



**LAFCO MEETING
AGENDA**

**Wednesday, February 4, 2009
1:15 PM**

**Board Meeting Chambers
70 West Hedding Street, First Floor
San Jose, CA 95110**

CHAIRPERSON: John Howe • VICE-CHAIRPERSON: Susan Vicklund-Wilson

COMMISSIONERS: Pete Constant, Don Gage, Liz Kniss

ALTERNATES: Al Pinheiro, Sam Liccardo, George Shirakawa, Terry Trumbull

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

Disclosure Requirements

1. Disclosure of Campaign Contributions

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

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

1. **ROLL CALL**
2. **WELCOME NEW LAFCO COMMISSIONERS: LIZ KNISS AND GEORGE SHIRAKAWA**
3. **PUBLIC PRESENTATIONS**

This portion of the meeting is reserved for persons desiring to address the Commission on any matter not on this agenda. Speakers are limited to THREE minutes. All statements that require a response will be referred to staff for reply in writing.
4. **APPROVE MINUTES OF DECEMBER 3, 2008 LAFCO MEETING**

CONSENT CALENDAR

- *5. **APPROVE CONSENT CALENDAR**
 - 5.1 **WEST VALLEY SANITATION DISTRICT 2008-03 (FORRESTER ROAD)**

A request by the West Valley Sanitation District to annex one parcel with an area of approximately 1.82 acres, located on the east side of Forrester Road within the Town of Los Gatos.

Possible Action: Consider the petition for annexation and staff recommendation.

ITEMS FOR ACTION / DISCUSSION

6. **BUDGET SUBCOMMITTEE FOR FISCAL YEAR 2009-10**

Possible Action: Establish a LAFCO Budget Subcommittee for Fiscal Year 2009-10.
7. **LAFCO FEE WAIVER REQUEST FROM CAMPBELL AND LOS GATOS FOR AN URBAN SERVICE AREA / SPHERE OF INFLUENCE AMENDMENT AND FOR DETACHMENT FROM CAMPBELL TO FACILITATE ANNEXATION OF ISLAND (WEST PARR AVENUE)**

Possible Action: Accept report and provide direction to staff.

CLOSED SESSION

8. **PUBLIC EMPLOYEE APPOINTMENT – Pursuant to Government Code Section 54957(b)(1)**

Title: LAFCO General Counsel

ITEMS FOR ACTION / DISCUSSION

9. REPORT OUT OF CLOSED SESSION**10. EXECUTIVE OFFICER'S REPORT****10.1 CALAFCO Staff Workshop in San Luis Obispo
April 29 - May 1, 2009**

Possible Action: Authorize staff to attend the 2009 CALAFCO Staff Workshop and authorize travel expenses funded by LAFCO budget.

10.2 CALAFCO Workshop on "SB 375 - So How Will it Work for LAFCO?" San Jose, March 27, 2009

Possible Action: Authorize commissioners and staff to attend the workshop and authorize expenses funded by LAFCO budget.

10.3 LAFCO Informational Workshop on Annexation Procedures for Cities and Special Districts (March 10, 2009)

Information only.

11. COMMISSIONERS' REPORTS**12. WRITTEN CORRESPONDENCE****13. NEWSPAPER ARTICLES****14. PENDING APPLICATIONS / UPCOMING PROJECTS****15. ADJOURN**

Adjourn to regular LAFCO meeting on Wednesday, April 8, 2009, at 1:15 PM in the Board Meeting Chambers, 70 West Hedding Street, First Floor, San Jose, CA 95110.

Any disclosable public records related to an open session item on the agenda and distributed to all or a majority of the Commission less than 72 hours prior to that meeting are available for public inspection at the LAFCO Office at the address listed at the bottom of the first page of the agenda during normal business hours. In compliance with the Americans with Disabilities Act, those requiring accommodation for this meeting should notify the LAFCO Clerk 24 hours prior to the meeting at (408) 299-6415, or at TDD (408) 993-8272, indicating that message is for the LAFCO Clerk.

**LOCAL AGENCY FORMATION COMMISSION OF
SANTA CLARA COUNTY
MINUTES
WEDNESDAY, DECEMBER 3, 2008**

1. ROLL CALL

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 3rd day of December 2008 at 1:15 p.m. in the Isaac Newton Senter (INS) Auditorium, 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; and Dunia Noel, LAFCO Analyst. Kathy Kretchmer, is present as LAFCO Counsel from the County Counsel's office for all items on the agenda except the San Martin incorporation proposal. Mala Subramanian is present as LAFCO Counsel for the San Martin incorporation proposal.

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

2. NEW ALTERNATE COMMISSIONER: KEN YEAGER, COUNTY REPRESENTATIVE

The Chairperson announces the appointment of Santa Clara County Supervisor Ken Yeager as Alternate LAFCO Commissioner representing the County.

3. PUBLIC PRESENTATION

There are no public presentations.

Commissioner Alvarado states that she reviewed the minutes and staff report of the November 7, 2008 public hearing and informs that she is prepared to participate in this meeting.

