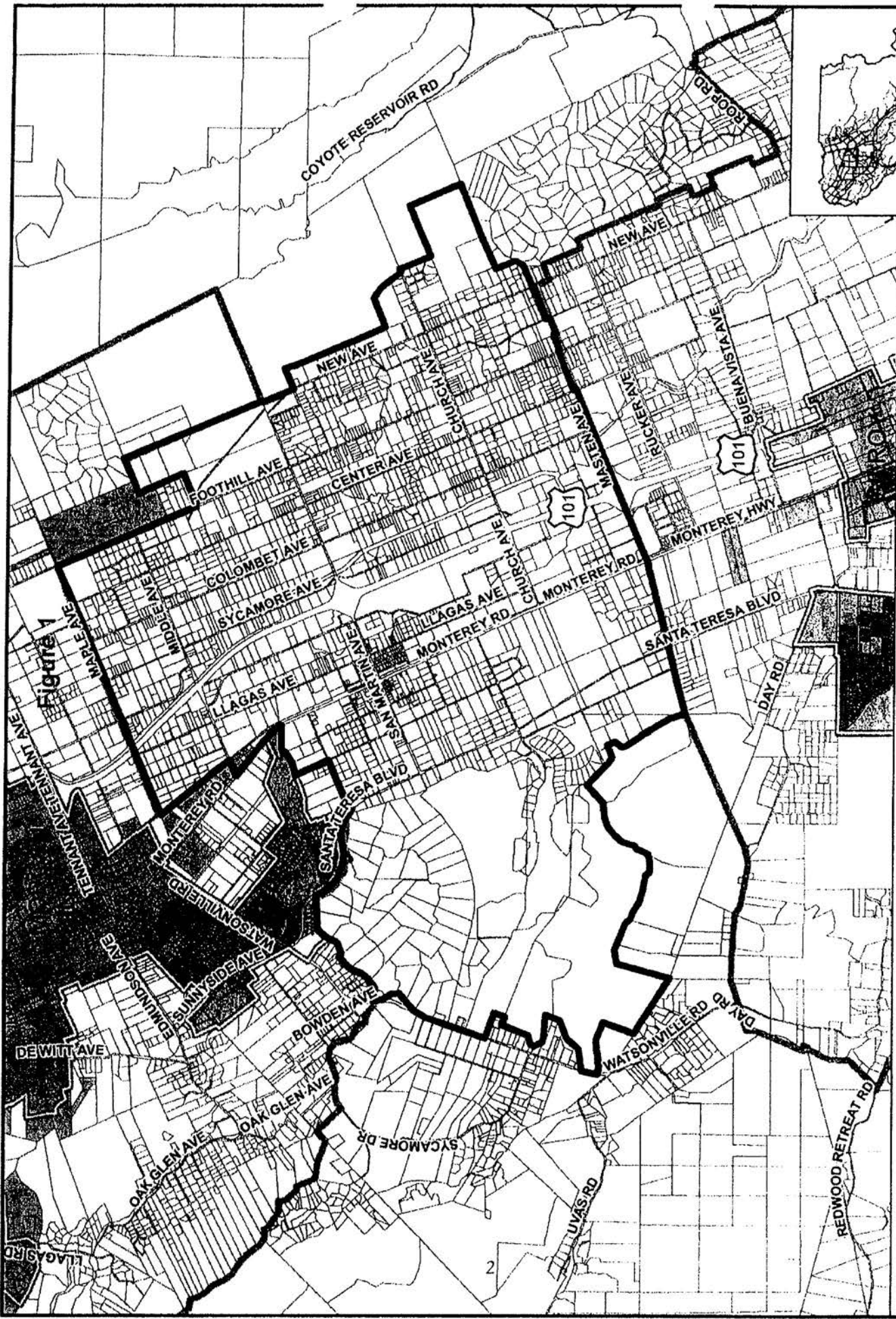
BACKGROUND

In February 2007, the San Martin Neighborhood Alliance submitted a petition and application to the Local Agency Formation Commission (LAFCO) of Santa Clara County to incorporate as a town.

The community is located between Morgan Hill to the north and Gilroy to the south. The proposed area of the town would be approximately 16 square miles, which is larger than the City of Morgan Hill. The town would have approximately 6,900 residents, and it would be home to the CordeValle Resort and Golf Course and the Clos LaChance Winery.

ATTACHMENTS

- Attachment A - San Martin Incorporation Map
- Attachment B - Summary of Revenues and Expenses
- Attachment C - Change in Revenues and Expenses



LAFCO
 Local Agency Formation Commission of San Jose County



- Proposed San Martin Incorporation Boundary
- San Martin Proposed Boundary
- Sphere of Influence
- City Line
- Urban Services Area

Table 1
Summary of Revenues and Expenses (All Figures in Constant \$'s)
San Martin Incorporation Analysis, EPS #17060 Partial Transition Year 6 months Proponents' Proposed Boundary

Item	Fiscal Year									
	2008-09 1	2009-10 2	2010-11 3	2011-12 4	2012-13 5	2013-14 6	2014-15 7	2015-16 8	2016-17 9	2017-18 10
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	\$0	\$838,885	\$838,885	\$838,885	\$838,885	\$838,885	\$838,885	\$838,885	\$838,885	\$838,885
Transient Occupancy Tax	\$0	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557	\$221,557
Real Property Transfer Tax	\$0	\$5,436	\$5,571	\$5,708	\$5,849	\$5,993	\$6,141	\$6,292	\$6,447	\$6,605
Franchise Fees	\$0	\$289,873	\$290,075	\$290,277	\$290,479	\$290,681	\$290,883	\$291,086	\$291,288	\$291,490
Planning and Building Fees	\$0	\$274,742	\$276,116	\$277,496	\$278,884	\$280,278	\$281,679	\$283,088	\$284,503	\$285,926
Public Works/Eng. Fees	\$0	\$89,020	\$89,465	\$89,913	\$90,362	\$90,814	\$91,268	\$91,724	\$92,183	\$92,644
Fines, Penalties, Misc.	\$0	\$32,684	\$32,793	\$32,901	\$33,009	\$33,117	\$33,225	\$33,333	\$33,441	\$33,549
State Motor Vehicle License Fees	\$31,086	\$62,377	\$62,583	\$62,788	\$62,994	\$63,200	\$63,405	\$63,611	\$63,816	\$64,022
Property Tax/VLF Swap	\$273,656	\$512,513	\$477,474	\$442,193	\$406,670	\$370,907	\$372,113	\$373,320	\$374,526	\$375,733
Revenue Credits (transition yr. rec'd by County)	\$995,433									
Investment Earnings	\$6,095	\$60,657	\$60,373	\$60,094	\$59,821	\$59,555	\$60,040	\$60,537	\$61,046	\$61,557
Total	\$1,306,269	\$3,093,519	\$3,078,998	\$3,064,780	\$3,050,878	\$3,037,308	\$3,062,039	\$3,087,377	\$3,113,339	\$3,139,939
General Fund Expenses										
Legislative	\$16,750	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500	\$29,500
Elections	\$0	\$10,000	\$0	\$10,000	\$0	\$10,000	\$0	\$10,000	\$0	\$10,000
City Manager and City Clerk	\$140,613	\$328,659	\$330,289	\$331,927	\$333,573	\$335,227	\$336,890	\$338,561	\$340,240	\$341,928
City Attorney	\$125,000	\$76,131	\$76,511	\$76,894	\$77,278	\$77,665	\$78,053	\$78,443	\$78,836	\$79,230
Administrative Services	\$83,025	\$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	\$51,688	\$443,032	\$444,635	\$446,246	\$447,864	\$449,481	\$451,126	\$452,769	\$454,421	\$456,080
Public Works Administration	\$37,125	\$178,040	\$178,931	\$179,825	\$180,724	\$181,628	\$182,536	\$183,449	\$184,366	\$185,288
Non-Departmental	\$57,000	\$132,500	\$84,500	\$76,500	\$76,500	\$76,500	\$76,500	\$76,500	\$76,500	\$76,500
Office Rent/Supplies	\$15,336	\$62,515	\$61,133	\$61,554	\$61,975	\$62,396	\$62,817	\$63,238	\$63,659	\$64,080
Insurance	\$105,195	\$214,636	\$209,890	\$211,334	\$212,778	\$214,222	\$215,666	\$217,110	\$218,554	\$220,000
Contingency (10%)	\$105,195	\$214,636	\$209,890	\$211,334	\$212,778	\$214,222	\$215,666	\$217,110	\$218,554	\$220,000
Reserve Fund Contribution	\$105,195	\$109,441	\$110,000	\$110,555	\$111,110	\$111,665	\$112,220	\$112,775	\$113,330	\$113,885
LAFCO	\$525,414	\$1,212	\$1,212	\$1,212	\$1,212	\$1,212	\$1,212	\$1,212	\$1,212	\$1,212
Repayment of Transition Yr. Cnty Services (1)	\$1,263,551	\$2,471,645	\$2,310,003	\$2,325,893	\$2,214,969	\$2,240,118	\$2,242,711	\$2,268,088	\$2,270,871	\$2,296,440
Total	\$42,718	\$621,874	\$768,995	\$738,896	\$835,909	\$797,190	\$819,328	\$819,310	\$842,468	\$843,499
General Fund Operating Surplus (Deficit)	\$105,195	\$214,636	\$214,636	\$214,636	\$214,636	\$214,636	\$214,636	\$214,636	\$214,636	\$214,636
% of Expenditures (exc. coming, reserves)	10.0%	10.0%	10.2%	10.2%	10.7%	10.5%	10.5%	10.4%	10.4%	10.3%
B. ROAD FUND OPERATIONS										
Road Fund Revenues										
Gas Taxes	\$100,395	\$188,455	\$176,036	\$163,531	\$150,940	\$138,264	\$138,692	\$139,119	\$139,547	\$139,975
Prop 42 Funds	\$31,844	\$63,899	\$64,751	\$65,614	\$66,488	\$67,373	\$68,268	\$69,175	\$70,094	\$71,023
Total	\$132,238	\$252,354	\$240,787	\$229,145	\$217,428	\$205,637	\$206,960	\$208,295	\$209,641	\$210,998
Road Fund Expenditures										
Pavement Maintenance	\$211,049	\$213,160	\$213,160	\$215,292	\$217,444	\$219,619	\$221,815	\$224,033	\$226,274	\$228,536
Signal Maintenance, Traffic Engineering	\$51,008	\$51,008	\$51,263	\$51,519	\$51,776	\$52,035	\$52,296	\$52,557	\$52,820	\$53,084
Other Costs (sweeping, trash removal, signs, drainage)	\$523,833	\$526,452	\$529,084	\$531,730	\$534,388	\$537,060	\$539,746	\$542,444	\$545,157	\$547,885
Contingency (10%)	\$78,589	\$79,087	\$79,589	\$80,095	\$80,604	\$81,117	\$81,634	\$82,154	\$82,678	\$83,202
Repayment of Transition Yr. Cnty Services	\$811,118	\$864,479	\$869,962	\$875,484	\$881,046	\$886,647	\$892,288	\$897,970	\$903,692	\$909,455
Total	\$811,118	\$864,479	\$869,962	\$875,484	\$881,046	\$886,647	\$892,288	\$897,970	\$903,692	\$909,455
Road Fund Operating Surplus (Deficit)	(\$678,879)	(\$612,125)	(\$629,175)	(\$646,340)	(\$663,618)	(\$681,010)	(\$698,328)	(\$715,646)	(\$732,964)	(\$750,282)
TOTAL, All Funds	(\$636,161)	\$9,748	\$139,819	\$92,557	\$172,291	\$116,179	\$134,000	\$129,635	\$148,417	\$145,043

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

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	<u>\$10,237</u>	
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	<u>\$483,933</u>	
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	\$89,414	Cnty avg/collector times 27 collector miles
Traffic Congestion Relief: 2182a [1] (B)	<u>\$41,624</u>	based on reduction in County maintained miles
Subtotal	\$158,737	
Expenditure Reductions (4)		
Road Maintenance	\$1,502,235	
Other Road Costs (traffic engineering, signal maint.)	<u>\$120,000</u>	Excludes cost-recovery development engineering
Subtotal	\$1,622,235	
Net County Road Fund Surplus or (Deficit)	\$1,463,498	
Total General Fund and Road Fund Surplus or (Deficit)	\$591,258	

(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) Future city road maintenance expenditures shown in Table 1 are assumed to be lower than recent expenditures due to the improved condition of the roads upon transfer from the County to the new city.

REGISTERED VOTERS ONLY

1.	Print Your Name: <u>LEE MARTIN</u>	Residence Address ONLY: <u>11430 Ketho Ave.</u>	<u>3/21/2008</u>
	Signature as Registered to Vote: <u>Lee Martin</u>	City: <u>Gilroy, Calif.</u> Zip: <u>95020</u>	
2.	Print Your Name: <u>JOSEPH S. TURTURICI</u>	Residence Address ONLY: <u>1385 ROTHE DR.</u>	<u>3/21/08</u>
	Signature as Registered to Vote: <u>Joseph S. Turturici</u>	City: <u>GILROY, CA</u> Zip: <u>95020</u>	
3.	Print Your Name: <u>Leona Turturici</u>	Residence Address ONLY: <u>11385 Rothe Dr.</u>	<u>3/21/08</u>
	Signature as Registered to Vote: <u>Leona Turturici</u>	City: <u>Gilroy</u> Zip: <u>95020</u>	
4.	Print Your Name: <u>ANGIE M. LUCCHESI</u>	Residence Address ONLY: <u>11437-ROTHE DR.</u>	<u>3/25/08</u>
	Signature as Registered to Vote: <u>Angie M. Lucchesi</u>	City: <u>Gilroy, CA</u> Zip: <u>95020</u>	
5.	Print Your Name: <u>LOUIS S. LUCCHESI</u>	Residence Address ONLY: <u>11437-ROTHE DR.</u>	<u>3/25/08</u>
	Signature as Registered to Vote: <u>Louis S. Lucchesi</u>	City: <u>Gilroy, CA</u> Zip: <u>95020</u>	
6.	Print Your Name: <u>Mary Quintero</u>	Residence Address ONLY: <u>11420 Rothe Dr.</u>	<u>4/2/08</u>
	Signature as Registered to Vote: <u>Mary Quintero</u>	City: <u>Gilroy</u> Zip: <u>95020</u>	
7.	Print Your Name: _____	Residence Address ONLY: _____	
	Signature as Registered to Vote: _____	City: _____ Zip: _____	
8.	Print Your Name: _____	Residence Address ONLY: _____	
	Signature as Registered to Vote: _____	City: _____ Zip: _____	
9.	Print Your Name: _____	Residence Address ONLY: _____	
	Signature as Registered to Vote: _____	City: _____ Zip: _____	
10.	Print Your Name: _____	Residence Address ONLY: _____	
	Signature as Registered to Vote: _____	City: _____ Zip: _____	

PROPERTY OWNERS ONLY

1.	Print Your Name: <u>Edward G. Rezendes</u>	Residence Address ONLY: <u>275-H Calif. Ave.</u>	3/24/08
	Signature as Registered to Vote: <u>Edward G. Rezendes</u>	City: <u>San Martin, Calif.</u> Zip: <u>95046</u>	
2.	Print Your Name: <u>Evelyn D Rezendes</u>	Residence Address ONLY: <u>275-H Calif. Ave</u>	3/24/08
	Signature as Registered to Vote: <u>Evelyn D Rezendes</u>	City: <u>San Martin Calif.</u> Zip: <u>95046</u>	
3.	Print Your Name: XXXX <u>MADELINE MARTIN</u>	Residence Address ONLY: <u>15780 HARDING AVE.</u>	3/24/08
	Signature as Registered to Vote: <u>Madeline Martin</u>	City: <u>SAN MARTIN, CA.</u> Zip: <u>95046</u>	
4.	Print Your Name: <u>Tomiko Takeda</u>	Residence Address ONLY: <u>12690 Harding Ave.</u>	3/31/08
	Signature as Registered to Vote: <u>Tomiko Takeda</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
5.	Print Your Name: <u>Masatoshi Takeda</u>	Residence Address ONLY: <u>12690 Harding Ave.</u>	3/31/08
	Signature as Registered to Vote: <u>M. Takeda</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
6.	Print Your Name: <u>Haloph Donato</u>	Residence Address ONLY: <u>585 Highland Ave</u> ⁹⁵⁰⁴⁶	3/26/08
	Signature as Registered to Vote: <u>Haloph Donato</u>	City: <u>San Martin, CA</u> Zip: <u>95046</u>	
7.	Print Your Name: <u>Jessie Donato</u>	Residence Address ONLY: <u>585 Highland Ave.</u>	3/26/08
	Signature as Registered to Vote: <u>Jessie Donato</u>	City: <u>San Martin, CA</u> Zip: <u>95046</u>	
8.	Print Your Name: <u>BRIAN RESSLER</u>	Residence Address ONLY: <u>12875 ALES PL</u>	3/24/08
	Signature as Registered to Vote: <u>Brian Ressler</u>	City: <u>SAN MARTIN</u> Zip: <u>95046</u>	
9.	Print Your Name: <u>Nancy L Ressler</u>	Residence Address ONLY: <u>12875 Alee Pl</u>	3/24/08
	Signature as Registered to Vote: <u>Nancy L Ressler</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
10.	Print Your Name: <u>Anita Turk</u>	Residence Address ONLY: <u>905 Lena Ave Gilroy</u>	4/5/08
	Signature as Registered to Vote: <u>Anita Turk</u>	City: <u>Gilroy</u> Zip: <u>95020</u>	

REGISTERED VOTERS

1.	Print Your Name: <u>Eliska W. Thiels</u>	Residence Address ONLY: <u>1620 Decker</u>	<u>3/29/08</u>
	Signature as Registered to Vote: <u>Eliska W. Thiels</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
2.	Print Your Name: <u>Roy P. Thiels</u>	Residence Address ONLY: <u>1620 Decker</u>	<u>3/29/08</u>
	Signature as Registered to Vote: <u>Roy P. Thiels</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
3.	Print Your Name: <u>Lia Ray Ourricarri</u>	Residence Address ONLY: <u>1615 Decker Ave</u>	<u>3/29/08</u>
	Signature as Registered to Vote: <u>[Signature]</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
4.	Print Your Name: <u>Roland Ourricarri</u>	Residence Address ONLY: <u>1615 Decker Ave</u>	<u>3/29/08</u>
	Signature as Registered to Vote: <u>[Signature]</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
5.	Print Your Name: <u>MIKE THILLS</u>	Residence Address ONLY: <u>1640 DECKER AVE</u>	<u>3/29/08</u>
	Signature as Registered to Vote: <u>[Signature]</u>	City: <u>SAN MARTIN</u> Zip: <u>95046</u>	
6.	Print Your Name: <u>Jenny Thiels</u>	Residence Address ONLY: <u>1640 Decker Ave</u>	<u>3/29/08</u>
	Signature as Registered to Vote: <u>Jennifer Thiels</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
7.	Print Your Name: <u>Marybelle McMillan</u>	Residence Address ONLY: <u>1870 E. San Martin Ave</u>	<u>3/30/08</u>
	Signature as Registered to Vote: <u>Marybelle McMillan</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
8.	Print Your Name: <u>LEONA M REIF</u>	Residence Address ONLY: <u>1770 Sycamore</u>	<u>3/30/08</u>
	Signature as Registered to Vote: <u>Leona M Reif</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
9.	Print Your Name: <u>JAMES LINES</u>	Residence Address ONLY: <u>13150 Sycamore</u>	<u>3/30/08</u>
	Signature as Registered to Vote: <u>James Jones</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
10.	Print Your Name: <u>Natalie Jones</u>	Residence Address ONLY: <u>13150 Sycamore</u>	<u>3/30/08</u>
	Signature as Registered to Vote: <u>Natalie Jones</u>	City: <u>San Martin</u> Zip: <u>95046</u>	

REGISTERED VOTERS ONLY

1.	Print Your Name: <u>Jeffrey W. Harris</u> Residence Address ONLY: <u>13450 Columbet Ave</u>		
	Signature as Registered to Vote: <u>Jeffrey W. Harris</u> City: <u>San Martin</u> Zip: <u>95046</u>		<u>3-8-08</u>
2.	Print Your Name: <u>James M Lewis SR</u> Residence Address ONLY: <u>13470 Cololumbet Ave</u>		
	Signature as Registered to Vote: <u>James M Lewis, Sr</u> City: <u>San Martin</u> Zip: <u>95046</u>		<u>3-8-08</u>
3.	Print Your Name: <u>FREDDIE E LEWIS</u> Residence Address ONLY: <u>13470 Cololumbet Ave</u>		
	Signature as Registered to Vote: <u>Freddie E Lewis</u> City: <u>San Martin CA</u> Zip: <u>95046</u>		<u>3-8-08</u>
4.	Print Your Name: <u>Benny Robinson</u> Residence Address ONLY: <u>13530 Columbet Ave</u>		
	Signature as Registered to Vote: <u>Benny Robinson</u> City: <u>SAN MARTIN CA.</u> Zip: <u>95046</u>		<u>3-9-08</u>
5.	Print Your Name: <u>Ernestine Sue Robinson</u> Residence Address ONLY: <u>13530 Columbet Ave</u>		
	Signature as Registered to Vote: <u>Ernestine Sue Robinson</u> City: <u>San Martin</u> Zip: <u>95046</u>		<u>3-9-08</u>
6.	Print Your Name: <u>MABLE Martinez</u> Residence Address ONLY: <u>13530 Columbet Ave.</u>		
	Signature as Registered to Vote: <u>Mable Martinez</u> City: <u>San Martin CA.</u> Zip: <u>95046</u>		<u>3-9-08</u>
7.	Print Your Name: <u>Jann L Martinez</u> Residence Address ONLY: <u>13520 Columbet Ave</u>		
	Signature as Registered to Vote: <u>Jann L Martinez</u> City: <u>San Martin CA.</u> Zip: <u>95046</u>		<u>3-9-08</u>
8.	Print Your Name: <u>DAVID A. Robinson</u> Residence Address ONLY: <u>13530 Columbet Ave</u>		
	Signature as Registered to Vote: <u>David A. Robinson</u> City: <u>San Martin CA.</u> Zip: <u>95046</u>		<u>3-11-08</u>
9.	Print Your Name: <u>John Robinson</u> Residence Address ONLY: <u>13530 Columbet Ave</u>		
	Signature as Registered to Vote: <u>John Robinson</u> City: <u>San Martin CA</u> Zip: <u>95046</u>		<u>3-11-08</u>
10.	Print Your Name: <u>Cecilia Harris</u> Residence Address ONLY: <u>13450 Columbet Ave</u>		
	Signature as Registered to Vote: <u>Cecilia Harris</u> City: <u>San Martin</u> Zip: <u>95046</u>		<u>3-27-08</u>

