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October 21, 2008 (Agenda)

Contra Costa Local Agency Formation Commission
651 Pine Street, Sixth Floor
Martinez, CA 94553

Request for Reconsideration – Alamo Incorporation

Dear Commissioners:

DISCUSSION:

On September 18, 2008, the Commission conditionally approved the incorporation of the Town of Alamo, and related actions including establishing a coterminous sphere of influence (SOI) for the Town of Alamo and corresponding dissolutions of and detachments from various County Service Areas (LAFCO 07-27).

The Commission's approval of the incorporation was based on the required statutory findings, including the finding of fiscal feasibility, pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 ("CKH Act" Gov. Code Section 56000 et seq.).

Government Code Section 56895 (Attachment 1) provides that when LAFCO adopts a resolution making determinations, any person or affected agency may file a written request with LAFCO requesting amendments to or reconsideration of the resolution. The request shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously are claimed to warrant the reconsideration. Requests for reconsideration must be received within 30 days of the adoption of the LAFCO resolution. The deadline for submitting a request for reconsideration in response to the Alamo incorporation proposal is October 18. However, given that this is a Saturday, we extended the date to Monday, October 20, 2008.

On September 25, 2008, LAFCO received a request for reconsideration from R. Jean Taylor (Attachment 2). The letter was received in a timely manner and is presented for the Commission's consideration. As of this writing, only one request for reconsideration has been received.

Ms. Taylor states in her letter that "reconsideration is requested to correct several procedural

defects in LAFCO's actions at the September 18, 2008 hearing because there was insufficient information at that time to make a decision.” In her letter, Ms. Taylor includes a list of issues that were raised during the September 18 LAFCO hearing. These issues, along with LAFCO staff analysis and recommendations, are presented below.

1. Concerns expressed by speakers at the hearing that remain unaddressed:

- a. *The overly optimistic Comprehensive Fiscal Analysis (CFA) – Ms. Taylor indicates that the CFA does not reflect cost increases for contract services caused by Contra Costa County's budget issues, and underestimates costs.*

Response: Pursuant to State law, the CFA was developed based on the best available information. The assumptions used in compiling estimated future revenues and expenditures are based on existing cost and revenue data provided by the County, State and other current service providers. The forecast model also utilizes various industry standard forecast methodologies such as per capita estimating, growth-based estimating, and review of comparable city data.

Revenues and cost estimates, in most cases, have been projected to future years at a general inflation rate of 3.1% annually, based on the statistical 10 year annual change in the Consumer Price Index for the San Francisco Bay Area. The CFA makes no specific assumptions regarding salary and benefit increases above the inflation rate, as these are dependent on future budgetary assessments and policy decisions. However, the CFA does include an approximate one percent real cost increase to account for within grade (step) increases within city staff classifications. This is consistent with the industry standard for these types of fiscal studies.

- b. *Lack of resident involvement in the application process – The letter indicates that residents were not included in the application for incorporation process, the definition of the government proposed, or any approval of the application for incorporation.*

Response: Applications can be submitted to LAFCO either by resolution of an affected agency (e.g., County, city, special district) or by petition of affected registered voters or land owners. Most incorporations are initiated through registered voter petition.

According to the State Office Planning and Research Incorporation Guidelines, “*The process of explaining the goals of an incorporation effort to potential signers of the petition is an important step in the education of the community about the issues involved in and the purpose of incorporation. The process of gathering signatures on petitions is also a means of determining the level of support for incorporation and gathering feedback from residents.*”

The application to incorporate the Town of Alamo was submitted to LAFCO by a petition of registered voters. The petition was signed by approximately 32% (3,117) of the registered voters in Alamo.

With regard to the definition of government, by law, a new city must incorporate as a general law city.

With regard to approval of the application, pursuant to the CKH Act, LAFCO is responsible

for approving or disapproving an incorporation proposal.

- c. *The misleading petition for the application to incorporate – Ms. Taylor indicates that residents were misled by petition volunteers about the purpose of the petition, and were not shown the entire petition and its incorporation proposal during the petition drive.*

Response: LAFCO was provided a copy of the Alamo incorporation petition in July 2007; the petition was approximately three pages in length. The petition drive was initiated on September 5, 2007. All signed petitions were delivered to the LAFCO office and each signed petition included the full petition text. The petition drive ended in late October/early November 2007. The application was submitted in early November.

Government Code Section 56652 sets forth the minimum requirements for submitting an application to LAFCO, which include the following:

- A petition or resolution
- A statement of the nature of the proposal
- A map and description of the boundaries of the subject territory
- Other data as requested
- Names of the persons to receive copies of the staff report and notices

The application was submitted following the petition drive, which is the logical sequence in accordance with the above requirements.