4. APPROVE THE MINUTES OF NOVEMBER 7, 2008 MEETING

On motion of Commissioner Alvarado, seconded by Commissioner Gage, it is unanimously ordered on a vote of 5-0 that the minutes of November 7, 2008 meeting be approved, as submitted.

5. APPROVE CONSENT CALENDAR

5.1 PALO ALTO REORGANIZATION 2008 (FORMER LOS ALTOS SEWAGE TREATMENT PLANT SITE)

Commissioner Howe informs that he will abstain from voting on this item because his wife is employed by the El Camino Hospital District and the proposal involves a detachment of territory from that special district.

On motion of Commissioner Gage, seconded by Commissioner Wilson, it is unanimously ordered on a vote of 4-0, with Commissioner Howe abstaining, that the request by the City of Palo Alto be approved to detach two parcels (APNs 116-01-013 and 047) from the City of Los Altos, El Camino Hospital District, and Santa Clara County Service Area No. 1 (Library Services), and to annex to the City of Palo Alto; and, that protest proceedings be waived pursuant to Government Code Section 56663.

6. WEST VALLEY SANITATION DISTRICT SPHERE OF INFLUENCE (SOI) AMENDMENT AND ANNEXATION 2008-02 (OVERLOOK ROAD)

This being the time and place set to consider a petition by property owners to amend the SOI of West Valley Sanitation District (WVSD) and annex the territory, the Chairperson declares the public hearing open and requests the staff report.

Neelima Palacherla, LAFCO Executive Officer, reports that this proposal addressing the septic system failure issues consists of amendment of WVSD SOI and annexation to that District of 22 parcels with a combined acreage of approximately 52 acres, located off Linda Vista Avenue, Beckwith Road, and Overlook Road in an incorporated area outside the SOI of Monte Sereno. She briefly discusses how the territory is to be served, the cost of the project and how the construction is going to be financed, and informs that the benefiting property owners will eventually pay for the construction cost. She also reports that the construction of sewer line will begin in Summer 2009 and that WVSD has sufficient capacity to provide sewer service. She further reports that septic systems in the area, which have been installed prior to the 1970s, no longer meet the County standards and the County Department of Environmental Health (DEH) has documented problems on several of these parcels. She continues her report by stating that due to the County General Plan and zoning designation, existing lot sizes and steep

terrain there is no potential for further subdivision, although any development potential of the four vacant lots included in the proposal would have to be evaluated individually. She then comments that this project may set a precedent because landowners to the east are facing a similar situation and could potentially seek annexation to WVSD. Ms. Palacherla advises that in addressing the septic problem in the area, LAFCO policies would typically require annexation to Monte Sereno be considered; however, this area is not contiguous to that city's urban service area (USA) and city limits, and the city does not provide sewer service. She then recommends that the proposal be approved because sewer service will alleviate the public health and safety concerns, there is a lack of other options to serve existing homes, and because there is only limited growth inducing impact on surrounding unincorporated area.

On Commission consensus, there being no objection, the Chairperson opens the public comment period for this item.

Peter Wilkens, landowner of a subject parcel, requests approval of the application stating that the County DEH has notified him that his septic system is in violation of current standards and has to be upgraded. However, he is unable to do so because there is a spring on his property and it is located outside of WVSD SOI. He informs that other properties are facing similar situations.

The Chairperson determines that there are no other members of the public who would like to speak on the item and declares the public hearing closed.

Commissioner Gage moves for approval and Commissioner Howe seconds the motion. At the request of the Chairperson, Commissioner Gage restates the motion. Commissioner Wilson expresses concern on the growth inducing aspects of the proposal given staff comments relating to the area on the east, as well as potential development of vacant lands. In response to an inquiry by Commissioner Gage, Ms. Palacherla advises that building permits will be issued based on the County's land use and zoning regulations. Commissioner Gage comments that it does not mean that the vacant lots can tap into sewer lines because it is available. As an example, he cites a situation in San Martin where the Sheriff and court facilities are connected to a sewer line; however, sewer service is not available to neighboring parcels. In response to an inquiry by Commissioner

Wilson, Ms. Palacherla advises that properties included in the SOI and annexed to WVSD would be able to get sewer connection from the district; however, the area will be subject to the County's land use regulations and development standards. In response to an inquiry by Commissioner Gage, Ms. Palacherla advises that there is some potential for four vacant lots to be developed; however, each site has to be evaluated separately. Ms. Kretchmer advises that LAFCO cannot impose land use conditions, and states that the County Ordinance Code requires that parcels within 300 feet of a sewer line be provided sewer service and the County land use process and building requirements remain in effect.

The Chairperson calls the question. It is ordered on 4-0 vote, with Commissioner Wilson abstaining, that the WVSD SOI be amended to include approximately 52 acres and that SOI determinations be adopted; that annexation to WVSD of 22 parcels be approved; and, and that the LAFCO Executive Officer be directed to conduct protest proceedings in accordance with LAFCO policies and the Cortese Knox Hertzberg (CKH) Act.