REGISTERED VOTERS ONLY

1.	Print Your Name: <u>JOHN J. ALES</u> Residence Address ONLY: <u>17905 HARDING AV.</u>	3/24/08
	Signature as Registered to Vote: <u>John J. Ales</u> City: <u>SAN MARTIN, CA</u> Zip: <u>95046</u>	
2.	Print Your Name: <u>Bernice Ales</u> Residence Address ONLY: <u>12905 Harding Ave</u>	3/24/08
	Signature as Registered to Vote: <u>Bernice Ales</u> City: <u>San Martin, CA</u> Zip: <u>95046</u>	
3.	Print Your Name: <u>James F. ...</u> Residence Address ONLY: <u>17866 Sycamore Ave.</u>	3/24/08
	Signature as Registered to Vote: <u>James F. ...</u> City: <u>SAN MARTIN CA</u> Zip: <u>95046</u>	
4.	Print Your Name: <u>JANE SKIMBEALY</u> Residence Address ONLY: <u>13115 A COLONY AVE</u>	3/24/08
	Signature as Registered to Vote: <u>Jane Kimberly Cramelt</u> City: <u>SAN MARTIN CA</u> Zip: <u>95046</u>	
5.	Print Your Name: <u>Elaine Bonino</u> Residence Address ONLY: <u>13275 Colony Ave</u>	3/23/08
	Signature as Registered to Vote: <u>Elaine M. Bonino</u> City: <u>San Martin, CA</u> Zip: <u>95046</u>	
6.	Print Your Name: <u>Helen Bonino</u> Residence Address ONLY: <u>13275 Colony Ave</u>	3/23/08
	Signature as Registered to Vote: <u>Helen Bonino</u> City: <u>San Martin, CA</u> Zip: <u>95046</u>	
7.	Print Your Name: <u>Lynn Hudewig</u> Residence Address ONLY: <u>13565 Monterey Rd.</u>	3/20/08
	Signature as Registered to Vote: <u>Lynn Hudewig</u> City: <u>San Martin</u> Zip: <u>95046</u>	
8.	Print Your Name: <u>LYNNE BONINO</u> Residence Address ONLY: <u>13115 Colony Ave</u>	3/24/08
	Signature as Registered to Vote: <u>Lynne Bonino</u> City: <u>San Martin</u> Zip: <u>95046</u>	
9.	Print Your Name: <u>Caroline Young</u> Residence Address ONLY: <u>13150 Llagas ave</u>	4/1/08
	Signature as Registered to Vote: <u>Caroline Young</u> City: <u>San Martin, CA</u> Zip: <u>95046</u>	
10.	Print Your Name: <u>Colon TRACCO</u> Residence Address ONLY: <u>13150 LLAGAS AV.</u>	4/1/08
	Signature as Registered to Vote: <u>Colon Tracco</u> City: <u>SAN MARTIN</u> Zip: <u>95046</u>	

PROPERTY OWNERS ONLY

1.	Print Your Name: <u>Donna Augustin</u> Signature as Registered to Vote: <u><i>Donna Aug</i></u>	Residence Address ONLY: <u>9526 Oakwilde Ave</u> City: <u>Morada, CA</u> Zip: <u>95212</u>	HPN 3/21/08
2.	Print Your Name: <u>Daren Augustin</u> Signature as Registered to Vote: <u><i>D.A.</i></u>	Residence Address ONLY: <u>9526 Oakwilde Ave</u> City: <u>Morada, CA</u> Zip: <u>95212</u>	#264 3/21/08
3.	Print Your Name: <u>Julie A. Sattler</u> Signature as Registered to Vote: <u><i>Julie A. Sattler</i></u>	Residence Address ONLY: <u>13089 Harding Av</u> City: <u>San Martin</u> Zip: <u>95046</u>	3/24/08
4.	Print Your Name: <u>Edward D. Sattler</u> Signature as Registered to Vote: <u><i>Edward D. Sattler</i></u>	Residence Address ONLY: <u>13089 Harding Ave</u> City: <u>San Martin</u> Zip: <u>95046</u>	3/24/08
5.	Print Your Name: <u>LYNNE BONINO</u> Signature as Registered to Vote: <u><i>Lynne Bonino</i></u>	Residence Address ONLY: <u>13115 Colony Avenue</u> City: <u>San Martin</u> Zip: <u>95046</u>	3/24/08
6.	Print Your Name: <u>Abel Olivares</u> Signature as Registered to Vote: <u><i>Abel Olivares</i></u>	Residence Address ONLY: <u>13210 Colony Ave</u> City: <u>San Martin</u> Zip: <u>95046</u>	3/24/08
7.	Print Your Name: <u>Lynn Ludwig</u> Signature as Registered to Vote: <u><i>Lynn Ludwig</i></u>	Residence Address ONLY: <u>13865 Monterey Rd.</u> City: <u>San Martin</u> Zip: <u>95046</u>	3/31/08
8.	Print Your Name: <u>MARIA WHITE</u> Signature as Registered to Vote: <u><i>Maria White</i></u>	Residence Address ONLY: <u>13195 Santa Jesus Blvd</u> City: <u>SAN MARTIN</u> Zip: <u>95046</u>	4-1-08
9.	Print Your Name: <u>ROBERT H WHITE</u> Signature as Registered to Vote: <u><i>Robert H White</i></u>	Residence Address ONLY: <u>13195 Santa Jesus Blvd</u> City: <u>SAN MARTIN</u> Zip: <u>95046</u>	4-1-08
10.	Print Your Name: <u>Donald J Bonino</u> Signature as Registered to Vote: <u><i>Donald J Bonino</i></u>	Residence Address ONLY: <u>13115 Colony Ave</u> City: <u>San Martin</u> Zip: <u>95046</u>	

REGISTERED VOTERS ONLY

1.	Print Your Name: <u>Subina P. ALDOFREDI</u> Residence Address ONLY: <u>14050 CENTER AVE</u>		
	Signature as Registered to Vote: <u>[Signature]</u> City: <u>San Martin</u> CA Zip: <u>95046</u>		
2.	Print Your Name: <u>Joseph ALDOFREDI</u> Residence Address ONLY: <u>14050 CENTER AVE.</u>		
	Signature as Registered to Vote: <u>[Signature]</u> City: <u>SAN MARTIN</u> CA. Zip: <u>95046</u>		
3.	Print Your Name: <u>ROBERT H. LLOYDE</u> Residence Address ONLY: <u>13665 FOOTHILL AVE,</u>		
	Signature as Registered to Vote: <u>[Signature]</u> City: <u>San Martin</u> Zip: <u>95046</u>		
4.	Print Your Name: <u>Lois L. Lloyd</u> Residence Address ONLY: <u>13665 Foothill Ave</u>		
	Signature as Registered to Vote: <u>[Signature]</u> City: <u>San Martin</u> CA Zip: <u>95046</u>		
5.	Print Your Name: <u>JEAN L. Wilson</u> Residence Address ONLY: <u>14020 Center Ave</u>		
	Signature as Registered to Vote: <u>[Signature]</u> City: <u>San Martin</u> Zip: <u>95046</u>		
6.	Print Your Name: <u>Ronald S DeFalco</u> Residence Address ONLY: <u>13970 Center Ave</u>		
	Signature as Registered to Vote: <u>[Signature]</u> City: <u>San Martin</u> Zip: <u>95046</u>		
7.	Print Your Name: <u>Lorraine DeFalco</u> Residence Address ONLY: <u>13970 Center Ave</u>		
	Signature as Registered to Vote: <u>[Signature]</u> City: <u>San Martin</u> Zip: <u>CA 95046</u>		
8.	Print Your Name: <u>JOHN L. Quilici</u> Residence Address ONLY: <u>14005 CENTER AVE</u>		
	Signature as Registered to Vote: <u>[Signature]</u> City: <u>SAN MARTIN</u> Zip: <u>95046</u>		
9.	Print Your Name: <u>Sarah T. Quilici</u> Residence Address ONLY: <u>14005 Center Ave</u>		
	Signature as Registered to Vote: <u>[Signature]</u> City: <u>San Martin</u> Zip: <u>95046</u>		
10.	Print Your Name: _____ Residence Address ONLY: _____		
	Signature as Registered to Vote: _____ City: _____ Zip: _____		

REGISTERED VOTERS ONLY

1.	Print Your Name: <u>Isabelle C. Buchner</u>	Residence Address ONLY: <u>2505 Church Ave.</u>	3-22-08
	Signature as Registered to Vote: <u>Isabelle C. Buchner</u>	City: <u>SAN MARTIN, CA.</u> Zip: <u>95046</u>	
2.	Print Your Name: <u>Richard S. Nelson</u>	Residence Address ONLY: <u>11891 De Paul Cir</u>	3-27-08
	Signature as Registered to Vote: <u>R Nelson</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
3.	Print Your Name: <u>CATHERINE A McCall</u>	Residence Address ONLY: <u>1184 De Paul Circle</u>	3-27-08
	Signature as Registered to Vote: <u>Catherine A. McCall</u>	City: <u>San Martin, CA</u> Zip: <u>95046</u>	
4.	Print Your Name: <u>Wendy Sparacino</u>	Residence Address ONLY: <u>11922 De Paul Circle</u>	3-27-08
	Signature as Registered to Vote: <u>Wendy Sparacino</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
5.	Print Your Name: <u>DAVID G. Picciano</u>	Residence Address ONLY: <u>11926 De Paul Circle</u>	3/27/08
	Signature as Registered to Vote: <u>David Picciano</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
6.	Print Your Name: <u>Susan M. Picciano</u>	Residence Address ONLY: <u>11986 De Paul Circle</u>	3-27-08
	Signature as Registered to Vote: <u>Susan M. Picciano</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
7.	Print Your Name: <u>Ralph W Adams</u>	Residence Address ONLY: <u>2665 Church Ave</u>	3/27/08
	Signature as Registered to Vote: <u>Ralph W Adams</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
8.	Print Your Name: <u>Linda L. Adams</u>	Residence Address ONLY: <u>2665 Church Ave</u>	3/27/08
	Signature as Registered to Vote: <u>Linda L. Adams</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
9.	Print Your Name: <u>CIARA R AVILLA</u>	Residence Address ONLY: <u>12570 NEW AVE</u>	4-5-08
	Signature as Registered to Vote: <u>Mrs. Clara R Avilla</u>	City: <u>SAN MARTIN</u> Zip: <u>95046</u>	
10.	Print Your Name: <u>GEORGE J. AVILLA</u>	Residence Address ONLY: <u>12570 NEW AVE</u>	4-5-08
	Signature as Registered to Vote: <u>George J. Avilla</u>	City: <u>SAN MARTIN</u> Zip: <u>95046</u>	

Neelima Palacherla, Executive Officer
LAFCO of Santa Clara County
April 7, 2008
Page 4

"A GUIDE TO THE LAFCO PROCESS FOR INCORPORATIONS", APPENDIX C. provides that when considering an incorporation proposal, LAFCO is required to consider the following factors (Section 56668).

- (1) Changing economic conditions which could result in a decrease in general revenues.
- (2) Area to be incorporated must be compact and contiguous and possess a community identity.
- (3) Comments from land owners.
- (4) The effect of the proposal on integrity of agricultural lands.
- (5) Ensure that the agriculture mitigation is provided at the approximate time.
- (6) Establishment of an agricultural buffer; and
- (7) Any information relating to existing land use designations. i.e.
 - a. Tax preference for Williamson Bill;
 - b. Right to Farm Ordinance; and
 - c. That our Local Rules amended in **August 2007** states "Inclusion of agriculture and open space lands within the boundaries of a proposed city is discouraged."

Agricultural land in our community is dispersed throughout the entire community. It is not located just at the most Northerly, Southerly and Westerly borders.

Under FINDINGS: Government Code Section 56720 states LAFCO's Commission may not approve or conditionally approve any incorporation, unless the Commission finds, based on the entire record, that the proposed incorporation is consistent with the intent of the law, that the commission has reviewed the spheres of influence of the affected local agencies and that the Commission has reviewed the Comprehensive Fiscal Analysis.

We, the undersigned, are asking the LAFCO Board to deny proponents request to move forward with the incorporation process. The inaccurate data used by Economic & Planning Systems (EPS) taints the proponents claims that incorporation is financially feasible. Furthermore, EPS totally ignored the issue of the effect of the proposal on the integrity of agricultural lands; the Right to Farm Ordinance; and agricultural lands taxed under the Williamson Bill Contract.

Signatures attached will be signed in counterpart and by this reference made a part hereof.

Neelima Palacheria, Executive Officer
 LAFCO of Santa Clara County
 April 7, 2008
 Page 3

Economic & Planning Systems made the determination that San Martin was viable based on data supplied by SMNA and that it was feasible to pay the following exorbitant salaries:

Table 1, GENERAL FUND EXPENSES shows salaries of \$312,257; \$201,258; \$182,988; and \$104,040 for a population of 6900. San Jose does not pay equivalent salaries with a population in excess **1 million**. IS THAT RESPONSIBLE OR IRRESPONSIBLE?

NOTE: The Planning & Building salary in the IFA is \$312,257; but in the CFA it is \$443,032.

Under **Table 1**, COMPARABLE CITIES REVENUES, EPS changed IFA's population of 6900 to 5,930 to make it appear as though San Martin can compete with Loomis & LaHabra Heights.

Then under **Table 4**, ANIMAL CONTROL EXPENDITURES, EPS raised the population to 6992 residents; perhaps to make it factor out to \$12.15 per capita which is greater than Portola Vally @ \$6.68 or Los Altos Hills @ 8.13.

Under "A GUIDE TO THE LAFCO PROCESS OF INCORPORATION, dated October 2003, Governor's Office of Planning and Research (OPR) the preparation of a CFA is the legal responsibility of LAFCO.

APPENDIX A - INCORPORATION PRIMER

II. A. Be Realistic.

"For any incorporation to succeed, it must have widespread community support. And must ensure that residents are educated about the incorporation process".

On P. 5 of the CFA, it states that "sufficient funds will be generated from CordeValle Resort and Winery, as well as other businesses serving local residents".

NOTE: One has to assume that "other businesses" are those included in **Table 1-2** which includes deceased people and phantom businesses.

The GOVERNOR'S OFFICE OF PLANNING AND RESEARCH (OPR) also states, "It must recognize the ability and readiness of the area to provide municipal level services. Under Revenue Neutrality, the Law states that an incorporation should not occur primarily for financial reasons (Section 56800)".

Neelima Palacherla, Executive Officer
LAFCO Santa Clara County
April 7, 2008
Page 2

Who is responsible? EPS? LAFCO? SMNA? EPS claims that because SMNA furnished the aforementioned data, they are not responsible. And, that they merely extrapolated figures from SMNA'S data to arrive at salaries, feasibility, etc. The LAFCO Board should carefully scrutinize the IFA as the CFA is predicated in large measure to gross revenue data taken from **Table 1-1** and number of employees from **Table 1-4**.

Neither the IFA or CFA mentions where City Hall will be located. No existing building is suitable. Yet, IFA quotes \$.55 per foot; and that the city would need 4500 square feet - \$2,475 per month or \$29,700 per year.

UNDER OTHER CITY EXPENDITURES, OFFICE RENT AND SUPPLIES, CFA QUOTES \$2.00 PER FOOT - \$9,000 PER MONTH OR \$118,000 A YEAR.

Under NEW TAXES, "The CFA assumes no new taxes will be imposed by the City".

Who is going to pay to build City Hall;
exorbitant salaries; health & retirement
benefits; and the municipal sewer system?

Excerpts taken from "OVERVIEW" and HISTORY OF INCORPORATION ACTIVITIES published by San Martin Neighborhood Alliance include the following:

"Suggestions for land usage within the commercial area were consistent":

"Participants favored sewer hook up within the Commercial Area to make it possible to put in locally serving businesses." "They did not want sewer hook up extended into the residential or agricultural areas".

"Participants favor sewer hook up within the industrial area to allow upgrades in land use".

"The issue of sewer hook up was discussed at the Community Outreach Program, as land uses within the industrial-commercial areas cannot be upgraded without sewer hook up."

"SMNA members contributed \$25,000 to fund a financial feasibility study. It would have been irresponsible to pursue the matter within the community at large if in July 2003, EPS did not determine that it was financially feasible to incorporate".

April 7, 2008

FAXED: (408)295-1613
ORIGINAL SENT BY U.S. MAIL

Neelima Palacherla, Executive Officer
LAFCO of Santa Clara County
70 West Hedding Street, 11th Floor
San Jose, California 95110

RE: Comprehensive Fiscal Analysis (CFA) EPS #17060
Prepared for Proposed Incorporation of San Martin

Dear Ms. Palacherla:

After reviewing the Comprehensive Fiscal Analysis (CFA), we are offering the following comments:

Under FINDINGS it states, "The area generates revenues greater than average per capita unincorporated revenues because of sales tax and hotel tax revenues generated by the CordeValle Resort and Winery, as well as other businesses serving local residents".

One must assume that "other businesses" refers to **Table 1-2**, Retail establishments and **Table 1-1**, Major Local Employers as depicted in the Initial Fiscal Analysis (IFA).

NOTE: SMNA did not publicly notice residents that the Initial Fiscal Analysis (IFA) dated May 2003 was available for public review until March 2008 - **5 years** after Economic & Planning Systems, Inc. (EPS) released their study and **1 year** after signatures were gathered to place the matter on the ballot.

The STATE GUIDE TO LAFCO PROCESS recommends conducting an "initial fiscal feasibility review" which is designed to help incorporation proponents decide whether to continue with an incorporation effort. What responsible proponent would continue to put in time and money after reviewing **Table 1-2**, San Martin Establishments which alleges that 2 deceased people are still in business and are grossing \$2,500,000 and \$500,000, respectively; Ultramar located in the City of Morgan Hill grossing \$2,500,000; phantom businesses that never existed; those that had gone out of business prior to 2003; and most egregiously, that the gross revenues and number of people employed were extremely exaggerated.

Table 1-4, Major Local Employers, lists number of employees, i.e., Nature Quality and CordeValle each employing 200 people.

At the bottom of **Table 1-4**, it shows SUBTOTAL 947 and "OTHER" 1,536 for a total of 2,483 people employed in San Martin. But there is no reference made to the names or location of these so called Local Employers who employ 1,536 people.

- c. The payment of in-lieu fees to an agricultural conservation entity that are sufficient to fully fund*:
 1. The cost of acquisition of agricultural lands or agricultural conservation easements for permanent protection, and
 2. The cost of administering, managing, monitoring and enforcing the agricultural lands or agricultural conservation easements, as well as the costs of maintaining agriculture on the mitigation lands.

* with provisions for adjustment of in-lieu fees to reflect potential changes in land values at the time of actual payment
8. Agricultural lands or conservation easements acquired and transferred to an agricultural conservation entity should be located in Santa Clara County and be lands deemed acceptable to the city and entity.
9. The agricultural mitigation should result in preservation of land that would be:
 - a. Prime agricultural land of substantially similar quality and character as measured by the Average Storie Index rating and the Land Capability Classification rating, and
 - b. Located within cities' spheres of influence in an area planned/envisioned for agriculture, and
 - c. That would preferably promote the definition and creation of a permanent urban/agricultural edge.
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. Examples of such measures include, but are not limited to:
 - a. Establishment of an agricultural buffer on the land proposed for development. The buffer's size, location and allowed uses must be sufficient to minimize conflicts between the adjacent urban and agricultural uses.
 - b. Adoption of protections such as a Right to Farm Ordinance, to ensure that the new urban residents shall recognize the rights of adjacent property owners conducting agricultural operations and practices in compliance with established standards.
 - c. Development of programs to promote the continued viability of surrounding agricultural land.

5. LAFCO will review and revise these policies as necessary.

Definition of Prime Agricultural Lands

6. "Prime agricultural land" as defined in the Cortese Knox Hertzberg Act means an area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than an agricultural use and that meets any of the following qualifications:
 - a. Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.
 - b. Land that qualifies for rating 80 through 100 Storie Index Rating.
 - c. Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Handbook on Range and Related Grazing Lands, July, 1967, developed pursuant to Public Law 46, December 1935.
 - d. Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre.
 - e. Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred dollars (\$400) per acre for three of the previous five calendar years.

Mitigation Recommendations

7. Proposals involving the conversion of prime agricultural lands should provide one of the following mitigations at a not less than 1:1 ratio (1 acre preserved for every acre converted) along with the payment of funds as determined by the city / agricultural conservation entity (whichever applies) to cover the costs of program administration, land management, monitoring, enforcement and maintenance of agriculture on the mitigation lands:
 - a. The acquisition and transfer of ownership of agricultural land to an agricultural conservation entity for permanent protection of the agricultural land.
 - b. The acquisition and transfer of agricultural conservation easements to an agricultural conservation entity for permanent protection of the agricultural land.

AGRICULTURAL MITIGATION POLICIES

Background

LAFCO's mission 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. LAFCO will consider impacts to agricultural lands along with other factors in its evaluation of proposals. LAFCO's Urban Service Area (USA) Amendment Policies discourage premature conversion of agricultural lands, guide development away from existing agricultural lands and require the development of existing vacant lands within city boundaries prior to conversion of additional agricultural lands. In those cases where LAFCO proposals involve conversion of agricultural lands, LAFCO's USA Amendment Policies require an explanation of why the inclusion of agricultural lands is necessary and how such loss will be mitigated.

Purpose of Policies

The purpose of these policies is to provide guidance to property owners, potential applicants and cities on how to address agricultural mitigation for LAFCO proposals and to provide a framework for LAFCO to evaluate and process in a consistent manner, LAFCO proposals that involve or impact agricultural lands.

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.
3. When a LAFCO proposal impacts or involves a loss of prime agricultural lands, LAFCO encourages property owners, cities and agricultural conservation agencies to work together as early in the process as possible to initiate and execute agricultural mitigation plans, in a manner that is consistent with these policies.
4. LAFCO will work with agricultural entities, the County, cities and other stakeholders to develop a program and public education materials to improve the community's understanding of the importance of agriculture in creating sustainable communities within Santa Clara County.

Revised August 1, 2007

- g. Areas included within the proposed incorporation boundaries should consist of existing developed areas and lands, which are planned for, development.
- h. Inclusion of agricultural and open space lands within the boundaries of a proposed city is discouraged.
- i. 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.

4. SERVICES TO INCORPORATION AREA

- a. Applicants must demonstrate to LAFCO that the proposed city will have the ability to provide adequate facilities and services in the incorporation area, at no less than the level of services provided in the area prior to incorporation.
- b. New cities should assume jurisdiction over as many services in the incorporation area as are feasible.

5. SPECIAL DISTRICTS AFFECTED BY INCORPORATION PROPOSAL

- a. District territory included in an incorporation area should be detached from the district or the district dissolved unless LAFCO determines that there is an overriding reason to retain the district.
- b. Detachment of territory from a region-wide special district which provides service to multiple communities outside the incorporation area is discouraged, unless the Commission determines that there is an overriding reason for the detachment.

6. TIMING AND INITIATION OF NEW CITY'S SPHERE OF INFLUENCE

- a. The Commission may determine the sphere of influence for the new city at the time the incorporation is approved or no later than one year from the effective date of incorporation. The new city may initiate a Sphere of Influence application. In the absence of an application within the time frame necessary for sphere adoption, the Commission will adopt an initial Sphere of Influence boundary for the city which will be coterminous with the city's boundaries.