- d. *The true cost of police services – The letter reiterates comments received during the September 18 hearing questioning the accuracy of the police service costs as reflected in the CFA in that they appear to be low.*

Response: As stated in the CFA, the Sheriff's Office costs and sworn personnel ratio are, as represented by the County Sheriff's Office, for existing levels of service. The CFA is restricted by law to conducting the analysis based on "existing level of services." The CFA anticipated that the law enforcement services provided under contract with the Sheriff's Office would be performed from the existing Alamo substation, and no city facilities would be required. This was so indicated in the data submittal from the Sheriff's Office. Future contract and service level determinations will be made by future city councils based on a number of variables. As such, there are no assumptions made in the CFA concerning what a future city council may determine to be the appropriate level of service.

- e. *Resolution of having two fire protection districts serve Alamo – Ms. Taylor notes the comments made at the September 18 hearing by a San Ramon Valley Fire Protection District (SRVFPD) representative regarding emergency response and two fire protection districts serving the Alamo. The letter indicates that the staff response to this issue was inadequate.*

Response: As acknowledged by the SRVFPD representative at the hearing, LAFCO does not have statutory authority to initiate boundary changes (i.e., annexations, detachments). Further, the application to incorporate the Town of Alamo did not include a boundary reorganization of the fire districts.

As discussed in the Executive Officer's Report (see September 18, 2008 LAFCO Agenda Item #9 at http://www.contracostalafco.org/meeting_archive.htm), and stated at the September 18 hearing, while not desirable, there are communities that are served by more than one fire district. If a reorganization of the fire districts is desired, a reorganization proposal can be submitted to LAFCO post-incorporation. Pursuant to State law, an application to modify the boundaries of the fire districts can be initiated by an affected agency (e.g., city, special district) or by an affected landowner or registered voter.

f. The cost of hiring and maintaining city officials – The letter notes comments made during the September 18 hearing expressing concerns that the projected salaries of Alamo city officials as reflected in the CFA are too low as compared to comparable cities.

Response: The CFA provides an analysis of comparable cities for various revenue and staffing comparisons. The various factors used to determine comparable cities include population, size, geographic proximity, age of city, diversity of revenue streams, development growth potential, and method of staffing (i.e., contract, in-house staff).

For the purpose of the Alamo analysis, six cities were selected for comparison. Four cities – Clayton, Moraga, Orinda and Lafayette – were selected primarily due to their population and proximity to Alamo. American Canyon and San Anselmo were selected for comparison to similar sized cities in the surrounding Bay Area region.

The salary information included in the CFA for Alamo is based on 2007-08 *base* salary ranges for comparable cities, and does not include any cash benefits (e.g., auto allowance, city-paid contribution to deferred compensation programs, etc.) that may inflate the salary amounts.

The salaries included in the CFA are estimates. The future City Council will set employee salary ranges dependent on the needs of the city, qualifications of the individuals selected to perform the job and other factors.

As discussed in the CFA, most, if not all, of the cities that incorporated since 1992 utilize a contract city model. Many newly incorporated cities utilize part-time and/or contract staff to fill the City Manager position, at least during the start-up period. The CFA assumes that for the first year, the new city will rely heavily on contract staff.

There are various public and private resources available to assist newly formed cities with their staffing needs. For example, the California State Association of Counties (CSAC) and the League of California Cities (the League) sponsor Public Service Skills, Inc. (PSS), to help public agencies meet their interim staffing requirements. PSS relies primarily on retirees with significant professional city, county and special district experience to help agencies fill their staffing needs in a cost-effective manner.

g. The cost of potential litigation – Ms. Taylor asks if insurance costs were included in the CFA, and expresses concern regarding costs associated with potential litigation and whether the new city would be able to deal with these costs.

Response: Public agencies are required to carry insurance to cover costs associated with liability and legal challenges. The CFA estimates approximately \$104,000 annually over the

10-year projection period to fund insurance costs, including liability.

The new city will have an opportunity to participate in one or more insurance funding pools. For example, since 1986, the Association of Bay Area Governments (ABAG) has provided Risk Management & Insurance Services through the ABAG Pooled Liability Assurance Network (PLAN) Corporation. The PLAN is a non-profit corporation whose purpose is to benefit the citizens of each member community by establishing a stable, cost-effective self-insurance, risk sharing and risk management program for its members. The PLAN is run by ABAG under the direction of its member communities, which currently include 31 cities. ABAG insurance services include liability and property pools, workers compensation, claims management, risk management, training and related service.

h. The 16% redevelopment fees as revenue – The letter notes comments made during the September 18 hearing expressing concerns regarding redevelopment fees.

Response: A review of the LAFCO meeting tapes and speaker cards indicates that there were no public comments made relating to *redevelopment* fees. There are no redevelopment projects or fees within the Alamo community.

