



**Local Agency  
Formation Commission  
of Santa Clara County**  
777 North First Street  
Suite 410  
San Jose, CA 95112  
**SantaClaraLAFCO.org**

**Commissioners**  
Rich Constantine  
Susan Ellenberg  
Sergio Jimenez  
Yoriko Kishimoto  
Gary Kremen  
Mike Wasserman  
Susan Vicklund Wilson

**Alternate Commissioners**  
Helen Chapman  
Cindy Chavez  
Matt Mahan  
Russ Melton  
Terry Trumbull  
**Executive Officer**  
Neelima Palacherla

## **LAFCO MEETING MINUTES WEDNESDAY, JUNE 2, 2021**

### **CALL TO ORDER**

The meeting was called to order at 1:15 p.m.

Pursuant to the provisions of California Governor's Executive Order N-29-20 issued on March 17, 2020, this meeting was held by teleconference only.

### **1. ROLL CALL**

**The following commissioners were present:**

- Chairperson Susan Ellenberg
- Commissioner Rich Constantine
- Commissioner Sergio Jimenez
- Commissioner Yoriko Kishimoto
- Commissioner Gary Kremen (arrived at 1:22 p.m.)
- Commissioner Mike Wasserman
- Alternate Commissioner Helen Chapman
- Alternate Commissioner Terry Trumbull (voted in place of Commissioner Susan Vicklund Wilson)

**The following commissioners were absent:**

- Commissioner Susan Vicklund Wilson
- Alternate Commissioner Cindy Chavez
- Alternate Commissioner Matt Mahan
- Alternate Commissioner Russ Melton

**The following staff members were present:**

- Neelima Palacherla, LAFCO Executive Officer
- Dunia Noel, LAFCO Assistant Executive Officer
- Emmanuel Abello, LAFCO Clerk
- Mala Subramanian, LAFCO Counsel

### **2. PUBLIC COMMENTS**

There were none.

**3. APPROVE CONSENT CALENDAR**

**Chairperson Ellenberg** proposed inclusion of Agenda Items 4, 10 and 11 on the consent calendar for approval in one motion, without discussion if there is no objection.

The Commission approved Agenda Items 4, 10 and 11 on consent.

Motion: Wasserman

Second: Jimenez

AYES: Constantine, Ellenberg, Jimenez, Kishimoto, Trumbull, Wasserman

NOES: None

ABSTAIN: None

ABSENT: Kremen

**MOTION PASSED**

**\*4. CONSENT ITEM: MINUTES OF APRIL 7, 2021 LAFCO MEETING**

The Commission approved the minutes of April 7, 2021 meeting.

**5. MORGAN HILL OUT OF AGENCY CONTRACT FOR WATER SERVICES (METTA TAM TU BUDDHIST TEMPLE)**

Ms. Noel provided the staff report.

Adam Paszkowski, Principal Planner, City of Morgan Hill, provided a PowerPoint presentation describing the proposal and requesting Commission approval.

**Commissioner Kremen** inquired whether the LAFCO policies that were mentioned by Mr. Paszkowski refer to state law or those established by LAFCO. Mr. Paszkowski indicated that his understanding was that they are LAFCO policies but deferred to LAFCO staff. Ms. Noel informed that state law has provisions discouraging extension of services outside of agency boundaries and provides some exceptions as to when LAFCO could allow such extensions and that similarly, local LAFCO policies also discourage service extensions given the long standing countywide policies, the County General Plan etc. She noted several cities in the County, including Morgan Hill, also have policies to discourage service extensions but may include exceptions.

Do Tran, project engineer representing the Metta Tam Tu Buddhist Temple, presented a brief video illustrating how the property was cleaned, and was transformed with various improvements. He explained how SB 1263 had suddenly changed the rules on how water will be provided to the project. He requested LAFCO to approve the extension of water service from Morgan Hill so the County can issue the necessary permits to allow the construction of the Buddha Hall.