Revised August 1, 2007

- b. Incorporation proposals are charged on an actual cost basis with a deposit required when the proposal is initiated. The cost of the proceedings will be much higher than the initial deposit. The deposit allows staff to open a file and initiate the determination of petition sufficiency and begin meetings with the proponents to develop a time frame and cost estimates.
- c. Consultants will be hired for the preparation of the comprehensive fiscal analysis and CEQA analysis / documents. Each consultant's total cost will be divided into costs for each sub task. Prior to commencement of each sub task, the proponents must make a deposit in the amount of the estimated cost for that task. LAFCO will not authorize the consultant to commence work on the task until the funds are received. At the end of each task a final accounting will be done. Any amounts due must be paid within 30 days. Any refunds will be applied to the subsequent task or refunded. The actual amounts of the deposits will be determined after the consultant contracts are negotiated.
- d. LAFCO staff will provide the proponents an initial estimate of the costs of the incorporation proceedings. The terms of payment will be stated in an agreement to be executed between LAFCO and the proponents.

3. INCORPORATION BOUNDARIES

- a. The Commission will review proposal boundaries, as submitted by proponents. Alternatives to the proposal must also be considered by LAFCO. The Executive Officer will convene a meeting to identify logical boundary alternatives for the new city at the earliest date possible. The meeting will include the proponents.
- b. The Commission may modify proposed boundaries and order the inclusion or deletion of territory to accomplish its goal of creating orderly boundaries.
- c. A proposed incorporation must satisfy a demonstrated need for services, and promote the health, safety, and welfare of the community.
- d. A proposed incorporation or formation must not conflict with the normal and logical expansion of adjacent governmental agencies.
- e. An area proposed for incorporation must be compact and contiguous, and possess a community identity.
- f. The proposal boundaries and alternatives shall not create islands or areas that would be difficult to serve.

INCORPORATION POLICIES

These policies augment the Governor's Office of Planning and Research (OPR) "Guide to the LAFCO Process for Incorporations". Where these local policies differ from the OPR Guidelines the local policies shall apply. These policies are not intended to preempt state law. Should these policies conflict with the provisions of law, the provisions of the CKH Act and related statutes shall prevail. Unless otherwise specified herein, proposals for incorporation are subject to all policies and requirements that apply to proposals and applications submitted to Santa Clara LAFCO.

1. CERTIFICATE OF FILING AND TIME LIMITATIONS

- a. In order to deem the incorporation application filed, issue the Certificate of Filing and set a hearing date for the proposal, all application requirements must be completed (§56651). The Certificate of Filing will not be issued by the Executive Officer until all of the filing requirements have been met including the comprehensive fiscal analysis and information sufficient to facilitate an environmental determination pursuant to CEQA.
- b. To ensure that the petition signatures remain sufficient and that the proposal remains current, the application requirements must be completed within 24 months following the date of the Certificate of Sufficiency or the date of adoption of the resolution making the application.
- c. If the application remains incomplete after 22 months, LAFCO staff will notify the proponents at least 60 days before the 24-month deadline. The Commission may allow an extension of the 24-month time period, on a case by case basis.
- d. LAFCO staff will use its best efforts to ensure timely completion of each procedural requirement in the incorporation process, including, but not limited to, preparing requests for financial information as early as possible following the close of the fiscal year; giving appropriate notice, initiating agency consultations; and convening meetings related to revenue transfers.

2. INCORPORATION PROCESSING FEES

- a. The actual costs for processing the incorporation application are the proponent's responsibility. Application costs include consultant costs for preparing the comprehensive fiscal analysis and the environmental review documents, LAFCO staff time, legal counsel costs and other related expenses incurred by LAFCO in the incorporation proceedings.

EPS shows 6,700 acres to be incorporated. After deducting 1,000 acres for Cordeville & Winery, the remaining 5,700 acres consists of numerous properties zoned AGRICULTURAL, Pasture, Grazing and Range Land; AGRICULTURAL, Field Crops, Non-Orchard; AGRICULTURAL, Flower Growers; AGRICULTURAL, Orchard; & GREENBELT.

A reasonable person would conclude that growing grapes is classified as "farming"; yet Economic & Planning Systems, Inc. failed to follow State and County LAFCO Guidelines.

Revenues generated from FARMING AND CONDO RENTAL are not listed as viable sources for purposes of incorporation in the STATE OF CALIFORNIA LAFCO RULES; OR THE LOCAL COUNTY LAFCO RULES.

A community must gain financial stability from COMMERCIAL AND INDUSTRIAL REVENUES; not farming, condo rental or tourism. Carmel Valley's attempt to incorporate was predicated on substituting industrial (which they do not have) with tourism. Revenues generated from tourism cannot be predicted or reliable.

A lawsuit is currently pending against LAFCO in Monterey County.

Oakhurst in Madera County after several years of wrangling got their measure on the ballot and the measure failed.

El Dorado Hills also recently failed. Even though they already have a municipal sewer system and municipal water system in place, when asked on the ballot (1) if they were in favor of incorporation and (2) if they were willing to pay higher taxes in order to support incorporation, voters overwhelmingly said, "No" to higher taxes.

The San Martin Retail Establishments list includes businesses that never existed; two businesses owned by men who died prior to 2003; and several who had gone out of business. The most egregious actions were when they inflated "gross revenues" and number of employees to illustrate that San Martin was financial viable and could support incorporation.

Proponents claim that it is financially viable to incorporate a rural community in order to keep it rural & greenbelted; and to continue using septic systems. If we are going to remain exactly the same as we are today, why would anyone want to pay CITY TAXES to support paying the City Manager \$182,988; Finance Director \$201,258; and the Planning Director and Staff \$323,257? San Jose has a population of over 1 million people; yet their city officials are not paid anywhere near that much and we only have a population of 6900. Also, rural residents would have an assessment added to their property tax bill to support a municipal sewer system to be used only for properties along Monterey Road.

LAFCO procedures for incorporation is to ensure that any proposed incorporation is economically feasible and in the **best interest of the community.**

STATE OF CALIFORNIA
A GUIDE TO THE LAFCO PROCESS FOR INCORPORATION
GOVERNOR'S OFFICE OF PLANNING &* RESEARCH

APPENDICES B.

"A logical incorporation boundary does the following:

Recognizes the ability and readiness of the area to provide **"municipal level services"**.

APPENDICES D. WHY INCORPORATE?

Reasons for incorporation efforts include but are not limited to the following:

1. Municipal level services, i.e. water and sewer.
2. Who is likely to benefit from change and who is likely to lose?

LOCAL SANTA CLARA COUNTY LAFCO RULES REVISED 8-1-07

P. 2. item 3 (e) An area proposed for incorporation must be **compact and contiguous**, and possess a community identity.

(h) Inclusion of agriculture lands within the boundaries of a proposed city is **discouraged**.

P. 3. 10 (b) Adoption of protection such as a RIGHT TO FARM ORDINANCE; to ensure that the new urban residents shall recognize the rights of adjacent property owners to conduct agricultural operations and practices.

(c) Development of programs to promote the continued viability of surrounding agricultural land.

(The Comprehensive Fiscal Analysis (CFA) does not address farming) (A copy is available from our LAFCO office)

The Comprehensive Fiscal Analysis does, however, state that Cordevalle and Clos La Chance Winery; and the businesses contained in the Initial Fiscal Analysis (businesses that are listed and do not exits or whose revenues are grossly exaggerated) generate enough revenues to incorporate.

In addition to land zoned RR-5A, Residential and Recreational Facilities, CordeValle & Winery own approximately 1000 acres zoned HS HILLSIDE & A-20S ALL DESIGNATED AS A GREENBELT AREA.

LAFCO INCORPORATION GUIDELINES
GOVERNOR'S OFFICE OF PLANNING & RESEARCH (OPR)
www.opr.ca.gov

EXECUTIVE SUMMARY

P. 1. "Preparation of a Comprehensive Fiscal Analysis (CFA) is expensive and if the proposed incorporation is **infeasible**, many proponents feel their efforts and money have been wasted".

"The incorporation guidelines contain a recommended "INITIAL FISCAL FEASIBILITY REVIEW (IFA) which is designed to help incorporation proponents decide whether to continue with the incorporation effort".

STATE OF CALIFORNIA
A GUIDE TO THE LAFCO PROCESS FOR INCORPORATION
GOVERNOR'S OFFICE OF PLANNING RESEARCH

P. 2. "Existing law requires each local LAFCO to adopt written policy and procedures which may augment and supplement State Incorporation Guidelines".

P. 10. INITIAL FISCAL FEASIBILITY REVIEW. "The initial fiscal feasibility review is designed to help community groups conduct a quick appraisal of the potential for incorporation".

APPENDICES E. BUT CAN IT FLY?

P. 4. "Incorporations have to be **financially feasible**. While this is often seen as the primary test for incorporation, it is only one of the many standards of the review Lafco will use."

Costs of **capital improvements** are not recurring costs. Only recurring revenues and expenditures i.e police and fire protection, road repair, animal control, etc. should be evaluated for purposes of determining revenue neutrality.

"NO NEW TAXES" refers to property taxes paid to the Tax Collector of Santa Clara County NOT CITY TAXES AND CITY ASSESSMENTS. A new city gets only a small portion of the property taxes paid to the County to support services we already enjoy such as police, fire, etc. Therefore, the NO NEW TAXES admonition which has been repeated constantly does not include building city hall; exorbitant salaries shown in the IFA; health and retirement benefits (that is bankrupting some cities as we speak); municipal sewer system; municipal water system; TAX ON EVERY BUSINESS; and all the unforeseen expenses that are necessary to support city government. PEOPLE MUST BE WILLING TO TAX THEMSELVES AFTER THEY BECOME INCORPORATED. Therefore it is crucial to determine what if anything each citizen will gain by incorporating.

Table 1-1
 Major Local Employers
 San Martin Incorporation Analysis

Employer	Business Type	Commercial Classification	Number of Employees
Nature Quality Inc	Canned & Frozen Foods	Manufacturing	200
CordeValle	Membership Sports & Recreation Clubs	Services	200
Phillip Services Corp	Refuse System	Transportation, Communications & Utilities	79
South County Social Svc Dept	Social, HR & Income Maintenance Programs	Public Administration	55
Lone Star Landscape Inc	Landscape Counseling & Planning	Agriculture, Forestry, and Fishing	50
West Coast Engineering	Engineering Services	Services	45
San Martin School	Elementary & Secondary School	Services	40
San Martin Mushroom Inc	Fresh Fruits & Vegetables	Wholesale Trade	38
Santa Clara County Roads Dept	Legislative Bodies	Public Administration	33
Cachique USA	Dairy Products	Manufacturing	30
San Martin Veterinary Hospital	Veterinary Services for Animal Specialties	Agriculture, Forestry, and Fishing	25
B & D Mushroom Inc	Food Crops Grown Under Cover	Agriculture, Forestry, and Fishing	25
Camping World	Recreational Vehicle Dealers	Retail Trade	25
South County Retirement Home	Nursing and Personal Care Facilities	Services	22
Polytron Corp	Business Consulting Services	Services	20
Peterson Tractor Co	Construction & Mining (except petroleum) Machinery & Equipment	Wholesale Trade	20
Regional Farms Inc	Ornamental Floriculture and Nursery Products	Agriculture, Forestry, and Fishing	20
Clos LaChance Wines	Wines, Brandy, and Brandy Spirits	Manufacturing	20
Subtotal			947
Other			1,536
Total			2,483

Sources: InfoUSA data based on zip code 95046, which may not align exactly with proposed city boundaries, and Economic & Planning Systems.

*Where are these 1,536 people employed?
 The number of employees shown on this page are
 supposedly working every day.*

Table 1 Summary of Revenues and Expenses (All figures in Constant 2003\$)

Item	Fiscal Year									
	2004-05	2005-06	2006-07	2007-08	2008-09	2009-2010	2010-11	2011-12	2012-13	2013-14
General Fund Revenues	\$778,394	\$805,928	\$828,493	\$872,169	\$1,002,623	\$1,035,278	\$1,072,137	\$1,108,181	\$1,141,982	\$1,178,282
Property Taxes	\$635,423	\$648,225	\$628,026	\$641,700	\$654,828	\$687,814	\$763,046	\$788,201	\$783,669	\$789,428
Sales Tax	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000
Transient Occupancy Tax	\$30,880	\$31,880	\$32,828	\$33,868	\$38,035	\$38,128	\$37,283	\$38,429	\$39,700	\$39,870
Real Property Transfer Tax	\$88,841	\$88,901	\$87,975	\$89,082	\$90,182	\$91,278	\$92,403	\$93,546	\$94,700	\$95,870
Franchise Fees	\$114,888	\$151,488	\$177,942	\$179,748	\$179,557	\$180,371	\$181,188	\$182,010	\$182,835	\$183,666
Planning Fees	\$10,181	\$18,282	\$18,372	\$18,466	\$19,568	\$18,951	\$19,744	\$18,838	\$19,932	\$19,028
Public Works/Eng. Fees	\$19,023	\$16,246	\$18,471	\$18,668	\$18,930	\$18,184	\$19,401	\$19,841	\$19,883	\$20,128
Fines and Penalties	\$460,434	\$465,434	\$459,424	\$463,434	\$453,434	\$453,434	\$453,434	\$453,434	\$453,434	\$453,434
State Motor Vehicle License Fees	\$22,878	\$23,374	\$23,828	\$25,312	\$25,778	\$26,271	\$27,028	\$27,089	\$27,958	\$28,288
Investment Earnings	\$2,250,457	\$2,250,770	\$2,557,470	\$2,558,558	\$2,803,806	\$2,889,987	\$2,790,180	\$2,735,703	\$2,793,410	\$2,864,039
Total	\$4,250,457	\$4,250,770	\$4,250,770	\$4,250,770	\$4,250,770	\$4,250,770	\$4,250,770	\$4,250,770	\$4,250,770	\$4,250,770
General Fund Expenses	\$426,000	\$28,000	\$28,000	\$28,000	\$28,000	\$28,000	\$28,000	\$28,000	\$28,000	\$28,000
City Council	\$0	\$5,717	\$0	\$5,869	\$0	\$5,006	\$0	\$8,184	\$0	\$8,307
Elections	\$80,885	\$168,197	\$192,888	\$183,901	\$184,821	\$189,745	\$188,673	\$187,807	\$189,545	\$196,486
City Manager	\$89,780	\$54,007	\$52,302	\$54,988	\$54,586	\$54,783	\$54,982	\$56,181	\$56,382	\$55,584
City Clerk	\$100,000	\$102,000	\$104,040	\$106,121	\$108,243	\$110,408	\$112,516	\$114,669	\$117,188	\$119,509
City Attorney	\$111,780	\$112,989	\$201,288	\$202,284	\$203,276	\$204,292	\$205,218	\$206,340	\$207,371	\$208,408
Police	\$87,500	\$87,500	\$87,500	\$87,500	\$87,500	\$87,500	\$87,500	\$87,500	\$87,500	\$87,500
Administrative Services	\$0	\$1,141,584	\$1,187,800	\$1,193,844	\$1,220,877	\$1,248,114	\$1,276,167	\$1,304,861	\$1,334,179	\$1,364,167
Animal Control	\$0	\$38,714	\$39,383	\$40,074	\$40,772	\$41,482	\$42,204	\$42,938	\$43,687	\$44,447
Planning	\$162,910	\$278,988	\$312,257	\$313,280	\$328,410	\$240,484	\$241,584	\$242,679	\$243,780	\$244,887
Public Works Administration	\$72,785	\$73,126	\$73,467	\$73,882	\$74,231	\$74,602	\$74,978	\$75,350	\$75,727	\$76,106
Office Rent/Supplies	\$104,700	\$64,700	\$64,700	\$64,700	\$64,700	\$64,700	\$64,700	\$64,700	\$64,700	\$64,700
Insurance	\$23,810	\$63,707	\$63,707	\$70,064	\$69,637	\$69,637	\$70,718	\$71,972	\$72,880	\$74,184
Contingency	\$39,860	\$108,178	\$118,818	\$118,757	\$114,388	\$116,411	\$117,850	\$119,953	\$121,487	\$123,840
Reserve for Contingency	\$860,749	\$672,456	\$608,854	\$621,958	\$647,945	\$651,478	\$655,456	\$659,986	\$664,572	\$669,208
Total	\$1,419,708	\$1,419,708	\$1,419,708	\$1,419,708	\$1,419,708	\$1,419,708	\$1,419,708	\$1,419,708	\$1,419,708	\$1,419,708
General Fund Operating Surplus (Deficit)	\$3,824,757	\$3,824,757	\$3,824,757	\$3,824,757	\$3,824,757	\$3,824,757	\$3,824,757	\$3,824,757	\$3,824,757	\$3,824,757
Cum. General Fund Surplus (Deficit)	\$3,824,757	\$7,649,514	\$11,474,271	\$15,298,028	\$19,121,785	\$22,945,542	\$26,769,299	\$30,593,056	\$34,416,813	\$38,240,570

***** TO BE DETERMINED *****

City Manager 182,988 year Mayor
 City Attorney 104,040 " Council Members
 Finance Director 201,258 "
 Planning Director 312,257 "
 Public Works Director 13,494 "
 where will they board city hall? and
 at what cost?

Table I-2
San Martín Retail Establishments
San Martín Incorporation Analysis

Boat Barn

Retail	Business Type	Sales Volume/Assets	Employees
Apparel and Accessory Stores Freddie Western Store	Shoe Store	\$1,000,000-\$2,500,000	10 - 19
Auto Dealers & Gas Service Station			
Camping World	Recreational Vehicle Dealers	\$10,000,000-\$20,000,000	20 - 49
San Martín Exxon	Gasoline Service Stations	\$2,500,000-\$5,000,000	5 - 9
Ultramar Inc	Gasoline Service Stations	\$1,000,000-\$2,500,000	5 - 9
Union Jack	Motor Vehicle Dealers (Used Only)	<\$500,000	1 - 4
ALF Auto Wreckers	Auto and Home Supply Stores	<\$500,000	1 - 4
Karoo Enterprises Inc	Motorcycle Dealers	<\$500,000	1 - 4
Building Material/Garden Supply/Mobile Homes			
Nursery Outlet	Retail Nurseries, Lawn and Garden Supply Stores	\$1,000,000-\$2,500,000	10 - 19
Power Equipment Co	Retail Nurseries, Lawn and Garden Supply Stores	\$1,000,000-\$2,500,000	10 - 19
A Plus Windows	Lumber and Other Building Materials	\$1,000,000-\$2,500,000	5 - 9
Mt Green Nursery	Retail Nurseries, Lawn and Garden Supply Stores	\$500,000-\$1,000,000	1 - 4
Select Auto Glass	Paint, Glass, and Wallpaper Stores	\$500,000-\$1,000,000	1 - 4
Freddie Sanchez Hardwood Floor	Lumber and Other Building Materials	\$500,000-\$1,000,000	1 - 4
Akl Nursery	Retail Nurseries, Lawn and Garden Supply Stores	<\$500,000	1 - 4
Garage Doors Etc	Lumber and Other Building Materials	<\$500,000	1 - 4
Battaglia Ranch	Retail Nurseries, Lawn and Garden Supply Stores	<\$500,000	1 - 4
A-1 Saw & Lawn Mower	Retail Nurseries, Lawn and Garden Supply Stores	<\$500,000	1 - 4
Eating and Drinking Places			
Dreyer's Grand Ice Cream	Eating Places	<\$500,000	10 - 19
San Martín Meats & Deli	Eating Places	<\$500,000	10 - 19
San Martín Cafe	Eating Places	<\$500,000	5 - 9
El Patio Mexican Deli	Eating Places	<\$500,000	1 - 4
Food Stores			
Rocco's Market	Grocery Stores	\$1,000,000-\$2,500,000	5 - 9
Don Boy Foods Inc	Grocery Stores	\$500,000-\$1,000,000	5 - 9
LIB Farms	Fruit and Vegetable Markets	\$500,000-\$1,000,000	1 - 4
San Martín Drive In Market	Grocery Stores	\$500,000-\$1,000,000	1 - 4
Avila's Market	Grocery Stores	<\$500,000	1 - 4
Mama's Mart	Grocery Stores	<\$500,000	1 - 4
Uesugi Farms Inc	Fruit and Vegetable Markets	<\$500,000	1 - 4
Gourmet Country	Miscellaneous Food Stores	<\$500,000	1 - 4
Home Furniture/Furnishings/Equipment			
Superior Information	Computer and Computer Software Stores	\$1,000,000-\$2,500,000	1 - 4
Integrated Manufacturing Svc	Computer and Computer Software Stores	\$500,000-\$1,000,000	1 - 4
DATA Image	Computer and Computer Software Stores	<\$500,000	1 - 4
George the Dick Man	Radio, Television, and Consumer Electronic Stores	<\$500,000	1 - 4
Elektron Appliance Svc	Household Appliance Stores	<\$500,000	1 - 4
Miscellaneous Retail			
Balloons Buy Lisa	Gift, Novelty, and Souvenir Shops	<\$500,000	1 - 4
St Catherine's Community Store	Used Merchandise Stores	<\$500,000	1 - 4
Shaklee Distributor	Direct Selling Establishments	<\$500,000	1 - 4
Engraving Co	Miscellaneous Retail Stores (Not Elsewhere Classified)	<\$500,000	1 - 4
Loce	Miscellaneous Retail Stores (Not Elsewhere Classified)	<\$500,000	1 - 4
Kessler May & Horses	Sporting Goods Stores and Bicycle Shops	<\$500,000	1 - 4

Sources: InfoUSA data based on zip code 96046, which may not align exactly with proposed city boundaries, and Economic & Planning Systems.

Please note that the Initial Fiscal Analysis (IFA) was not merely a preliminary analysis. It was the **FINAL REPORT** from which the proponents claim it was financially feasible to move forward in an attempt to incorporate San Martin.

The methodology used by Economic & Planning Systems, Inc. (EPS) to arrive at salaries of \$313,000 for the Planning Director; \$202,000 for Finance Director; \$184,000 for City Manager; and \$108,000 for City Attorney consisted of adding up total gross assets, for example, \$20,000,000 NOT \$10,000,000 for Camping World. Moreover, they used \$500,000 for each small retail establishment regardless of whether that business grossed a mere \$30,000.

Using grossly exaggerated numbers provided to EPS, i.e. estimates of gross annual assets; and inflated numbers for employees, EPS concluded that it was "feasible" to consider incorporation. They show \$61,500,000 as total sales volume of which \$20,500,000 represents non-existent businesses; and businesses that closed prior to 2003; or since 2003.

The study is only as accurate as the data provided by the proponents. If data provided is exaggerated, the entire report is seriously flawed. Retail establishments that do exist are estimated far in excess of actual gross sales volume.

Retail establishments crossed out on Table 1-2, San Martin Retail Establishments, San Martin Incorporation Analysis, do not exist. And, Ultramar, Inc. is located within the boundary of the City of Morgan Hill due to the fact that the City of Morgan Hill strip annexed all properties along the east side of Monterey Road South to Middle Avenue.

Preparation of a **Comprehensive** Fiscal Analysis (CFA) is expensive and if the incorporation is **infeasible**, many proponents feel their efforts and money have been wasted. Therefore, the Incorporation Guidelines recommend doing an IFA which is designed to help proponents decide whether to continue with an incorporation effort. Clearly, proponents should have been able to determine that the IFA produced by EPS was lacking in credibility.