However, there was a comment made regarding *community development* fees and concern that these fees were overstated.

County departments provided FY 06/07 Base Year costs for direct and indirect labor, material, and contract services provided to the Alamo community for providing community development services, which include Planning, Building & Safety, Engineering and Code Enforcement.

Community development revenues are derived from various functions such as review of site plans, tract maps, variance, General Plan amendments and zoning change requests (Planning); permit issuance, building and grading plan checks and building inspections (Building, Safety and Engineering); and citations relating to code enforcement violations (Code Enforcement).

As reported by the County, revenues derived through planning fees are a factor of costs. The County estimates an approximate 60% recovery of planning costs. Building, Safety and Engineering revenues are based on actual fees collected for services. The County reported that for the base year, fees for services reflect the 7,000+ hours expended on plan checks, nearly 13,000 hours on inspections, and over 800 permits issued in FY 2006-07.

i. The inadequacy of the boundary maps – Ms. Taylor notes that at least one speaker voiced concerns over the lack of clarity in the boundary maps.

Response: A review of the LAFCO meeting tapes and speaker cards indicates that there were no public comments made relating to the Alamo incorporation boundary maps. The Alamo incorporation maps included with the LAFCO agenda packet and written materials and posted on the LAFCO website were prepared in GIS format, which included considerable detail. In addition, copies of the Alamo incorporation plat and legal description are available in the LAFCO office.

A review of the LAFCO meeting tapes indicates that Commissioner David Piepho commented on the maps relating to LAFCO agenda item #8 – Sphere of Influence (SOI) Amendments – City of Walnut Creek and Town of Danville. Commissioner David Piepho commented that the SOI maps were difficult to read as they lacked street names; he requested that future maps include street names. LAFCO staff noted this request.

- j. The requirement for low-income housing – The letter notes comments made during the September 18 hearing expressing concern and confusion regarding the State requirements for providing low income housing in Alamo.*

Response: The Executive Officer’s Report provides a detailed discussion regarding fair sharing of regional housing issues, which is governed by State law.

In sum, the Association of Bay Area Governments (ABAG), in conjunction with local agencies, prepares a Regional Housing Needs Assessment (RHNA) plan every five years. This process is required by State law for purposes of planning for the regional fair share allocation of future overall and affordable housing. The 2007-2014 plan has been adopted and the County and cities have received their estimated housing allocations.

Pursuant to Government Code Section 65584.07(c), if an incorporation of a new city occurs after the council of governments (i.e., ABAG) has made its final allocation under Government Code Section 65584, “the city and county may reach a mutually acceptable agreement on a revised determination and report the revision to the council of governments” (i.e., ABAG). See September 18, 2008, Executive Officer’s Report for details.

- 2. The financial information is outdated. LAFCO is relying on financial information from 2006 to approve a 2009 incorporation vote – Ms. Taylor expresses concern that the CFA numbers are outdated and overly optimistic and that a new CFA should be prepared using newer numbers.**

Response: The comment regarding the CFA presenting overly optimistic numbers is addressed under Question 1(a) above.

With regard to the timeliness of the fiscal data, Government Code Section 56800 provides that data used for the CFA “shall be from the most recent fiscal year for which data are available, preceding the issuance of the certificate of filing.”

The Alamo CFA was initiated in January 2008. The data collection process took approximately three months to complete. The most current fiscal year data available was the FY 2006-07 audited fiscal data. The certificate of filing was issued in July 2008, at which time the FY 2007-08 data was not available.

The unaudited FY 2007-08 data was released by the County in September 2008. According to County staff, the audited FY 2007-08 data will be available in late November/early December 2008.

The process for updating the CFA to include FY 2007-08 could be initiated following release of the audited FY 2007-08 data in late November/early December 2008. The estimated timeline for collecting and analyzing the data and preparing the updated CFA is approximately 3-4 months.

According to the fiscal consultant, the estimated cost to update the CFA is approximately \$40,000. This cost would be borne by the incorporation petitioners.

Following the CFA update, an Administrative Draft CFA would be prepared and reviewed by LAFCO staff and the data would be verified by County and other agencies that provided the data. This review and verification is estimated to take approximately 30-60 days.

In conjunction with the CFA update, the County and incorporation petitioners are required to enter into revenue neutrality negotiations. In accordance with Contra Costa LAFCO policies, the parties have up to 90 days to complete these negotiations. Subsequently, the revenue neutrality agreement must be ratified by the County Board of Supervisors.

Based on the required tasks outlined above, the estimated timeline for completing the CFA update, data verification and revenue neutrality negotiations would be approximately 7-10 months (July-October 2009).