Quyen Vhong, Executive Director of the International Children Assistance Network (ICAN), a nonprofit organization serving Vietnamese children and families in Santa Clara County, and a member of the Temple's congregation, requested LAFCO to approve the proposal. She informed that she met Master Phap Chon, spiritual leader and teacher of the group, at a refugee camp in Hong Kong in 1989 and that in 2000, they co-founded a community organization serving families in San Jose. She requested approval of the proposal so the Temple can go forward with its mental

health program, bring communities together and create peace and harmony in the county.

Kim Tran, member of the Metta Tam Temple, requested LAFCO to approve the request water extension stating that the cost of construction has gone up and that the process has already taken a long time.

Master Phap Chon, spiritual leader and teacher of the congregation, indicated that the Temple, which was built on a garbage dumpsite, is a gift to the community and the American people. He indicated that he would accept whatever the Commission's decision is, but he expressed hope for approval as that will allow his community to share its culture with the residents of the county.

Brian Schmidt, Legislative Advocacy Director, Green Foothills, stated that he agreed with staff analysis that the proposal is inconsistent with LAFCO policies and that this is a special case because of the change in state law. He directed attention to the letter that he sent to LAFCO expressing support for approval due to the unfortunate situation of this specific proposal, and recommended that LAFCO advise Morgan Hill, the County and the California State Water Resources Control Board (SWRCB) for the need to ensure that water service issues of future applications be addressed early on in the process.

Hung Nguyen indicated that he and his family members have been longtime members of the temple and have benefited from its teachings, and he requested approval of the application.

**Chairperson Ellenberg** determined that there are no other speakers from the public who would like to speak on the item.

In response to an inquiry by **Commissioner Kishimoto**, Ms. Noel indicated that she is not aware of a grandfather clause in SB 1263 but stated that the law defers to the SWRCB to decide whether or not to allow creation of a new public water system. In response to another inquiry by Commissioner Kishimoto, Ms. Noel indicated that there was no analysis conducted on whether the existing well would have been sufficient to serve the needs of the Temple prior to SB 1263. She stated that the SWRCB recommended that the Temple get a connection from Morgan Hill.

**Commissioner Kishimoto** acknowledged the heartfelt statements by the proponents about the time it took to complete the temple that was caught midstream by the changes in the law. She explained that it is LAFCO's role to ensure urban uses in the urban areas where roads and water exist in order to protect the environment and farmlands. She expressed confidence that the temple also supports that goal. She then moved for approval of the staff recommendation. **Commissioner Jimenez** seconded.

In response to **Chairperson Ellenberg's** inquiry, Ms. Noel advised that in addition to LAFCO staff's ongoing conversation with SWRCB, City of Morgan Hill and the County, a letter will be sent informing these agencies that approval of this proposal is not a precedent and that service provision in these types of situations should be addressed early on and determined prior to issuance of any land use approvals and permits.

**Chairperson Ellenberg** expressed the need for the agencies involved to ensure that

developers are made aware about the water service issue up front and not years into their project.

**Commissioner Jimenez** inquired whether the statement that this approval is not precedent-setting will preclude future applicants from citing this project as a precedent. In response, Ms. Subramanian indicated that the reason the specific language is recommended is to make it clear to future applicants this is really a unique situation. She confirmed **Commissioner Jimenez's** understanding that while it may not preclude applicants from using this as a precedent, making it explicit in the motion may deter them. In response to his follow-up inquiry, Ms. Noel stated that this is the first time that this statement is included in a motion. Ms. Subramanian stated that she recommended language on precedent if the Commission desires to be explicit in the motion. **Commissioner Jimenez** expressed appreciation to speakers from the community and acknowledged their work to ensure a better community.

**Commissioner Wasserman** expressed support for the approval and indicated how the project was caught up in the change of state law. He expressed his intention to bifurcate vote on Staff Recommendation into two parts, the approval of the proposal being the first part and the second part being notice to the County, Morgan Hill and SWRCB that approval is not a precedent and water issues should be addressed prior to any approval or permitting, as he would have proposed the deletion of that clause. However, he indicated that anyone can use this approval as a precedent because it has occurred and that future governing board can decide whether or not to draw similarities from this, although now the law is in place so this approval will not serve as a precedent. He then expressed his support for the motion and indicated that the other public agencies are independent and are entitled to their opinion.