7. CENTRAL FIRE PROTECTION DISTRICT: ARNERICH-WAGNER NO. 1

This being the time and place set to consider a petition by property owners to annex territory to Santa Clara County Central Fire Protection District (SCCCFPD), the Chairperson declares the public hearing open and requests the staff report.

Dunia Noel, LAFCO Analyst, reports that property owners petitioned to annex a 42.5-acre area to SCCCFPD located off Arnerich Road, Hicks Road, and Wagner Road, and SCCCFPD has expressed support to the proposal. The entire project area is located within the USA of Los Gatos and that city is annexing the three remaining unincorporated parcels in the subject area. She informs that the proposal is a non-100 percent consent application because property owners of a parcel included in the project have not consented to the annexation. She adds that portions of two parcels (APNs 537-17-031, 032) are being included to avoid creating islands. Majority of the project area is developed with single family residences; however, an 11-acre parcel, which is ineligible for subdivision under existing land use policies of both County and Los Gatos, is currently vacant. Ms. Noel advises that boundaries are definite and certain, conform to lines of assessment and

LAFCO's road annexation policies; that the proposal does not create islands or areas that are difficult to serve; and, that SCCCFPD serves Los Gatos and much of surrounding unincorporated area. She then recommends approval of the proposal.

The Chairperson notes that there are no members of the public who would like to speak on the item and declares 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 the Commission find this annexation categorically exempt from the provisions of CEQA pursuant to Class 19, Section 15319 (a) & (b); and Class 3, Section 15303(a); that the annexation to SCCCFPD, be approved; that the LAFCO Executive Officer be directed to conduct the protest proceedings pursuant to CKH Act.

*Ms. Kretchmer leaves the dais and Mala Subramanian, LAFCO Counsel for San Martin incorporation proposal, joins the Commissioners at the dais.
Alternate Commissioner Pinheiro leaves at 1:44 p.m.*

8. CLOSED SESSION

The Chairperson announces that the Closed Session will be held at the INS Auditorium and requests members of the public to step outside.

On order of the Chairperson, there being no objection, the meeting is adjourned to Closed Session at 1:44 p.m.

The Commission reconvenes at 2:23 p.m.

9. RESOLUTION DENYING THE PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

The Chairperson requests the staff report. Ms. Palacherla reports that in compliance with the Commission's direction at the November 7, 2009 public hearing, staff has suspended all work on the San Martin incorporation proposal and has prepared a resolution denying the proposed incorporation, without consideration of the merits of the proposal, because the proponents have failed to pay the LAFCO fees. Further, on November 25, 2008, Richard Van't Rood, picked up the check that LAFCO was holding for State Controller's Review. Ms. Palacherla advises that Government Code Section 56895 provides a 30-day reconsideration period after the Commission adopts the resolution

denying the application. During that period, any person may file a written request for reconsideration indicating any new facts that must be considered. The reconsideration request will then be noticed and placed on the agenda of the next LAFCO meeting. The fee for reconsideration is based on actual staff time with an initial deposit of \$2,350.

Ms. Subramanian reports that Richard Van't Rood, on behalf of the San Martin Neighborhood Alliance (SMNA), has filed in court an ex parte application for alternative writ of mandate on November 21, 2008 to enjoin the Commission from interfering with the process of the request for the State Controller to review the draft CFA, from ordering the Executive Officer to refuse to process the request for State Controller's review, and from conducting a final hearing on the incorporation prior to the completion of the State Controller's Review. She informs that Judge James Emerson had denied the ex parte application in its entirety because it was premature to bring a lawsuit and recommended that SMNA first exhaust all administrative remedies.

The Chairperson opens the public comment period for this item and informs that Richard Van't Rood, spokesperson for the proponents will be given five minutes to speak.

Mr. Van't Rood expresses concern about how the Commission and staff have processed the application, stating that a small community had raised money to vote on incorporating their own town and make land use decisions. He expresses the opinion that the County and the Commission do not want San Martin to incorporate and states that the fee being charged is very high compared with other incorporations. He adds that the way the CFA was done had incurred additional expenses, and comments that the State Controller should review the CFA because the proponents did not have the opportunity to question the process. He informs that the proponents have paid for the deposit and complied with every condition. He then explains that the reason why the proponents did not sign the agreement between LAFCO and SMNA provided by the LAFCO Counsel relating to the review of the CFA by the State Controller was because it contained indemnification provisions and SMNA did not have enough time to convene its Board of Directors. He then expresses the opinion that some of the reasons why the County is rejecting the incorporation proposal is because it wants to control the airport and land use decisions, and may have a plan to industrialize San Martin in order to raise revenues to

cover its budget deficit and meet its pension plan obligations. He informs that SMNA would pay LAFCO fees if the request for review of the CFA by State Controller is processed and if there is certainty on the incorporation. He then comments about the change in LAFCO counsel's position and questions why the Assistant County Counsel was at the ex parte hearing.

