



COMMITTEE FOR
GREEN FOOTHILLS

Committee for Green Foothills NEWS RELEASE

FOR IMMEDIATE RELEASE: **June 24, 2008**

PRESS CONTACTS:

Brian Schmidt, Legislative Advocate
phone (650) 968-7243 * brian@greenfoothills.org

Following Multiple Environmental Failures Committee for Green Foothills Votes "No Confidence" in Santa Clara County LAFCO

FOR THE FIRST TIME IN THE ORGANIZATION'S HISTORY, THE COMMITTEE FOR GREEN FOOTHILLS PASSED A RESOLUTION OF "NO CONFIDENCE" IN LAFCO BASED ON MULTIPLE FAILURES TO LISTEN TO NEUTRAL ADVICE AND FOLLOW ITS OWN ANTI-SPRAWL POLICIES

At the June Board meeting in Palo Alto, The Committee for Green Foothills (CGF) Board of Directors passed a resolution of "No Confidence" in the Santa Clara County Local Agency Formation Commission (LAFCO), stating that LAFCO's repeated failure to follow its own environmental policies appears likely to continue in the future. CGF cited multiple instances of 3-2 votes by the LAFCO Commission rejecting independent, neutral evaluations by staff and hired consultants, and instead promoting sprawl development. The three Commission members placing these questionable votes were San Jose City Councilmember Pete Constant, Sunnyvale City Councilmember John Howe, and County Supervisor Don Gage, while the two voting in the minority were County Supervisor Blanca Alvarado and private citizen Susan Vicklund-Wilson.

After much deliberation, CGF's Board made the No Confidence finding for the first time in the environmental organization's 46-year history, citing multiple occasions where a bare majority of the LAFCO Commission has voted to disregard the neutral advice and failed to follow policies limiting sprawl (see attached "Resolution of No Confidence in Santa Clara County LAFCO"). "Problems with LAFCO date back to last year, when the Commission on a 3-2 vote decided to extend the southwest corner of Morgan Hill outward and labeled it 'infill'," said Brian Schmidt, the Committee's Legislative Advocate. "This year, LAFCO was tasked to set the boundaries for the potential incorporation of San Martin between Morgan Hill and Gilroy. Again on the basis of 3-2 votes, it ignored recommendations by four neutral evaluators to minimize the environmental impact of the boundaries and to document the environmental impact of the boundaries it chose. These

**COMMITTEE FOR
GREEN FOOTHILLS**

3921 E. Bayshore Road
Palo Alto, CA 94303

650.968.7243 PHONE
650.968.8431 FAX

info@GreenFoothills.org
www.GreenFoothills.org

repeated violations of LAFCO's own policies requiring cities to only grow slowly and when the land is needed - have caused us to lose all confidence in LAFCO following its policies in the future."

CGF's No Confidence resolution calls on the bodies responsible for LAFCO Commission appointments to communicate with their appointees and "take appropriate action to rectify the situation." The resolution also calls for increased scrutiny of LAFCO by the public, news media, and other environmental organizations until the problems have been resolved.

LAFCO's purpose under state law and County policies is to "referee" the growth of cities and extension of urban services, stopping the sprawl that comes from uncontrolled expansion and limiting city expansion to only the amount needed for the cities' anticipated growth. Other cities like San Jose, Gilroy, and Morgan Hill have Urban Service Area boundaries, limiting where city services like sewer and water line access occurs. Beyond the Urban Service Area is the Sphere of Influence, where land is currently under County jurisdiction but might at some future time become incorporated into the City. LAFCO must decide whether to approve city proposals to extend the Urban Service Area boundaries further out into a Sphere of Influence, and LAFCO can exercise its authority to stop harmful sprawl. The San Martin proposal, however, attempts to change the rules.

"The proposed City of San Martin would have the City's Urban Service Area extend all the way to the Sphere of Influence boundaries for Morgan Hill in the north and Gilroy in the south, including thousands of acres of working farmland in the city boundaries," said Schmidt. "This proposal contradicts the whole idea that cities should start small and then grow outward. We understand that some incorporation supporters think the farmlands won't be lost, but any city council election could result in a complete revamping of land use and loss of farmland. This is confirmed by the fact that all the neutral evaluators hired by LAFCO, told them not to do this. LACFO members on the 3-2 vote simply chose to ignore that advice. "

LAFCO's first outside counsel (an attorney for the County that represented LAFCO) and LAFCO's own staff stated that the failure to exclude heavily agricultural areas violated LAFCO policies for preserving open space. LAFCO then hired an environmental consultant who determined that a simple environmental document would be inadequate because of the potential for significant environmental impacts. LAFCO's new outside counsel, hired because of a potential conflict of interest with the County, agreed that evidence suggested a physical impact and required more environmental review and protection. "All told, four neutral evaluators hired by LAFCO recommended either a reduced size of San Martin to protect farmland - or increased environmental review if LAFCO did not reduce the size," said Schmidt. "LAFCO refused to do this multiple times without any basis for ignoring its own guidelines. This is just like its decision to extend the southwest corner of Morgan Hill outward despite the guideline that the expansion could only be in the case of 'infill'."

