

AGENDA
REGULAR MEETING
Wednesday, December 10, 2003
1:15 p.m.

Chambers of the Board of Supervisors
70 West Hedding Street, First Floor, East Wing
San Jose, CA 95110

CHAIRPERSON: Blanca Alvarado
COMMISSIONERS: Donald F. Gage, Linda LeZotte, Susan Vicklund-Wilson, Mary Lou Zoglin
ALTERNATES: John Howe, Pete McHugh, Chuck Reed, Terry Trumbull

The items marked with an asterisk (*) are included in the Consent Agenda and will be taken in one motion. At the beginning of the meeting, anyone who wants to discuss a consent item should make a request to remove that item from the Consent Agenda.

If you wish to participate in the following proceedings, you are prohibited from making a campaign contribution of more than \$250 to any commissioner or alternate. This prohibition begins on the date you begin to actively support or oppose an application before LAFCO and continues until three months after a final decision is rendered by LAFCO. No commissioner or alternate may solicit or accept a campaign contribution of more than \$250 from you or your agent during this period if the commissioner or alternate knows, or has reason to know, that you will participate in the proceedings. If you or your agent have made a contribution of more than \$250 to any commissioner or alternate during the twelve (12) months preceding the decision, in the proceeding that commissioner or alternate must disqualify himself or herself from the decision. However, disqualification is not required if the commissioner or alternate returns the campaign contribution within thirty (30) days of learning both about the contribution and the fact that you are a participant in the proceedings.

1. ROLL CALL

2. PUBLIC PRESENTATIONS

This portion of the meeting is reserved for persons desiring to address the Commission on any matter not on this agenda. Speakers are limited to **THREE** minutes. All statements that require a response will be referred to staff for reply in writing.

3. APPROVE MINUTES OF OCTOBER 8, 2003 MEETING

4. APPROVE CONSENT CALENDAR

***4.1 Cupertino Sanitary District Annexation: Pierce Road (Lands of Wilson)**

A resolution by the Cupertino Sanitary District to annex a 1.32 acre area (APN: 503-68-015) located on the east side of Pierce Road, between Palomino Way and Mt. Eden Road in the City of Saratoga.

Possible Action: Approve annexation to Cupertino Sanitary District, subject to certain terms and conditions, and waive further protest proceedings.

5. INFORMATIONAL WORKSHOP ON DRAFT COUNTYWIDE FIRE PROTECTION SERVICE REVIEW REPORT

Information Only.

6. ADMINISTRATIVE APPROVAL OF THE CITY OF MILPITAS' REQUEST TO EXTEND WATER SERVICE TO ONE PARCEL IN SPRING VALLEY HEIGHTS AREA.

Information Only.

7. 2004 SCHEDULE OF LAFCO MEETINGS

Possible Action: Adopt the schedule of meetings and filing deadlines for 2004.

8. UPDATE ON COUNTYWIDE WATER SERVICE REVIEW

Information Only.

9. PENDING APPLICATIONS

9.1 Mid-Peninsula Regional Open District Annexation of Coastal Lands in San Mateo County

For information only.

10. WRITTEN CORRESPONDENCE

11. ADJOURN

Adjourn to the next regular business meeting on Wednesday, February 11, 2004.

NOTE TO COMMISSIONERS:

Upon receipt of this agenda, please contact Emmanuel Abello, LAFCO Clerk at (408) 299-5088 if you are unable to attend the LAFCO meeting.

In compliance with the Americans with Disabilities Act, those requiring accommodation for this meeting should notify the Clerk of the Board's Office 24 hours prior to the meeting at (408) 299-4321, TDD (408) 993-8272.

Local Agency Formation Commission
of Santa Clara County

MINUTES

WEDNESDAY, OCTOBER 8, 2003

1. ROLL CALL

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 8th day of October 2003 at 1:15 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California, with the following members present: Vice-Chairperson Susan Vicklund-Wilson and Commissioners Donald Gage, Linda LeZotte and Mary Lou Zoglin.

The LAFCO staff in attendance include Neelima Palacherla, LAFCO Executive Officer; Kathy Kretchmer, LAFCO Counsel; Dunia Noel, LAFCO Analyst; and Ginny Millar, LAFCO Surveyor.

The meeting is called to order by Vice-Chairperson Susan Vicklund-Wilson and the following proceedings are had, to wit:

2. PUBLIC PRESENTATION

There are no public presentations.

3. APPROVE MINUTES OF JUNE 11, 2003 MEETING

On motion of Commissioner Gage, seconded by Commissioner Zoglin, it is ordered on a 4-0 vote, with Chairperson Alvarado absent, that the minutes of the August 13, 2003 meeting be approved, as submitted.