San Martin simply does not have ample commercial and industrial development to financially justify and maintain the necessary components of city government depicted in this fiscal analysis.

For a complete copy of the Initial Fiscal Analysis of the Proposed Incorporation of San Martin, refer to www.epsys.com.

Pages 6, 34 & 35 attached were taken from the **FINAL REPORT**, Initial Fiscal Analysis, EPS #13016.

Business owners have faxed letters to LAFCO as well as to your office regarding the inflated gross revenues shown on P. 35.

FAXED TO: (408)295-1613

DATE: April 10, 2008

RE: Overview of Initial Fiscal Analysis & Comprehensive Fiscal Analysis.

Excerpts taken from State LAFCO Incorporation Guidelines; Governor's Office of Planning & Research

Page 6, 34 & 35 contained in the IFA depicting and Referenced in the CFA as "OTHER BUSINESSES".

Revised LOCAL LAFCO RULES Dated August 1, 2007, and Pages 1-3; & AGRICULTURAL MITIGATION POLICIES.

FROM: Concerned Citizens Opposing Incorporation (CCOI)

PAGES FAXED INCLUDING COVER SHEET: (15)

ATTENTION: Neelima Palacherla, Executive Officer

Dear Ms. Palacherle,

In our haste to meet the impending deadline to review and comment on the Comprehensive Fiscal Analysis, we failed to include names and telephone numbers of contact people for CCOI. The three contact people are:

Floy Montarbo (408)779-4593
Lynn Bonino (409)683-2883
Lucy Walsh (408)683-2707

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

Memo to Peter Kutras, Jr.
Re: Revenue Neutrality
April 10, 2008
Page 9

The Opinion goes on to assert that even if the Roads fund can be treated separately, “then LAFCO must exercise its discretion to include the benefit to restricted funds as well.” It does not effectively explain how this approach differs from actually including the Roads fund in the revenue neutrality calculations nor does the Opinion cite any authority for this position. In fact, under the provisions of subdivision (b) of Section 56815, LAFCO is prohibited from exercising any such discretion. The pertinent language states that LAFCO “*shall not approve* a proposal” unless it finds there is revenue neutrality or, under subdivision (c), that there are mitigation payments addressing the negative fiscal impact, or the parties otherwise agree.

Finally, the Opinion argues that the financial issue of revenue neutrality should not be the single factor on which a proposed incorporation is approved.¹⁴ Admittedly, there are a number of factors that LAFCO must consider in its decision to approve or disapprove a proposed incorporation. However, as noted above, the Legislature in Section 56815 has stated very clearly that if there is not revenue neutrality, LAFCO “shall not approve” an incorporation proposal. That result is required even if the proposal may meet all other criteria for incorporation.

CONCLUSION

Based on our review and analysis of the applicable statutes and guidelines as well as the legal opinion submitted by the Proponents, it is our conclusion that in the calculation of revenue neutrality by LAFCO, general fund revenues must be considered separately from restricted funds and, therefore, any benefit the County might realize in its Roads fund as a result of the proposed incorporation of San Martin may not be used to offset the negative fiscal impact to the County’s general fund that would result from the incorporation.

¹⁴ Opinion, page 10.

Memo to Peter Kutras, Jr.
Re: Revenue Neutrality
April 10, 2008
Page 8

reveals no reference to the term restricted or unrestricted funds.”¹² The Opinion does not address the fiscal impact to the County of the loss of general fund revenue or the County’s responsibility for continuing to provide services to all County residents.

We have set out above the clear legal justification for the *requirement* that LAFCO consider restricted and unrestricted revenues separately in its analysis of revenue neutrality. The Opinion contains no arguments that effectively contradict or cause us to reconsider our analysis and conclusion.

The Opinion also considers significant to this issue the fact that the publication *Growth Within Bounds* contains no reference to restricted or unrestricted funds for purposes of revenue neutrality. However, that fact is simply irrelevant to consideration of this issue. That document was created by the Commission on Local Governance for the 21st Century (Commission). In 2000, the Legislature enacted the Cortese-Knox-Hertzberg Local Government Reorganization Act (Act)¹³ which made extensive reforms to and reorganized the existing law. In section 286 of the Act, the Legislature states that the Act is intended to implement the recommendations of the Commission. The document, however, made no recommendation for changes to what are now sections 56810 and 56815. It did suggest language which was included in the Act for the Governor’s Office of Planning and Research to develop statewide guidelines for the incorporation process, guidelines which included the statement that “restricted and unrestricted revenues should be evaluated separately.”

The Act itself made no significant changes to the law as it relates to revenue neutrality. It did, however, repeal existing sections 56842 and 56845 and reenacted them as sections 56810 and 56815. No changes were made to Section 56810 and the only change to Section 56815 was to include the reference to “direct and indirect expenditures” in paragraph (2) of subdivision (b). Thus, while *Growth Within Bounds* did not reference restricted or unrestricted funds, the Act certainly did by its reenactment in Section 56810 of the existing language of 56842 discussed and analyzed above.

Since the original enactment of the revenue neutrality requirement in 1992, the law has consistently and specifically addressed how general purpose, or unrestricted, funds and specific, or restricted, funds, both revenues and expenditures, are to be used in the revenue neutrality calculations. They are to be considered separately. LAFCO, in its CFA, has applied those provisions correctly.

¹² Ibid., page 9.

¹³ Stats. 2000, Ch. 761 (AB 2838).

Memo to Peter Kutras, Jr.
Re: Revenue Neutrality
April 10, 2008
Page 7

“harmonize” the language of the two sections, is to interpret Section 56815 to require the separate consideration of general purpose revenues and restricted revenues in the calculation of revenue neutrality. If Section 56815 is interpreted to mean that general purpose and restricted revenues and expenditures are not to be considered together, then the language of subdivision (j) is rendered surplusage, a result, under the well accepted rules of statutory construction, the courts will seek to avoid.

As estimated by the CFA, the County will see a reduction in its general fund revenue in the amount of \$872,000 annually. This loss of revenue will significantly impact the County’s ability to provide the criminal justice, public health, social and other services for which it is responsible for providing to all residents of the County, including the residents of San Martin. This loss of revenue will not be mitigated by any positive fiscal benefit to the Roads fund since those funds are restricted by law for use only for Roads purposes. Under the terms of subdivision (a) of Section 56815, this is not a similar exchange of revenue and responsibility for service delivery as intended by the Legislature. And under the provisions of subdivision (b) of Section 56815, LAFCO “shall not approve a proposal” if the loss of revenue to the County is not substantially equal to the expenditures that will be assumed by San Martin for which the County was previously responsible.

Proponents’ Legal Opinion on Revenue Neutrality

We have reviewed the legal opinion (Opinion) dated April 7, 2008 provided to the Proponents by William Ross which concludes that the CFA improperly excluded the Roads fund when considering revenue neutrality, or, alternatively, if it was properly excluded “then LAFCO must exercise its discretion to include the benefit to restricted funds as well.” For the reasons provided below, we find the Opinion not persuasive.

On page 7, the Opinion asserts that the CFA omits the Roads fund from the revenue neutrality calculations. In fact, the CFA treats the Roads fund as part of the revenue neutrality calculation but, in accordance with statutory requirements and OPR and LAFCO Guidelines, evaluates it separately because of its restricted fund nature.

The Opinion further states that “[t]here is no legal justification to omit the Road Maintenance costs from the Neutrality Costs or authority to treat it any differently than the Animal Control, Land Use Planning, Inspection, Enforcement, Clean Water and Waste Management costs that the County includes in the Neutrality Calculation”.¹¹ As additional support for this conclusion, the Opinion notes that “a complete search of *Growth Within Bounds*

¹¹ Opinion, page 8.

determination and the determination required by paragraph (3), "total amount of revenue from all sources available for general purposes" means the total amount of revenue which an affected local agency may use on a discretionary basis for any purpose and does not include any of the following:

(A) Revenue which, by statute, is required to be used for a specific purpose.

(B) Revenue from fees, charges, or assessments which are levied to specifically offset the cost of particular services and do not exceed the cost reasonably borne in providing these services.

(C) Revenue received from the federal government which is required to be used for a specific purpose.

(2) The commission shall determine, based on information submitted by each affected local agency, an amount equal to the total net cost to each affected local agency during the prior fiscal year of providing those services which the new jurisdiction will assume within the area subject to the proposal. For purposes of this paragraph, "total net cost" means the total direct and indirect costs that were funded by general purpose revenues of the affected local agency and excludes any portion of the total cost that was funded by any revenues of that agency that are specified in subparagraphs (A), (B), and (C) of paragraph (1).

(3) The commission shall multiply the amount determined pursuant to paragraph (2) for each affected local agency by the corresponding proportion determined pursuant to paragraph (1) to derive the amount of property tax revenue used to provide services by each affected local agency during the prior fiscal year within the area subject to the proposal. The county auditor shall adjust the amount described in the previous sentence by the annual tax increment according to the procedures set forth in Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code, to the fiscal year in which the new city or district receives its initial allocation of property taxes.

...

(j) The calculations and procedures specified in this section shall be made prior to and shall be incorporated into the calculations specified in Section 56815.

(Emphasis added)

The emphasized language in paragraphs (1) and (2) of subdivision (c) above provides that in making the calculation of property tax revenues to be exchanged, restricted revenues are not to be included. The net costs to be included in the calculation are only those that are funded by general purpose revenues and specifically exclude those costs that are funded by restricted revenues. Subdivision (j) then provides that the calculations and procedures in Section 56810 are to be incorporated into the calculations of revenue neutrality in Section 56815. Applying the rules of statutory construction cited earlier, the only way to give effect to subdivision (j), and to

Memo to Peter Kutras, Jr.
Re: Revenue Neutrality
April 10, 2008
Page 5

responsibility for service delivery among the county, the proposed city, and other subject agencies.” (Emphasis added).

It appears clear from this language, that the intent of the Legislature was to protect the fiscal integrity of the local agency losing the revenue so that it can continue to provide the services for which it remains responsible. As OPR noted in the quoted language above, many of those services for which a county remains responsible are services that are provided county-wide, including the newly incorporated area. These include social services, public health services and criminal justice system services such as the district attorney, public defender, correctional facilities and probation. The revenue neutrality requirement is intended to ensure that a county avoid a loss in revenues that could result in a reduction in services for which the county remained responsible.

Given the legislative intent and the language of the statute, a “similar exchange” of revenue and responsibility for service delivery cannot occur if revenue is included in the calculation that is not legally available to the county for expenditure on services for which the county remains responsible. A contrary interpretation would undermine the intent of the Legislature as expressed in the language since the fiscal integrity of a county would, in fact, be jeopardized if the negative fiscal impact on the general fund was allowed to be offset by a positive effect on county funds that are not legally available for general fund purposes. In addition, this interpretation gives effective meaning to the use of “similar” in subdivision (a) of Section 56815.

Our conclusion is further supported by the provisions of Section 56810¹⁰ concerning the calculation of the amount of property tax revenue to be exchanged between a county and the incorporating town. That section provides in pertinent part:

(a)...

...

(c) If the proposal would not transfer all of an affected agency’s service responsibilities to the proposed city or district, the commission and the county auditor shall do all of the following:

(1) The county auditor shall determine the proportion that the amount of property tax revenue derived by each affected local agency pursuant to subdivision (b) of Section 93 of the Revenue and Taxation Code bears to the total amount of revenue from all sources, available for general purposes, received by each affected local agency in the prior fiscal year. *For purposes of making this*

¹⁰ Section 56810 was originally enacted as Section 56842 in 1992 as part of Assembly Bill 3027 (ch. 1369).

Memo to Peter Kutras, Jr.
Re: Revenue Neutrality
April 10, 2008
Page 4

The revenue neutrality law was an attempt to make the tax allocation more equitable by requiring LAFCO to ensure that counties and districts are held harmless from new incorporations. Counties have dual responsibilities for services. The County is the provider of law enforcement services in the unincorporated area. It often provides fire protection as well. Additionally, it is the county that provides for the rest of the criminal justice system to all county residents-services such as the District Attorney, correctional facilities, Probation and Public Defender. In addition, the social services and public health care systems are almost exclusively provided by counties. These services are provided regardless of where people live and are funded by the same revenue stream that previously could be diverted to an incorporating city. Revenue neutrality has generally removed the financial incentive for communities to incorporate as counties do not lose more revenues over and above the costs associated with services to be provided.”⁶

Section 56815 does not specifically address the issue of whether for purposes of calculating revenue neutrality a negative fiscal impact to a county’s general fund may be offset by a positive impact on a fund where the revenues are not available for general fund purposes. Nor have we been able to find any court decisions that have considered the issue. However, in analyzing the language of the section in light of the stated legislative intent and, when viewed in the context of related statutes, it is our opinion that in calculating revenue neutrality, LAFCO may not offset the negative fiscal impact to the County’s general fund by any positive impact on County restricted funds.⁷

In interpreting any statute, courts are guided by well established rules of statutory construction including to ascertain the intent of the Legislature in order to adopt the construction that best effectuates the purpose of the law. Statutes should be construed to provide a reasonable result consistent with the legislative purpose.⁸ In construing statutes, a court will look at the words in context and harmonize the language to the extent possible and attempt to avoid interpretations that render words surplusage.⁹

In this instance, the Legislature specifically stated its intent concerning revenue neutrality in subdivision (a) of Section 56815, that there should be “a *similar* exchange of both revenue and

⁶ OPR Guide, p. 40.

⁷ OPR has adopted this standard in its Guide at page 44. LAFCO has adopted this standard as well. See Santa Clara County LAFCO “Incorporation Policies” at page 10.

⁸ *Thornburg v. Superior Court* (2006) 138 Cal. App. 4th 43, 49.

⁹ *Woods v. Young* (1991) 53 Cal.3d 315, 323.

DISCUSSION

Section 56815³ provides in pertinent part:

- (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 further the 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.

The Governor's Office of Planning and Research (OPR) was charged with the task of developing statewide guidelines that would serve as the "minimum" guidelines and direction to local LAFCOs for the incorporation process.⁴ As part of those guidelines⁵, OPR provides some helpful background on the origin of the revenue neutrality requirement. It provides in part as follows:

"After Proposition 13, local agencies could no longer alter the property tax rate to compensate for lost revenue when a new city incorporated and started receiving sales and other tax revenue. Other communities in the unincorporated area who had relied on the county to provide municipal level services found their revenue sources reduced. Counties, facing revenue losses due to the incorporation, were forced to reduce services simply because there were no practical alternatives such as raising additional revenue.

³ Section 56815 was originally enacted as Section 56842 in 1992 by Assembly Bill 1559 (ch. 697) and amended that same year by Assembly Bill 3027 (ch. 1369). It was renumbered as Section 56815 in 2000 by AB 2838 (ch. 761).

⁴ Section 56815.2.

⁵ "A Guide to the LAFCO Process for Incorporations" (OPR Guide), Governor's Office of Planning and Research (October 2003).

Memo to Peter Kutras, Jr.
Re: Revenue Neutrality
April 10, 2008
Page 2

BACKGROUND

In February 2007, the San Martin Neighborhood Alliance (Proponents) submitted a petition and application to the Local Agency Formation Commission of Santa Clara County (LAFCO) to incorporate as a town. LAFCO is the agency responsible for approving or disapproving incorporation proposals.

Section 56815 of the Government Code provides that LAFCO may not approve an incorporation in which the loss of revenues to the County is not substantially equal to the reduction in expenditures by the County as a result of the transfer of responsibility for services to the new town unless the negative fiscal effect will be mitigated by payments by the new town to the County, or the parties otherwise agree to the incorporation.¹ This is the “revenue neutrality” requirement applicable to incorporations.

LAFCO commenced consideration of the application including the preparation of a Comprehensive Fiscal Analysis (CFA) to determine the fiscal viability of the proposed town as well as the fiscal impact on local government agencies, including the County. The CFA estimates that for the first 10 years after incorporation, the Town would have an annual surplus ranging between \$9,700 and \$172,000. The CFA also estimated that there would be a negative fiscal impact to the County General Fund of \$872,000 annually but a positive impact to the County’s Roads fund of \$1.5 million.² The loss in general fund revenues means less actual revenue available to the County to perform the critical criminal justice, public health and social services that are provided to all County residents including those within the proposed new town of San Martin. Any positive impact on the Roads fund would not offset the loss in general fund revenues because the Roads fund revenues are restricted funds that may be expended only for Roads-related purposes and are not available for County general fund programs or purposes.

It has been the County’s position that any positive fiscal impact to the Roads fund should not be considered as an offset to the negative fiscal impact on the County’s General Fund because the Roads funds are restricted funds and by law may not be used to replace lost General Fund dollars. The Proponents believe that the County should recognize the benefit to the Roads fund as a “credit” for purposes of the revenue neutrality calculations. On April 7, 2008, we were provided a copy of a legal opinion prepared on behalf of the Proponents in support of their position.

¹ Gov. Code Section 56815. All section references are to the Government Code unless specified otherwise.

² The actual impact to the Roads fund will be much less than that amount over time according to County staff analysis. This amount is probably overstated as it is based on recent County Roads expenditures which were higher than usual in the fiscal year examined due to increased emphasis on upgrading the roads in the San Martin area.

OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA

70 West Hedding Street, 9th Floor
San Jose, California 95110-1770
(408) 299-5900
(408) 292-7240 (FAX)



Ann Miller Ravel
COUNTY COUNSEL

Winifred Botha
Robert C. Campbell
Lori E. Pegg
ASSISTANT COUNTY COUNSEL

MEMORANDUM

TO: Peter Kutras, Jr., County Executive
FROM: *Ann Miller Ravel*
Ann Miller Ravel, County Counsel
Robert C. Campbell, Assistant County Counsel *Bob Campbell*
RE: Revenue Neutrality
DATE: April 10, 2008

OPINION REQUESTED

You have requested the opinion of this Office on the question of whether the Local Agency Formation Commission of Santa Clara County, when considering the revenue neutrality of the proposed incorporation of the Town of San Martin must separately evaluate the fiscal impact of the proposed incorporation on the unrestricted general fund revenues and the impact on the restricted revenues of the County. In addition, this opinion will address the legal opinion on revenue neutrality provided to the proponents of the proposed incorporation dated April 7, 2008.

CONCLUSION

It is the opinion of this Office that the Local Agency Formation Commission must separately consider the impact of the proposed incorporation on the unrestricted general fund and the impact on the restricted funds when calculating revenue neutrality. If the impact of the proposed incorporation would result in a significant reduction in general fund revenues for the County, LAFCO cannot consider any increase in available restricted fund revenue to the County for purposes of determining revenue neutrality. The restricted fund revenues are not available for use for general fund purposes and, therefore, cannot offset the negative fiscal impact on the general fund revenues of the County.

REGISTERED VOTERS ONLY

1.	Print Your Name: <u>LUCY M. WALSH</u> Residence Address ONLY: <u>13600 Columbat Ave</u>		
	Signature as Registered to Vote: <u>[Signature]</u> City: <u>San Martin</u> Zip: <u>95046</u>		<u>3/7/08</u>
2.	Print Your Name: <u>RONALD L. WALSH</u> Residence Address ONLY: <u>13600 Columbat Ave</u>		
	Signature as Registered to Vote: <u>[Signature]</u> City: <u>San Martin</u> Zip: <u>95046</u>		<u>3/7/08</u>
3.	Print Your Name: <u>AL WAGLER</u> Residence Address ONLY: <u>13685 COLUMBAT</u>		
	Signature as Registered to Vote: <u>[Signature]</u> City: <u>SAN MARTIN</u> Zip: <u>95046</u>		<u>3-7-08</u>
4.	Print Your Name: <u>RUTH WAGLER</u> Residence Address ONLY: <u>13685 CALUMBAT</u>		
	Signature as Registered to Vote: <u>[Signature]</u> City: <u>SAN MARTIN</u> Zip: <u>95046</u>		<u>3-7-08</u>
5.	Print Your Name: <u>VIRGINIA R SHIELDS</u> Residence Address ONLY: <u>13330 LINCOLN</u>		
	Signature as Registered to Vote: <u>[Signature]</u> City: <u>SAN MARTIN</u> Zip: <u>95046</u>		<u>3-21-08</u>
6.	Print Your Name: <u>Maryll Johnston</u> Residence Address ONLY: <u>13560 Santa Teresa BL</u>		
	Signature as Registered to Vote: <u>[Signature]</u> City: <u>SM</u> Zip: <u>95046</u>		<u>4-4-08</u>
7.	Print Your Name: _____ Residence Address ONLY: _____		
	Signature as Registered to Vote: _____ City: _____ Zip: _____		
8.	Print Your Name: _____ Residence Address ONLY: _____		
	Signature as Registered to Vote: _____ City: _____ Zip: _____		
9.	Print Your Name: _____ Residence Address ONLY: _____		
	Signature as Registered to Vote: _____ City: _____ Zip: _____		
10.	Print Your Name: _____ Residence Address ONLY: _____		
	Signature as Registered to Vote: _____ City: _____ Zip: _____		

REGISTERED VOTERS ONLY

1. Print Your Name: <u>Karen M Pedigo</u> Signature as Registered to Vote: <u>[Signature]</u>	Residence Address ONLY: <u>2505 Church Ave</u> City: <u>San Martin</u> Zip: <u>95046</u>	<u>3/21/08</u>
2. Print Your Name: <u>JAMES BUCHNER</u> Signature as Registered to Vote: <u>[Signature]</u>	Residence Address ONLY: <u>2505 Church Ave</u> City: <u>SAN MARTIN</u> Zip: <u>95046</u>	<u>3/24/08</u>
3. Print Your Name: <u>Robert Buchner</u> Signature as Registered to Vote: <u>[Signature]</u>	Residence Address ONLY: <u>2505 Church Ave</u> City: <u>San Martin</u> Zip: <u>95046</u>	<u>3/22/08</u>
4. Print Your Name: <u>Maria Bonilla</u> Signature as Registered to Vote: <u>[Signature]</u>	Residence Address ONLY: <u>2508A Church Ave</u> City: <u>San Martin CA</u> Zip: <u>95046</u>	<u>3/26/08</u>
5. Print Your Name: <u>Angelina Esquivel</u> Signature as Registered to Vote: <u>[Signature]</u>	Residence Address ONLY: <u>2500A Church Ave</u> City: <u>San Martin CA</u> Zip: <u>95046</u>	<u>3/26/08</u>
6. Print Your Name: _____ Signature as Registered to Vote: _____	Residence Address ONLY: _____ City: _____ Zip: _____	
7. Print Your Name: _____ Signature as Registered to Vote: _____	Residence Address ONLY: _____ City: _____ Zip: _____	
8. Print Your Name: _____ Signature as Registered to Vote: _____	Residence Address ONLY: _____ City: _____ Zip: _____	
9. Print Your Name: _____ Signature as Registered to Vote: _____	Residence Address ONLY: _____ City: _____ Zip: _____	
10. Print Your Name: _____ Signature as Registered to Vote: _____	Residence Address ONLY: _____ City: _____ Zip: _____	

