

**LOCAL AGENCY FORMATION COMMISSION OF  
SANTA CLARA COUNTY  
MINUTES WITH REVISIONS  
WEDNESDAY, SEPTEMBER 10, 2008**

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**1. ROLL CALL**

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 10th day of September 2008 at 1:15 p.m. in the Isaac Newton Senter 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 Don Gage and John Howe. Commissioner Blanca Alvarado is absent. Alternate Commissioner Terry Trumbull is present.

The LAFCO staff in attendance includes Neelima Palacherla, LAFCO Executive Officer; Dunia Noel, LAFCO Analyst; and, Mala Subramanian, LAFCO Counsel for the San Martin incorporation proposal.

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

**2. PUBLIC PRESENTATIONS**

There are no public presentations.

**3. APPROVE MINUTES OF JUNE 4, 2008 AND JULY 2, 2008 MEETINGS**

On motion of Commissioner Gage, seconded by Commissioner Howe, it is unanimously ordered on a vote of 4-0, with Commissioner Alvarado absent, that the minutes of June 4, 2008 and July 2, 2008 be approved, as submitted.

**4. OPTIONS FOR REVENUE NEUTRALITY TERMS FOR THE PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN**

The Chairperson requests the report. Ms. Palacherla briefly discusses Table 1 of the staff report, which is the 10-year budget projections for the town, and Table 3, which illustrates the impact to the County. She states that since revenue neutrality negotiations have failed, State law requires the Commission to impose terms and conditions. She then briefly discusses the options for revenue neutrality. Ms. Subramanian advises that the staff

report includes her memorandum discussing some of comments made by the proponents and her recommendation and analysis.

The Chairperson opens the public comment period for this item.

John Wolfinbarger, a member of San Martin Neighborhood Alliance (SMNA), gives his time to Richard Van't Rood.

Mr. Van't Rood, SMNA spokesperson, conveys to the Commission a letter signed by about 200 San Martin residents requesting that the Commission allow residents to vote on the incorporation without raising taxes. He then states that Option 3 was presented for negotiations and comments on Option 4.

The Chairperson calls those who requested to speak: Reggie Bravo, JF Comprechio, Jeannie Van't Rood, Candice Tohamson, Sylvia Hamilton, Joe Bentley, and all of whom indicate that Mr. Van't Rood had spoken for them.

Miguel Marquez, Assistant County Counsel, County of Santa Clara, states that the County's position is to ensure that the General Fund is whole, and that the Commission cannot unilaterally impose an offset of one fund against the other. He informs that the County will disagree if LAFCO considers the benefits of road fund as an offset to the County General Fund impact. He expresses agreement with LAFCO Counsel's analysis that restricted and unrestricted funds be segregated.

In response to an inquiry by Commissioner Wilson, Ms. Palacherla advises that staff is seeking direction from the Commission at this meeting relating to the Terms and Conditions. In response to a follow-up question by Commissioner Wilson, Ms. Palacherla informs that Option 1 is not be feasible without a tax increase. In response to an inquiry by Commissioner Wilson on Option 4, Ms. Subramanian advises that County savings on the Road Fund could partly offset a percentage of General Fund loss, not dollar-for-dollar, because the town assumes road services that the County will no longer provide.

In response to Commissioner Wilson's questions, Mr. Van't Rood states that with proper findings, Option 3 could be adopted in terms and conditions. Commissioner Howe confirms with staff that the County and proponents did not reach agreement on Option 2.

Commissioner Gage inquires about the difference in opinion between the LAFCO Counsel and the County Counsel. Mr. Marquez states that the statutes require that the County's General Fund be kept whole so the County can continue to provide countywide services. He states that restricted funds should be segregated from General Fund since they cannot be used to pay for other countywide services. In response to another inquiry by Commissioner Gage, Mr. Marquez informs that Road Fund surplus can not be given back to San Martin because these have heavy restrictions on how the funds are spent and for what specific purpose. Ms. Subramanian states that incorporation is not meant to benefit either the County or the new town. She then informs that the Streets and Highways Code has a mechanism by which the County could provide aid for maintaining city roads. Commissioner Gage comments that savings in the County Road Fund which should have gone to San Martin should be returned to San Martin. Mr. Marquez advises that the County opposes both options 2 and 4. Deputy County Executive Sylvia Gallegos states that the historical context for revenue neutrality is to protect the County's General fund. She then talks about County's budget deficits and how the \$872,000 is substantial in the context of County budget shortfall. She informs that road expenses are growing by 15 percent each year due to increasing cost of asphalt and steel, while the Road Fund revenues, which are not indexed to inflation, are declining. The Chairperson comments that the County is of the opinion that it can keep the Road Fund surplus and seek mitigation of General Fund loss. In response to this, Ms. Gallegos advises that the reason for this is because Road Fund cannot be used to offset the shortfall in the General Fund. In response to a follow up inquiry by the Chairperson, Ms. Gallegos advises that the legislative intent of revenue neutrality is to protect the County's General Fund. In response to the inquiry by the Chairperson, Mr. Marquez informs that the County would agree to terms and conditions that keeps the General Fund whole and holds the County harmless.