3. The recent crash of the financial market is evidence that current financial information should be used when determining whether an incorporated Alamo is fiscally feasible –
Ms. Taylor expresses concern regarding the stability of the economy and the impact to a new city.

Response: The economy is one of many variables that can impact local government.

In the wake of such challenges, local governments rely on public policy and their decision makers to address these challenges. In addition, having a solid financial base is critical.

The State of California Office of Planning and Research Guide to Incorporations provides that the CFA include both a contingency fund in the range of 10-20% of estimated expenditures, as well as a reserve fund of at least 10% to cover the following:

- A new city has no historical track record on the cost or level of services required to meet the expectations of the newly incorporated community;
- Unanticipated expenditures could occur due to major disasters, emergencies, liability claims, and litigation settlements;
- Funds may have to be budgeted for non-road related capital improvement projects. As the new city grows in staffing and assumes services from the county and outside contractors, there will be a need for new facilities, vehicles and other major equipment;
- Local finances may be subject to changes based on the State's budget; and
- **Changing economic conditions could result in a decrease in general fund revenues.**

The Alamo CFA provides for an annual contingency of 10% which is not allocated to any specific cost item. The CFA assumes that the 10% contingency is expended annually and provides additional protection for "unanticipated expenditures" in the overall analysis. The Alamo CFA provides for additional reserves in the 10-year projection period which include the following: 1) general fund reserve that ranges from a low of 25% to a high of 52%, 2) road fund reserve that ranges from 77% to 115%, and 3) recreation and park fund reserve that ranges from 122% to 400%.

Incorporation is a complex process that must meet legal requirements. The Commission's decision to approve the incorporation of Alamo subject to voter approval was based on a number of factors, including statutory requirements, proposed boundary, fiscal feasibility, revenue neutrality agreement, and provision of services.

The Alamo CFA concludes that the new Town of Alamo is considered to be fiscally feasible at the existing level of service. The forecast model demonstrates more than sufficient revenue, and reserve capacity exists to ensure short and long term fiscal sustainability.

4. Three of the present LAFCO commissioners expressed a desire for more time and more information – *The letter notes that three of the Commissioners had questions regarding the CFA and the timing of the proposed incorporation.*

Response: At the September 18 hearing, LAFCO staff and the fiscal consultant explained the timeline as related to the status and impact of SB 301 and the timeliness of fiscal data.

The CFA consultant explained the effects of SB 301 on the proposed incorporation. Briefly, with the signing of AB 1602 into law in 2006, newly incorporating cities now receive a significant restoration of Motor Vehicle License Fee (VLF) funding for cities that incorporate between August 2004 and June 30, 2009. This revenue carries an additional population based subvention (i.e., finding based on three times the number of registered voters) for the first five years of incorporation based on a sliding scale formula. Also, as a result of AB 1602, a new city receives State subventions for most Motor Vehicle Fuel Taxes based on the same population formula as for the new VLF funding. After the fifth year, funding for both revenues revert to the standard formula based on the actual annual population of the city. This represents a significant but temporary source of general purpose and road maintenance funding for the proposed city.

AB 1602 is scheduled to “sunset” on July 1, 2009. Current legislation, SB 301, is intended to remove the sunset requirement and is critical to newly incorporating cities. As of the LAFCO hearing on September 18, the Governor had not signed SB 301. As the fiscal consultant explained, without this legislation it would be nearly impossible for a new city to incorporate. The Governor signed SB 301 on September 27, 2008. See Executive Officer's Report and CFA for a complete discussion of these issues.

In addition to the legislation, the incorporation is also sensitive to the timeliness of the fiscal data and the potential for the fiscal data to become stale, thus necessitating the need to redo the CFA, which would result in additional time and cost as discussed in #2 above and in the Executive Officer's Report and CFA.

5. After the votes had been cast, it was determined there were not enough votes to approve the measure; however, one of the Commissioners changed his vote, thereby creating the necessary quorum for approval – *Ms. Taylor requests clarification regarding a quorum, LAFCO's policy requiring four affirmative votes, and the voting actions.*

Response: Pursuant to Government Code Section 56300 each LAFCO shall establish written policies and procedures. The Contra Costa LAFCO has adopted policies and procedures, which undergo a regular review and update.

The Contra Costa LAFCO policies and procedures rely on Roberts Rules of Order as a general

guide for conducting meetings and to resolve points of order, unless otherwise specified in the local policies.

The LAFCO policies provide that four members of the Commission constitute a quorum for the transaction of business. Five members of the Commission were present throughout the September 18 hearing.

The LAFCO policies also provide that four affirmative votes are required to approve any proposal or action.

Further, commissioners are allowed to change their vote before the final vote is recorded.

The vote on the incorporation proposal was in accordance with local LAFCO policies and Roberts Rules of Order.