Commissioner Gage comments that the San Martin airport is under the County's control, that the County made very few land use decisions in San Martin, and projects that are unwanted by residents have been in the area for a very long time. He then informs that he tried to ensure that the proponents are treated fairly in this process, including his recommendation to delay the payment of LAFCO fees until close to the hearing date. He expresses concern for San Martin residents because under the current economic situation, a new Town of San Martin could become bankrupt like Vallejo. He states that even the State and the County are facing budget deficits. He then informs that he had reviewed all available information relating to the proposed incorporation, and feels that San Martin is unable to sustain itself as a town, and that he will be voting for the adoption of the resolution denying the incorporation proposal.

The Chairperson requests Mr. Van't Rood to sit down following Commissioner Gage's comments. The Chairperson informs that the allotted time for Mr. Van't Rood to speak is over.

Craig Bassett, SMNA co-counsel, informs that the statutes enable the proponents to request for review of the CFA by the State Controller. He comments that the fact that a judge had denied the ex parte writ of mandate is not the end of this case and suggests that even if the Commission adopts the resolution denying the incorporation, provisions be made to resume processing of the incorporation proposal in case the court issues a writ.

In response to an inquiry by John Wolfinbarger, SMNA member, Chairperson Constant informs that he received an email relating to a lawsuit against LAFCO. Mr. Wolfinbarger states that a lawsuit should awaken the Commission and he expresses disappointment over the handling of the incorporation proposal. He then speaks about how politicians have brought the whole country into an economic mess.

Sylvia Hamilton, SMNA President, expresses appreciation to commissioners who have listened to the proponents and kept open minds. She states that the proponents took

inspiration from the Founding Fathers' legacy of self-governance and that the County would not go along with that legacy if San Martin is not allowed to incorporate. She comments that there are items in the CFA that are costlier than they needed to be and that is the reason why the proponents are requesting the State Controller's review. She then comments that the incorporation process was made difficult.

Mary Tomlinson, SMNA member, informs that the Commission had disregarded input from the proponents and comments that LAFCO, which should be an independent agency, is actually biased towards the County. She adds that incorporation will be best for the community and informs that an unwanted toxic waste center was recently added in the community.

John Sanders, SMNA member, states that LAFCO fee is excessive when compared to other incorporation efforts in the State. He comments that the reason why the proponents have not paid the LAFCO fees is because much of it has been incurred by doing the CFA incorrectly, and states that staff worked on a part of the initial study. He warns of litigation if LAFCO does not process the request for State Controller review of the CFA and expresses disappointment because San Martin residents will be denied the chance to vote on incorporation.

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

Commissioner Wilson moves for the adoption of the resolution denying the proposed incorporation of the Town of San Martin because the proponents have not paid the fees. Commissioner Alvarado seconds the motion.

Commissioner Howe comments that each one of the commissioners has done an outstanding job on the application. Chairperson Constant states that he feels that the proponents have been given the opportunity to present their case, and while there are differences in legal opinion, he expresses confidence in the opinion of LAFCO Counsel.

The Chairperson calls the question. It is ordered on a 4-0 vote, with Commissioner Howe opposed, that Resolution No. 2008-04 be adopted, denying the proposed incorporation of the Town of San Martin.

Ms. Subramanian leaves the dais and Ms. Kretchmer rejoins the meeting at 2:38 p.m.

10. UPDATE ON REQUEST FOR PROPOSALS SEEKING GENERAL LEGAL COUNSEL SERVICES FOR LAFCO

The Chairperson requests the staff report. Ms. Noel reports that LAFCO had issued a request for proposals (RFP) for general legal counsel services which will close on January 9, 2009. She recommends that an Ad-Hoc Committee be created to interview qualified applicants.

Chairperson Constant informs that he and Commissioner Wilson had served on the sub-committee that selected legal counsel for the San Martin incorporation proposal and comments that the process had worked well.

On motion of Commissioner Alvarado, seconded by Commissioner Howe, it is unanimously ordered on a vote of 5-0 that Chairperson Constant and Vice-Chairperson Wilson be appointed to the subcommittee to select LAFCO's general legal counsel.

11. APPOINTMENT OF CHAIRPERSON AND VICE-CHAIRPERSON FOR 2009

Commissioner Alvarado moves to appoint Commissioner Wilson as Chairperson and Commissioner Howe as Vice-Chairperson in 2009. Commissioner Wilson proposes that the motion be amended to appoint Commissioner Howe as Chairperson because his term will end in 2009. Commissioner Alvarado amends the motion to appoint Commissioner Howe as the Chairperson in 2009 and Commissioner Wilson as the Vice-Chairperson, and to return to normal rotation cycle in 2010. Commissioner Gage seconds the motion. Commissioner Howe expresses appreciation for Commissioner Wilson.

The Chairperson calls the question. It is unanimously ordered on a vote of 5-0 that Commissioner Howe be appointed as the Chairperson in 2009 and Commissioner Wilson as the Vice-Chairperson.

12. 2009 SCHEDULE OF LAFCO MEETINGS

On motion of Commissioner Alvarado, seconded by Commissioner Howe, it is unanimously ordered on a 5-0 vote that the 2009 schedule of LAFCO meetings be adopted.

