ITEM NO. 3B

LOCAL AGENCY FORMATION COMMISSION OF
SANTA CLARA COUNTY
MINUTES
WEDNESDAY, JULY 2, 2008

1. ROLL CALL

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 2nd day of July 2008 at 1:15 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; and Mala Subramanian, LAFCO counsel for the San Martin Incorporation proposal.

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

2. CLOSED SESSION

On order of the Chairperson, there being no objection, the Commission adjourns to Closed Session at 1:18 p.m. to discuss one item of significant exposure to litigation per Government Code §54956.9.

The Commission reconvenes at 2:15 p.m.

3. PUBLIC PRESENTATIONS

Brian Schmidt, Committee for Green Foothills (CGF), informs that the CGF led a tour of farms in South Santa Clara County and visited, among other places, an orchard in Morgan Hill, the Mission Organics Home Ranch and the Thomas Kruse Winery. He notes that participants saw the importance of farmland, bought local products and made a commitment to support local agriculture and signed a letter requesting the County and city governments to do the same. The letter also calls upon LAFCO to stop ignoring its obligations to protect farmlands from the effects of sprawl. He states that CGF found that LAFCO neglected to follow its obligation to protect the farmlands when it allowed expansion of Morgan Hill last year and labeled it "infill." He states that CGF passed a resolution of no confidence in LAFCO a first in CGF's 46-year history. He informs that the resolution was sent to LAFCO commissioners, staff, and the proponents of San Martin incorporation.

4. APPROVE MINUTES OF JUNE 4, 2008 MEETINGS

Commissioner Wilson informs that the Commission did not have a chance to review the minutes. On motion of Commissioner Wilson, seconded by Commissioner Howe, it is unanimously ordered that approval of the minutes of the June 4, 2008 meeting be deferred to the next meeting.

5. COMPREHENSIVE FISCAL ANALYSIS AND REVENUE NEUTRALITY ANALYSIS FOR THE PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

The Chairperson requests the staff report. Ms. Palacherla states that upon the direction of the Commission at the June 4, 2008 meeting, LAFCO Counsel has prepared an analysis of the revenue neutrality issue and requests Ms. Subramanian to make a presentation.

Ms. Subramanian briefly describes her June 25, 2008 memorandum outlining the options for the Commission in considering revenue neutrality. Ms. Palacherla then continues by providing a summary of the revisions to the CFA Tables 1 and 3. She also directs attention to the supplemental staff report dated July 2, 2008 which includes further revisions to Tables 1 and 3. She then explains the changes and notes that the responses from the CFA Consultant to the proponents' most recent comments on the CFA are included in the report.

In response to an inquiry by Commissioner Wilson, Ms. Palacherla informs that the numbers being used in the CFA are based on the FY06-07 data and the figures for FY07-08 will not be available until August or September 2008.

The Chairperson opens the public comment period for this item and informs that one speaker representing the County and another representing the proponents will each be given five minutes to speak, and all others will be given three minutes.

Sylvia Gallegos, Deputy County Executive, County of Santa Clara, recommends that the Commission accept the finding of the LAFCO Executive Officer that the incorporation is not fiscally feasible. She requests the Commission to consider the fiscal impact to the County as illustrated in Table 3, and advises that the ongoing deficit is approximately $69,000 even if the two funds are combined. She then indicates that the County is opposed to the proposed incorporation unless the General Fund is made whole through mitigation payments. She states that the purpose of revenue neutrality is to protect the County's General Fund, as was indicated in her last address to the Commission. She then expresses objection to LAFCO counsel's position to use the savings in the Roads Fund to offset the shortfall to the General Fund because revenue neutrality should be determined by separately considering the General Fund and Road Fund. She states that this is consistent with the guidelines issued by the State Office of Planning and Research and LAFCO policies.

Miguel Marquez, Assistant County Counsel, County of Santa Clara, continues to address the Commission on behalf of the County by expressing agreement with LAFCO Counsel's position that the statutory scheme prohibits the Commission from approving the incorporation unless revenue and costs are substantially equal. He informs that the statutory scheme defines what is to be included in the revenue neutrality calculation, quotes the specific provision of the CKH Act, and states that the statute requires only the use of unrestricted General Fund in the revenue neutrality calculation, and explicitly excludes the restricted funds. He expresses disagreement with LAFCO Counsel on whether the Commission has the discretion to disregard the mechanical calculation of revenue neutrality required by statute. He notes that while the statutory scheme gives the Commission the discretion to include terms and conditions, that discretion must be exercised in a manner that complies with all the statutory requirements, including the use of mechanical calculation. Responding to the LAFCO Counsel's reference to the legislative intent underlying the statutory scheme, he informs that courts only look at legislative intent when the language in the statute is ambiguous and subject to more than one interpretation. He informs that doing so exceeds the Commission's discretion and could be challenged in court. Finally, he notes that the County should be held harmless in this incorporation, and trading of restricted and unrestricted monies would harm the County.