REGISTERED VOTERS ONLY

1.	Print Your Name: <u>Tony Morabito</u>	Residence Address ONLY: <u>930 E. Middle Ave</u>	<u>3-21-08</u>	<u>San Martin</u>
	Signature as Registered to Vote: <u>TONY MORABITO</u>	City: <u>95046</u>		
2.	Print Your Name: <u>VIRGINIA MORABITO</u>	Residence Address ONLY: <u>930 E. Middle Ave.</u>	<u>3-21-08</u>	
	Signature as Registered to Vote: <u>Virginia Morabito</u>	City: <u>San Martin</u> Zip: <u>95046</u>		
3.	Print Your Name: <u>CAROL RASMUSSEN</u>	Residence Address ONLY: <u>14465 Columbet Ave.</u>	<u>3/25/08</u>	
	Signature as Registered to Vote: <u>Carol Rasmussen</u>	City: <u>San Martin Calif.</u> Zip: <u>95046</u>		
4.	Print Your Name: <u>CAROLEEN RASMUSSEN</u>	Residence Address ONLY: <u>14465 Columbet Ave</u>	<u>3/25/08</u>	
	Signature as Registered to Vote: <u>Caroleen Rasmussen</u>	City: <u>SAN MARTIN</u> Zip: <u>95046</u>		
5.	Print Your Name: <u>Jeff Rasmussen</u>	Residence Address ONLY: <u>14465 columbet Ave</u>	<u>4-1-08</u>	<u>San Martin</u>
	Signature as Registered to Vote: <u>Jeff Rasmussen</u>	City: <u>San Martin</u> Zip: <u>95046</u>		
6.	Print Your Name: _____	Residence Address ONLY: _____		
	Signature as Registered to Vote: _____	City: _____ Zip: _____		
7.	Print Your Name: _____	Residence Address ONLY: _____		
	Signature as Registered to Vote: _____	City: _____ Zip: _____		
8.	Print Your Name: _____	Residence Address ONLY: _____		
	Signature as Registered to Vote: _____	City: _____ Zip: _____		
9.	Print Your Name: _____	Residence Address ONLY: _____		
	Signature as Registered to Vote: _____	City: _____ Zip: _____		
10.	Print Your Name: _____	Residence Address ONLY: _____		
	Signature as Registered to Vote: _____	City: _____ Zip: _____		

REGISTERED VOTERS ONLY

1	Print Your Name: <u>GABRIEL DIAS</u>	Residence Address ONLY: <u>11975 TURK CH AV.</u>	<u>3/24/08</u>
	Signature as Registered to Vote: <u>[Signature]</u>	City: <u>SAN MARTIN, CA</u> Zip: <u>95046</u>	
2	Print Your Name: <u>Barbara R Green</u>	Residence Address ONLY: <u>275 C California Ave</u>	<u>4/5/08</u>
	Signature as Registered to Vote: <u>Barbara R Green</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
3	Print Your Name: <u>CLIFFORD P TURK</u>	Residence Address ONLY: <u>POSLENA AVE</u>	<u>4/5/08</u>
	Signature as Registered to Vote: <u>Clifford P Turk</u>	RESIDE IN SAN MARTIN City: <u>Elroy, Ca.</u> Zip: <u>95020</u>	
4	Print Your Name: <u>Donald Bourne</u>	Residence Address ONLY: <u>13115 Colony Ave</u>	<u>4/7/08</u>
	Signature as Registered to Vote: <u>Donald J Bourne</u>	City: <u>San Martin</u> Zip: <u>95046</u>	
5	Print Your Name: _____	Residence Address ONLY: _____	
	Signature as Registered to Vote: _____	City: _____ Zip: _____	
6	Print Your Name: _____	Residence Address ONLY: _____	
	Signature as Registered to Vote: _____	City: _____ Zip: _____	
7	Print Your Name: _____	Residence Address ONLY: _____	
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	Signature as Registered to Vote: _____	City: _____ Zip: _____	
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	Signature as Registered to Vote: _____	City: _____ Zip: _____	
10	Print Your Name: _____	Residence Address ONLY: _____	
	Signature as Registered to Vote: _____	City: _____ Zip: _____	

REGISTERED VOTERS ONLY

Print Your Name: <u>Nicholas M. Harris</u> Signature as Registered to Vote: <u>Nicholas M. Harris</u>	Residence Address ONLY: <u>13450 Columbet Ave</u> City: <u>SAN MARTIN</u> Zip: <u>95046</u>	<u>3/19/08</u>	
2. Print Your Name: <u>SHARON GIBBS</u> Signature as Registered to Vote: <u>Sharon Gibbs</u>	Residence Address ONLY: <u>13410 COLUMBET AVE</u> City: <u>SAN MARTIN</u> Zip: <u>95046</u>		
3. Print Your Name: <u>CHUCK GIBBS</u> Signature as Registered to Vote: <u>Chuck Gibbs</u>	Residence Address ONLY: <u>13910 COLUMBET</u> City: <u>SAN MARTIN</u> Zip: <u>95046</u>		
4. Print Your Name: _____ Signature as Registered to Vote: _____	Residence Address ONLY: _____ City: _____ Zip: _____		
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10. Print Your Name: _____ Signature as Registered to Vote: _____	Residence Address ONLY: _____ City: _____ Zip: _____		

X

PROPERTY OWNERS ONLY

	Print Your Name: <u>MARIE DIAZ</u> Residence Address ONLY: <u>11993 TURLOCK AVE</u> Signature as Registered to Vote: <u>[Signature]</u> City: <u>SAN MARTIN, CA</u> Zip: <u>95046</u>	<u>3/24/08</u>
2.	Print Your Name: <u>Rick Spohn</u> Residence Address ONLY: <u>13771 Harding Ave</u> Signature as Registered to Vote: <u>Richard A Spohn</u> City: <u>San Martin</u> Zip: <u>95046</u>	<u>3/24/08</u>
3.	Print Your Name: <u>Joy K Spohn</u> Residence Address ONLY: <u>13771 Harding Ave</u> Signature as Registered to Vote: <u>Joy K Spohn</u> City: <u>San Martin</u> Zip: <u>95046</u>	<u>3/24/08</u>
4.	Print Your Name: _____ Residence Address ONLY: _____ Signature as Registered to Vote: _____ City: _____ Zip: _____	
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10.	Print Your Name: _____ Residence Address ONLY: _____ Signature as Registered to Vote: _____ City: _____ Zip: _____	

PROPERTY OWNERS ONLY

1.	Print Your Name: <u>RICHARD MURPHY</u>	Residence Address ONLY: <u>12300 CENTER AVE</u>
	Signature as Registered to Vote: <u>[Signature]</u>	City: <u>SAN MARTIN</u> Zip: <u>95046</u>
2.	Print Your Name: <u>PHILIP C. WOLFE</u>	Residence Address ONLY: <u>12290 CENTER AVE</u>
	Signature as Registered to Vote: <u>[Signature]</u>	City: <u>SAN MARTIN</u> Zip: <u>95046</u>
3.	Print Your Name: <u>CYNTHIA GOLDSMITH</u>	Residence Address ONLY: <u>1510 PALMWOOD LN</u>
	Signature as Registered to Vote: <u>[Signature]</u>	City: <u>SAN MARTIN</u> Zip: <u>95046</u>
4.	Print Your Name: _____	Residence Address ONLY: _____
	Signature as Registered to Vote: _____	City: _____ Zip: _____
5.	Print Your Name: _____	Residence Address ONLY: _____
	Signature as Registered to Vote: _____	City: _____ Zip: _____
6.	Print Your Name: _____	Residence Address ONLY: _____
	Signature as Registered to Vote: _____	City: _____ Zip: _____
7.	Print Your Name: _____	Residence Address ONLY: _____
	Signature as Registered to Vote: _____	City: _____ Zip: _____
8.	Print Your Name: _____	Residence Address ONLY: _____
	Signature as Registered to Vote: _____	City: _____ Zip: _____
9.	Print Your Name: _____	Residence Address ONLY: _____
	Signature as Registered to Vote: _____	City: _____ Zip: _____
10.	Print Your Name: _____	Residence Address ONLY: _____
	Signature as Registered to Vote: _____	City: _____ Zip: _____

REGISTERED VOTERS ONLY

1.	Print Your Name: <u>MARK SIDERIS</u>	Residence Address ONLY: <u>170 SOUTH ST</u>	
	Signature as Registered to Vote: <u>[Signature]</u>	City: <u>SAN MARTIN</u> Zip: <u>95046</u>	<u>3-24-08</u>
2.	Print Your Name: <u>DICK KUBOTA</u>	Residence Address ONLY: <u>14885 FOOTHILL AVE</u>	
	Signature as Registered to Vote: <u>[Signature]</u>	City: <u>SAN MARTIN</u> Zip: <u>95046</u>	<u>3-27-08</u>
3.	Print Your Name: <u>MICHAEL S DECKER</u>	Residence Address ONLY: <u>35 SPRING AVE</u>	
	Signature as Registered to Vote: <u>[Signature]</u>	City: <u>SAN MARTIN</u> Zip: <u>95046</u>	<u>3-27-08</u>
4.	Print Your Name: _____	Residence Address ONLY: _____	
	Signature as Registered to Vote: _____	City: _____ Zip: _____	
5.	Print Your Name: _____	Residence Address ONLY: _____	
	Signature as Registered to Vote: _____	City: _____ Zip: _____	
6.	Print Your Name: _____	Residence Address ONLY: _____	
	Signature as Registered to Vote: _____	City: _____ Zip: _____	
7.	Print Your Name: _____	Residence Address ONLY: _____	
	Signature as Registered to Vote: _____	City: _____ Zip: _____	
8.	Print Your Name: _____	Residence Address ONLY: _____	
	Signature as Registered to Vote: _____	City: _____ Zip: _____	
9.	Print Your Name: _____	Residence Address ONLY: _____	
	Signature as Registered to Vote: _____	City: _____ Zip: _____	
10.	Print Your Name: _____	Residence Address ONLY: _____	
	Signature as Registered to Vote: _____	City: _____ Zip: _____	

REGISTERED VOTERS ONLY

1.	Print Your Name: <u>SUSAN GRAESER</u>	Residence Address ONLY: <u>12275 Center ave</u>		
	Signature as Registered to Vote: <u>Susan M Graesa</u>	City: <u>San Martin</u>	Zip: <u>95046</u>	
2.	Print Your Name: <u>William Memmen</u>	Residence Address ONLY: <u>12275 Center Ave</u>		
	Signature as Registered to Vote: <u>William J Memmen</u>	City: <u>San Martin</u>	Zip: <u>95046</u>	
3.	Print Your Name: _____	Residence Address ONLY: _____		
	Signature as Registered to Vote: _____	City: _____	Zip: _____	
4.	Print Your Name: _____	Residence Address ONLY: _____		
	Signature as Registered to Vote: _____	City: _____	Zip: _____	
5.	Print Your Name: _____	Residence Address ONLY: _____		
	Signature as Registered to Vote: _____	City: _____	Zip: _____	
6.	Print Your Name: _____	Residence Address ONLY: _____		
	Signature as Registered to Vote: _____	City: _____	Zip: _____	
7.	Print Your Name: _____	Residence Address ONLY: _____		
	Signature as Registered to Vote: _____	City: _____	Zip: _____	
8.	Print Your Name: _____	Residence Address ONLY: _____		
	Signature as Registered to Vote: _____	City: _____	Zip: _____	
9.	Print Your Name: _____	Residence Address ONLY: _____		
	Signature as Registered to Vote: _____	City: _____	Zip: _____	
10.	Print Your Name: _____	Residence Address ONLY: _____		
	Signature as Registered to Vote: _____	City: _____	Zip: _____	

REGISTERED VOTERS ONLY

Print Your Name: Jennifer Hammond	Residence Address ONLY: 13440 Columbet Ave	3/25/08
Signature as Registered to Vote: <i>[Signature]</i>	City: San Martin Zip: 95046	
2. Print Your Name: IRENA BECHTOLD	Residence Address ONLY: 13440 COLUMBET AVE	
Signature as Registered to Vote: <i>[Signature]</i>	City: SAN MARTIN Zip: 95046	3/26/08
3. Print Your Name:	Residence Address ONLY:	
Signature as Registered to Vote:	City: Zip:	
4. Print Your Name:	Residence Address ONLY:	
Signature as Registered to Vote:	City: Zip:	
5. Print Your Name:	Residence Address ONLY:	
Signature as Registered to Vote:	City: Zip:	
6. Print Your Name:	Residence Address ONLY:	
Signature as Registered to Vote:	City: Zip:	
7. Print Your Name:	Residence Address ONLY:	
Signature as Registered to Vote:	City: Zip:	
8. Print Your Name:	Residence Address ONLY:	
Signature as Registered to Vote:	City: Zip:	
9. Print Your Name:	Residence Address ONLY:	
Signature as Registered to Vote:	City: Zip:	
10. Print Your Name:	Residence Address ONLY:	
Signature as Registered to Vote:	City: Zip:	

PROPERTY OWNERS ONLY

Signature as Registered to Vote: _____ Address ONLY: 1117 ILKINSON AVE		3/24/08
2.	Print Your Name: <u>REV J GROEN</u> Signature as Registered to Vote: <u>[Signature]</u> Residence Address ONLY: <u>275 W PALM</u> City: <u>MARTIN CA</u> Zip: <u>95016</u>	California Arroyo 4/5/08
3.	Print Your Name: _____ Signature as Registered to Vote: _____ Residence Address ONLY: _____ City: _____ Zip: _____	
4.	Print Your Name: _____ Signature as Registered to Vote: _____ Residence Address ONLY: _____ City: _____ Zip: _____	
5.	Print Your Name: _____ Signature as Registered to Vote: _____ Residence Address ONLY: _____ City: _____ Zip: _____	
6.	Print Your Name: _____ Signature as Registered to Vote: _____ Residence Address ONLY: _____ City: _____ Zip: _____	
7.	Print Your Name: _____ Signature as Registered to Vote: _____ Residence Address ONLY: _____ City: _____ Zip: _____	
8.	Print Your Name: _____ Signature as Registered to Vote: _____ Residence Address ONLY: _____ City: _____ Zip: _____	
9.	Print Your Name: _____ Signature as Registered to Vote: _____ Residence Address ONLY: _____ City: _____ Zip: _____	
10.	Print Your Name: _____ Signature as Registered to Vote: _____ Residence Address ONLY: _____ City: _____ Zip: _____	

POWER EQUIPMENT CO.
12525 Monterey Road
San Martin, CA 95046

April 4, 2008

Local Agency Formation Commission
70 W. Hedding Street, 11th Floor
San Jose, California 95110

RE: INITIAL FISCAL ANALYSIS
PROPOSED INCORPORATION OF SAN MARTIN

ATTENTION: Neelima Palacheria, Executive Officer

Dear Ms. Palacheria:

The Initial Fiscal Analysis dated May 2003 and prepared for the San Martin Neighborhood Alliance by Economic & Planning Systems, Inc. lists Power Equipment Co. as a Retail Establishment grossing \$2,500,000 and employing 19 people.

The information you ascribed to Power Equipment Co. is far in excess of the true gross receipts generated in 2003.

In the future, please do not use our company name showing false and misleading information to justify financial feasibility for the benefit of placing the incorporation matter on the ballot.

Yours truly,


Victoria E. Cannon CFO

cc: LAFCO BOARD MEMBERS
Don Gage
Blanca Alvarado
John Howe
Pete Constant
Susan Vicklund-Wilson

MT. GREEN NURSERY
12690 Harding Avenue
San Martin, CA 95046

April 4, 2008

Local Agency Formation Commission
70 W. Hedding Street, 11th Floor
San Jose, California 95110

RE: INITIAL FISCAL ANALYSIS
PROPOSED INCORPORATION OF SAN MARTIN

ATTENTION: Neelima Palacheria, Executive Officer

Dear Ms. Palacheria:

The Initial Fiscal Analysis prepared for the San Martin Neighborhood Alliance by Economic & Planning Systems, Inc. dated May 2003 contains information about Mt. Green Nursery that is extremely exaggerated.

In the future, please do not use false information regarding Mt. Green Nursery without contacting my office first in order to prevent distorted information from being used to prove that San Martin generates enough income to place the incorporation matter on the ballot.

Yours truly,



Tomiko Takeda

cc: LAFCO BOARD MEMBERS
Don Gage
Blanca Alvarado
John Howe
Pete Constant
Susan Vicklund-Wilson

A-1 Saw & Lawnmower
30 Burbank Street
San Martin, CA 95046

March 13, 2008

Local Agency Formation Commission
70 W. Hedding Street, 11th Floor
San Jose, California 95110

RE: INITIAL FISCAL ANALYSIS
PROPOSED INCORPORATION OF SAN MARTIN

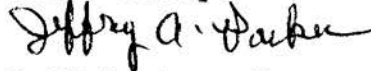
ATTENTION: Neelima Palacheria, Executive Officer

Dear Ms. Palacheria:

Please be informed that the Initial Fiscal Analysis that was prepared for the San Martin Neighborhood Alliance by Economic & Planning Systems, Inc. dated July 2003 contains information regarding A-1 Saw & Lawnmower that is extremely exaggerated.

In the future, please do not use an inflated revenue figure in reference to A-1 Saw & Lawnmower for the purpose of placing the incorporation matter on the ballot.

Yours truly,



Jeff Parker, Owner



March 10, 2008

Local Agency Formation Commission (LAFCO)
70 W. Hedding St., East Wing, 11th Floor
San Jose, CA 95110
Attn: Neelima Palacheria, Executive Officer

Re: Boot Barn in San Martin, CA

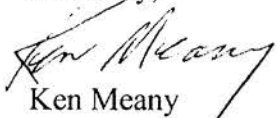
Dear Commission,

It was brought to my attention that a firm called Economic & Planning Systems, Inc. has published sales and personnel figures about our store that are grossly inaccurate. The report I refer to is attached and was prepared on behalf of the San Martin Neighborhood Alliance.

The report shows that Felice's Western Store had 2003 sales of between \$1,000,000 and 2,500,000 with an employee count of 10-19. The store used to be called Felice's, but the correct name is Am-Pat, Inc. dba Boot Barn. The sales range is way too broad and without disclosing our private information, I can tell you that even the midpoint of this range would be a large over-estimate. An average employee count would have been 8-10, including both full and part-time help.

I don't know how the estimates were conceived, but if the high ranges were used I think there would be a very distorted summary assumption.

Sincerely,


Ken Meany
Real Estate Manager



COMMITTEE FOR
GREEN FOOTHILLS

April 10, 2008

Dunia Noel
Santa Clara County LAFCCO

Re: Comments on the CFA for the proposed Incorporation of new city of San Martin

Dear Dunia;

The Committee for Green Foothills submits the following comments on the San Martin CFA:

The CFA relies on contradictory trends between appreciation in real property and income, contradictions that are not sustainable. A similar analysis by the same contractor that did the CFA assumed in the Coyote Valley Fiscal Analysis that housing prices and resulting property taxes would increase 3% above inflation while salary expenses, which broadly reflect household income, increase 1% above inflation. Such an unsustainable divergence between housing prices and the ability to pay for housing prices render the analysis inadequate, and show more revenues than would actually occur. Here, the CFA relies on 2% real appreciation and 0.5% real increase in salaries. These two figures should be the same, not divergent.

In addition, the CFA at page 29 states the City would not incur costs if it participated in the HICP. This statement should be double-checked as to whether the City's responsibility for roads, culverts, or bridges could incur costs under the HICP.

Please contact us if you have any questions.

Sincerely,

Brian A. Schmidt
Legislative Advocate, Santa Clara County

LAFCO Meeting: April 16, 2008
 TO: LAFCO
 FROM: Neelima Palacherla, LAFCO Executive Officer
 SUBJECT: Revised Schedule for San Martin Incorporation Proposal
 Agenda Item # 4.5

STAFF RECOMMENDATION

Consider the revised incorporation schedule and provide direction to staff as necessary.

BACKGROUND

LAFCO will not be able to have the San Martin incorporation public hearing on May 7th as scheduled previously. Therefore, the processing of the incorporation will be delayed and the deadlines for the November election will not be met.

The next possible election dates are in March or April of 2009. According to the Office of the Registrar of Voters, the incorporation does not meet the statutory requirements to qualify for a mailed ballot election pursuant to Elections Code 4000 et seq. Staff therefore recommends the April election date which would allow adequate time to complete the process before June 30, 2009. The following is an outline of the revised schedule for the San Martin Incorporation proposal:

Revised Timeline for Incorporation

April through August 2008	Hire Alternate Legal Counsel LAFCO to obtain Legal Opinion on Revenue Neutrality Issues Provide Opportunity for Further Revenue Neutrality Negotiations between County and Proponents, if necessary Prepare Executive Officer Staff Report and Recommendation
September – October 2008	LAFCO Public Hearings on the Incorporation
April 2009	Incorporation Election

A more detailed schedule with special LAFCO meeting dates for September and October will be prepared following this meeting.

One issue of concern for March/ April election date is the cost. The cost of an election in November is estimated to range from about \$31,000 to \$49,000, whereas a March /April election is estimated to cost approximately \$191,000 to \$209,000. The cost of a successful incorporation election is borne by the new Town and the County bears the cost of the election if the incorporation fails at the ballot.

In addition to the cost of elections, proponents must also consider potential additional staff, consultant and legal costs associated with the delayed schedule.

PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

STATEMENT OF LAFCO STAFF COSTS

Statement Month: March 2008

Beginning Balance	AMOUNT
BALANCE FROM THE PREVIOUS STATEMENT	\$ 73,557.96

Staff Time for September 2007					\$ 12,252.30
	LAFCO Staff	Hours	Hourly Rate	Cost	
	LAFCO Clerk	19.50	\$ 93.00	\$ 1,813.50	
	LAFCO Analyst	20.00	\$ 139.00	\$ 2,780.00	
	LAFCO Counsel	2.60	\$ 198.00	\$ 514.80	
	LAFCO Executive Officer	47.00	\$ 152.00	\$ 7,144.00	
Expenses					\$ 338.12
	San Jose Post Record publication of Notice of Availability of Public Hearing Draft CFA			\$ 61.60	
	Mailing postage for Notice of Availability of Public Hearing Draft CFA (\$0.42 x 93)			\$ 39.06	
	San Jose Post Record publication of Notice of Intent to Adopt Revised Negative Declaration			\$ 163.20	
	Mailing postage for Notice of Intent to Adopt Negative Declaration (\$0.42 x 93)			\$ 39.06	
	Hearing Notice for April 16, 2008 Meeting			\$ 35.20	
TOTAL DUE FOR THE CURRENT STATEMENT					\$ 12,590.42

BALANCE DUE TO DATE	\$ 86,148.38
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NOTE: Pursuant to the Fee Agreement for the San Martin Incorporation Proposal, the payment for LAFCO staff costs is due prior to the first LAFCO public hearing, which is expected to occur in May 2008. An invoice will be provided thirty days prior to the first hearing.