LAFCO's action raised the possibility of legal action against the agency. Inadequate environmental documents can be easily challenged in court, something that LAFCO's counsel pointed out in written comments at the June 4, 2008 meeting. Normally, exposure to legal liability does not impose a financial burden on taxpayers because agencies obtain indemnification agreements from applicants. In the LAFCO-San Martin case, however, the agency voted by the same 3-2 margin not to require an indemnification agreement, so Santa Clara County taxpayers will have to pay for legal costs and fees.

As an example of the information received and ignored by LAFCO, CGF pointed to a memo submitted by LAFCO's outside law firm. While the attorneys stated that LAFCO has the ultimate authority to decide whether incorporation with expanded boundaries has environmental impacts, the firm's own recommendation stated, "Keeping in mind the low bar of the fair argument standard, we believe that with the inclusion in the record of the information discussed above [demonstrating impacts], there is probably substantial evidence to support preparation of either a MND or EIR." Disregarding this advice, LAFCO chose not to prepare a MND (Mitigated Negative Declaration, requiring additional environmental protections) or an EIR (Environmental Impact Report, a comprehensive environmental document that acknowledges significant impacts).

LAFCO has five members, with two from the County Board of Supervisors (Supervisors Don Gage and Blanca Alvarado), one from San Jose City Council (Councilmember Pete Constant), one from the County Association of Cities (Sunnyvale City Councilmember John Howe), and one member appointed from the public (Susan Vicklund-Wilson of Morgan Hill).

###

About the Committee for Green Foothills

Committee for Green Foothills is a regional grassroots organization working to establish and maintain land-use policies that protect the environment throughout Santa Clara and San Mateo Counties. Committee for Green Foothills, established in 1962, is a Bay Area leader in the continuing effort to protect open space and the natural environment. For more information about the Committee for Green Foothills or about our work on this issue, visit www.GreenFoothills.org.

###

Attachment: Resolution of No Confidence in Santa Clara County LAFCO, passed by the Committee for Green Foothills Board of Directors, June 18, 2008

Whereas, Santa Clara County Local Agency Formation Commission (LAFCO) on April 4, 2007, voted 3-2 to extend the southwest corner of Morgan Hill outwards by 18 acres to accommodate conversion of agricultural-zoned land to residential uses;

And whereas, the southwest extension of Morgan Hill was approved contrary to advice of LAFCO staff and environmental organizations;

And whereas, the outward extension changed adjacent land in active agricultural use from being bordered with residences on one side to being bordered by residences on two sides;

And whereas, such outward extension of a city's corner, to purportedly meet LAFCO policies, was labeled "infill";

And whereas, LAFCO on February 6, 2008 voted 3-2 to tentatively approve boundaries for the proposed City of San Martin that would be coterminous with its Sphere of Influence;

And whereas, the boundaries would allow the proposed City to potentially develop all the way to the boundaries of Morgan Hill's and Gilroy's Spheres of Influence without any further approval of LAFCO;

And whereas, the coterminous boundary for San Martin was opposed by LAFCO staff, LAFCO Counsel, and by environmental organizations;

And whereas, LAFCO Policies 3e and 3h, pointed out by LAFCO staff and Counsel, call for compact development and preservation of farmland and open space;

And whereas, Santa Clara County's General Plan and LAFCO enabling legislation call for preserving open space and regulating orderly growth of cities;

And whereas, on April 28, 2008 LAFCO's outside environmental consultant informed LAFCO that growth inducement impacts and agricultural impacts required preparation of a Mitigated Negative Declaration with new environmental protections not included in the previous environmental report;

And whereas, on June 4 2008 LAFCO's newly-appointed outside legal counsel agreed with LAFCO's environmental consultant that a Mitigated Negative Declaration or even an Environmental Impact Report should be prepared on the basis that the existing Negative Declaration may not be found legally adequate;

And whereas, despite four independent, neutral recommendations to take actions to reduce the incorporation's impacts that relate to boundaries (from the first LAFCO Counsel, second LAFCO outside counsel, LAFCO's environmental consultant, and LAFCO staff), LAFCO voted 3-2 not to require preparation of additional environmental documents or additional environmental protections;

And whereas, other examples demonstrate problems with LAFCO's commitment to follow its policies requiring preservation of open space;

And whereas, attempts by environmental organizations to persuade LAFCO to follow its policies for environmental protection have been unsuccessful;

And whereas, LAFCO's consistent failure to provide reasonable restraint on sprawl indicates it will behave similarly in the future;

And whereas, Santa Clara County City Governments and the County Government, responsible for appointments of LAFCO Commissioners, must consider the grave effects from LAFCO's dysfunction;

THEREFORE, BE IT RESOLVED, that the Committee for Green Foothills Board of Directors expresses no confidence in Santa Clara County LAFCO's recent, current, and future performance of its obligations to protect the environment, regulate orderly growth, and preserve open space;

AND BE IT FURTHER RESOLVED; that Committee for Green Foothills requests the authorities responsible for appointments to LAFCO immediately begin discussions with Commission members and take appropriate action to rectify the situation;

AND BE IT FURTHER RESOLVED; that the Committee for Green Foothills urges the public, the news media, and other environmental organizations to increase their scrutiny of LAFCO actions until the situation is resolved.