At the request of Commissioner Gage, Ms. Subramanian advises that the Commission has the authority to use the County's Road Fund savings to offset all, a portion of, or none of the General Fund shortfall.

Richard Van't Rood, SMNA Spokesperson, directs attention to the staff report and states that other road costs like street sweeping, trash removal, signage and drainage costs to the County is $452,569; however, the proposed San Martin budget allots $526,252 for this expenditure. He then proposes that if road related maintenance is contracted with the County, San Martin would have savings to pay for mitigation as indicated on Table 3. He adds that the projected expenditure in the first year is overstated by approximately $300,000 to $500,000 and better applies to much larger towns of 60,000 to 70,000 people. He informs that the proponents will submit a letter relating to this matter. He then continues by stating that LAFCO has the discretion to use all or none of the Road Fund savings to offset the General Fund shortfall; however, the cooperation of the County will be required.

Maureen Peterson, a resident of San Martin, expresses concern on how the projected revenues are going to be realized and requests staff to provide the list of businesses by category indicating how the projected revenues will be realized. She informs that unlike the CFA, the IFA clearly indicated development and even illustrated where retail businesses, town hall and other developments would be located. She informs that if there in an average of two working adults on every parcel, there will be roughly 3,600 taxpayers in about 1,800 parcels. She comments that without expansion, the present population base could not sustain San Martin, and informs that the citizens oppose urban development. She then states that she will provide more details in an email to the Commissioners.

Kenneth Peterson, a resident of San Martin, informs that his family moved from San Jose because San Martin is quiet and peaceful and wants to keep the community that way. He informs that he is raising vegetables and farm animals. He then expresses the opinion that the whole reason for incorporating is to build up San Martin.

Lynne Bonino, a resident of San Martin, states that the incorporation is ill-timed because the current economic situation is the worst since the Great Depression and that the new town will only be established with a debt of over $1 million to the County. If FY2008-09 figures are used, that debt could be even larger because of reduced revenues and increased costs. She notes that it is risky to project that the revenues will keep pace with inflation, and discusses how the town's projected Road Fund deficit would absorb the General Fund surplus over the years. She then refers to a statement in the CFA that financial feasibility is based on how the new city should be able to maintain pre-incorporation level of services. She notes that San Martin's traffic enforcement service is not included in the budget projections in the CFA. In addition, the CFA lists a number of items that are not funded such as storm water management, plan and permit compliance, and maintenance of several rail routes, among others. She then inquires how these costs would be funded. She informs that the County currently has assigned a special deputy sheriff for agricultural problems and expresses concern that the escalating cost of food products would mean substantial law enforcement cost for the town. She then quotes a statement in the CFA that San Martin "may not be able to receive the same level of services currently provided by the County because of the city's smaller scale of operation and limited revenue base," and states that San Martin may not be financially feasible particularly if the CFA takes into account the present state of the economy and the unfunded services.

Larry Warren, a resident of San Martin, proposes that revenues and expenditures be provided in spreadsheets with best case and worst case scenarios. He comments that FY08 figures will not be available until August 2008,however, projections can be used for the CFA. He observes that the CFA does not show the worst case scenario because it does not take into account the actual reduced revenues and spiraling costs. As an example, a mere 10 percent reduction in tax revenue would amount to $84,000 in the first two years. He then questions the $274,000 revenues from planning and building fees because it has been assumed that there would be little or no building activity. He also questions whether it is reasonable to assume $42,000 in fines and penalties during the first year of incorporation. He then questions the reduction in FY2009-10 road maintenance allocation since the cost should actually increase.

Judith Comprechio, SMNA member, requests that the opponents for incorporation prepare tables illustrating their revenues and cost projections to enable the proponents to review these figures.