4. MORGAN HILL 2003 URBAN SERVICE AREA AND SPHERE OF INFLUENCE AMENDMENT AND REORGANIZATION - BOY'S RANCH WATER TANK SITE

Ms. Palacherla advises that the City of Morgan Hill is requesting a minor Sphere of Influence (SOI) amendment to remove three parcels (APNs 728-35-003,

004 and 005) from the SOI of San Jose and include them within Morgan Hill's SOI. In addition, the City of Morgan Hill is requesting an amendment of its Urban Service Area (USA) to include these three parcels. She states that Morgan Hill is also requesting a reorganization to (1) detach APN 728-35-005 from San Jose, and (2) annex APNs 728-35-003 and 005, and (a) detach APN 728-35-003 from the South Santa Clara County Fire Protection District (SSCCFPD), and (b) annex APN 728-35-005 to the Santa Clara County Library Service Area (SCCLSA). Ms. Palacherla adds that the City is requesting these boundary changes to increase the water storage capacity of an existing half million-gallon tank to one million-gallon tank as a back up for emergencies and peak-hour usage. Morgan Hill owns the three contiguous parcels. APN 728-35-003 is in unincorporated County, APN 728-35-004 is in Morgan Hill city limits while APN 728-35-005 is in San Jose's city limits. She notes that the Morgan Hill could expand the water tank only after all the three parcels are merged into one. However, these parcels could only be merged together if they all lie within the same jurisdiction.

Ms. Palacherla advises that the San Jose City Council has adopted a resolution in support of Morgan Hill's SOI amendment and the detachment of APN 728-35-005 from San Jose. She adds that since San Jose has indicated support for the application, there are no city services being provided to the area, and no development planned for the site, staff considers the proposal as a minor SOI change and will not require a service review. With regard to the USA amendment, Ms. Palacherla advises the area is not a prime agricultural land and the application is a logical and orderly boundary change for Morgan Hill. She adds that there is no growth inducing impact because access to the site is restricted, its slope is more than 50 percent and there is no service being provided to the area. She states that the fiscal impact to the affected agencies is negligible and that the proposal complies with all policies for annexation.

Ms. Palacherla indicates that Government Code Section 56663(c) allows

the Commission to waive protest proceedings if all the agencies gaining or losing territories as a result of boundary change consent to waive protest proceedings. However, she notes that since staff has not received the waiver of protest from the South Santa Clara County Fire Protection District, a protest proceeding should be held. She indicates that though there are no registered voters in the area, state law does not provide exemption from protest proceeding. Ms. Palacherla states that the Executive Officer was previously authorized by the Commission to hold proceedings.

In response to an inquiry by Commissioner Gage, Ms. Kretchmer advises that SSCCFPD was initially unaware that the protest waiver requires approval by the Board of Supervisors and that there are several steps required before it can be brought to the Board. She advises that the district has not taken the first step in the process at this time. Vice-Chairperson Wilson observes that the protest proceeding could be faster. In response to an inquiry by Commissioner Gage, Ms. Palacherla advises that the protest proceeding requires 30 days after the present hearing, and a 21-day notice period prior to the protest hearing itself.

In response to an inquiry by Vice-Chairperson Wilson, Terry Linder, Senior Planner, City of Morgan Hill, states that the City wants to start the construction of the water tank as soon as possible and is willing to pay the costs of a protest hearing. In response to an inquiry by Commissioner Gage, Ms. Linder states that she is not in a position to determine whether the City is able to provide free water to the Boys Ranch facility and indicates that she will inform her superiors about this inquiry. Ms. Kretchmer advises that the Commission may conditionally approve the application contingent on the receipt of all the protest waivers, continue the hearing to December 10, 2003 or direct the Executive Office to hold the protest hearing. Ms. Kretchmer adds that staff could complete the protest hearing within 51 days. Ms. Palacherla indicates that the County and SSCCFPD expressed willingness to provide the waiver letters and attribute the delay of the waivers to the process involved. Commissioner Gage

notes that these agencies may not protest against this project because it will provide additional water for fire protection. He proposes that the Commission conditionally approve the application contingent upon the receipt of the waivers of protest from the County and SSCCFPD. In response to an inquiry by Commissioner Gage, Ms. Linder advises that Morgan Hill has sent a letter to SSCCFPD requesting for the waiver of protest from that agency. Commissioner Gage offers help with follow up for the waiver of protest letters if necessary.