13. EXECUTIVE OFFICER'S REPORT

There is no report from the Executive Officer.

14. COMMISSIONERS' REPORTS

Chairperson Constant expresses appreciation to the Commission for allowing him to serve as chairperson in 2008 and informs that Commissioner Alvarado is attending her last LAFCO meeting today. Discussion ensues about Commissioner Alvarado's many years of service to the County and LAFCO. Commissioner Wilson expresses appreciation to Chairperson Constant for his streamlined and fair handling of meetings. Commissioner Howe expresses agreement and thanks Commissioner Alvarado for her service to the Commission. Commissioner Gage commends the Chairperson for doing a great job, for being thoughtful, fair, diplomatic, and being in control of the time. He then comments that Commissioner Alvarado's constituents appreciate her efforts on LAFCO and that he enjoyed working with her. Commissioner Alvarado states that LAFCO was one of her favorite assignments as a member of the County Board of Supervisors because, while it is a little known agency, it does a very important job for the County. She notes that Gilroy wanted to expand its USA and was unhappy with some LAFCO policies; however, that motivated Gilroy to adopt its own agricultural mitigation policy which has allowed the Commission to move forward on some of that city's proposals. She comments that the adoption of LAFCO's agricultural mitigation policies is one of the most important things that the Commission has done. She recalls how she and Commissioner Wilson came back motivated about agricultural land preservation after attending a CALAFCO conference in Monterey where examples were shown of what other LAFCOs statewide have done to address the premature conversion of agricultural lands. She comments that while the work of LAFCO gets very little recognition, she would leave the Board of Supervisors feeling rewarded and satisfied to have been a part of the Commission. She expresses hope that her successor would see the assignment to LAFCO as worthy of full attention because it offers opportunity to do good for the County. She then commends Brian Schmidt, Committee for Green Foothills, for being consistently present at the LAFCO meetings and for all his work to safeguard the interests of the County with regard to environmental issues and land use policies. She then thanks commissioners and staff for a commendable job.

15. WRITTEN CORRESPONDENCE

There is no written correspondence.

16. NEWSPAPER ARTICLES

There are no newspaper articles.

17. PENDING APPLICATIONS / UPCOMING PROJECTS

There are no pending applications.

18. ADJOURN

On order of the Chairperson, there being no objection, the meeting is adjourned at 3:01 p.m. to a regular meeting to be held on Wednesday, February 4, 2009 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



ITEM No. 6

MEETING DATE: February 4, 2009
TO: Local Agency Formation Commission of Santa Clara County
FROM: Neelima Palacherla, Executive Officer
SUBJECT: **LAFCO Budget Subcommittee for 2009 - 2010**
Agenda Item # 6

APPOINTMENT OF BUDGET SUBCOMMITTEE

Staff recommends that the Commission establish a Budget Subcommittee composed of two commissioners to develop and recommend the proposed FY 2009-2010 LAFCO budget for consideration by the full Commission.

The time commitment from commissioners serving on this committee would be limited to 2-3 meetings between the months of February and June.

MEETING DATE: February 4, 2009
TO: Local Agency Formation Commission of Santa Clara County
FROM: Neelima Palacherla, Executive Officer
Dunia Noel, Analyst
SUBJECT: **LAFCO Fee Waiver Request from Campbell and Los Gatos for an USA/SOI Amendment and Detachment from Campbell to Facilitate Annexation of Island (W. Parr Avenue)**
Agenda item # 7

STAFF RECOMMENDATION

Accept report and provide further direction as necessary.

LAFCO FEE WAIVER REQUEST

The City of Campbell and the Town of Los Gatos are jointly requesting that LAFCO waive its processing fees for an urban service area (USA) / sphere of influence (SOI) amendment and for detachment of property from Campbell to facilitate annexation of an unincorporated island to Campbell and Los Gatos. The island comprises entirely of County road segments (West Parr Avenue). See **Attachment A** for the joint request letter from Los Gatos and Campbell.

BACKGROUND

Staff from LAFCO, the Santa Clara County Roads and Airports Department, the City of Campbell, and the Town of Los Gatos have been working together to facilitate the annexation of segments of a County road (West Parr Avenue between Capri Drive and Pollard Avenue) in order to resolve confusion in jurisdictional and maintenance issues. Since the W. Parr Avenue road segments are unincorporated and completely surrounded by the City of Campbell to the north and the Town of Los Gatos to the south, they are considered unincorporated islands. These unincorporated islands (i.e. segments of West Parr Avenue) are currently located within the City of Campbell's Urban Service Area and Sphere of Influence and are less than 150 acres. Therefore they are currently eligible to be annexed by the City of Campbell under the streamlined island annexation process. Under the Island Annexation Program, LAFCO would waive its fees for processing an island annexation (\$1,103) and the County of Santa Clara would cover the various processing costs (including the preparation of assessor's report, the preparation of annexation map and description and the surveyor's report)

and also pay the State Board of Equalization fees (approximately \$300) . In addition, the County has agreed to pay for the pavement work (\$47,435) completed by the City of Campbell on the unincorporated portions of West Parr Avenue contingent on West Parr Avenue being annexed to either the City of Campbell or the Town of Los Gatos.