6. There is nothing in the LAFCO policies and procedures or Commissioner Handbook that addresses whether a LAFCO Commissioner may change his vote once it has been cast, and what the process for such a change is – Ms. Taylor expresses concern regarding the fluctuation in the votes on the incorporation proposal.

Response: See response to Question #5 above.

7. There were no alternate members present at the meeting – The letter requests clarification regarding attendance at the LAFCO meeting and the role of the alternates.

Response: The composition of local agency formation commissions is provided for in State law (Gov. Code Section 56000 et seq.).

The Contra Costa LAFCO is composed of seven regular members: two County members, two city members, two special district members and one public member. In addition, there is one alternate member in each of the four categories, for a total of 11 regular and alternate commissioners. In accordance with LAFCO policies, four members constitute a quorum.

The Government Code provides that an alternate member may serve and vote in place of the regular member in the respective category.

The LAFCO members who voted on the proposed incorporation of the Town of Alamo are as follows: *Helen Allen* (Regular City Member), *David Piepho* (Regular Special District Member), *Martin McNair* (Regular Public Member), *George Schmidt* (Alternate Special District Member serving and voting in place of Dwight Meadows – regular Special District Member) and *Gayle Uilkema* (Regular County Member).

8. LAFCO Staff claimed that continuing the hearing to a later date was impossible under the scheduling constraints of the March 2009 vote. It was, however, unclear why LAFCO Commissioners were forced to decide at that moment – Ms. Taylor expresses concern and raises questions regarding the time sensitivity of a decision by LAFCO and why such a decision could not be postponed.

Response: The Alamo incorporation process was formally initiated in July 2007 with a Notice

of Intent to Circulate a Petition as submitted to LAFCO. This was the beginning of a lengthy and technical process as described in the September 18, 2008, Executive Officer's Report and in the CFA.

At the September 18 hearing, LAFCO staff and the CFA consultant explained the time sensitivity issues relating to the timeliness of fiscal data and the status and impact of SB 301. In sum, should the matter continue, the fiscal data could become stale; thus, necessitating the need to redo the CFA, which would result in additional time and cost. Further, the consultant explained the effects of SB 301 on the proposed incorporation as explained below. See responses above, including the response to Question #4 and the Executive Officer's Report and CFA for a discussion of this matter.

9. LAFCO staff explained that if the incorporation vote did not go forward for March 2009, then the same CFA that deemed an incorporated Alamo fiscally feasible would determine that incorporation is infeasible. It was not, however, explained why – *The letter requests clarification regarding the timing of the incorporation and fiscal feasibility.*

Response: See responses above, including the response to Question #4 and the Executive Officer's Report and CFA for a discussion of this matter.

10. The public is entitled to better information and a fair hearing – *The letter reiterates doubts expressed by a number of speakers and some of the Commissioners, concerns about the timeliness of the fiscal data, and a desire to have more time to consider the proposal.*

Response: The statutory framework guiding the incorporation of a city includes, but is not limited to, the State constitution, CKH Act, Revenue & Taxation Code and the California Environmental Quality Act (CEQA).

As noted in the State of California Office of Planning and Research Guide to Incorporations, "...incorporation is, in itself, a complex process with tight time limits, and various legal requirements..." The review and analysis provided by LAFCO is "detailed and exhaustive as required by law." All incorporations must be heard in a public hearing.

LAFCO is responsible for ensuring a fair and equitable deliberation on incorporation proposals. The Government Code and the State Guidelines for Incorporations set forth various provisions for accomplishing this, including, but not limited to, the following:

- Adopt policies and procedures relating to incorporation proposals
- Establish standard application forms and fee schedule relating to incorporations
- Establish policies, procedures and standards relating to boundaries and spheres of influence
- Establish policies and procedures relating to fiscal feasibility and revenue neutrality
- Provide policies and procedures relating to the State's rules and procedures regarding incorporations

In addition, LAFCO played an important role in providing comprehensive and complete information, educating the public, and facilitating communications between affected local government parties and others on the incorporation process.

The Contra Costa LAFCO has adopted complete policies, procedures, forms and standards relating to all of the above. These policies and procedures help guide LAFCO through the lengthy, complex and technical incorporation process.

Every effort was made to provide a fair, equitable, timely and open process, using the best information available, and in accordance with State law and local policy.

In conclusion, the new Town of Alamo is considered to be fiscally feasible at the existing level of service. The forecast model demonstrates more than sufficient revenue and reserve capacity exists to ensure short and long term fiscal sustainability.

As echoed by several Commissioners, incorporations are one of the most important boundary changes LAFCO must consider, and the Commissioners take this responsibility earnestly. The Commission's decision to approve the incorporation of Alamo subject to voter approval was based on statutory requirements, proposed boundary, fiscal feasibility, revenue neutrality agreement, and the efficient provision of municipal services.