On motion of Commissioner Gage, seconded by Commissioner Zoglin, it is unanimously ordered, on a vote of 4-0, with Chairperson Alvarado absent, that Resolution No. 03-11, (a) approving the minor SOI amendment between the City of San Jose and the City of Morgan Hill which removes APNs 728-35-003, 004 and 005 from the San Jose SOI and includes them into Morgan Hill's SOI, (b) approving the amendment to Morgan Hill's USA to include these three parcels into Morgan Hill's USA, and detach APN 728-35-003 from SSCCFPD, and annex APN 728-35-005 to SCCLSA, conditioned on the receipt of waivers of protest from the County and the SSCCFPD, be approved.

5. EXECUTIVE OFFICER'S REPORT

5A. UPDATE ON LAFCO'S COUNTYWIDE FIRE SERVICE REVIEW

Ms. Palacherla reports that the Technical Advisory Committee has reviewed the first draft of the fire service review report and will meet again to review the second draft. She states that the report may be released and presented for public review and comment by November 2003. During the public review and comment period, staff will solicit input from the fire agencies and other stakeholders. Ms. Palacherla advises that the report, which will include comments from the stakeholders, will be submitted for approval to the Commission on December 10, 2003.

5B. UPDATE ON GILROY'S AGRICULTURAL MITIGATION POLICY

Dunia Noel, LAFCO Analyst, advises that staff has received a draft City of

Gilroy Agricultural Mitigation Policies for review and comment. She reports that Gilroy City Council will hold a public hearing on October 22, 2003 to consider the policies. She indicates that the draft policy may be approved and would take effect in November 2003. Ms. Noel advises that the proposed policy was formulated by a task force, composed of representatives from the City Council, Planning Commission, citizens at large, agricultural interests, Open Space Authority and Land Trust. She reports that staff will review this policy and provide the Commissioners with copies of staff comment.

5C. REPORT ON THE 2003 CALAFCO ANNUAL CONFERENCE HELD IN SAN FRANCISCO

Ms. Palacherla reports that staff and commissioners attended the 2003 CALAFCO Annual Conference, during which, Commissioner Wilson was elected to the CALAFCO Board. Ms. Noel continues the report by saying that the conference had thirteen sections covering a variety of topics. The first session of interest was on the timely availability of water, particularly since LAFCO is required to review the availability of water when looking at boundary changes and service requests. She indicates that staff has amended the LAFCO policies to reflect this new requirement. Another topic of interest was on school facilities, state standards for school sites, boundary changes and provision of services to schools. Ms. Noel adds that while schools are regulated by the state and exempt from local land use controls, cities cannot extend services to schools outside their boundaries without LAFCO approval. She advises that staff has already sent a letter to all cities and school districts in the County on this matter. Ms. Noel continues by saying that the third panel talked about preservation of lands and advises the Commission that staff is working closely with the Department of Conservation to ensure compliance to state law in the annexation of lands under Williamson Act contracts. Ms. Noel states that a speaker from that agency made a presentation during the LAFCO City-Conducted Annexation Process Workshop held on May 14, 2003. Finally, she reports that another topic of

interest was on the California Environmental Quality Act and LAFCO's role under that law, particularly with regard to the ongoing municipal service reviews and SOI updates.

6. PENDING APPLICATIONS

Ms. Palacherla reports that staff received an application from the Cupertino Sanitary District (Pierce Road - Lands of Wilson) which is currently being reviewed.

7. WRITTEN CORRESPONDENCE

Ms. Palacherla advises that staff is providing the Commissioners with a copy of the report from the League of Women Voters about the LAFCOs in the Bay Area region.

8. ADJOURNMENT

On order of the Vice-Chairperson, there being no objection, the meeting is adjourned at 1:39 p.m. to the next regular meeting to be held on Wednesday, December 10, 2003 at 1:15 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California.

Susan Vicklund-Wilson, Vice-Chairperson
Local Agency Formation Commission

ATTEST:

Emmanuel Abello, LAFCO Clerk

Date : December 2, 2003
 Designation : **Cupertino Sanitary District - Pierce Road (Lands of Wilson)**
 Type of Application: LAFCO Heard Change of Organization
 Filed By: Resolution / 100% Consent
 Date of Hearing: December 10, 2003

1. REVIEW OF PROPOSAL

- a. Acreage and location: - Conforms to Sphere of Influence? Yes No
 1.32 acre area (APN 503-68-015) located on the - Creates island, corridor or strip? Yes No
 east side of Pierce Road, between Palomino Way - Conforms to road policy? Yes No
 and Mt. Eden Road in the City of Saratoga. - Conforms to lines of assessment? Yes No
(if no, explain)

b. Effect on community services

- Provision of all municipal services
- Provision of all district services
- Municipal/District services not provided
- Detachment from
- School District Impact Report
- County Transit Impact Report

e. Present land use:

Single Family Home

f. Proposed land use:

No Change

- g. Involves prime agricultural land or Williamson Act land? **No**

c. Inhabited Uninhabited

d. Are boundaries Definite and Certain?
 Yes No

2. ENVIRONMENTAL REVIEW OF PROPOSAL

- Annexation is Categorically Exempt from CEQA
 Under Class 19, Sections 15319(a) and 15319(b)
- The City is the Lead Agency and completed the Final EIR
- LAFCO is the Lead Agency and prepared Negative Declaration/Draft EIR

3. SUGGESTED CONDITIONS OR OTHER COMMENTS:

See Exhibit "C" for Terms and Conditions

4. PROTESTS:

5. RECOMMENDATIONS:

1. **Approve annexation of the area to Cupertino Sanitary District as depicted in Exhibits "A" & "B" (Map & Legal Description) and subject to terms and conditions in Exhibit "C".**
2. **Waive further protest proceedings pursuant to Government Code Section 56663(c).**

By: Neelima Palacherla
 Neelima Palacherla, Executive Officer

Date: 12/03/03

EXHIBIT "A"
ANNEXATION TO CUPERTINO SANITARY DISTRICT
"PIERCE ROAD-WILSON"

All of that certain real property situate in the City of Saratoga, County of Santa Clara, State of California described as follows:

BEGINNING at the Northwest corner of Parcel B as shown on that certain Record of Survey Map recorded in Book 127 of Maps at page 44, Santa Clara County Records, said point being on the monument line of Pierce Road as shown on said map, said point also being on the boundary of the annexation to Cupertino Sanitary District entitled "Saratoga Hills No. 5"; thence leaving said monument line of Pierce Road and proceeding $S78^{\circ}26'15"E$ 30.16 feet to the Northeast corner of said Parcel B, said point also being the Northwest corner of Parcel A as shown on said map; thence proceeding along the Northerly boundary of said Parcel A $S78^{\circ}26'15"E$ 173.15 feet to the Northeast corner of said Parcel A; thence continuing along the boundary of said Parcel A and the boundary of said annexation "Saratoga Hills No. 5" $S21^{\circ}20'00"W$ 308.26 feet to the Southeast corner of said Parcel A, said point also being on the Northerly boundary of the annexation to Cupertino Sanitary District entitled "Palomino Way"; thence leaving the boundary of aforementioned annexation "Saratoga Hills No. 5" and proceeding along the Southerly boundary of said Parcel A and the boundary of said annexation "Palomino Way" $N63^{\circ}00'00"W$ 190.94 feet to a point on the Southwest corner of said Parcel A, said point also being on the Southeast corner of aforementioned Parcel B; thence leaving the boundary of said Parcel A and proceeding along the boundary of said Parcel B $N63^{\circ}00'00"W$ 30.01 feet to the Southwest corner of said Parcel B, said point also being on the monument line of aforementioned Pierce Road; thence continuing along the boundary of aforementioned annexation "Palomino Way" $N63^{\circ}00'00"W$ 20.01 feet to the western boundary of Pierce Road and the boundary of aforementioned annexation "Saratoga Hills No. 5"; thence leaving said boundary of annexation "Palomino Way" and continuing along the westerly boundary of Pierce Road and the boundary of annexation "Saratoga Hills No. 5" $N28^{\circ}48'00"E$ 184.25 feet to an angle point on the westerly boundary of said Pierce Road as shown on said map; thence $N17^{\circ}27'00"E$ 64.01 feet; thence leaving said westerly boundary of Pierce Road and continuing along the boundary of aforementioned annexation "Saratoga Hills No. 5" $S78^{\circ}26'15"E$ 20.11 feet to the aforementioned monument line of Pierce Road and the **POINT OF BEGINNING** of this description.

Containing 62,569 square feet (1.436 acre) more or less and including all of aforementioned Parcels A and B.