In response to an inquiry by Commissioner Howe, Ms. Palacherla advises that the County's Road Fund savings of approximately \$1.5 million was based on expenditures for roads in FY06-07 and is much higher than a typical year; and, the Commission has the

discretion to consider lower savings in determining revenue neutrality. Commissioner Howe questions if the statute requires the use of FY06-07 data in the CFA and Ms. Palacherla expresses agreement. Commissioner Howe questions if the road spending in FY06-07 is \$1.5 million and Ms. Gallegos expresses agreement.

Commissioner Wilson moves to direct staff to look at options 1 and 4 and return with a recommendation at the October 1, 2008 public hearing. Commissioner Gage seconds the motion.

In response to an inquiry by the Chairperson, Ms. Subramanian advises that a certain percentage could be used to offset General Fund loss and provides an example of a city, paying an adjacent city in restricted fund. In response to an inquiry by the Chairperson, Ms. Subramanian advises to keep the restricted and unrestricted funds separate.

In response to an inquiry by Commissioner Gage, Ms. Palacherla informs that staff will look at options 1 and 4 and bring back a recommendation at the next meeting. However, she informs that the October 1, 2008 hearing may be rescheduled to November 7, 2008. The Chairperson states that the schedule will be discussed on the next item.

Commissioner Howe then summarizes the motion. Commissioner Wilson expresses agreement and informs why options 2 and 3 are not included in her motion.

Chairperson calls the question. It is unanimously ordered on a vote of 4-0, with Commissioner Alvarado absent, that staff be directed to bring back information on Option 1 and Option 4 at the next meeting.

**5. UPDATE ON (a) PAYMENT OF LAFCO STAFF COSTS, (b) COMPLIANCE WITH DISCLOSURE REQUIREMENTS, AND (c) PROPOSED SCHEDULE FOR THE SAN MARTIN INCORPORATION PROCESS**

The Chairperson informs that the discussion to move the hearing to November 7, 2008 was a result of his comments that he may be unavailable on October 1, 2008; since then, he has changed his plans in order to attend the meeting . The Chairperson then requests the staff report. Ms. Palacherla reports on the proposed schedule, and provides an update on fees stating that the unpaid LAFCO fee at the end of July 2008 is \$153,473.65.

She recommends that the FPPC forms be used for filing the disclosure and that SMNA is not fully compliant with the requirements.

The Chairperson opens the public comment period for this item.

Jan Webb, a resident of San Martin, states that she opposes the incorporation because she prefers to live in the unincorporated area and wants San Martin to remain unincorporated. She dealt with County staff over the years and is impressed by their consistent helpful attitude. The incorporation is a wasteful process that would burden County taxpayers if it failed and the residents of San Martin if it succeeded. She then requests the Commission to hold the election in a public election year where there will be more voter turnout.

Mr. Van't Rood states that he opposes the option to tax the residents of San Martin and comments that State and local guidelines have not been followed because the boundary issue was not addressed before the petition was circulated and that meant additional costs and time. He states that proponents did not have the support of LAFCO staff in revenue neutrality negotiations, especially since staff opined that the town was not feasible. Additionally, he states that the Public Review Draft CFA must include Terms and Conditions, and be posted 30 days prior to LAFCO hearing.

At the request of the Chairperson, Ms. Subramanian advises that the Public Review Draft CFA has been made available to the public longer than the required 30-day period even if some tables have been revised. In response to a follow-up inquiry by the Chairperson, Ms. Subramanian informs that the Terms and Conditions will be based on Commission's direction, and since it is the Commission's own policy that dictates these timelines, the October 1, 2008 hearing may be continued to November 7, 2008 to allow the public 30 days to review the Terms and Conditions. Mr. Van't Rood expresses disagreement stating that the Terms and Conditions should be made available at the first public hearing, stating that the continuance is a way to make the proponents pay the LAFCO fee. He informs that the tables in the Public Review Draft CFA have been changed several times and that the document should include revenue neutrality terms.