However, Los Gatos and Campbell have discussed and jointly concluded that rather than Campbell annexing the entire width of the unincorporated W. Parr Avenue segments (which it could currently do), the road maintenance and jurisdictional issues for development projects would be more logically addressed if each of the cities annexed up to the center line of W. Parr Avenue. That is, the City of Campbell would annex the W. Parr Avenue right-of-way north of the center line and the Town of Los Gatos would annex the W. Parr Avenue right-of-way south of the center line.

In order to implement their joint recommendation the two jurisdictions must seek LAFCO approval for:

- Amending their USA/SOI boundary so that it coincides with the center line of West Parr Avenue.
- Detaching from the City of Campbell a portion of W. Parr Avenue right of way up to the centerline between Vale Avenue and Theresa Avenue.

The joint letter from Los Gatos and Campbell indicates that they are prepared to take formal action to complete the entire annexation process and are requesting that LAFCO waive fees for the proposed detachment and USA/SOI amendment. The letter notes that the granting of such a request is consistent with LAFCO's Island Annexation Policies (See Attachment B for LAFCO's Island Annexation Policies, Policy #9).

Under the current fee schedule, LAFCO would collect a deposit of \$11,481 and charge actual costs for a proposal that consisted of a detachment and USA/SOI amendment in order to cover the staff time and materials involved in processing the application. If the cost of processing the proposal is less than the deposit then that difference is refunded to the applicant, upon completion of the project.

Pursuant to Government Code §56383(d), the Commission may waive a fee if it finds that payment would be detrimental to the public interest. However, any waiver of fees is limited to only those costs incurred by the commission in the processing of a proposal as per §56383(f). The applicant will remain responsible for any outside fees such as the State Board of Equalization fees for the detachment proposal.

With the exception of LAFCO's current island annexation fee waiver, it has been LAFCO's practice to not waive its fees, as LAFCO strives to achieve full cost recovery. Given that the LAFCO budget is funded jointly by the County and all the cities, it is difficult to justify a special waiver for some agencies at the expense of others. This LAFCO fee waiver request for amendment of associated boundaries in order to

facilitate an island annexation is the first of its kind. However, staff is aware of at least one other similar island annexation situation that is being contemplated by two cities. The granting of the requested fee waiver could likely open the door to at least one other similar request.

This request for fee waiver is non-standard in that it is not accompanied by an application to LAFCO for the SOI/USA amendment or for the detachment from Campbell. It is unclear if the cities would follow through with the boundary changes and annex the road should LAFCO deny the request for fee waiver.

There are two alternatives that the Commission could consider:

1. LAFCO should request that the City and the Town submit a complete application to allow the Commission to concurrently consider the merits of the proposal, determine if the payment of the fee would be to the public detriment and consider the potential precedent setting nature of granting a fee waiver for this specific proposal. Furthermore, receipt of the joint application, including the required city resolutions, would provide greater assurance to LAFCO that the two cities will ultimately complete all the processes necessary to annex the W. Parr Avenue unincorporated island, before LAFCO staff and County staff expend additional time on the proposal – similar to our requirements for facilitating island annexations. Additionally, outside fees such as the State Board of Equalization fees and the cost of map verification by the County Surveyor's office and the cost of County Assessor's Report may not be waived by LAFCO.
2. LAFCO could deny the request for a fee waiver and request the City of Campbell to annex the entire section of West Parr Avenue and work out a maintenance / improvement agreement with the Town of Los Gatos to address any potential issues.

ATTACHMENTS

- Attachment A: Joint letter from Campbell and Los Gatos dated January 6, 2009, requesting LAFCO fee waiver
- Attachment B: LAFCO Island Annexation Policies



January 6, 2009

The Honorable Pete Constant
Chair, Santa Clara County LAFCO
70 W. Hedding St., 10th Floor
San Jose, CA 95110

Re: West Parr Avenue – Pocket Annexation (Campbell/Los Gatos)

Dear Chair Constant:

Staff from LAFCO, Santa Clara County (County), the Town of Los Gatos (Town), and the City of Campbell (City) have been working together on the possible annexation of County island pockets along West Parr Avenue between Capri Drive and Pollard Avenue in an effort to resolve jurisdictional and maintenance issues.

The County Surveyor's Office recently confirmed that the City currently possesses ownership of the public right-of-way along the majority of the north side of West Parr Avenue between Capri Drive and Pollard Avenue from the street centerline. However, right-of-way ownership on the south side of West Parr Avenue is divided among the City (18%), the Town (11%) and the County (71%). To further complicate the matter, the current Urban Service Area (USA)/Sphere of Influence (SOI) boundary is located south of the street centerline.

In accordance with LAFCO's Island Annexation Policies, all three agencies agree that the entire southern half of West Parr should be annexed into the Town in the interest of efficient service provision, and orderly growth and development. In order for the Town to assume ownership of the south side, the following needs to take place.