MARCH 2008

STAFF	DATE	ACTIVITY/TASK	HOUR UNITS	MONTHLY TOTAL
LAFCO CLERK	3/4/2008	Assist staff with maps and graphics, adjust document layout, and convert to PDF the Public Hearing Draft CFA	1.25	19.50
	3/6/2008	Prepare, revise and finalize mailing list for Notice of Availability (NOA) of Public Hearing Draft CFA	1.00	
	3/7/2008	Post on the LAFCO website the NOA of Public Hearing Draft CFA, and prepare for publication in San Jose Post Record	1.00	
	3/7/2008	Distribute NOA of Public Hearing Draft CFA by US Mail and County courier service	4.00	
	3/7/2008	Prepare map, graphics, inserts for Revised Initial Study/Negative Declaration (IS/ND), fix document layout and convert to PDF the Revised IS/ND, and mail invoice to SMNA	1.25	
	3/11/2008	Post the Notice of Intent to Adopt Revised IS/ND on the LAFCO website, insert maps and adjust document layout for posting, copy and distribute Notice by US Mail and County courier service	4.50	
	3/12/2008	Prepared Notice of Intent to Adopt Revised IS/ND for publication in San Jose Post Record	0.50	
	3/13/2008	Updated San Martin files with NOA of Public Hearing Draft CFA and Notice of Intent to Adopt Revised IS/ND	0.25	
	3/20/2008	Process invoices from San Jose Post Record for payment re. publication of notices for Public Hearing Draft CFA and Revised IS/ND	0.50	
	3/21/2008	Prepare minutes of February 6, 2008 meeting San Martin items	3.50	
	3/24/2008	Prepare minutes of February 6, 2008 meeting San Martin items	1.00	
	3/26/2008	Prepare and publish in San Jose Post Record the Notice of Hearing for April 16, 2008 and post at County Government Center bulletin board	0.50	
	3/27/2008	Prepare draft agenda for April 16, 2008 meeting.	0.25	

MARCH 2008

STAFF	DATE	ACTIVITY/TASK	HOUR UNITS	MONTHLY TOTAL
EXECUTIVE OFFICER	3/3/2008	Prepare incorporation schedule and CFA, RNNC Meeting and preparations	5.00	47.00
	3/4/2008	Discussion re Lion's Gate CSD, review IS/ND	3.00	
	3/5/2008	Review and discuss IS/ND	2.00	
	3/6/2008	Review and finalize Draft CFA	2.00	
	3/7/2008	Review revenue neutrality issues / discussions	5.00	
	3/10/2008	Final revisions to IS/ND	2.00	
	3/12/2008	Work on Draft CFA release issues	2.00	
	3/13/2008	Surveyors costs for preparing map/description and review revenue neutrality issues	4.00	
	3/14/2008	Research revenue neutrality issues, update to commissioners on incorporation	5.00	
	3/17/2008	Write staff report and review CFA issues	3.00	
	3/18/2008	Discuss with Berkson and Kretchmer re. options for revenue neutrality	3.00	
	3/20/2008	Discuss with Kretchmer, review Morgan Hill's decisions on areas 2 and 3, review consultant invoices, send invoices to proponents	6.00	
	3/21/2008	Revenue neutrality issues and terms	3.00	
3/27/2008	Discuss surveyor costs, email re. conflict of interest	2.00		
LAFCO ANALYST	3/3/2008	Prepare and revise Notice of Availability (NOA) for Revised IS/ND and mailing list	4.00	20.00
	3/4/2008	Prepare Clearinghouse Revised Notice of Completion (NOC) for Revised IS/ND	1.00	
	3/5/2008	Revisions to IS/ND	4.00	
	3/6/2008	Revisions to IS/ND	4.00	
	3/7/2008	Revisions to IS/ND	5.00	
	3/10/2008	Finalize Revised IS/ND	1.00	
	3/10/2008	Email NOC, NOA, and Revised IS/ND to S. Jenkins and prepare documents for posting on LAFCO Website.	1.00	
LAFCO COUNSEL	3/4/2008	Question from ROV regarding vote required for incorporation and corresponding code section	0.20	2.60
	3/8/2008	Meeting with N. Palacherla regarding timeline	0.30	
	3/11/2008	Noticing issues and noticing content issues	0.20	
	3/12/2008	Respond to question regarding schedule	0.30	
	3/13/2008	Review San Martin Project Schedule, Elections Code, and confirm timeline, email to N. Palacherla re same, call Clerk of the Board re. Keyboard timeline	1.10	
	3/21/2008	Review consultant's agreement and proponents fee agreement and discussion with N. Palacherla	0.50	

PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

STATEMENT OF LAFCO STAFF COSTS

Statement Month: February 2008

Beginning Balance	AMOUNT
BALANCE FROM THE PREVIOUS STATEMENT	\$ 53,921.46

Staff Time for September 2007					\$ 19,636.50
	LAFCO Staff	Hours	Hourly Rate	Cost	
	LAFCO Clerk	16.30	\$ 93.00	\$ 1,515.90	
	LAFCO Analyst	41.00	\$ 139.00	\$ 5,699.00	
	LAFCO Counsel	23.20	\$ 198.00	\$ 4,593.60	
	LAFCO Executive Officer	51.50	\$ 152.00	\$ 7,828.00	
Expenses					\$ -
TOTAL DUE FOR THE CURRENT STATEMENT					\$ 19,636.50

BALANCE DUE TO DATE	\$ 73,557.96
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NOTE: Pursuant to the Fee Agreement for the San Martin Incorporation Proposal, the payment for LAFCO staff costs is due prior to the first LAFCO public hearing, which is expected to occur in May 2008. An invoice will be provided thirty days prior to the first hearing.

FEBRUARY 2008

STAFF	DATE	ACTIVITY/TASK	HOUR UNITS	MONTHLY TOTAL
EXECUTIVE OFFICER	2/1/2008	Review Draft CFA text and finalize CEQA and Boundaries staff reports	3.00	51.50
	2/4/2008	Follow up with CFA data from County to Berkson	1.00	
	2/5/2008	Discuss CFA presentation with R. Berkson and preparation for LAFCO meeting	1.50	
	2/6/2008	LAFCO Meeting and preparation	3.00	
	2/7/2008	Follow up on reports / discussion	3.00	
	2/8/2008	Discussion with S.Jenkins re. IS/ND, staff meeting to discuss IS/ND	2.00	
	2/12/2008	Discuss with ROV, review CKH Act, Discuss with K Kretchmer re. incorporation elections	2.00	
	2/14/2008	RNNC meeting and preparation, letter to Morgan Hill	4.00	
	2/19/2008	Review Revised CFA tables / prepare schedule/ elections issues	6.00	
	2/20/2008	Research CHP services for CFA / schedule	2.00	
	2/21/2008	Review roads issue for CFA /SCo Review	4.00	
	2/25/2008	RNNC meeting and preparation	3.00	
	2/27/2008	South County Joint Planning Advisory Committee meeting / Review and work on IS/ND issues	6.00	
	2/28/2008	RNNC meeting and preparation	3.00	
2/29/2008	Research cost of elections / Review schedule/ CFA & IS/ND issues	8.00		
LAFCO ANALYST	2/1/2008	Finalize staff reports for the February 6, 2008 LAFCO meeting concerning the IS/ND and incorporation boundaries	5.00	41.00
	2/6/2008	February 6 th LAFCO meeting and preparations	2.00	
	2/8/2008	Meeting with N. Palacherla and K. Kretchmer concerning process for revising and re-circulating CEQA document and addressing specific comments and issues.	0.67	
	2/11/2008	Revisions to IS/ND	2.00	
	2/18/2008	Revisions to IS/ND	2.00	
	2/21/2008	Revisions to IS/ND	4.00	
	2/22/2008	Revisions to IS/ND	5.00	
	2/26/2008	Revisions to IS/ND	4.00	
	2/27/2008	Revisions to IS/ND	6.00	
	2/27/2008	Presentation to South County Joint Planning Advisory Committee	1.00	
	2/28/2008	Discussion with K. Kretchmer concerning consistency with local and regional policies	0.33	
	2/28/2008	Revisions to IS/ND	5.00	
2/29/2008	Revisions to IS/ND	4.00		

FEBRUARY 2008

STAFF	DATE	ACTIVITY/TASK	HOUR UNITS	MONTHLY TOTAL
LAFCO COUNSEL	2/1/2008	Work with staff on reports for February 6 regarding incorporation boundaries	1.10	
	2/5/2008	Review January 30 letter from proponents regarding boundaries; Discussion with Javier, Blanca's aide, regarding boundary issues, discussion with Lizanne Reynolds regarding County general plan provisions.	0.90	
	2/6/2008	Review draft CFA	1.00	
	2/8/2008	Meeting with staff on steps in recirculation of CEQA documents and on specific response to comments and revised CEQA document; Work on timing of steps remaining in incorporation process to meet statutory timelines.	1.20	
	2/12/2008	Discussion with N. Palacherla regarding incorporation election process	0.20	
	2/13/2008	Discussion with K. Kretchmer re candidate deadlines re election for San Martin councilmembers, and email to K. Kretchmer re same with abbreviated election calendar. (by SBS)	0.10	
	2/14/2008	Questions regarding ability to change revenue neutrality team; Research and consultation with Riverside LAFCO regarding coordination of election process for city officials with incorporation election, identify questions for registrar of voters response.	1.30	
	2/14/2008	Review several emails from K. Kretchmer re San Martin incorporation / election issues. (by SBS)	0.20	
	2/20/2008	SBS: Review email from K. Kretchmer, research election issue re San Martin incorporation, calls to E. Larson, S. Bushey at ROV and lengthy conference call with Bushey and Kretchmer re election deadlines.	1.10	
	2/20/2008	Conference call with registrar of voters regarding election laws for city officials; Discussion with N. Palacherla regarding election timelines.	1.00	
	2/21/2008	SBS: Research election questions re incorporation, discussions/email with K. Kretchmer re same.	4.00	
	2/21/2008	Research ability to condition measure and discussion with N. Palacherla of alternative effective dates for the incorporation.	1.00	
	2/22/2008	Further research on establishment of effective date for incorporation and appropriate conditions for the resolution of ordering the incorporation subject to election, check dates on SB 301.	0.90	

FEBRUARY 2008

STAFF	DATE	ACTIVITY/TASK	HOUR UNITS	MONTHLY TOTAL
LAFCO COUNSEL (Continued)	2/22/2008	Emails from/to K. Kretchmer re incorporation election and discussion with K. Kretchmer re same. (By SBS)	0.30	23.20
	2/22/2008	Review statutes regarding incorporation election requirements, correct draft timeline information from Registrar of Voters, discussions with Susan Swain regarding timeline provisions.	2.00	
	2/25/2008	Review and comment on revised draft timeline for incorporation/city official election deadline; review proposal from proponents regarding revenue neutrality; attend first 2 hours of revenue neutrality meeting.	2.80	
	2/27/2008	Communication from Rick Van't Rood, discussion with N. Palacherla, review of State Controller's report regarding Wildomar, meeting with N. Palacherla, review of timeline.	1.30	
	2/28/2008	Review and comment on initial study to be recirculate and on Compliance with Policies, discussion with D. Noel regarding comments; Check statutes regarding timing of state controller's review.	1.80	
	2/29/2008	Review of statutes regarding release of CFA and period of time to request state controller's review, work with Neelima on timelines.	1.00	
LAFCO CLERK	2/1/2008	Schedule conference rooms for Revenue Neutrality negotiation.	0.50	16.30
	2/4/2008	Prepare monthly staff time invoice for January 2008	0.75	
	2/4/2008	Copy documents on San Martin for the February 6, 2008 meeting.	0.50	
	2/5/2008	Prepare maps and documents for LAFCO meeting	3.25	
	2/6/2008	Meeting set-up for CFA presentation	0.50	
	2/8/2008	Update/organize files on San Martin re reports, letters, maps and documents distributed at the February 6, 2008 meeting; Scan documents to PDF and update digital files on San Martin.	4.50	
	2/11/2008	Continue working on updating records on San Martin. Respond to public inquiry.	3.50	
	1/21/2008	Update room reservations for San Martin Revenue Neutrality Meeting.	0.30	
	2/27/2028	Review and update mailing list for CFA and CEQA notices for San Martin.	2.50	

PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

STATEMENT OF LAFCO STAFF COSTS

Statement Month: January 2008

Beginning Balance	AMOUNT
BALANCE FROM THE PREVIOUS STATEMENT	\$ 41,353.71

Staff Time for January 2008						
	LAFCO Staff	Hours	Hourly Rate	Cost		
	LAFCO Clerk	20.45	\$ 93.00	\$ 1,901.85		\$ 12,567.75
	LAFCO Analyst	21.50	\$ 139.00	\$ 2,988.50		
	LAFCO Counsel	7.30	\$ 198.00	\$ 1,445.40		
	LAFCO Executive Officer	41.00	\$ 152.00	\$ 6,232.00		
Expenses						
	None					\$ -
TOTAL DUE FOR THE CURRENT STATEMENT					\$ 12,567.75	

BALANCE DUE TO DATE	\$ 53,921.46
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NOTE: : Pursuant to the Fee Agreement for the San Martin Incorporation Proposal, the payment for LAFCO staff costs is due prior to the first LAFCO public hearing, which is expected to occur in May 2008. An invoice will be provided thirty days prior to the first hearing.

JANUARY 2008

STAFF	DATE	ACTIVITY/TASK	HOUR UNITS	MONTHLY TOTAL
EXECUTIVE OFFICER	1/4/2008	Review data regarding San Martin boundaries	1.00	41.00
	1/7/2008	Planning San Martin tour	1.00	
	1/8/2008	Preparation for San Martin Tour	1.00	
	1/9/2008	LAFCO San Martin Tour	3.00	
	1/10/2008	Preparation / Meeting of Ad Hoc Revenue Neutrality Negotiations Committee (RNNC) and draft letter to SMNA	3.00	
	1/11/2008	Brandman invoice issues, follow up on issues from RNNC meeting	1.00	
	1/14/2008	Discussion with R. Jackson re. roads issues, Review roads survey of comparable cities, Complete letter to R. Van'tRood / R. Berkson	3.00	
	1/15/2008	Meeting with Surveyor's Office and K Kretchmer re. boundary and roads issues	2.00	
	1/16/2008	Follow up with County re. CFA data, Phone Conversation with R. Van'tRood and R. Berkson.	1.00	
	1/21/2008	Review CFA and follow up with County	2.00	
	1/23/2008	Meeting with S. Gallegos and R. Jackson re. roads issues	1.50	
	1/24/2008	Discussion with R. Berskon re. CFA issues	0.50	
	1/28/2008	Work with County on roads data for CFA, Discussion with S. Jenkins and D. Noel re. IS/ND and staff report	3.00	
	1/29/2008	Discussion re. County General Plan and County parks issues, alternative boundaries issues for staff report, review CFA revisions	6.00	
	1/30/2008	Review and revise CEQA and alternatives boundaries staff reports and review CFA revisions	6.00	
1/31/2008	Review and revise CEQA and alternatives boundaries staff reports, review CFA revisions	6.00		
LAFCO ANALYST	1/9/2008	LAFCO Tour of San Martin	3.00	
	1/15/2008	Meeting with County Surveyor's Office Staff and N. Palacherla to discuss the proposed incorporation boundary and county and city roads issues	1.00	
	1/28/2008	Discussion with N. Palacherla and Steve Jenkins regarding comment letters on the IS/ND and next steps in the CEQA process	1.00	

JANUARY 2008

STAFF	DATE	ACTIVITY/TASK	HOUR UNITS	MONTHLY TOTAL
LAFCO ANALYST	1/28/2008	Drafting staff report on IS/ND Next Steps	1.00	21.50
	1/29/2008	Discussion with Kathy regarding comment letters on IS/ND and Discussion with K. Kretchmer and N. Palacherla regarding handling of boundaries in the Initial Study	0.50	
	1/29/2008	Drafting staff report on alternative boundaries for the proposed incorporation	6.00	
	1/30/2008	Meeting with K. Kretchmer and N. Palacherla to discuss CEQA issues and response to comments on the Negative Declaration	1.00	
	1/30/2008	Final draft of staff report on IS/DN Next Steps	4.00	
	1/31/2008	Revisions to draft of staff report on alternative boundaries for the proposed incorporation for February 2008 LAFCO Meeting	4.00	
LAFCO COUNSEL	1/1/2008	Questions from N. Palacherla regarding agenda for tour of San Martin and permissible discussion items	0.30	
	1/9/2008	Question regarding agenda for San Martin tour and language for Brown Act limitations	0.20	
	1/10/2008	Review letter from SMNA regarding revised draft CFA; Review and comment on response letter to SMNA	1.00	
	1/11/2008	Discussion with N. Palacherla regarding implementation of county ordinances upon incorporation, review code sections applicable to adoption of county ordinances, consultation with Winnie Botha, Assistant County Counsel.	0.40	
	1/14/2008	Question from N. Palacherla regarding incorporation boundaries and street policies; Review and comment on revised draft letter responding to CFA.	0.80	
	1/15/2008	Review correspondence from San Martin Neighborhood Alliance regarding revenue neutrality and letter regarding general plan costs; discussion with N. Palacherla regarding Streets and Highways code	0.50	
	1/28/2008	Review and consider comment letters to Initial Study and Negative Declaration	1.00	

JANUARY 2008

STAFF	DATE	ACTIVITY/TASK	HOUR UNITS	MONTHLY TOTAL
LAFCO COUNSEL	1/29/2008	Discussion with D. Noel regarding comment letters on Initial Study and ND; Discussion with N. Palacherla and D. Noel regarding handling of boundaries in Initial Study; Review of information from Parks on Trails Master Plan.	1.00	7.30
	1/30/2008	Meeting with N. Palacherla and D. Noel to discuss CEQA issues and response to comments to ND.	1.00	
	1/31/2008	Comments and discussion regarding staff report relating to boundary issues and CEQA action, further discussion with D. Noel regarding staff report.	1.10	
LAFCO CLERK	1/3/2008	Call commissioners about tour of San Martin; Work on vehicle options and route details.	1.50	20.45
	1/4/2008	Prepare and revise agenda for tour of San Martin; post agenda on LAFCO website and County public notice board.	3.00	
	1/7/2008	Call commissioners to confirm attendance; finalize use of bus; update LAFCO website on San Martin tour and comments on CEQA.	3.20	
	1/8/2008	Finalize and make copies of San Martin tour materials. Post on the LAFCO website.	3.00	
	1/9/2008	Tour of San Martin	3.00	
	1/11/2008	Prepare monthly staff time invoice for December 2007	0.75	
	1/15/2008	Organize and update San Martin files	1.00	
	1/16/2008	Transcribe, edit, revise and finalize San Martin items on the December 2007 minutes of meeting	3.75	
	1/30/2008	Copy staff reports on San Martin for agenda packets; post agenda on the website.	1.25	

REPORT OF THE EXECUTIVE OFFICER

Type of Application: Annexation to the West Valley Sanitation District
Designation: **WEST VALLEY SANITATION DISTRICT 2008-1 (Canon Drive)**
Filed By: Landowner Petition (Non-100% Consent)
Support By: **West Valley Sanitation District, per Resolution No. 08.02.01**
Dated 2/13/2008
LAFCO Meeting Date: **April 16, 2008 (Agenda Item #5.0)**

1. REVIEW OF PROPOSAL:

a. Acreage and Location of Proposal:

The proposal consists of approximately 29.78 acres on Canon Drive in an unincorporated area located within the City of Saratoga's Sphere of Influence. The seven affected Assessor Parcel Numbers are: 510-25-030, 510-25-033, 510-25-034, 510-60-001, 510-60-002, 510-60-004, and 510-60-005. Although not part of the applicant's proposal, LAFCO staff is recommending that Parcel 510-25-028 and a portion of parcel 510-26-085 both be included in the proposal in order to avoid creating islands and to avoid creating sewer service confusion.

- b. Proposal is:** Inhabited Uninhabited
- c. Are boundaries Definite and Certain?** Yes No
- d. Does project conform to Sphere of Influence?** Yes No
- e. Does project create island, corridor or strip?** Yes No
- f. Does project conform to road annexation policy?** Yes No
- g. Does project conform to lines of assessment?** Yes No

The boundaries of the proposal cut through a small portion of parcel 510-26-085 which is adjacent to Canon Drive. The remaining portion of parcel 510-26-085 is already located within the boundaries of the West Valley Sanitation District.

- h. Present land use:** Single Family Residential and undeveloped.
- i. Proposed land use:** No Change and single family residential.
- j. Involves prime agricultural land or Williamson Act land?** No

2. ENVIRONMENTAL REVIEW:

The proposal is categorically exempt from the provisions of CEQA pursuant to CEQA Class 19, Section 15319 (a) and (b); Class 2, Section 15302; and Class 3, Section 15303 (a) and (d).

3. SUGGESTED CONDITIONS OR OTHER COMMENTS:

None.

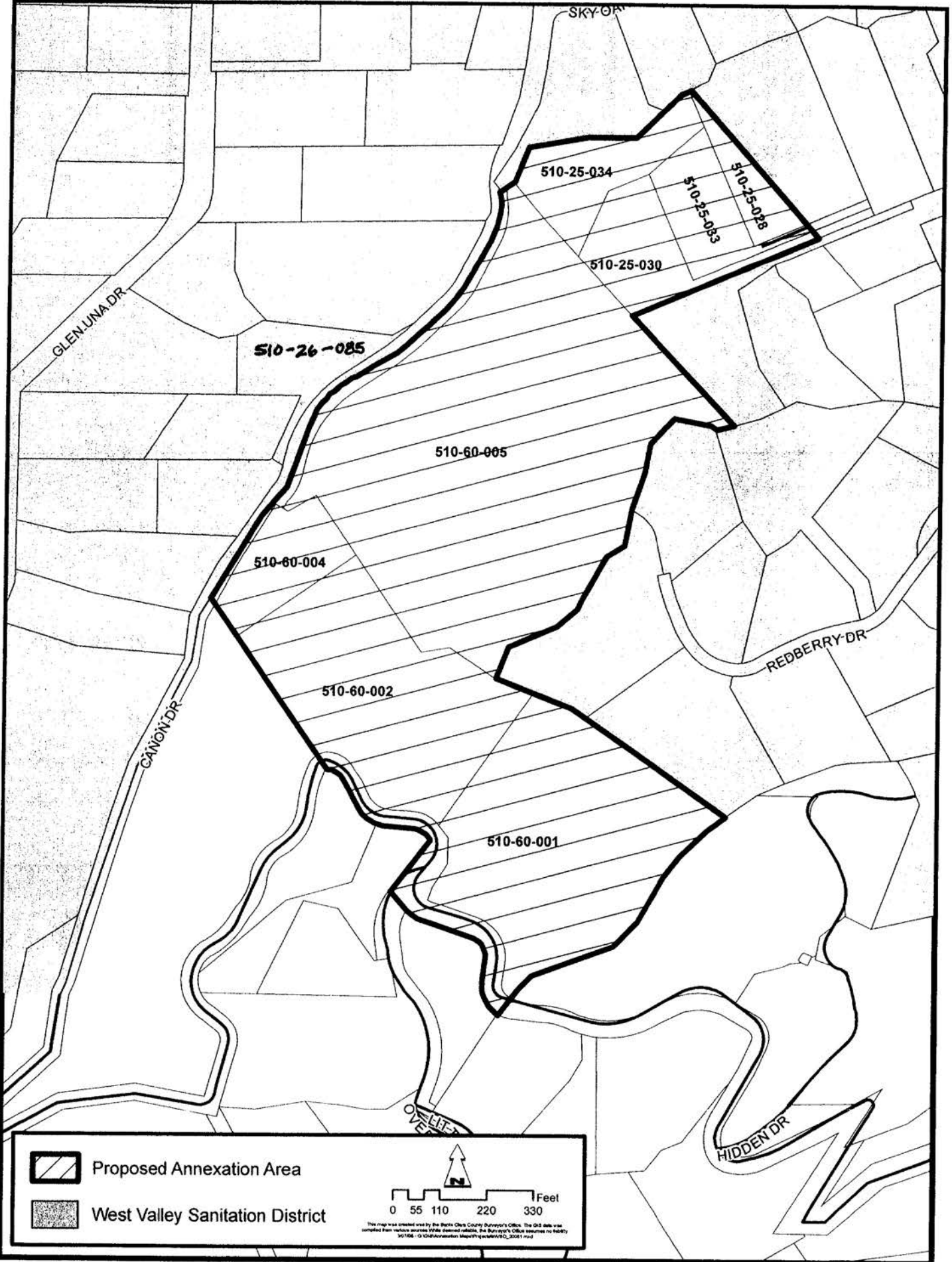
4. RECOMMENDATIONS:

1. Take CEQA action as recommended in the LAFCO Analyst Report (Attachment C)
2. Approve annexation to the West Valley Sanitation District of area depicted in Exhibits A & B.
3. Find that the subject territory is inhabited, has less than 100% consent of the affected landowners and registered voters, and direct LAFCO Executive Officer to conduct the protest proceedings on June 4, 2008.