RECOMMENDATION

The request for reconsideration does not meet the statutory requirements as it does not present new or different facts that could not have been presented previously. It is recommended that the Commission deny the request for reconsideration.

Please contact the LAFCO office if you have any questions.

Sincerely,

Lou Ann Texeira
Executive Officer

Attachments:

Attachment 1 – Government Code Section 56895
Attachment 2 – Letter Dated September 24, 2008 from R. Jean Taylor

GOVERNMENT CODE

56895. (a) When a commission has adopted a resolution making determinations, any person or affected agency may file a written request with the executive officer requesting amendments to or reconsideration of the resolution. The request shall state the specific modification to the resolution being requested and shall state what new or different facts that could not have been presented previously are claimed to warrant the reconsideration. If the request is filed by a school district that received notification pursuant to Section 56658, the commission shall consider that request at a public hearing.

(b) Notwithstanding Section 56106, the deadlines set by this section are mandatory. The person or agency shall file the written request within 30 days of the adoption of the initial or superseding resolution by the commission making determinations. If no person or agency files a timely request, the commission shall not take any action pursuant to this section.

(c) Upon receipt of a timely request, the executive officer shall not take any further action until the commission acts on the request.

(d) Upon receipt of a timely request by the executive officer, the time to file any action, including, but not limited to, an action pursuant to Section 21167 of the Public Resources Code and any provisions of Part 4 (commencing with Section 57000) governing the time within which the commission is to act shall be tolled for the time that the commission takes to act on the request.

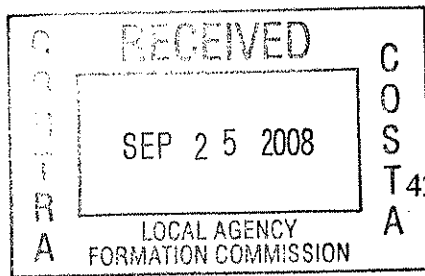
(e) The executive officer shall place the request on the agenda of the next meeting of the commission for which notice can be given pursuant to this subdivision. The executive officer shall give notice of the consideration of the request by the commission in the same manner as for the original proposal. The executive officer may give notice in any other manner as he or she deems necessary or desirable.

(f) At that meeting, the commission shall consider the request and receive any oral or written testimony. The consideration may be continued from time to time but not to exceed 35 days from the date specified in the notice. The person or agency that filed the request may withdraw it at any time prior to the conclusion of the consideration by the commission.

(g) At the conclusion of its consideration, the commission may approve or disapprove with or without amendment, wholly, partially, or conditionally, the request. If the commission disapproves the request, it shall not adopt a new resolution making determinations. If the commission approves the request, with or without amendment, wholly, partially, or conditionally, the commission shall adopt a resolution making determinations that shall supersede the resolution previously issued.

(h) The determinations of the commission shall be final and conclusive. No person or agency shall make any further request for the same change or a substantially similar change, as determined by the commission.

(i) Notwithstanding subdivision (h), clerical errors or mistakes may be corrected pursuant to Section 56883.



R. Jean Taylor
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September 24, 2008

Contra Costa County LAFCO
C/O Lou Ann Texeira
651 Pine Street, 6th Floor
Martinez, CA 94553

RE: Request for Reconsideration of Decision Made at LAFCO Hearing on September 18, 2008 at Creekside Church in Alamo

To Whom It May Concern:

This is a Request for Reconsideration of the LAFCO decision on September 18, 2008, regarding the decision to allow Alamo residents to vote on the incorporation of Alamo. The processing fee of \$2,500 is enclosed.

A modification is being sought of the decision to approve the vote for incorporation of Alamo. The decision to allow Alamo residents to vote on incorporation should either have been continued or denied based on the information provided to LAFCO Commissioners and the public as of September 18, 2008.

Reconsideration is required to correct several procedural defects in LAFCO's actions at the September 18, 2008 hearing because there was insufficient information at that time to make a decision. In addition, the method in which the vote was taken, and the reasons why the vote had to be made on that evening, made the voting process arbitrary and unfair. The reasons for modifying the approval of the measure to allow a vote on the incorporation of Alamo are listed below.

1. **There were several concerns expressed by speakers at the hearing that continue to remain unaddressed:**

- **The overly optimistic Comprehensive Fiscal Analysis (CFA):** The fiscal study does not reflect a basis for costs or projected cost increases for contract services caused by Contra Costa County's budget issues. The CFA as a whole appears to be overly optimistic as to revenues, and it appears to underestimate the costs. This combination presents a far brighter picture of incorporated Alamo than might really be possible. Almost every speaker opposed to incorporation expressed different reasons for revisiting the validity of the CFA. These concerns, though valid, were not adequately addressed.

