



**Local Agency
Formation Commission
of Santa Clara County**

777 North First Street
Suite 410
San Jose, CA 95112

SantaClaraLAFCO.org

Commissioners

Sylvia Arenas
Jim Beall
Rosemary Kamei
Yoriko Kishimoto
Otto Lee
Russ Melton
Terry Trumbull

Alternate Commissioners

Domingo Candelas
Helen Chapman
Cindy Chavez
Teresa O'Neill
Mark Turner

Executive Officer
Neelima Palacherla

**LAFCO MEETING MINUTES
WEDNESDAY, AUGUST 2, 2023**

CALL TO ORDER

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

1. ROLL CALL

The following commissioners were present:

- Chairperson Russ Melton
- Vice Chairperson Sylvia Arenas
- Commissioner Jim Beall
- Commissioner Rosemary Kamei
- Commissioner Yoriko Kishimoto
- Commissioner Otto Lee
- Commissioner Terry Trumbull
- Alternate Commissioner Helen Chapman
- Alternate Commissioner Teresa O'Neill
- Alternate Commissioner Mark Turner

The following commissioners was absent:

- Alternate Commissioner Domingo Candelas
- Alternate Commissioner Cindy Chavez

The following staff members were present:

- Neelima Palacherla, LAFCO Executive Officer
- Dunia Noel, LAFCO Assistant Executive Officer
- Emmanuel Abello, Associate Analyst
- Joshua Nelson, LAFCO Counsel

Chairperson Melton announced that Joshua Nelson, Best Best & Krieger, is attending as the LAFCO Counsel.

2. PUBLIC COMMENTS

Seth Schalet, CEO of the Santa Clara County Fire Safe Council, informed he sent written comments on the Fire Service Review Report, but he did not receive a receipt from staff. He then expressed his appreciation to the Commission and staff for their work on the Report.

Chairperson Melton informed that the Report will be discussed under Item #6 of the agenda. He then determined that there are no members of the public who would like to speak on the item.

3. APPROVE CONSENT CALENDAR

The Commission approved the consent calendar.

Motion: Kishimoto

Second: Arenas

AYES: Arenas, Beall, Kamei, Kishimoto, Lee, Melton, Trumbull

NOES: None

ABSTAIN: None

ABSENT: None

MOTION PASSED

***4. CONSENT ITEM: APPROVE MINUTES OF JUNE 7, 2023 LAFCO MEETING**

The Commission approved the minutes of June 7, 2023 meeting.

5. GILROY URBAN SERVICE AREA AMENDMENT 2021 (WREN INVESTORS & HEWELL)

EO Palacherla provided the staff report.

Chairperson Melton requested members to disclose their ex parte communications regarding the application since the last meeting. He informed that he had met with Gilroy Mayor Marie Blankley and property owner Mark Hewell.

Commissioner Trumbull reported that he did not have any ex parte communications to report.

Commissioner Kamei informed that she had met with Mayor Blankley and Gloria Ballard, project consultant. She then discussed for commission consideration, the possibility of swapping underutilized lands within the city limits for lands that are more suited for annexation and development.

Commissioner Arenas informed that she met with the proponent and Mayor Blankley, and her staff had phone calls with Alice Kaufman of Green Foothills. In response to an inquiry by **Commissioner Arenas** regarding whether the City's response for fire service times is adequate, EO Palacherla informed that the City's response did not include the fire services analysis for the proposed development with 300 new homes and 1,000 new residents. **Commissioner Arenas** expressed the need to clarify whether Gilroy's responses to LAFCO are sufficient as that would help commissioners make the decision. She informed that the lack of clarity and the discrepancy in understanding terms such as infill and vacant lands discourages a true discussion of the proposal.

In response to an inquiry from **Commissioner Lee**, EO Palacherla summarized the detachment process and informed that a detachment application to LAFCO can be initiated by petition of property owners or registered voters or by a city council

resolution. She stated that LAFCO staff would then review the application and prepare a staff report and that the Commission would then hold a public hearing to consider the application and when approved, LAFCO would hold a protest proceeding. She noted that the level of protest would determine the outcome of the proposal. In response to his follow-up inquiry, EO Palacherla informed that in the past, LAFCO has not received applications exclusively for detachment but as part of other actions involving adjustment of boundaries between cities.