By: 
Neelima Palacherla, Executive Officer

Date: 4/11/08

WVSD Annexation 2008-1





File No. 07074
Drawn By JPH
Checked By CGD
March 20, 2008

A handwritten signature in black ink, appearing to read "Curt G. Dunbar".

CURT G. DUNBAR PLS 5615 RENEWAL DATE 9/30/08
DUNBAR AND CRAIG LAND SURVEYS
1011 CEDAR STREET, SANTA CRUZ CA 95060

EXHIBIT A

WVSD ANNEXATION 2008-1 CANON DRIVE

SITUATE IN SEC. 18, T.8.S., R.1.W, M.D.M. & B. IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA.

BEING ALL OF THE LANDS OF HENRY T. YAMATE, TRUSTEE OF THE YAMATE 1980 TRUST, AS CONVEYED BY TRUST TRANSFER DEED DATED JANUARY 29, 2007 AND RECORDED FEBRUARY 2, 2007 AS DOCUMENT NUMBER 19288698 OF OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS; AND

BEING ALL OF THE LANDS OF BOON C. OOI AND BENG S. TAN, HUSBAND AND WIFE AS COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP, AS CONVEYED BY GRANT DEED DATED JANUARY 20, 2004 AND RECORDED JANUARY 1, 2004 AS DOCUMENT NUMBER 17586702 OF OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS; AND

BEING ALL OF THE LANDS OF JAQUELINE FLYNN AS CONVEYED BY GRANT DEED DATED JULY 26, 1968 AND RECORDED SEPTEMBER 20, 1968 AS DOCUMENT NUMBER 3487514 OF OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS; AND

BEING ALL OF THE LANDS OF CHRIS MARCHESE AND LISA MARCHESE, HUSBAND AND WIFE, AS CONVEYED BY GRANT DEED DATED AUGUST 6, 2002 AND RECORDED AUGUST 14, 2002 AS DOCUMENT NUMBER 16420058 OF OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS; AND

BEING ALL OF THE LANDS OF REX CARDINALE AND ELAINE C. CARDINALE, OR THEIR SUCCESSORS, AS TRUSTEES OF THE CARDINALE FAMILY REVOCABLE TRUST DATED MARCH 2, 2000 AS CONVEYED BY TRUST TRANSFER DEED RECORDED MARCH 30, 2000 AS DOCUMENT NUMBER 15197167 OF OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS; AND

BEING ALL OF THE LANDS OF DAVID MONTAGNA AND ANNE E. MONTAGNA, HUSBAND AND WIFE AS JOINT TENANTS AS CONVEYED BY GRANT DEED DATED JANUARY 3, 2003 AND RECORDED JANUARY 10, 2003 AS DOCUMENT NUMBER 16739413 OF OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS TO WIT:

BEGINNING AT THE MOST WESTERN CORNER OF THE WEST VALLEY SANITATION DISTRICT AS ESTABLISHED BY ANNEXATION 1996-2 BAINTER WAY, REVISED FEBRUARY 5, 1996; ALSO BEING THE MOST WESTERN CORNER OF LANDS OF CARL LAURITSEN AND LORENE LAURITSEN, AS TRUSTEES OF THE LAURITSEN FAMILY TRUST, AS CONVEYED BY GRANT DEED TITLE INTO TRUST DATED JULY 12, 2002 AND RECORDED JULY 18, 2002 AS DOCUMENT NUMBER 16369308; ALSO BEING THE MOST WESTERN CORNER OF THAT CERTAIN RECORD OF SURVEY MAP RECORDED DECEMBER 20, 1963 IN BOOK 171 OF MAPS AT PAGE 13, SANTA CLARA COUNTY RECORDS.

THENCE FROM SAID POINT OF BEGINNING ALONG SAID WEST VALLEY SANITATION DISTRICT BOUNDARY 1996-2 BAINTER WAY

(1) SOUTH 44° 31' EAST 351.65 FEET TO AN ANGLE POINT IN THE BOUNDARY OF THAT CERTAIN WEST VALLEY SANITATION DISTRICT ANNEXATION 1994 REDBERRY DRIVE; THENCE ALONG SAID LAST MENTIONED BOUNDARY

(2) SOUTH 79° 12' 03" WEST 42.90 FEET; THENCE

(3) NORTH 61° 48' 27" WEST 17.82 FEET; THENCE

(4) SOUTH 81° 39' 03" WEST 105.55 FEET; THENCE

(5) SOUTH 39° 54' 48" WEST 82.51 FEET; THENCE

(6) SOUTH 17° 12' 54" WEST 110.71 FEET; THENCE

(7) SOUTH 10° 31' 15" WEST 88.60 FEET; THENCE

(8) SOUTH 59° 38' 31" WEST 46.97 FEET; THENCE

(9) SOUTH 27° 44' 54" WEST 138.52 FEET; THENCE

(10) SOUTH 47° 16' 21" WEST 64.45 FEET; THENCE

(11) SOUTH 68° 14' 03" WEST 72.72 FEET; THENCE

(12) SOUTH 62° 44' 34" WEST 46.28 FEET; THENCE

(13) SOUTH 22° 18' 12" WEST 79.31 FEET; THENCE

(14) SOUTH 67° 19' 37" EAST 182.82 FEET; THENCE

(15) SOUTH 54° 52' 37" EAST 454.56 FEET TO THE EASTERN MOST CORNER OF SAID LANDS OF MONTAGNA, ALSO BEING THE EASTERN MOST CORNER OF PARCEL A AS SHOWN ON THAT CERTAIN PARCEL MAP DATED JULY 1978 AND RECORDED ON MAY 8, 1979 IN BOOK 441 OF MAPS AT PAGES 14 & 15 OF OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS; THENCE LEAVING SAID 1994 REDBERRY DRIVE ANNEXATION BOUNDARY AND ALONG THE SOUTHEASTERLY BOUNDARY OF LANDS OF MONTAGNA, ALSO BEING THE SOUTHEASTERLY BOUNDARY OF SAID PARCEL A

(16)SOUTH 52° 33' 18" WEST 46.57 FEET; THENCE

(17)SOUTH 45° 15' WEST 89.10 FEET; THENCE

(18)SOUTH 37° 07' WEST 72.60 FEET; THENCE

(19)SOUTH 29° 45' WEST 127.38 FEET; THENCE

(20)SOUTH 46° 30' WEST 69.96 FEET; THENCE

(21)SOUTH 67° 40' WEST 127.38 FEET; THENCE

(22)SOUTH 71° 00' WEST 71.28 FEET; THENCE

(23)SOUTH 47° 30' WEST 52.80 FEET; THENCE

(24)SOUTH 39° 40' WEST 84.48 FEET TO THE SOUTHERN MOST CORNER OF SAID PARCEL A, ALSO BEING AN ANGLE POINT IN THE CENTER LINE OF CANON DRIVE (FORMERLY BAINTE AVENUE) AS SHOWN ON THAT CERTAIN RECORD OF SURVEY DATED NOVEMBER 26, 1947 AND RECORDED ON DECEMBER 30, 1947 IN BOOK 16 OF MAPS AT PAGE 27 OF OFFICIAL RECORDS, SANTA CLARA COUNTY RECORDS; THENCE LEAVING SAID SOUTHEASTERLY BOUNDARY OF PARCEL A

(25)SOUTH 39° 40' WEST 26.50 FEET TO A POINT IN THE SOUTHWESTERN LINE OF CANON DRIVE (FORMERLY BAINTE AVENUE) AS SHOWN ON SAID LAST MENTIONED RECORD OF SURVEY; THENCE ALONG SAID SOUTHWESTERN LINE OF CANON DRIVE (FORMERLY BAINTE AVENUE)

(26)NORTH 09° 20' WEST 72.71 FEET; THENCE

(27)NORTH 17° 50' EAST 117.90 FEET; THENCE

(28)NORTH 00° 15' EAST 16.03 FEET; THENCE

(29)NORTH 61° 15' WEST 26.33 FEET; THENCE

(30)NORTH 80° 15' WEST 47.82 FEET; THENCE

(31)NORTH 74° 30' WEST 166.48 FEET; THENCE

(32)NORTH 19° 00' EAST 111.80 FEET; THENCE

(33)NORTH 31° 00' EAST 54.83 FEET; THENCE

(34)NORTH 00° 45' WEST 19.21 FEET; THENCE

(35)NORTH 81° 30' WEST 151.64 FEET; THENCE

(36)NORTH 30° 15' WEST 145.44 FEET; THENCE

(37)NORTH 74° 00' WEST 33.83 FEET; THENCE LEAVING SAID SOUTHWESTERLY LINE OF

CANON DRIVE

(38) NORTH 34° 21' 50" WEST 31.35 FEET TO THE CENTER LINE OF CANON DRIVE, ALSO BEING AN ANGLE POINT IN THE SOUTHWESTERN BOUNDARY OF SAID LANDS OF CARDINALE, ALSO BEING AN ANGLE POINT IN THE SOUTHWESTERN BOUNDARY OF PARCEL B OF SAID PARCEL MAP RECORDED IN BOOK 441 OF MAPS AT PAGES 14 & 15; THENCE ALONG THE SOUTHWESTERN BOUNDARY OF SAID PARCEL B

(39) NORTH 34° 21' 50" WEST 430.80 FEET TO THE WESETRN MOST CORNER OF LANDS OF MARCHESE, ALSO BEING ON THE SOUTHEASTERN LINE OF CANON DRIVE; THENCE

(40) NORTH 34° 21' 50" WEST 56.05 FEET TO THE EXISTING WEST VALLEY SANITATION DISTRICT LINE, ALSO BEING THE NORTHWEST LINE OF CANON DRIVE; THENCE NORTHEASTERLY ALONG THE EXISTING WEST VALLEY SANITATION DISTRICT BOUNDARY

(41) NORTH 28° 45' EAST 48.26 FEET; THENCE

(42) NORTH 32° 45' EAST 210.28 FEET; THENCE

(43) NORTH 61° 20' WEST 47.07 FEET; THENCE

(44) NORTH 24° 00' EAST 227.70 FEET; THENCE

(45) NORTH 55° 00' EAST 184.80 FEET; THENCE

(46) NORTH 59° 30' EAST 124.08 FEET; THENCE

(47) NORTH 43° 30' EAST 133.32 FEET; THENCE

(48) NORTH 26° 30' EAST 174.24 FEET; THENCE

(49) NORTH 39° 00' EAST 66.00 FEET; THENCE

(50) NORTH 63° 00' EAST 70.48 FEET TO THE WESTERN MOST CORNER OF LANDS OF FLYNN, ALSO BEING THE WESTERN MOST CORNER OF THE 4.030 ACRE PARCEL AS SHOWN ON THAT CERTAIN RECORD OF SURVEY RECORDED SEPTEMBER 26, 1958 IN BOOK IN BOOK 98 OF MAPS AT PAGE 1, SANTA CLARA COUNTY RECORDS; THENCE ALONG THE NORTHERLY AND WESTERLY BOUNDARY OF SAID 4.030 ACRE PARCEL

(51) NORTH 22° 20' EAST 86.46 FEET;

(52) NORTH 80° 30' EAST 147.18 FEET; THENCE

(53) SOUTH 89° 00' EAST 108.90 FEET; THENCE

(54) NORTH 45° 00' EAST 136.47 FEET; THENCE

(55) NORTH 65° 30' EAST 36.09 FEET TO THE SOUTHWESTERN BOUNDARY OF THE RANCHO RINCONADA DE LOS GATOS; THENCE ALONG SAID LAST MENTIONED RANCHO

(56) SOUTH 42° 53' EAST 442.61 FEET, MORE OR LESS, TO A POINT ON SAID WEST VALLEY

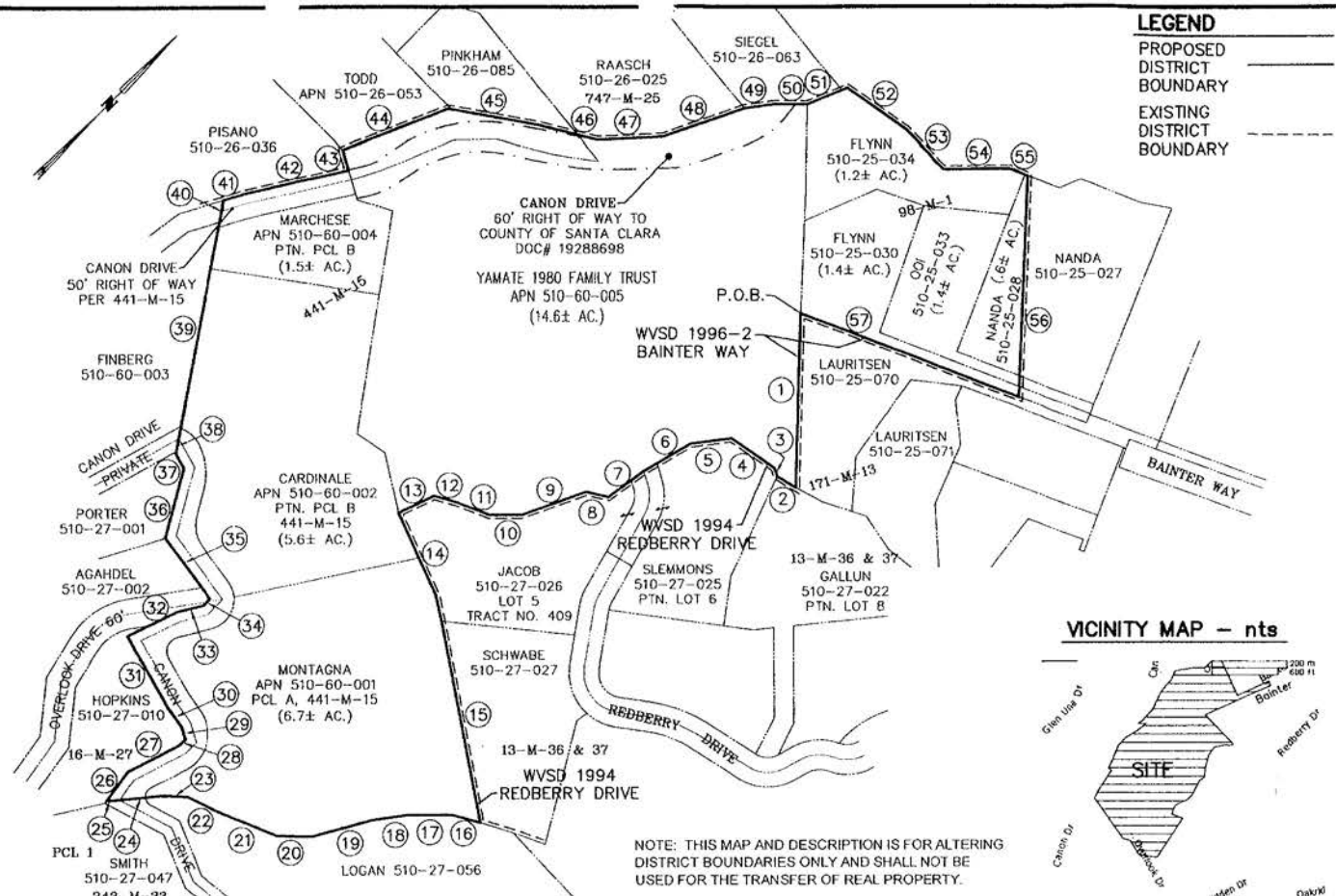
SANITATION DISTRICT BOUNDARY 1996-2 BAINTER WAY; THENCE ALONG SAID LAST MENTIONED DISTRICT BOUNDARY

(57)SOUTH 64° 48' WEST 471.30 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING, AND CONTAINING APPROXIMATELY 33.1 ACRES.

NOTE: THIS MAP AND DESCRIPTION IS FOR ALTERING DISTRICT BOUNDARIES ONLY AND SHALL NOT BE USED FOR THE TRANSFER OF REAL PROPERTY.

LEGEND

- PROPOSED DISTRICT BOUNDARY
- EXISTING DISTRICT BOUNDARY



COURSE TABLE

01 S 44°31' E 351.65'	16 S 52°33'18" W 46.57'	31 N 74°30' W 166.48'	46 N 59°30' E 124.08'
02 S 79°12'03" W 42.90'	17 S 45°15' W 89.10'	32 N 19°00' E 111.80'	47 N 43°30' E 133.32'
03 N 61°48'27" W 17.82'	18 S 37°07' W 72.60'	33 N 31°00' E 54.83'	48 N 26°30' E 174.24'
04 S 81°39'03" W 105.55'	19 S 29°45' W 127.38'	34 N 00°45' W 19.21'	49 N 39°00' E 66.00'
05 S 39°54'48" W 82.51'	20 S 46°30' W 69.96'	35 N 81°30' W 151.64'	50 N 63°00' E 70.48'
06 S 17°12'54" W 110.71'	21 S 67°40' W 127.38'	36 N 30°15' W 145.45'	51 N 22°20' E 86.46'
07 S 10°31'15" W 88.60'	22 S 71°00' W 71.28'	37 N 74°00' W 33.83'	52 N 80°30' E 147.18'
08 S 59°38'31" W 46.97'	23 S 47°30' W 52.80'	38 N 34°21'50" W 31.35'	53 S 89°00' E 108.90'
09 S 27°44'54" W 138.52'	24 S 39°40' W 84.48'	39 N 34°21'50" W 430.80'	54 N 45°00' E 136.47'
10 S 47°16'21" W 64.45'	25 S 39°40' W 26.50'	40 N 34°21'50" W 56.05'	55 N 65°30' E 36.09'
11 S 68°14'03" W 72.72'	26 N 09°20' W 72.71'	41 N 28°45' E 48.26'	56 S 42°53' E 442.61'
12 S 62°44'34" W 46.28'	27 N 17°50' E 117.90'	42 N 32°45' E 210.28'	57 S 64°48' W 471.30'
13 S 22°18'12" W 79.31'	28 N 00°15' E 16.03'	43 N 61°20' W 47.07'	
14 S 67°19'37" E 182.82'	29 N 61°15' W 26.33'	44 N 24°00' E 227.70'	
15 S 54°52'37" E 454.56'	30 N 80°15' W 47.82'	45 N 55°00' E 184.80'	



DUNBAR & CRAIG
LICENSED LAND SURVEYORS

1011 CEDAR STREET | 1180 COLEMAN AVENUE
SANTA CRUZ, CA 95060 | SAN JOSE, CA 95110
(831) 425-7533 | (408) 298-1298

"EXHIBIT B"

WVSD ANNEXATION 2008-1
CANON DRIVE

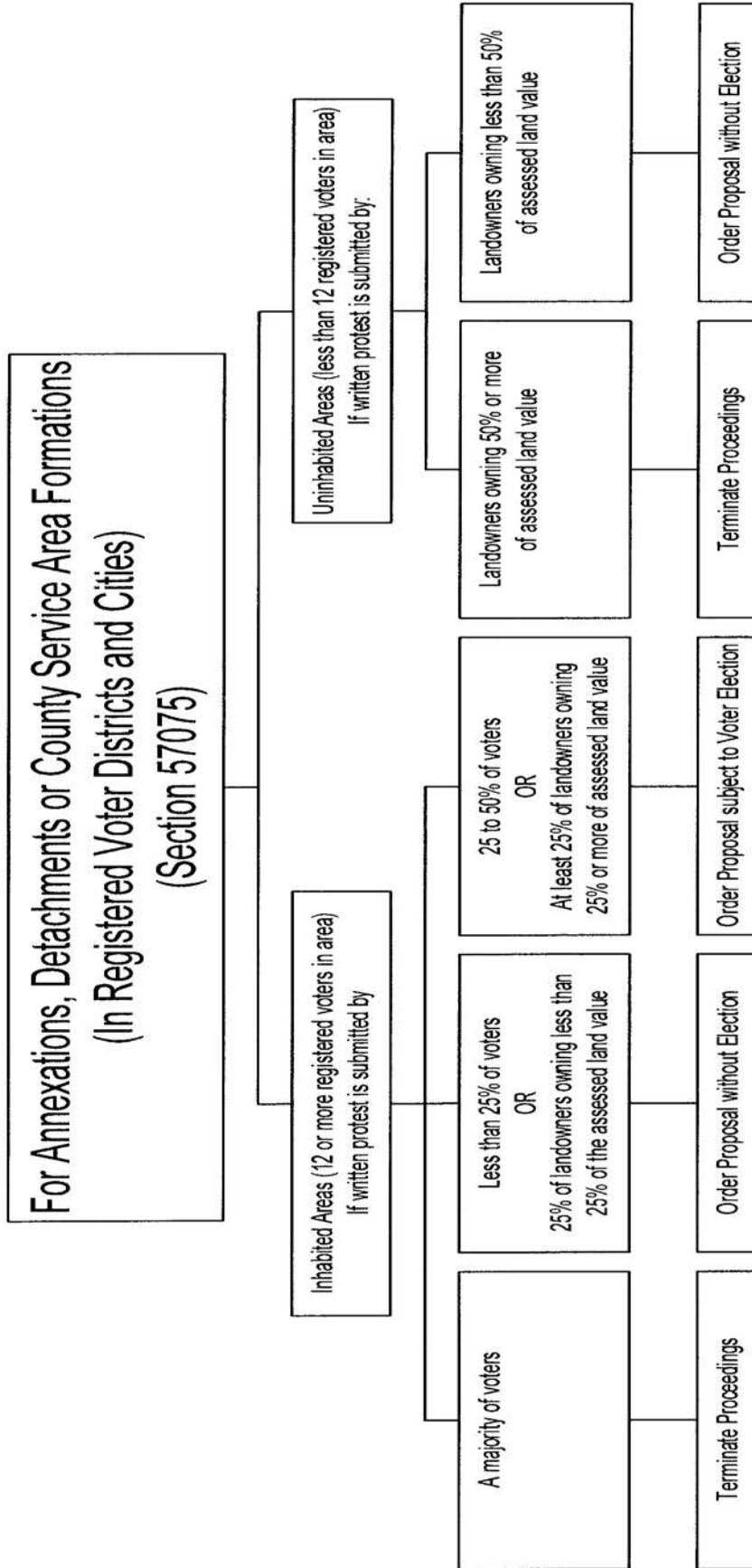
PORTION OF SEC. 18, T.8 S., R.1 W., M.D.M. & B. IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA	
SCALE 1"=275'	JOB NO. 07074-LAFCO.DWG
DATE MARCH 20, 2008	INDEX SANTA CRUZ
DRAWN JPH / CHC	BASE MAP

OVERVIEW OF LAFCO PROTEST PROCEEDINGS PROCEDURES

This application is a Non-100% Consent annexation proposal because only the owners of 4 of the 8 total parcels have signed the petition for their property to be annexed into the District. Therefore, following LAFCO approval of a Non-100% Consent annexation proposal, the LAFCO Executive Officer must hold protest proceedings (Government Code Section 57000(c)) as follows:

1. Within 35 days of the adoption of the resolution by the Commission, and not prior to the 30-day reconsideration period for a Commission decision, the Executive Officer shall notice the proposal for protest hearing (Government Code Section 57002(a)).
2. Notices are required to be posted and published 21 days prior to the hearing. Notices are required to be sent to each affected city, district or county, all landowners owning land within the subject area, all registered voters within the subject area, and to anyone requesting special notice (Government Code Section 57025(b), (c), and (d)). As part of the protest hearing notice, landowners and registered voters in the affected area will receive a written protest form which they may mail or deliver to the LAFCO office. Protest may be filed with LAFCO from the date of the notice until the conclusion of the protest hearing.
3. The hearing date should be between 21 to 60 days from the date of the notice (Government Code Section 57002(a)).
4. At the protest hearing, the Commission's resolution is summarized and any oral or written protests are heard or received. Protests may be filed with LAFCO from the date of the notice until the conclusion of the protest hearing. Written protests may be withdrawn anytime prior to conclusion of the protest hearing. The law specifies rules for a valid protest. (Government Code Section 57050(b))
5. Within 30 days after the hearing, a finding is made on the value of written protests filed and not withdrawn (Government Code Section 57052), and based on that value (see Attachment B and Government Code Section 57075(a)) a resolution is adopted that:
 - a. Terminates proceedings (Government Code Section 57075(a)(1))
 - b. Orders the proposal without an election (Government Code Section 57075 (a)(3)), or
 - c. Orders the proposal subject to confirmation by the registered voters, i.e., an election must be conducted (Government Code Section 57075 (a)(2)).
6. The finding is based solely on the percentage of valid written protests that were submitted prior to the close of hearing.
7. If an election must be conducted, LAFCO is required to inform the Board of Supervisors of the Commission's determination and request them to direct the elections official to conduct the election.