Ms. Subramanian directs attention to the LAFCO policy as it relates to the hearing schedule. Commissioner Gage proposes that the public hearing be held on November 7, 2008 and that payment of LAFCO fees be required prior to that date. Ms. Subramanian advises that a public hearing on November 7, 2008 would allow the CFA and Terms and Conditions to be made available to the public for a 30-day period. She adds that the CFA has already been reviewed by the public and staff has received many comments. In response to an inquiry by Commissioner Howe, Mr. Van't Rood indicates that the law requires a 30-day review period for the Terms and Conditions. Ms. Subramanian clarifies that the Commission's policies requires the 30-day period and not State law. Mr. Van't Rood states that OPR Guidelines requires that. Commissioner Gage informs that OPR guidelines are not State law and, as such, the Commission may decide on this matter. Commissioner Gage then summarizes the hearing timeline and Ms. Subramanian expresses agreement. In response to an inquiry by Commissioner Wilson on the CFA timing, Ms. Subramanian advises that there is no State law provision that governs this process; however, the Chairperson states that guidelines inform the public on what to expect.

Commissioner Gage moves that a meeting be held on October 1, 2008 to determine revenue neutrality, and that staff be directed to publish a Public Review Draft CFA, along with the Terms and Conditions, 30 days prior to November 7, 2008 public hearing. Commissioner Howe seconds the motion.

Commissioner Gage comments that both the October 1, 2008 and November 7, 2008 are both public meetings and the agenda should specify the intent of each meeting. Ms. Subramanian expresses agreement.

Commissioner Gage amends the motion to require that LAFCO fees be paid in full 72 hours prior to the November 7, 2008 meeting. Commissioner Wilson reminds that the disclosure requirements should be complied with and Commissioner Gage states that this will also be included in his motion. Ms. Palacherla advises that the disclosures are now due and informs that other FPPC forms on the LAFCO website are also applicable to the

proposal. Commissioner Wilson proposes that this item be taken under a separate action. The Chairperson expresses agreement.

The Chairperson calls the question. It is unanimously ordered on a vote of 4-0, with Commissioner Alvarado absent, that a meeting be held on October 1, 2008 for the Commission to provide direction on revenue neutrality, that staff be directed to publish the Public Review Draft CFA, along with the Terms and Conditions 30 days prior to the November 7, 2008 public hearing; and that the proponents be required to pay the LAFCO fees in full no later than 72 hours prior the hearing.

The Chairperson opens discussion on the disclosure requirements. Mr. Van't informs that local policy requires the disclosures at the first public hearing and informs that the proponents have provided a preliminary disclosure; however, SMNA's treasurer is ill and was unable to prepare the FPPC forms. Commissioner Wilson informs that LAFCO requires the use of FPPC forms. In response to inquiry by Commissioner Gage, Ms. Palacherla advises that the staff report recommends that FPPC forms be used in lieu of staff preparing new forms considering that this function will be transferred to FPPC in January 2009, and that some guidance on preparing these forms is available on the LAFCO website. Commissioner Gage informs the proponents to contact staff for additional information.

Commissioner Gage moves to require proponents to comply with the disclosure requirements using the FPPC forms. Commissioner Wilson seconds the motion and proposes that a deadline be indicated because some of the filings are past due. The Chairperson comments that it would be fair to allow the proponents additional time because the forms have not been modified. Commissioner Gage modifies his motion to indicate that disclosures be filed no later than two weeks from today. In response to an inquiry by Ms. Subramanian, the Chairperson clarifies that the Commission sets September 24, 2008 as a new deadline for any disclosure forms, including those that have been due.

The Chairperson calls the question. It is unanimously ordered on a vote of 4-0, with Commissioner Alvarado absent, that disclosures for the proposed incorporation be submitted using FPPC forms no later than September 24, 2008.

**6. COMMISSIONERS' REPORTS**

Commissioner Howe informs that he attended the CALAFCO Conference on September 2-5, 2008 and reports that Commissioner Wilson has been elected as Vice-Chairperson of CALAFCO, and that Emmanuel Abello, LAFCO Clerk, made a presentation.

**7. EXECUTIVE OFFICER'S REPORT**

There are no reports.

**8. NEWSPAPER ARTICLES / NEWSLETTERS**

There are no newspaper articles.

**9. ADJOURN**

On order of the Chairperson, there being no objection, the meeting is adjourned at 2:35 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.

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Pete Constant, Chairperson  
Local Agency Formation Commission

ATTEST:

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Emmanuel Abello, LAFCO Clerk