**Commissioner Kremen** stated that disadvantaged communities face many issues. He indicated that the SWRCB has regulations for social justice reasons as small community wells may not have the technical wherewithal to ensure safe water or the resources to manage their own water service utility. He indicated that he would not support preventing residents from hooking up to nearby water lines. He informed that he is against the sentence in the motion about the letter to agencies but will vote for it as it does not matter if it is a precedent or not.

The Commission:

Project Action

1. Approved the request by the City of Morgan Hill to extend water service outside the City's jurisdictional boundaries to the proposed Metta Tam Tu Buddhist Temple located at 610 Fisher Avenue (APN 817-07-024) in the unincorporated area. Informed the County, the City of Morgan Hill and the State Water Resource Control Board that this approval is not a precedent and that in the future, the provision of water in these type of situations should be addressed early on and determined prior to issuance of any land use approvals and permits.

CEQA Action

2. As a Responsible Agency under CEQA, determined that the proposal is categorically exempt from the provisions of CEQA pursuant to State CEQA Guidelines §15303(d).

Motion: Yoriko

Second: Sergio

AYES: Constantine, Ellenberg, Jimenez, Kishimoto, Kremen, Trumbull, Wasserman

NOES: None

ABSTAIN: None

ABSENT: None

**MOTION PASSED**

**6. FINAL BUDGET FOR FY 2022**

**Chairperson Ellenberg** opened the public hearing, determined that there are no speakers from the public who would like to speak on the item.

The Commission:

1. Adopted the Final Budget for Fiscal Year 2021-2022.
2. Found that the Final Budget for Fiscal Year 2022 is expected to be adequate to allow the Commission to fulfill its statutory responsibilities.
3. Authorized staff to transmit the Final Budget adopted by the Commission including the estimated agency costs to the cities, the special districts, the County, the Cities Association of Santa Clara County and the Santa Clara County Special Districts Association.
4. Directed the County Auditor-Controller to apportion LAFCO costs to the cities; to the special districts; and to the County; and to collect payment pursuant to Government Code §56381.

Motion: Wasserman

Second: Constantine

AYES: Constantine, Ellenberg, Jimenez, Kishimoto, Kremen, Trumbull, Wasserman

NOES: None

ABSTAIN: None

ABSENT: None

**MOTION PASSED**

**7. UPDATE ON THE COUNTYWIDE FIRE SERVICE REVIEW**

Ms. Palacherla presented the staff report.

**Commissioner Kishimoto** noted that she chairs the Countywide Fire Service Review Technical Advisory Committee and reported that the Santa Clara County City Managers Association and Fire Chiefs Association actively participate on the Committee and expressed appreciation for their support.

The Commission accepted the staff report.

Motion: Wasserman

Second: Kishimoto

AYES: Constantine, Ellenberg, Jimenez, Kishimoto, Kremen, Trumbull, Wasserman

NOES: None

ABSTAIN: None

ABSENT: None

**MOTION PASSED**

**8. PENDING APPLICATIONS / UPCOMING PROJECT**

Ms. Palacherla reported that LAFCO has received an application designated as Gilroy Urban Service Area Amendment 2021 – Wren Investors and Hewell, which if complete, may be heard at the August meeting.

**9. COMMISSIONER REPORTS**

There were none.

**\*10. CONSENT ITEM: NEWSPAPER ARTICLES / NEWSLETTERS**

10.1 CALAFCO Quarterly Report, May 2021

**\*11. CONSENT ITEM: WRITTEN CORRESPONDENCE**

There were none.

**12. ADJOURN**

The Commission adjourned at 2:17 p.m., to the next regular LAFCO meeting on August 4, 2021 at 1:15 p.m., in the Board of Supervisors' Chambers, 70 West Hedding Street, San Jose.

Approved on October 13, 2021.

DocuSigned by:

*Rich Constantine*

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Rich Constantine, Acting Chairperson  
Local Agency Formation Commission of Santa Clara County

DocuSigned by:

*Emmanuel Abello*

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By: Emmanuel Abello, LAFCO Clerk