- **Lack of resident involvement in the application process:** Residents were not included in the application for incorporation process, the definition of the government proposed, or any approval of the application for incorporation.

- **The misleading petition for the application to incorporate:** Residents were misled by petition volunteers about the purpose of the petition, and were only told they were authorizing feasibility studies to see if Alamo could function as a city. Residents were not shown the entire petition and its incorporation proposal during the petition drive and were only provided review of the signature sheets.

- **The true cost of police services:** Multiple speakers expressed doubts that the numbers in the CFA addressing the costs of police services were accurate. In fact, speakers with backgrounds in law enforcement explained the true costs of maintaining a police force, and the true costs are far greater than predicted by the CFA. It is agreed that the greatest cost to a city is the maintenance of its police force; therefore, it is vital that the numbers be accurate when predicting this cost.

- **Resolution of having two fire protection districts serve Alamo:** A representative from the San Ramon Valley Fire Protection District presented questions as to emergency response if two fire protection districts serve Alamo. LAFCO Staff did not provide an adequate response to this concern, but only explained that this sometimes

happens. It remains unclear why Alamo would structure its fire protection services in this potentially problematic way.

- **The cost of hiring and maintaining city officials:** Multiple speakers had done research to determine what the salaries of city officials from nearby cities really are, and had determined that the numbers in the CFA are once again too low for the true cost of paying future Alamo city officials. If Alamo were to offer the salaries provided in the CFA, it would likely have problems hiring qualified city staff and officials.

- **The cost of potential litigation:** As an incorporated city, Alamo would be liable for any lawsuits against the city. The cost of this liability was not addressed. Liability could potentially be an enormous cost to the city, and it is unclear how it would deal with the cost of this liability given that the CFA underestimates all the costs associated with running a city government. According to LAFCO Staff, incorporated Alamo could carry liability insurance to deal with litigation liability; however, the cost of insurance was not explained, and it is unclear whether it is built in to the CFA.

- **The 16% redevelopment fees as revenue:** 16% of incorporated Alamo's revenue is supposed to come from redevelopment fees. Multiple speakers expressed doubts that this number was accurate given that Alamo is mostly built out and there would not be much development in Alamo. If this revenue stream is overly optimistic, and the costs are underestimated, Alamo could be in serious financial trouble by relying on the numbers in the CFA.

- **The inadequacy of the boundary maps:** At least one speaker voiced concerns over the lack of clarity in the boundary maps provided by LAFCO Staff, and asked for better maps showing the new boundaries of incorporated Alamo. The questions regarding the maps were never addressed.

- **The requirement for low-income housing:** Under current law, an incorporated Alamo would have to provide a certain amount of low-income housing. It has not been determined how much low-income housing would be required, where this low-income housing would be, and who would pay for the low-income housing. Multiple speakers

addressed concerns about this issue; however, no answers have been provided. This is a critical issue in determining whether incorporation is in the best interests of Alamo residents, and should be addressed with particularity before a decision regarding incorporation is made.

2. The financial information is outdated. LAFCO is relying on financial information from 2006 to approve a 2009 incorporation vote:

LAFCO is authorized to use the most current full year financial information available at the time of the study, and the 2006/2007 fiscal year is the most recent available. This means half of the numbers used to make the model are from 2006. Of course, there has been enormous change since 2006. The LAFCO Staff explained that "financial studies can be off" and "the picture over time will always change." Even the company that did the study said, "the city will have to be managed very carefully." The newest numbers, however, are going to be available in October, and there should be a new CFA done including these most recent numbers.

As it is, the CFA is far too optimistic and relies on potentially erroneous information to conclude that an incorporated Alamo is fiscally feasible. To think that one can use the outdated numbers in the fiscal study to draw relevant conclusions as to the feasibility of Alamo to incorporate and remain functional in the years to come is irresponsible and unrealistic.

3. The recent crash of the financial market is evidence that current financial information should be used when determining whether an incorporated Alamo is fiscally feasible:

The current financial crisis is further proof that the financial climate is unstable. The financial crisis affects the federal government, and trickles down to state governments, county governments, and finally to local governments. Contra Costa County already has budget issues, and there should be greater concern as to the ability of an incorporated Alamo to stay fiscally sound in the face of such extreme financial crisis. To incorporate in today's financial market based on financial information from 2006 is dangerous and could lead to enormous financial issues for the newly incorporated Alamo in 2009.

The financial crisis is just one more reason to make the decision to incorporate on a newer, and more realistic CFA.