In response to a series of inquiries by **Alternate Commissioner Turner**, EO Palacherla informed that staff is working on a comprehensive update of LAFCO policies. She indicated that the information on the vacant land inventory has been provided to Gilroy and that Gilroy had previously prepared two inventories based on LAFCO's methodology. She explained that the purpose of LAFCO's inventory is to determine if a city has used its vacant and underutilized lands prior to seeking expansion, which is different from the purpose of the California Department of Housing and Community Development (HCD) inventory. She informed that Gilroy has more than five years vacant land supply based on prior inventories provided by the city and noted that the more recent inventories do not use the LAFCO definition. With regard to concerns expressed at the June 7th meeting regarding the Morgan Hill-Gilroy joint sewer trunkline, **Alternate Commissioner Turner** stated that it is expected the construction would begin in the next calendar year and be completed by the end of 2025. He directed attention to the matrix of LAFCO's questions and Gilroy's responses and expressed concern that it notes that the city did not analyze the fiscal impacts to school districts and inquired if LAFCO commented on the school impacts given the state requirement to build over 1,200 homes in the RHNA cycle. EO Palacherla indicated that LAFCO's comment was more in relation to the proposed urban service expansion and impacts of future development of the area and noted that it is different from the RHNA process which is internal to the city and does not involve LAFCO.

Commissioner Kishimoto stated that a different state law requires development to consider impacts and pay fees as mitigation. She directed attention to the proposal area map and noted that the pattern of development was likely the result of leapfrogging annexations in the past involving lands previously in agricultural use. In response to her inquiry, EO Palacherla informed that LAFCO does not have a written definition for infill but noted that it means development within existing city limits and within a city's urban service area.

Chairperson Melton acknowledged the comments made by Commissioner Arenas and noted that he has made two site visits and put a lot of thought into considering the merits of the application against the applicable laws and policies. In response to an inquiry by **Chairperson Melton**, EO Palacherla advised that the Commission can modify the staff recommendations and approve only a portion of the proposal area for inclusion in the urban service area. **Chairperson Melton** informed that the area south of Tatum Avenue that is C-shaped is the opposite of sprawl. He also acknowledged Commissioner Kamei's proposal and Commissioner Lee's interest in detachment of lands that cannot be developed and applauded the creative thinking.

Commissioner Arenas expressed concern that the HCD definition is not being used as it is the state's basis to comply with the housing element requirement. She stated that LAFCO's vacant land definition must not conflict with what the state is demanding of the cities. She also acknowledged that there is a natural tension between development of vacant lands and preservation of open space and the need to address the housing crisis. She noted the need for clear policies and process so LAFCO can continue to make decisions in the future and be part of the solution to the housing crisis. She added that there is a limit to how much housing can be accommodated in the downtown area and noted that a historic downtown area should not be demolished to be replaced by housing and noted that underutilized lands are not easy to develop. She noted that LAFCO policies require the city to provide an explanation for why the expansion is necessary and urged commissioners to consider Gilroy's explanation for the urban service area expansion.

Chairperson Melton opened the public hearing.

Andy Faber, Gilroy City Attorney, explained that the proposal is consistent with the City's general plan and requested LAFCO approval.

Cindy McCormick, Gilroy Senior Planner, presented a summary description of the proposal and requested that LAFCO approve the proposal.

In response to **Commissioner Lee**, Ms. McCormick informed that detachment of city lands that cannot be developed may be considered by Gilroy in the future. In response to another inquiry, Mr. Nelson advised that approval of the proposal, conditioned on detachment of certain lands within the city cannot be considered at this meeting because it is not part of the application. In response to **Commissioner Lee**, Ms. McCormick informs that 60 percent of the proposed neighborhood will be for low-density single-family housing while 40 percent will be for medium and high-density.

Commissioner Kishimoto expressed concern regarding the impact of the unfunded \$24 million in needed infrastructure development on individual housing units and future user fees. Ms. McCormick informed that the amount will be paid over a 20-year planning horizon and that funds are anticipated to be collected during that time. She indicated that most the infrastructure needed is already in place. **Commissioner Kishimoto** iterated her concern about cost and Ms. McCormick advised that there is a law that requires user fees to be reasonable. She informed that Gilroy's five-year capital improvement program includes \$150 million for infrastructure, which will be funded from the General Plan, impact fees and other sources like the water fund. Upon further inquiry by Commissioner Kishimoto, she acknowledged that she did not know the cost per unit.

In response to **Alternate Commissioner Turner**, Ms. McCormick stated that a member of the school district attends the Technical Advisory Committee for this proposal and has indicated that public school enrollment is currently down and school children from this development are welcome, and she indicated that impact fees will be levied on the school district.

