

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

1. ROLL CALL

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 3rd day of December 2008 at 1:15 p.m. in the Isaac Newton Senter (INS) Auditorium, County Government Center, 70 West Hedding Street, San Jose, California, with the following members present: Chairperson Pete Constant, Vice Chairperson Susan Vicklund-Wilson, and Commissioners Blanca Alvarado, Don Gage and John Howe. Alternate Commissioners Al Pinheiro and Terry Trumbull are also present.

The LAFCO staff in attendance includes Neelima Palacherla, LAFCO Executive Officer; and Dunia Noel, LAFCO Analyst. Kathy Kretchmer, is present as LAFCO Counsel from the County Counsel's office for all items on the agenda except the San Martin incorporation proposal. Mala Subramanian is present as LAFCO Counsel for the San Martin incorporation proposal.

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

2. NEW ALTERNATE COMMISSIONER: KEN YEAGER, COUNTY REPRESENTATIVE

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

3. PUBLIC PRESENTATION

There are no public presentations.

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

4. APPROVE THE MINUTES OF NOVEMBER 7, 2008 MEETING

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

5. APPROVE CONSENT CALENDAR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On motion of Commissioner Gage, seconded by Commissioner Howe, it is unanimously ordered on a vote of 5-0 that the Commission find this annexation categorically exempt from the provisions of CEQA pursuant to Class 19, Section 15319 (a) & (b); and Class 3, Section 15303(a); that the annexation to SCCCFPD, be approved; that the LAFCO Executive Officer be directed to conduct the protest proceedings pursuant to CKH Act.

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

8. CLOSED SESSION

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

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

The Commission reconvenes at 2:23 p.m.

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

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

provides a 30-day reconsideration period after the Commission adopts the resolution denying the application. During that period, any person may file a written request for reconsideration indicating any new facts that must be considered. The reconsideration request will then be noticed and placed on the agenda of the next LAFCO meeting. The fee for reconsideration is based on actual staff time with an initial deposit of \$2,350.

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

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

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

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

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

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

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

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

Sylvia Hamilton, SMNA President, expresses appreciation to commissioners who have listened to the proponents and kept open minds. She states that the proponents took inspiration from the Founding Fathers' legacy of self-governance and that the County would not go along with that legacy if San Martin is not allowed to incorporate. She comments that there are items in the CFA that are costlier than they needed to be and that is the reason why the proponents are requesting the State Controller's review. She then comments that the incorporation process was made difficult.

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

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

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

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

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

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

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

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

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

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

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

11. APPOINTMENT OF CHAIRPERSON AND VICE-CHAIRPERSON FOR 2009

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

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

12. 2009 SCHEDULE OF LAFCO MEETINGS

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

13. EXECUTIVE OFFICER'S REPORT

There is no report from the Executive Officer.

14. COMMISSIONERS' REPORTS

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

it offers opportunity to do good for the County. She then commends Brian Schmidt, Committee for Green Foothills, for being consistently present at the LAFCO meetings and for all his work to safeguard the interests of the County with regard to environmental issues and land use policies. She then thanks commissioners and staff for a commendable job.

15. WRITTEN CORRESPONDENCE

There is no written correspondence.

16. NEWSPAPER ARTICLES

There are no newspaper articles.

17. PENDING APPLICATIONS / UPCOMING PROJECTS

There are no pending applications.

18. ADJOURN

On order of the Chairperson, there being no objection, the meeting is adjourned at 3:01 p.m. to a regular meeting to be held on Wednesday, February 4, 2009 at 1:15 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California.



Pete Constant, Chairperson
Local Agency Formation Commission

ATTEST:



Emmanuel Abello, LAFCO Clerk