4. Three of the present LAFCO commissioners expressed a desire for more time and more information:

Three of the five attending LAFCO committee members expressed interest in holding off the vote in order to respond to the legitimate questions and financial concerns raised by some of the resident speakers. To hold off the vote, however, would possibly delay the process for the March 2009 vote for Alamo residents, and LAFCO did not want to "stand in the way of the democratic process." It was unclear, however, why an additional hearing could not be held. If the residents and Commissioners wanted more time to evaluate the information provided before moving forward with the vote on incorporation, more time should have been given.

Given LAFCO's mandate, and the numerous legitimate questions and concerns that were raised at the hearing, there should at least have been a continuance and postponement of the decision to allow to vote to go forward.

The only consistent view amongst a few of the Commissioners appeared to be that more time was necessary to make an adequate decision.

5. After the votes had been cast, it was determined there were not enough votes to approve the measure; however, one of the Commissioners changed his vote, thereby creating the necessary quorum for approval:

According to LAFCO policies, four members of the Commission shall constitute a quorum for the transaction of business. In addition, four affirmative votes are required to approve any proposal or other action. A tie vote, or any failure to act by at least four affirmative votes shall constitute a denial. An abstention shall not be counted as an affirmative vote.

At the beginning of the hearing, six of the LAFCO Commissioners were present. Halfway through the meeting, the Chair left, leaving five Commissioners to make the decision. At the end, there were three affirmative votes and two negative votes. At this time, LAFCO Staff interjected that three affirmative votes did not satisfy the necessary quorum requirements to approve a proposal before the Commission. At this point, one Commissioner changed his vote, thereby satisfying the requirement for four affirmative votes to approve a measure. It is unclear how or why this was done, considering votes had already been cast.

6. There is nothing in the LAFCO policies and procedures or Commissioner Handbook that addresses whether a LAFCO Commissioner may change his vote once it has been cast, and what the process for such a change is:

If the Commissioner had been unable to change his vote, the proposal for voting on an incorporation of Alamo would have failed. This would be a widely different result than what actually transpired. The fluctuation in the opinions of the Commissioners at the end of the meeting, and the switching of votes, demonstrates the arbitrary nature of the decision making process. At the least, the decision should have been to continue.

7. There were no alternate members present at the meeting:

Alternate members can vote if regular members are disqualified or absent. Although one Commissioner was absent from the proceedings, and the Chair left in the middle, no alternates participated in the hearing. The residents present, LAFCO Staff, and the Commissioners would certainly have benefited from having the full presence of seven LAFCO Commissioners at the meeting. It was never addressed why the alternate Commissioners were not present to participate in the discussion and voting.

8. LAFCO Staff claimed that continuing the hearing to a later date was impossible under the scheduling constraints of the March 2009 vote. It was, however, unclear why LAFCO Commissioners were forced to decide at that moment:

The end of the meeting was extremely rushed, with LAFCO Staff pushing the Commissioners to make a decision rather than hold-off the decision making to a later date. Deadlines and dates were discussed without any explanations. It was unclear why the decision could not be postponed. It was unclear why there could not be an additional hearing. It was unclear why more current financial information could not be used. It was just stated that the Commissioners had to decide there and then or Alamo would not have the opportunity to incorporate, which appears to be a drastic reason to make the decision.

9. LAFCO Staff explained that if the incorporation vote did not go forward for March 2009, then the same CFA that deemed an incorporated Alamo fiscally feasible would determine that incorporation is infeasible. It was not, however, explained why:

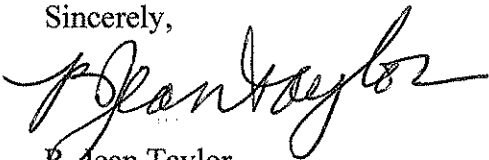
If incorporating a few months later means an incorporated Alamo would not be fiscally feasible, why is it feasible if incorporated in March 2009? This fact was stated at the very end of the meeting, with no follow through. If this is true, it is hugely problematic because it implies that the fiscal feasibility of an incorporated Alamo is so dependent on the assumptions in the current CFA that even the slightest variation would deem it infeasible.

10. The public is entitled to better information and a fair hearing:

There were so many speakers who presented doubts, and even the Commissioners wanted more time to assess the information before making a decision regarding the vote for incorporation. The deliberations were rushed, and the Commission voted prematurely. Before Alamo residents vote on whether to incorporate, they should be given a fair opportunity to assess more accurate information regarding the future of their town.

The most recent financial information should be used to obtain a new CFA. This information is certainly relevant to the Commission's decision, and will be available next month. At the hearing, the LAFCO Commission could have approved, denied, or continued the matter. The decision to approve was hastily made, and there should either have been a denial or a continuance of the matter to a later date.

Sincerely,



R. Jean Taylor
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Alamo Spotlight

CC:

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Commissioner William Bristow
Commissioner Federal Glover
Commissioner Martin McNair
Commissioner Dwight Meadows
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Commissioner Rob Schroder
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