Mr. Faber stated that the discussion on detachment was in reference to the Gilroy Gardens, which is 536 acres and is considered surplus land. He indicated that there was no interest from housing developers but that there may be interest for recreational purposes, particularly if Gilroy sells the land.

In response to **Alternate Commissioner Turner**, Ms. McCormick indicated that there is no immediate impact on public schools as the proposal area will be developed over five years since an environmental review and a specific plan are required.

In response to an inquiry by **Chairperson Melton**, Ms. McCormick indicated that Gilroy can meet its RHNA requirements on lands within its existing boundary over the next eight years.

MJ Frankel, representative for Wren Investors, explained how the project would benefit the community, and requested support for the proposal.

Mark Hewell, property owner, explained why the proposal should be approved and expressed support for the proposal.

Gloria Ballard, Principal with MH Engineering, representing the applicant, presented a map and explained why the proposal should be considered infill and requested LAFCO approval of the proposal.

Zach Hilton, Gilroy City Councilmember, explained his concerns with the proposal and expressed his support for LAFCO staff recommendation to deny the proposal.

Alice Kaufman, Policy and Advocacy Director, Green Foothills, explained why the proposal is not infill and urged denial of the proposal.

Jordan Grimes, South Bay Resilience Manager, Greenbelt Alliance, discussed the Housing Element and how the City should work to remove barriers to infill development in the city and urged denial of the proposal.

Raja Aluri, property owner in the proposal area, requested LAFCO approval and explained how the proposal would benefit the property owner, the environment and the community.

Marie Blankley, Gilroy City Mayor, explained the reasons why the Commission should approve the project and requested support for the proposal.

Dion Bracco, Gilroy City Councilmember, explained the benefits of the proposal and requested support for the proposal.

Chairperson Melton informed that he would support a motion for approval of the C-shaped area south of Tatum Avenue since it is opposite of urban sprawl and is infill. He noted that he favors denial of the remaining area in light of LAFCO's mission and because Gilroy can accommodate its RHNA within its existing city limits.

Commissioner Kamei noted that LAFCO's mandate is to prevent urban sprawl and in order for orderly growth Gilroy should consider decreasing underutilized lands and grow in areas more appropriately situated to be utilized. She proposes that should LAFCO deny this application, then LAFCO should consider waiving the

Cortese-Knox-Hertzberg (CKH) Act provision that limits the City from bringing back a similar application to LAFCO within the year if the City addresses its vacant land by either detachment of inappropriate lands or by other means such as conservation easements.

Commissioner Trumbull expressed support for Commissioner Kamei's idea for detachment and noted that he is in support of staff recommendation. He directed attention to the staff report where the definition of vacant land and methodology for preparing the vacant land inventory are provided, and noted that, Gilroy has provided two inventories mostly consistent with LAFCO definition, but subsequently provided two more inventories that are not consistent with LAFCO's methodology.

In response to **Commissioner Arenas**, EO Palacherla confirmed that LAFCO considers land developed within the city limits as infill. **Commissioner Arenas** stated that in that case the definitions must be memorialized as asked by the Santa Clara County Civil Grand Jury. She noted that according to that definition, development in North Coyote within San Jose city limits would be considered infill but it is unlikely that policymakers would consider such development as infill. She stated that the applicants have done their part and have explained the issues raised by LAFCO and that should be factored in the Commission's decision. In response to an inquiry from Commissioner Arenas, EO Palacherla advised that there have been other applications that were reviewed under the same standard but LAFCO does not have a written policy on it. **Commissioner Arenas** expressed her interest in a fair process and noted that the applicants have demonstrated how services would be delivered. She reiterated her comments on the definitions for infill and vacant land. She stated that commissioners have the obligation to understand and uphold the policies, and not be subjective or influenced by campaign contributions, and informed that she received no such contributions. She suggested a future study session to work on updating LAFCO policy and clarifying terms.

Chairperson Melton expressed agreement with Commissioner Arenas on the need for and interest in developing a written policy and stated that the workplan includes an item for a comprehensive update of LAFCO policies.

Commissioner Kishimoto acknowledged progress by Gilroy on its master plans and expressed agreement on the need for definition of terms including for farmland which has multiple definitions. She expressed support for staff recommendation to deny the project especially due to fiscal and environmental impacts but noted that she was open to considering approval of the portion south of Tatum Road as suggested by the chair.