The Chairperson calls on Jenny Van't Rood, Sylvia Hamilton and Betsy Siemens to address the Commission and all waive their time to speak. The Chairperson determines that there are no more members of the public who would like to speak on the item.

In response to an inquiry by Commissioner Howe, Ms. Palacherla informs that the CFA is based on FY07 data and that the FY08 data would not be available until August or September 2008. Using the FY08 data would entail additional consultant cost and may require revision of the contract with EPS. In response to a follow-up question by Commissioner Howe, Ms. Palacherla indicates that the Certificate of Filing was issued on June 30, 2008, the law only requires that the CFA use the data from the prior fiscal year.

Commissioner Howe moves to accept the report and request the County of Santa Clara and the proponents to reopen revenue neutrality negotiations with a professional facilitator and focus on the road vs. general funds to make the County whole.

In response to an inquiry by Commissioner Wilson, Ms. Palacherla advises that the staff report includes a statement to the effect that even if LAFCO applies the entire Road Fund benefits to reduce the impact to the County's General Fund, the new town would still be unable to pay the reduced mitigation payments resulting in an incorporation proposal that would not be fiscally feasible. This also applies to the revised tables, as there will be years when the town will be unable to make the mitigation payments.

Commissioner Gage seconds the motion.

Commissioner Alvarado informs that she was supportive of the incorporation at the start of the process; however, as the Commission got deeper into the process, she doubts the fiscal feasibility of the town. Initially, the significant road improvements in the area made the revenue neutrality uncertain and recently, there is an issue on the use of restricted Road Fund to cover the General Fund shortfall. She states that she is convinced that there is not enough leeway to support uncertainties because of events that the Commission cannot foresee such as the deteriorating economy. As a LAFCO Commissioner, she states that her obligation is to ensure that the process is fair, transparent and accurate so the voters would have enough information to make the right decision. She states that it would be irresponsible for the Commission to go forward with the incorporation because a deficit of $70,000 or even a surplus of $200,000 will not make a viable city. She states that while she is not arguing with the legal opinion, she expresses the opinion that State law and LAFCO policies do not give LAFCO the discretion to figure out which figures work in favor of one side or the other. She adds that there are many pieces to the puzzle that are unclear to her, including the refusal by the proponents to fulfill LAFCO's disclosure requirements. She then informs that she is voting against the motion.

Commissioner Wilson informs that she opposes the motion because it is inconsistent. The staff report is clear that even with the revisions, the incorporation proposal is infeasible; thus, there is no reason for revenue neutrality negotiation.

Commissioner Gage comments that he has been relatively neutral throughout this process in order to allow San Martin residents to explore what they want to do with their community. However, he expresses concern that San Martin may not be solvent in the out years. He states that since there is not much reserves, a little incident could wipe out the town. However, since the legal opinion provides some discretion, he states that he would like to have the opportunity to work through that. He also states that if no agreement is reached, then it is up to LAFCO to decide and he cannot support the incorporation if the County cannot be held revenue neutral. He then states that he would support the motion to explore every aspect.

Commissioner Howe informs that the purpose of the motion is to reopen the revenue neutrality negotiation, in good faith, possibly with a facilitator. The Chairperson expresses agreement with reopening the negotiations and allowing the proponents and the County to work with a facilitator to find common ground. He then requests staff to maintain the reserve fund at 10 percent to further close the gap and questions if the

General Plan costs have been addressed. In response to that, Ms. Palacherla advises that this issue has been addressed in the consultant's memorandum included in the staff report. In response to a follow-up inquiry by the Chairperson, Ms. Palacherla advises that some costs are not based on the size of the town, rather on the type of the change, the process and the community. She states that the current figure for the General Plan is very reasonable .

Ms. Gallegos informs that the County would be willing to renegotiate under the conditions set by the Board of Supervisors that revenue neutrality payments are made to make the County General Fund whole. She indicates that she has no authority to enter into negotiations otherwise; and, the Board of Supervisors would have to authorize staff when it reconvenes in August 2008.

At the request of the Chairperson, Commissioner Howe amends the motion to convey a request to the Board of Supervisors to enter into revenue neutrality negotiations with the proponents. Commissioner Gage expresses agreement.

Ms. Palacherla informs that the next Board of Supervisors meeting will be on August 12, 2008 and advises that the October 1, 2008 deadline may not be met if the revenue neutrality negotiations are reopened thereafter. The Chairperson expresses the desire for the County to give this matter its full attention.

