

**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 city hood, 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 sends 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 or 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