Commissioner Lee reiterated his prior comments regarding potential detachment or conservation easement for lands that cannot be developed. He also reiterated Councilmember Hilton's comments regarding higher density housing needs and encouraged its consideration over single-family homes. **Chairperson Melton** noted that Commissioner Lee is leaning toward staff recommendation for denial but appears amenable towards a workable solution.

Commissioner Beall provided historical background on annexations around Lake Anderson and informed that San Jose created a greenbelt to clarify boundaries and that clarity that does not exist here. He noted that Gilroy is the only city that declined to join the Open Space District when it was established and discussed the need to tighten and clarify Gilroy's boundaries. He discussed the need for all cities to build affordable housing and noted that there will be new legislation to offer surplus property for affordable housing which would also allow the Santa Clara Valley Water District (SCVWD) to build housing for the homeless population living near flood control infrastructure. He also informed that by investing in water recycling and treatment system in South County, it can also provide supply for agricultural uses, and expressed concern for those properties that are still on septic systems. He also reported on the electric train to Gilroy, which would help reduce noise pollution and help the environment in South County.

Chairperson Melton expressed his desire for a motion that can get a majority vote and observed that it appears that denial appears to be the predominant position on the commission but that there may be consideration of approval for areas south of Tatum or the Channel. He directed staff to develop language for a toolkit that includes detachment, conservation easement and waiver of the one-year limit for the city to file another application.

Alternate Commissioner Turner informed that there is no urban sprawl in Gilroy as it has not applied for USA expansion in the last 10 years. He reiterated his reasons for why the commission should consider approving Gilroy's application.

In response to EO Palacherla, **Chairperson Melton** clarified his request for the language to add to the motion.

Commissioner Trumbull acknowledged the need to clarify certain definitions of terms and he suggested that staff come back with a matrix that includes the various definitions and the definitions that LAFCO would use going forward.

Commissioner Arenas requested to ask a question of the applicant and **Chairperson Melton** agreed but cautioned against reopening the public hearing.

In response to **Commissioner Arenas's** inquiry whether approval of the area south of Tatum would have an impact on the master planning process, Ms. Ballard advised that as long as lines of assessment are not split, it would not interfere with their application. In response to **Commissioner Arenas**, EO Palacherla informed that it is her understanding that Gilroy is considering a specific plan for the entire area and that it should be a question for the City. Mr. Nelson agreed that it would likewise be a question for the city whether this CEQA would apply since it would be the lead agency. EO Palacherla added that LAFCO would be the responsible agency and would rely on the CEQA prepared by Gilroy.

Commissioner Kishimoto moved to approve the inclusion to USA of the area south of the channel, deny inclusion of the area north of the channel, and for staff to provide language to put into the effect detachment of lands not suitable for urban

development and/or establishment conservation easements and waive the limitation to reapply within a year.

At the request of **Chairperson Melton, Commissioner Kishimoto** clarified that her motion would exclude the channel from the USA since it is expected to remain as open space.

Upon the request of Chairperson Melton, Mr. Nelson informed that the language for the third part of the motion is to the extent it applies, for Commission to waive the time limit on a new application affecting the area pursuant to Government Code section 56884 as the public interest supports permitting the city and applicant to consider ways of addressing the Commission's findings that supported the denial of the application for the area north of the channel He also indicated that the fourth part of the motion is the CEQA findings that support the approval of the USA amendment for the portion south of the channel.

In response to an inquiry by **Commissioner Kamei, Chairperson Melton** informed that the City of Gilroy is able to accommodate its RHNA. **Chairperson Melton** thanked Gilroy staff and LAFCO staff and reiterated the reasons for supporting the motion. Commissioner Lee commended the Chairperson for building consensus and working out a compromise which addresses the septic and other issues. **Commissioner Arenas** agreed with Commissioner Lee, commended Chairperson Melton's leadership and thanked LAFCO staff and Gilroy staff.

The Commission:

1. Approved the request by the City of Gilroy to amend its USA boundary to include the parcels south the channel.
2. To the extent it applies, the Commission waived the time limit on a new application affecting the area pursuant to Government Code section 56884 as the public interest supports permitting the city and applicant to consider ways of addressing the Commission's findings that supported the denial of the application for the area including and north of the channel.
3. The Commission: (a) Found that the Initial Study and Mitigated Negative Declaration approved by the City of Gilroy on January 27, 2021 were completed in compliance with CEQA and are an adequate discussion of the environmental impacts of the project on parcels south of the channel (APN 790-09-010), (b) Found that prior to making a decision on this project, specifically on parcels south of the channel, LAFCO reviewed and considered the environmental effects of the project as outlined in the Initial Study and Mitigated Negative Declaration, and (c) Found that the City of Gilroy submitted a mitigation monitoring program and that the monitoring program ensures compliance with the mitigation measures identified in the Mitigated Negative Declaration that would eliminate or reduce significant adverse environmental effects to less than significant levels, associated with the Urban Service Area expansion over which LAFCO has responsibility.