- The City must de-annex a portion of street right-of-way along the south side of West Parr between Vale Avenue and Theresa Avenue.
- The current USA/SOI boundary must be realigned from 25-ft south of the street centerline to coincide with the street centerline.
- Concurrent with the two actions above, the Town would annex the street right-of-way south of the street centerline from Capri Drive to Pollard Avenue in accordance with LAFCO's Island Annexation Policies.

Pete Constant
January 6, 2009
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The desired adjustments to the City, County and Town boundaries and USA/SOI, will only affect ownership of the public right-of-way. These changes are indicated on the attached exhibit for your reference.

Both the Town and the City are prepared to agendize for formal Council action those steps necessary to effectuate this Pocket Annexation. However, prior to proceeding, we are requesting that LAFCO waive fees associated with the USA/SOI modification and de-annexation necessary to implement the Pocket Annexation as desired by the parties.


As you know, the County and LAFCO have routinely waived fees and covered costs associated with Pocket Annexations. Our request is that the fee waivers be extended to include the de-annexation and USA/SOI boundary adjustment component of this Pocket Annexation.


The goal of the three agencies is to have the Town assume ownership of the southern half of West Parr Avenue through the Pocket Annexation process. This cannot be done without modification to the USA/SOI boundary and a small de-annexation of public right-of-way from the City of Campbell.

LAFCO staff has advised our City and Town staff that they do not have the authority to grant fee waivers. As such, we hereby respectfully request that LAFCO consider waiving all fees associated with this island annexation process including de-annexation and correction of the USA/SOI boundary in accordance with LAFCO's Island Annexation Policies "to find ways to reduce or share the cost of processing unincorporated island annexations."

We look forward to your reply. Thank you for your kind attention.

Sincerely,


Jane P. Kennedy, Mayor
City of Campbell


Mike Wasserman, Mayor
Town of Los Gatos

Attachment

cc: LAFCO Members
Michael Murdter, Director of County Roads and Airports
Ron Jackson, Deputy Director, County Roads and Airports
Neelima Palacherla, LAFCO Executive Officer

LEGEND

COUNTY RIGHT-OF-WAY TO BE ANNEXED INTO TOWN OF LOS GATOS



CAMPBELL RIGHT-OF-WAY TO BE ANNEXED INTO TOWN OF LOS GATOS



TOWN OF LOS GATOS



CITY OF CAMPBELL

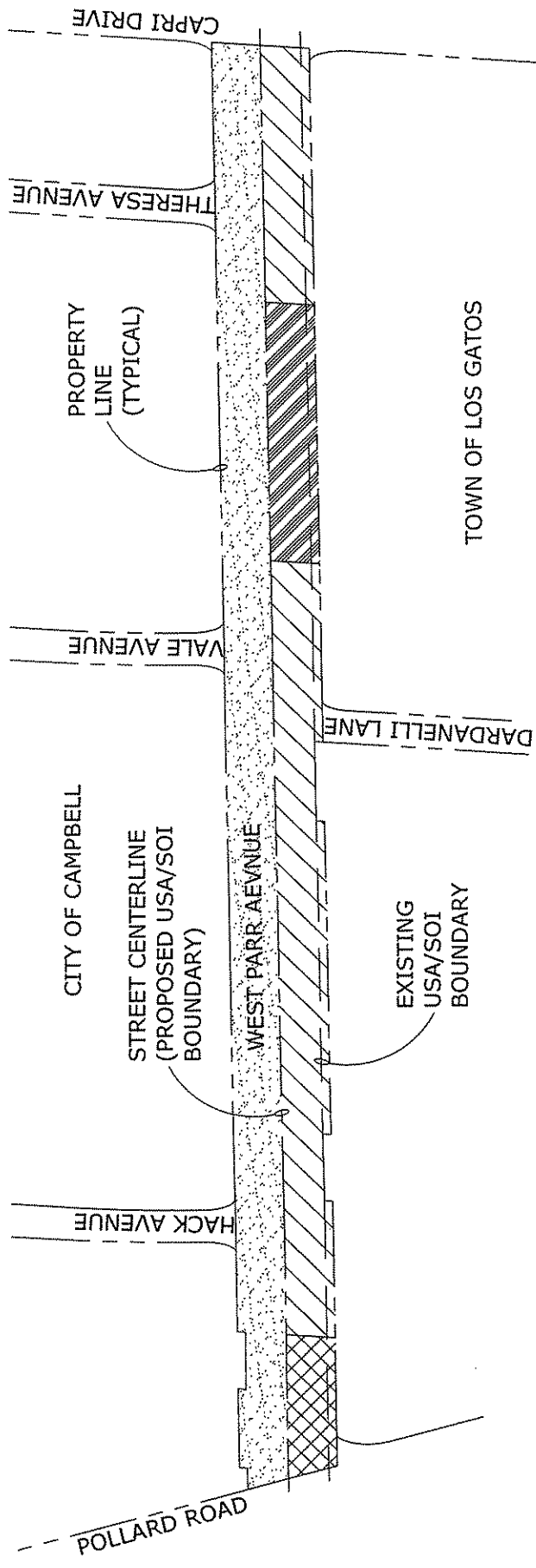
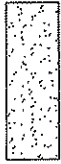