Mr. Van't Rood informs that the proponents would like to discuss road costs for the town which may result in revisions to the tables 1 and 3 and help with the revenue neutrality discussions. He then requests that the motion be amended to remove from the staff report a statement that the incorporation is not feasible because it is premature and tables could be revised. The Chairperson indicates that the proponents may work with staff to provide necessary information to facilitate the revenue neutrality negotiations because this is an evolving process. In response to Mr. Van't Rood's reiteration of his request to amend the motion to remove the statement regarding feasibility from the staff report, the Chairperson informs that the Commission cannot change the staff report and its acceptance does not indicate whether or not it is accurate or that the CFA is final.

The Chairperson calls the question. It is ordered on a vote of 3-2, with Commissioners Alvarado and Wilson voting against, that staff report be accepted, and that the Board of Supervisors be requested to enter into revenue neutrality negotiations with the proponents with the support of a professional facilitator.

6. UPDATE ON DISCLOSURE REQUIREMENTS AND PAYMENT OF LAFCO STAFF COSTS FOR THE PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

The Chairperson requests the staff report. Ms. Palacherla advises that the CKH Act and LAFCO policies require the disclosure of contributions and expenditures related to LAFCO applications. The proponents have indicated that disclosure is not required until the matter is a ballot measure. LAFCO Counsel in her response letter has stated that disclosure is required. She adds that LAFCO's responsibility for disclosure is likely to be shifted to FPPC by January 1, 2009 if legislation to that effect is successful. In the meantime, LAFCO is using the FPPC disclosure forms which use the definition for an election as included in the LAFCO policies and the proponents are requested to use those forms.

Relating to LAFCO staff costs, as of March 2008, the proponents owe LAFCO approximately $86,000, and staff time invoices for May and June will be provided soon. In May 2008, about $21,000 in legal cost has been incurred. She then directs attention to LAFCO Counsel's memorandum in the staff report relating to the options if the proponents are unable to pay LAFCO prior to the public hearing.

Commissioner Gage comments that the Commission has operated on the premise of fairness and that the Fee Agreement must be honored whether or not the incorporation is successful because LAFCO must be paid for the staff work.

The Chairperson opens the public comment period for this item.

Mr. Van't Rood informs that these disclosure requirements may not apply to the San Martin incorporation proposal because the application was filed prior to the policies. He states that he was informed by the Fair Political Practices Commission (FPPC) hotline that FPPC did not have jurisdiction over this. He comments that FPPC forms create ambiguity and confusion for LAFCO's disclosures. He states that the proponents will provide either a spreadsheet or a letter to the Commission as an initial disclosure.

In response to an inquiry by Commissioner Gage, Mr. Van't Rood informs that he would comply with the disclosure requirements by July 11, 2008. Commissioner Gage expresses agreement.

Margaret Wolford, a resident of San Martin, questions the proponents' refusal to comply with the disclosure requirement. She informs that she received a mail from the proponents and that should be disclosed because it indicated that SMNA is funding the application process and is for the incorporation. She then expresses agreement with Commissioner Alvarado that the present economic situation is not the right time for incorporation.

The Chairperson expresses agreement with Ms. Wolford that disclosures should make the process transparent and asks if staff could revise the disclosure forms to eliminate confusion. In response to an inquiry by the Chairperson, Ms. Palacherla informs that the proponents and opponents are subject to the disclosure policy.

Commissioner Alvarado states that the most important characteristic of a public agency is transparency, and disclosure holds decision makers accountable and enables the public to understand where the financial influence is coming from. She states that she does not know who the other proponents are except for a few people who consistently attend the LAFCO meetings. She expresses concern regarding Mr. Van't Rood's letter to staff and states that policy makers must know about the financial influence, where it is coming from, what kind of resources, and how the expenses have been paid for.

Commissioner Wilson moves to accept the staff report, and direct staff to revise the forms to meet the CKH Act disclosure criteria, and to work with LAFCO Counsel if necessary. Commissioner Gage seconds the motion.

In response to an inquiry by the Chairperson, Commissioner Wilson indicates that her motion includes direction to staff to modify the FPPC disclosure form in a way that complies with statutory disclosure requirements. In response to an inquiry by Commissioner Howe, Ms. Subramanian informs that a spreadsheet from the proponents would be made available to the Commission and would later be transferred to the modified FPPC form. In response to an inquiry by Commissioner Howe, Ms. Palacherla advises that disclosures could be made available on the LAFCO website. Upon the request of Commissioner Howe, Commissioner Wilson amends the motion to include direction to staff to post disclosures relating to the proposed incorporation on the LAFCO website. Commissioners Wilson and Gage express agreement.