Motion: Kishimoto

Second: Arenas

AYES: Arenas, Beall, Kamei, Kishimoto, Lee, Melton, Trumbull

NOES: None

ABSTAIN: None

ABSENT: None

MOTION PASSED

The Commission recessed at 4:30 p.m., and reconvened at 4:35 p.m.

6. COUNTYWIDE FIRE SERVICE REVIEW – PUBLIC REVIEW DRAFT REPORT

Chairperson Melton informed that the presentation by the consultant is about 60 to 70 minutes long and that there are video recordings of the presentation available on the LAFCO website.

Dan Petersen, AP Triton, consultant for the project, informed that the PowerPoint presentation is also included in the packet, and he indicated that he is available to answer questions. He also noted that LAFCO is receiving comments on the Public Review Draft Report through the end of the day.

Chairperson Melton acknowledged the work of the Technical Advisory Committee (TAC) led by Commissioners Kishimoto and Beall, and previously, by former Commissioner Susan Vicklund Wilson. **Commissioner Kishimoto** acknowledged the work of staff and consultants, and she urged commissioners to watch the video recording of the presentation as it discusses the insightful findings in the Draft Report. She informed that the TAC spent considerable amount of time discussing the wildland-urban interface and the report includes substantial recommendations.

Chairperson Melton expressed gratitude for Commissioner Kishimoto's leadership and opened the public hearing.

J. Logan, General Manager, Los Altos Hills County Fire District, expressed her appreciation to the consultants for their work and referenced and summarized the district's comments submitted on August 1, 2023.

Chairperson Melton determined that there are no members of the public who would like to speak on the item and declared the public hearing closed.

In response to **Chairperson Melton**, EO Palacherla informed that staff has received the comments from the Fire Safe Council, but its receipt was not acknowledged since staff has issued notification that the consultant will compile all comments and prepare responses for distribution. She indicated that the responses will be released later in August. In response to **Chairperson Melton**, Mr. Petersen informed that comments are provided by LAFCO staff to him each week and are being categorized by the consultants for responses.

The Commission accepted public comments and directed staff to revise the Report as necessary to address comments received through August 2, 2023.

Motion: Kishimoto

Second: Lee

AYES: Arenas, Beall, Kamei, Kishimoto, Lee, Melton, Trumbull

NOES: None

ABSTAIN: None

ABSENT: None

MOTION PASSED

7. CALAFCO RELATED ACTIVITIES

7.1 Designate Voting Delegate and Alternate for 2023 CALAFCO Board of Directors Election

The Commission appointed Chairperson Melton as the voting delegate and Commissioner Kishimoto as the alternate voting delegate.

Motion: Kishimoto

Second: Kamei

AYES: Arenas, Beall, Kamei, Kishimoto, Lee, Melton, Trumbull

NOES: None

ABSTAIN: None

ABSENT: None

MOTION PASSED

***8. CONSENT ITEM: EXECUTIVE OFFICER'S REPORT**

The Commission accepted the report.

8.1 Update on LAFCO Clerk Recruitment

8.2 Meeting with County Planning Office Staff on Annexation of Unincorporated Islands / Parcels

8.3 Meeting with Midpeninsula Regional Open Space District Staff on LAFCO Annexation Process

8.4 Meeting with University of California Researchers on Water System Consolidations

9. COMMISSIONER REPORTS

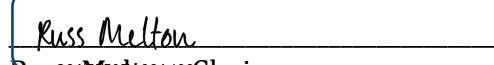
10. NEWSPAPER ARTICLES / NEWSLETTERS

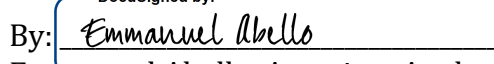
11. WRITTEN CORRESPONDENCE

12. ADJOURN

The Commission adjourned at 4:55 p.m., to the next regular LAFCO meeting on October 4, 2023, at 1:15 p.m., in the Board of Supervisors' Chambers, 70 West Hedding Street, San Jose.

Approved on October 4, 2023.

DocuSigned by:

Russ Melton, Chairperson
Local Agency Formation Commission of Santa Clara County

DocuSigned by:

By: Emmanuel Abello, Associate Analyst