EXHIBIT
CITY OF CAMPBELL - TOWN OF LOS GATOS - COUNTY OF SANTA CLARA
WEST PARR AVENUE - POCKET ANNEXATION

ISLAND ANNEXATION POLICIES

1. In order to fulfill the intent of the state legislature and implement the joint urban development policies of the cities, County and LAFCO, and in the interests of efficient service provision and orderly growth and development, the cities should annex unincorporated urban islands.
2. LAFCO will collaborate with the cities and the County in facilitating annexation of unincorporated urban islands.
3. LAFCO will provide a 2-year LAFCO fee waiver for annexations that result in the elimination of entire unincorporated islands. The current LAFCO fee is \$670 for each annexation area. This fee waiver will expire on January 1, 2007.
4. Where feasible, and in furtherance of goals to support orderly growth and development, cities are encouraged to annex entire islands, rather than conducting single parcel annexations.
5. In the interests of orderly growth and development, cities should annex urban unincorporated islands existing within their current USAs (urban service areas), before seeking to add new lands to their USAs.
6. Prior to seeking any USA amendment, except if the USA amendment is to resolve a significant, demonstrable public health and safety issue or if the USA amendment is a minor corrective action, the city should:
 - a. Initiate and complete annexation proceedings pursuant to Government Code Section 56375.3(a)(1), for all unincorporated islands that meet the provisions of Government Code Section 56375.3, unless the island constitutes publicly owned land, and,
 - b. For any city that has unincorporated islands larger than 150 acres, the city is strongly encouraged to adopt an annexation plan for the islands after holding community meetings, to apply a pre-zoning designation and to adopt resolutions to initiate annexation.
7. LAFCO encourages the County to remove incentives for property owners in the unincorporated islands to remain in the County, by making development standards in the unincorporated islands comparable to development standards in the surrounding city.
8. LAFCO will provide information on the island annexation procedures to each of the cities. LAFCO will develop process flow charts and public hearing notice / resolution templates for cities to use. LAFCO staff will conduct workshops on island annexation process for city staff.
9. LAFCO will work with the County, the cities and other interested parties/agencies to find ways to reduce or share the cost of processing unincorporated island annexations.
10. LAFCO staff will report to the Commission at each LAFCO meeting on the status of each city's island annexation efforts.

Adopted February 9, 2005

The California Association of Local Agency Formation Commissions is proud to present an all new CALAFCO University Course



SB 375

So How Will it Work for LAFCo?

A Workshop for LAFCo Commissioners and Staff

A PRACTICAL WORKSHOP for COMMISSIONERS and STAFF

SB 375 refers to Sustainable Communities Strategy, California Air Resources Board, Regional Targets Advisory Committees, Scoping Plans, Regional Housing Needs Assessments, CEQA streamlining, Regional Transportation Plan, current planning assumptions and transit priority projects.

Huh?

What does it mean for LAFCo's municipal service reviews and sphere of influence updates? How do the goals of SB 375 align with LAFCo's legislative mandates? How can we increase coordination and reduce the potential for disagreements with all the agencies involved? Should LAFCo ensure that our actions are consistent with the SB 375, regional strategy, regional housing or greenhouse gas reduction targets?

This workshop will try to answer some of the questions on what SB 375 will mean to LAFCOs. The process of implementing SB 375 will be explained by experts from agencies involved. Case studies will be used to focus the discussion on SB 375's impacts to LAFCOs and LAFCOs' role in implementation.

COURSE DETAILS

FRIDAY
27 March 2009

10:00 am to 3:00 pm

9:30 am - networking and refreshments

Region – Northern California

LOCATION

San Jose City Hall
Rooms 118-120
200 East Santa Clara Street
San Jose, CA

REGISTRATION FEE

\$75/person for CALAFCO Members and Associates

\$60/person for three or more from the same agency

\$125/person for Non Members

Registration includes lunch and course materials. Space is limited.

Register early

REGISTRATION

Please send registration and check (payable to "CALAFCO") to:

CALAFCO
1215 K Street, Suite 1650
Sacramento, CA 95814
916/442-6536

Curriculum Questions/Suggestions
Joyce Crosthwaite ♦ 714/834-2556



Sharing Information & Resources
www.calafco.org

REGISTRATION FORM – SB 375 Workshop: San Jose	FEES
LAFCo or Agency _____	Members
Address _____	at \$75 \$ _____
Phone _____	at \$60 \$ _____
Attendees _____	<small>Three or more from same agency registering together</small>
<small>Please include e-mail</small> _____	Non-Members
_____	at \$125 \$ _____
_____	Total Enclosed
_____	\$ _____
<small>NOTICE: Seating is limited. Registrations are transferable but there are no refunds. Payment must accompany registration.</small>	