The Chairperson calls the question. It is unanimously ordered on a vote of 5-0 that the staff report be accepted, staff be directed to revise the FPPC forms in a way that meets the CKH Act disclosure criteria and work with the LAFCO Counsel if necessary, and to post any disclosure on the LAFCO website.

7. UPDATE ON SCHEDULE FOR THE PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

The Chairperson requests the report. Ms. Palacherla directs attention to her staff report stating that the public hearing is scheduled for October 1, 2008 and this timeframe includes an allowance for potential revenue neutrality negotiations during the period from July 2 to August 18, 2008 and the consideration of a potential agreement by the Board of Supervisors on August 26, 2008. She then discusses possible adjustments to the schedule.

In response to the comment by Commissioner Gage, Ms. Palacherla advises that the Board may consider at its August 12, 2008 meeting the reopening of revenue neutrality negotiations for a period of 30 to 40 days. Commissioner Gage expresses agreement. In response to an inquiry by Commissioner Wilson, Ms. Palacherla advises that LAFCO policy allows 90 days for revenue neutrality negotiations; however, there is no policy for the duration of a second round of negotiations. Commissioner Wilson proposes that negotiations be shortened to 20 days because the two parties would only need to resolve specific issues. Commissioner Gage indicates that 10 days would be enough time for revenue neutrality negotiations.

Commissioner Howe informs that he would not be available on November 12 and proposes that the meeting be scheduled to November 10. He also adds that he would not be available from November 11 to 17, 2008. Ms. Palacherla advises that staff would work with the Commissioners on the schedule. In response to an inquiry by the Chairperson, Ms. Palacherla advises that there is no need to have a meeting before October 1 because the Board of Supervisors will not meet until August 12, 2008 and that there are no applications to LAFCO for the August meeting.

On motion of Commissioner Wilson, seconded by Commissioner Gage, it is unanimously ordered on a vote of 5-0 that the schedule be revised to allow a 10-day revenue neutrality negotiation period on August 12, 2008, and that staff be directed to find an alternate date for the proposed November 12 meeting to enable Commissioner Howe to participate.

The Chairperson calls on Brian Schmidt who has requested to speak on the item.

Brian Schmidt, Committee for Green Foothills, quotes a statement made by the LAFCO Counsel regarding CEQA that "keeping in mind the low bar for fair argument standard, we believe that inclusion in the record of the information discussed above (environmental impacts), there is probably substantial evidence to support preparation of either an MND or EIR." He states that the LAFCO Counsel then states that it is up to the Commission to determine whether or not physical impacts would exist. The reason why it is relevant to the schedule is because the record for this item is not closed and more evidence could likely be submitted to LAFCO. He then proposes that the Commission reconsider the issue of whether a Negative Declaration is sufficient either in an open discussion or a closed session.

At the request of Commissioner Wilson, Ms. Palacherla advises that the deadline for payment of LAFCO fees will be before September 1, 2008 which is 30 days before the October 1, 2008 hearing. She adds that the first disclosure will be required on August 22, 2008, which is 40 days prior to the LAFCO public hearing. She then indicates that staff will provide the staff time invoices in a timely manner to the proponents.

8. COMMISSIONERS' REPORTS

Commissioner Wilson requests that commissioners address the vote of no confidence made by the Committee for Green Foothills and echoes the concerns raised by the organization. She informs that she takes her duty as a LAFCO commissioner seriously in upholding CKH Act and the policies that the Commission has established over several decades. Commissioner Alvarado informs that she too takes the LAFCO role very seriously and with a great sense of responsibility.

The Chairperson informs that this issue is not on the agenda and should be properly noticed for discussion, if desired.

9. EXECUTIVE OFFICER'S REPORT

There is no report from the Executive Officer.

10. NEWSPAPER ARTICLES / NEWSLETTERS

There are no newspaper articles.

11. ADJOURN

The Chairperson announces that the LAFCO meeting scheduled for August 6, 2008 is cancelled..

On order of the Chairperson, there being no objection, the meeting is adjourned at 4:01 p.m. to the next regular meeting to be 'held on Wednesday, October 1, 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