PROTEST THRESHOLDS



LAFCO Meeting: April 16, 2008
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
SUBJECT: **Proposed Draft LAFCO Budget FY 2008-2009**
Agenda Item # 6

STAFF RECOMMENDATION

1. Adopt the Draft LAFCO Budget for fiscal year 2008-2009.
2. Find that the Draft FY 2009 Budget is expected to be adequate to allow the Commission to fulfill its statutory responsibilities.
3. Authorize staff to transmit the Draft Budget adopted by the Commission including the estimated agency costs as well as a notice for public hearing on the adoption of the Fiscal Year 2009 Final Budget to each of the cities, the County and the Cities Association.

BACKGROUND

LAFCO Budget and Adoption Process

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

Apportionment of LAFCO Costs

The CKH Act requires LAFCO costs to be split in proportion to the percentage of an agency's representation (excluding the public member) on the Commission. Since the City of San Jose has a permanent membership on LAFCO, state law

requires costs to be split between the County, the City of San Jose and the remaining cities. Hence the County pays half the LAFCO cost, the City of San Jose a quarter and the remaining cities the other quarter.

The cities' share (other than San Jose's) is apportioned in proportion to each city's total revenue as reported in the most recent edition of the Cities Annual Report published by the Controller, as a percentage of the combined city revenues within a county.

The CKH Act requires the County Auditor to request payment from the cities and the County no later than July 1 of each year for the amount each agency owes based on the net operating expenses of the Commission and the actual administrative costs incurred by the Auditor in apportioning costs and requesting payment.

FY 2008-2009 BUDGET TIMELINE

Dates	Staff Tasks / LAFCO Action
March 26 - April 16	Notice period, draft budget posted on LAFCO web site and available for review and comment on April 9
April 16	Public Hearing and adoption of draft budget
April 16	Draft budget along with draft apportionment amounts transmitted to agencies (cities and County) together with notice of public hearing for the final budget hearing
June 4	Public hearing and adoption of final budget
June 4 - July 1	Final budget along with final agency apportionments transmitted to agencies; Auditor requests payment from agencies

WORK PLAN FOR FY 2008-2009

The first round of service reviews and sphere of influence updates have been completed as required by the CKH Act before January 1, 2008. Taking into consideration several factors including but not limited to the recent revisions to the required service review determinations, evaluation of the first round of service reviews, issues identified at that time and new and emerging issues of

relevance to service delivery and boundaries, LAFCO must once again establish priorities and develop a program for conducting future service reviews.

Application processing activities are expected to continue at existing levels for all types of applications. San Jose is moving forward with its third phase of island annexations which include populated islands. LAFCO staff will continue to work with San Jose to review annexation information and finalize the annexations after city council approval.

Staff has devoted a significant amount of time to proposed incorporation of the Town of San Martin in the current fiscal year. This has delayed or taken away staff time from other projects and issues. The recent delay in the incorporation schedule postpones the election to the early part of next year. It is expected that this project will continue to consume quite a lot of staff time in the upcoming fiscal year.

LAFCO's public information/communication aspect of the work load includes among other things, upgrades/updates of the LAFCO web site, conducting workshops, making presentations if requested by agencies, communities or other groups, maintaining and updating digital boundary maps for cities and special districts, and actively participating in CALAFCO conferences and workshops. Santa Clara LAFCO hosted the 2008 CALAFCO Staff Workshop in April in San Jose. It was a successful workshop with very good evaluations from attendees and with the highest registrations ever for a CALAFCO staff workshop.

Other general work areas of LAFCO staff include administration of the LAFCO program, managing LAFCO records, reviewing and updating LAFCO procedures when necessary, updating and maintaining the LAFCO database, participating in training activities, tracking LAFCO related legislation and preparing budgets and fee schedule revisions.

The LAFCO Annual Report which will be published at the end of the current fiscal year will detail the types of applications processed and various activities / projects that LAFCO has completed in the current year.

STATUS OF CURRENT YEAR BUDGET (FY 2008)

The approved budget for the current year is \$761,637. It is projected that there will be a savings of about \$247,930 at the end of this fiscal year.

Projected Year End Savings = Projected Year End Revenue - Projected Year End Expenses

Projected Year End Savings = \$836,819 - \$588,889

Projected Year End Savings = \$247,930

This savings amount will largely be due to the following:

1. Not having spent the amount (\$100,000) allocated as reserves
2. Not having spent the funds allocated for Consultant Services
3. Having a larger fund balance from the previous fiscal year

The estimated savings of \$247,930, at the end of the current fiscal year of 2008, would be carried over to reduce the proposed FY 2009 budget's costs for the cities and the County.

PROPOSED FY 2008-2009 BUDGET

At its February 2008 LAFCO meeting, the Commission appointed a Budget Sub-Committee composed of Commissioners Don Gage and John Howe. The Commission directed the budget sub-committee to develop a draft budget for Commission consideration. The Budget Sub-Committee held one meeting on March 3rd and a second on April 9th to discuss issues related to the budget and to formulate the budget for FY 09.

The Budget Sub-Committee discussed current and future budget related issues and recommended that:

1. The current legal services agreement between LAFCO and the County be extended for an additional year until June 30, 2009 and that staff develop a process and seek proposals from outside attorneys for provision of legal services within this year.
2. The LAFCO policies on "Travel and Expense Reimbursement" referring to meeting per diem / stipend be clarified to state that "LAFCO meetings" include meetings authorized by the Commission, such as policy or budget sub-committee meetings.
3. The LAFCO Executive Officer position be made a full time position in order to address the increase in current and long term work load.
4. LAFCO staff should work with the County to explore the appropriate method of compensation for the new duties that the LAFCO Clerk has taken on in independently managing and updating the LAFCO website.
5. LAFCO staff should explore staff training and professional development opportunities in local government (e.g. Management Talent Exchange Program)
6. The LAFCO application fees be revised to more accurately reflect the increase in processing costs.

The proposed budget has been developed by the budget sub-committee.

The proposed budget for FY 2008-2009 is \$837,924. The proposed budget is slightly higher (about 10%) than the budget for the current year. A detailed itemization of the budget is provided below.

Object 1. SALARIES AND BENEFITS \$403,013

All three LAFCO staff positions will be staffed through the County Executive's Office. The proposed salary and benefits amount includes cost of living expenses and increase in benefits costs.

LAFCO Executive Officer

The Executive Officer position is proposed to be increased from a 0.8 FTE level to a full time position. Following a reclassification study as requested by LAFCO in 2003, the County established a unique LAFCO Executive Officer classification with a 7% salary increase. The proposed salary for the LAFCO Executive Officer position is \$108,667.

LAFCO Analyst

The LAFCO Analyst position would remain full time. Following a reclassification study as requested by LAFCO in 2003, the County established a unique LAFCO Analyst classification with a 5% salary increase. The proposed salary for the LAFCO Analyst position is \$96,221.

LAFCO Clerk

The County has created a unique classification for the LAFCO Clerk position titled "LAFCO Office Specialist". The LAFCO Clerk position would remain full time and the proposed salary for the position is \$57,311.

Object 2. SERVICES AND SUPPLIES

5258200 INTRA-COUNTY PROFESSIONAL \$139,800

LAFCO Counsel \$84,800

LAFCO will continue to contract with the Office of the County Counsel for legal counsel on an as needed basis at an hourly rate of \$212 (for FY 09) for an estimated 400 hours. During this year, LAFCO will seek proposals from outside legal firms and develop a selection process to hire LAFCO Counsel.

LAFCO Surveyor \$50,000

The County Surveyor will continue to assist with map review and approval. It is estimated that about 400 hours of service will be required in the next fiscal year. The County Surveyor's Office charges at the rate of about \$125 per hour.

County Counsel's Office has withdrawn from representing LAFCO for the San Martin incorporation proposal until and unless a revenue neutrality agreement is reached between the County and the proponents. LAFCO will be hiring alternate legal counsel for the incorporation proposal in the next few weeks. This item includes funds that will be used to fund the services of an alternate legal counsel.

Miscellaneous Staffing \$5,000

This amount allows LAFCO to seek technical assistance from the County Planning Office on CEQA or other planning issues. LAFCO accesses data in the County Planning Office's GIS server. This item includes maintenance and technical assistance for GIS, if necessary.

5255500 CONTRACT SERVICES \$75,000

This item is allocated for hiring consultants to assist LAFCO with special projects. This year, the amount is allocated for hiring consultants to upgrade the LAFCO web site and to develop and implement an archival system for LAFCO records.

5285700 MEAL CLAIMS \$750

This item is being maintained at \$750.

5220200 INSURANCE \$559

This item is based on an estimate provided by the County to cover general liability, auto liability and other miscellaneous coverages. Worker's Compensation is part of the payroll charge.

5250100 OFFICE EXPENSES \$2,000

This item is being maintained at \$2,000 and provides for the purchase of books, periodicals, small equipment and supplies throughout the year.

5255650 DATA PROCESSING SERVICES \$10,000

This item includes funds for web site maintenance by ISD as needed(20 hours @ \$66.79/hour = \$1,336), LAN services (\$6,657) and Email: three licenses for MS Outlook (\$1,073) and other miscellaneous charges.

5225500 COMMISSIONER'S FEES \$9,000

This item includes a \$100 per diem amount for LAFCO Commissioners and alternate Commissioners to attend LAFCO meetings and sub-committee meetings in the Fiscal Year 2009.

5260100 PUBLICATIONS AND LEGAL NOTICES \$2,500

The budget for this item is being maintained at \$2,500. This amount is for publication of hearing notices as required by state law for LAFCO applications and other projects/ studies.

5245100 MEMBERSHIP DUES \$7,000

This amount provides for the membership dues to the statewide association, CALAFCO -- the California Association of LAFCOs. CALAFCO. In recent years, CALAFCO has expanded its services with the CALAFCO web site, newsletter, CALAFCO Sacramento Office, legislative representation and member publications such as directories to name a few. In addition to these, CALAFCO is implementing other new programs such as the CALAFCO University, insurance and employee benefit options and research resources.

5250750 PRINTING AND REPRODUCTION \$1,500

An amount of \$1,500 is being budgeted for printing expenses for reports such as service review reports or other studies.

5285800 BUSINESS TRAVEL \$12,000

This item is for both staff and commissioners to attend conferences and workshops. It would cover air travel, accommodation, conference registration and other expenses at the conferences. CALAFCO annually holds a Staff Workshop and an Annual Conference that is attended by commissioners as well as staff. In addition, this item covers the travel expenses for commissioner's travel to the CALAFCO Board meetings. Commissioner Wilson is serving a second term on the CALAFCO Executive Board.

5285300 PRIVATE AUTOMOBILE MILEAGE \$1,500

This item provides for travel to conduct site visits, attend meetings, training sessions etc.

5285200 TRANSPORTATION AND TRAVEL (for use of County car) \$2,911

This item would allow for the use of a County vehicle for travel to conferences, workshops and meetings.

5281600 OVERHEAD \$62,391

This is an amount established by the County Controller's Office, for service rendered by various County departments that do not directly bill LAFCO for service. The FY 2009 costs include three elements:

First, the overhead includes the LAFCO share of the County's FY 2009 Cost Allocation Plan which is based on actual overhead costs from FY 2007 - the most recent year for which actual costs are available and include the following charges for LAFCO.

County Executive's Office:	\$17,497
Controller-Treasurer:	\$8,442
Employee Services Agency:	\$3,100
OBA:	\$2,149
Procurement:	\$89
Other Central Services:	\$101
ISD:	\$3,969
County Counsel	\$5,483

Secondly, a "roll forward" of \$16,120 is applied which is calculated by comparing FY 2007 Cost Plan with FY 2007 actuals. Since actuals exceeded the Plan by \$16,120, this amount is added to the FY 2008 Plan. This is a State requirement.

And lastly, an additional adjustment of \$5,441 is being made in the FY 2009 Cost Plan and is meant to reflect the increase in actual PERS costs in FY 2009. By making the adjustment at this time, the County is hoping to "flatten out" the roll-forward that would be charged in 2 years, when comparing the FY 2009 Plan to the FY 2009 actuals.

5275200 COMPUTER HARDWARE \$2,000

This item is being maintained at \$2,000 and will be used for hardware upgrades / purchases.

5250800 COMPUTER SOFTWARE \$2,000

This item is for purchases of computer software that would be required for the program and is also being maintained at \$2,000.

5250250 POSTAGE \$2,000

This amount is budgeted for the cost of mailing notices, agendas, agenda packets and other correspondence and is being maintained at \$2,000.

5252100 TRAINING PROGRAMS \$2,000

This item provides for staff development courses and seminars.

5701000 RESERVES \$100,000

This item includes reserves for two purposes: litigation reserve - for use if LAFCO is involved with any litigation and contingency reserve - to be used to deal with any unexpected expenses. If used during the year, this account will be replenished in the following year. In the past years, LAFCO has not had to use the reserves and the amount has been rolled over to the following year to offset the costs.

3. REVENUES

4103400 Application Fees \$40,000

It is anticipated that LAFCO will earn about \$40,000 in fees from processing applications. LAFCO has extended the fee waiver for island annexations, resulting in reduced revenues. This item does not include the fees for processing the San Martin incorporation. The staff costs for processing the incorporation are estimated to be about \$100,000.

The actual amount earned from fees is not within LAFCO control and depends entirely on the actual level of application activity.

4301100 Interest \$7,000

It is estimated that LAFCO will receive an amount of about \$7,000 from interest earned on LAFCO funds.

COST APPORTIONMENT TO CITIES AND COUNTY

Calculation of Net Operating Expenses

FY 2009 Net Operating Expenses = Proposed FY 2009 Expenditures - Proposed FY 2009 Fee Revenues
- Projected Year End Savings

FY 2009 Net Operating Expenses = \$837,924 - \$47,000- \$247,930

FY 2009 Net Operating Expenses = \$548,683

The proposed net operating expenses for FY 2009 is approximately the same (or slightly lower by \$289 than the current year) as that of the current year net operating expenses. The increase in the proposed FY 2009 budget is primarily due to cost of living expenses increase for staff and the increase in hours for the Executive Officer and increase in County's overhead and commissioners fees. However, these increases are offset by the high projected savings in the current year, resulting in no change to the net operating expenses.

Therefore there is no significant change in the cost to the cities and the County from the previous year. Please note that the projected operating expenses for FY 2009 are based on projected savings and expenses for the current year and are not actual figures. It is therefore to be expected that there will be revisions to the budget as we get a better indication of current year expenses towards the end of this fiscal year. This could result in changes to the proposed net operating expenses for FY 2009 which could in turn impact the costs for each of the agencies. Provided below is the draft apportionment to the agencies based on the proposed net operating expenses for FY 2009 (\$542,994).

Cost to Agencies

County of Santa Clara	\$271,497
City of San Jose	\$135,749
Remaining 14 cities in the County	\$135,749

Apportionment of the costs among the 14 cities will be based on percentage of the cities' total revenues and will be calculated by the County Controller's Office after LAFCO adopts the final budget in June. A draft of the estimated apportionment to the cities is included as Attachment B to provide the cities a general indication of the LAFCO costs.

ATTACHMENTS

Attachment A: Proposed Draft Budget for FY 2008-2009
Attachment B: Estimated Costs to Agencies Based on the Proposed Budget

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

**ITEM No. 6
ATTACHMENT A**

ITEM #	TITLE	APPROVED	ACTUALS	END OF	PROPOSED
		FY 07-08 BUDGET	Year to Date 1/31/2008	FY 2008 PROJECTIONS	FY 08-09 BUDGET
EXPENDITURES					
Object 1:	Salary and Benefits	\$331,889	\$198,666	\$361,342	\$403,013
Object 2:	Services and Supplies				
5258200	Intra-County Professional	\$134,200	\$29,741	\$134,200	\$139,800
5255500	Consultant Services	\$100,000	\$0	\$0	\$75,000
5285700	Meal Claims	\$750	\$103	\$605	\$750
5220200	Insurance	\$447	\$491	\$491	\$559
5250100	Office Expenses	\$2,000	\$612	\$1,000	\$2,000
5255650	Data Processing Services	\$13,459	\$5,967	\$13,459	\$10,000
5225500	Commissioners' Fee	\$5,400	\$1,900	\$7,300	\$9,000
5260100	Publications and Legal Notices	\$2,500	\$467	\$1,500	\$2,500
5245100	Membership Dues	\$5,500	\$5,500	\$5,500	\$7,000
5250750	Printing and Reproduction	\$1,500	\$5	\$1,500	\$1,500
5285800	Business Travel	\$10,500	\$4,997	\$10,500	\$12,000
5285300	Private Automobile Mileage	\$1,500	\$807	\$1,500	\$1,500
5285200	Transportation&Travel (County Car Usage)	\$1,500	\$809	\$1,500	\$2,911
5281600	Overhead	\$42,492	\$21,246	\$42,492	\$62,391
5275200	Computer Hardware	\$2,000	\$0	\$2,000	\$2,000
5250800	Computer Software	\$2,000	\$95	\$1,000	\$2,000
5250250	Postage	\$2,000	\$665	\$2,000	\$2,000
5252100	Staff Training Programs	\$2,000	\$0	\$1,000	\$2,000
5701000	Reserves	\$100,000	\$0	\$0	\$100,000
TOTAL EXPENDITURES		\$761,637	\$272,071	\$588,889	\$837,924
REVENUES					
4103400	Application Fees	\$50,000	\$24,781	\$40,000	\$40,000
4301100	Interest: Deposits and Investments	\$7,000	\$7,076	\$9,000	\$7,000
Total Interest / Application Fee Revenue		\$57,000	\$31,857	\$49,000	\$47,000
4600100	Cities (Revenue from other Agencies)	\$271,642	\$271,642	\$271,642	
5440200	County	\$271,642	\$271,642	\$271,642	
Savings/Fund Balance from previous FY		\$161,354	\$244,535	\$244,535	\$247,930
TOTAL REVENUE		\$761,638	\$819,676	\$836,819	
NET LAFCO OPERATING EXPENSES		\$543,283			\$542,994
COSTS TO AGENCIES					
	County	\$271,642			\$271,497
	City of San Jose	\$135,821			\$135,749
	Other Cities	\$135,821			\$135,749

RevisedPerSubCommittee
April 9, 2008

2008/2009 LAFCO COST APPORTIONMENT

Estimated Costs to Agencies Based on the Proposed Budget

LAFCO Net Operating Expenses for 2008/2009				\$542,994
Jurisdictions	Revenue per 2004/2005 Report*	Percentage of Total Revenue	Allocation Percentages	Allocated Costs
County	N/A	N/A	50.0000000%	\$271,497.00
San Jose	N/A	N/A	25.0000000%	\$135,748.50
Campbell	\$33,583,551	2.3221444%	0.5805361%	\$3,152.28
Cupertino	\$44,567,482	3.0816315%	0.7704079%	\$4,183.27
Gilroy	\$87,762,328	6.0683516%	1.5170879%	\$8,237.70
Los Altos	\$29,341,524	2.0288282%	0.5072070%	\$2,754.10
Los Altos Hills	\$9,803,619	0.6778741%	0.1694685%	\$920.20
Los Gatos	\$29,227,240	2.0209260%	0.5052315%	\$2,743.38
Milpitas	\$79,213,756	5.4772581%	1.3693145%	\$7,435.30
Monte Sereno	\$1,926,533	0.1332107%	0.0333027%	\$180.83
Morgan Hill	\$62,734,560	4.3377994%	1.0844498%	\$5,888.50
Mountain View	\$149,284,097	10.3222922%	2.5805731%	\$14,012.36
Palo Alto	\$304,096,000	21.0268062%	5.2567015%	\$28,543.57
Santa Clara	\$384,386,866	26.5785414%	6.6446354%	\$36,079.97
Saratoga	\$15,767,551	1.0902519%	0.2725630%	\$1,480.00
Sunnyvale	\$214,534,993	14.8340844%	3.7085211%	\$20,137.05
Total	\$1,446,230,100	100.0000000%	100.0000000%	\$542,994.01
Total Cities (minus San Jose)				\$135,750.51

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

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