Nov. 19, 2003

J:\jobs\Wilson\EXHIBIT A.doc



**TERMS AND CONDITIONS FOR ANNEXATION
TO CUPERTINO SANITARY DISTRICT**

The annexation shall be subject to the following terms and conditions:

1. In the event that pursuant to rules, regulations or ordinances of the District, as now or hereafter amended, the District shall require any payment of a fixed or determinable amount of money, either as a lump sum or in installments, for the acquisition, transfer, use or right of use of all or any part of the existing property, real or personal, of the District, such payment will be made to the District in the manner and at the time as provided by the rules, regulations or ordinances of the District as now or hereafter amended.
2. Upon and after the effective date of said annexation, the Property, all inhabitants within such Property, and all persons entitled to vote by reason of residing or owning land within the Property shall be subject to the jurisdiction of the District, shall have the same rights and duties as if the Property had been a part of the District upon its original formation, shall be liable for the payment of principal, interest and any other amounts which shall become due on account of any outstanding or then authorized but thereafter issued bonds, including revenue bonds, or other contracts or obligations of the District and shall be subject to the levying or fixing and collection of any and all taxes, assessments, service charges, rentals or rates as may be necessary to provide for such payment; and shall be subject to all of the rates, rules, regulations and ordinances of the District, as now or hereafter amended.

Date prepared: November 24, 2003

Hearing date: December 10, 2003

To: The Santa Clara County Local Agency Formation Commission

From: Dunia Noel, LAFCO Analyst *DN*

Subject: **Cupertino Sanitary District Annexation: Pierce Rd. (Lands of Wilson)**

Recommended Environmental Action:

Approve Categorical Exemption. The project is categorically exempt from the requirements of CEQA.

Reasons for Recommendation:

The project is exempt under CEQA Class 19, Section 15319 (a) and Section 15319 (b) that states:

Section 15319 (a): Annexation to a city or special district of areas containing existing public or private structures developed to the density allowed by the current zoning or pre-zoning of either the gaining or losing environmental agency whichever is more restrictive, provided, however, that the extension of utility services to the existing facilities would have a capacity to serve only the existing facilities.

Section 15319 (b): Annexation of individual small parcels of the minimum size for facilities exempted by Section 15303, New Construction or Conversion of Small Structures.

Cupertino Sanitary District proposes to annex one parcel as well as a portion of Pierce Road that totals approximately 1.32 acres in size and is located on the east side of Pierce Road between Palomino Way and Mt. Eden Road in the City of Saratoga. The parcel (Assessor Parcel No. 503-68-015), located at 14040 Pierce Road, is located in the City of Saratoga and has a 1,800 square foot home on it. The property owner is requesting approval to abandon their existing septic system and to connect to sewer through the Cupertino Sanitary District.

Regarding the annexation into the Cupertino Sanitary District, the parcel at 14040 Pierce Road is zoned HR (Hillside Residential) with a 2-acre minimum lot size, based on the slope of the property and is not eligible for further subdivision due to its size. The property is under the jurisdiction of the City of Saratoga and has a General Plan

Designation of "Residential Hillside Conservation." The parcel is located within Cupertino Sanitary District's Sphere of Influence. The proposed annexation to Cupertino Sanitary District is thus exempt from CEQA because the special district annexation meets the requirements of the Class 19 exemption.

November 17, 2003

Darryl Wong
455 East Calaveras Blvd.
Milpitas, CA 95035

**Re: Spring Valley Heights, 550 Vista Ridge Drive (APN 042-31-002)
Request for Extension of Water Services**

Dear Mr. Wong:

This is to inform you that the LAFCO Chairperson and Executive Officer have administratively approved your request for extending water services to the above mentioned property located on 550 Vista Ridge Drive. As provided for under the local LAFCO policies for "Out of Agency Contract for Service Requests", the Chair and the Executive Officer may give administrative approvals for requests with an urgent health and safety concern, if the proposal meets certain criteria.

Attached is a staff report describing how the proposal meets the required criteria and how it complies with applicable LAFCO policies. This staff report will be presented to the full LAFCO at its December 10 meeting as an informational item.

You may contact Neelima Palacherla at 408/299-5127 if you have any questions regarding this issue.

Sincerely,



Blanca Alvarado
LAFCO Chairperson



Neelima Palacherla
LAFCO Executive Officer

November 17, 2003

TO: LAFCO

FROM: Neelima Palacherla, Executive Officer *up*

SUBJECT: Administrative Approval for
Out of Agency Contract for Water Services (City of Milpitas)
Spring Valley Heights, 550 Vista Ridge Drive (APN 042-31-002)

FOR YOUR INFORMATION ONLY

The LAFCO Chairperson and Executive Officer administratively approved a request from the City of Milpitas for extending water service to a single family home located at 550 Vista Ridge Drive just outside the city limits of Milpitas, without waiting for the full Commission approval.

As a Responsible Agency under CEQA, found that the extension of services to the property with an existing single family home is categorically exempt from CEQA under Section 15301(b).

PROJECT DESCRIPTION

The City of Milpitas requested LAFCO administrative approval to provide water services to the property (APN 042-31-002) located at 550 Vista Ridge Drive, located outside Milpitas' city limits and urban service area but within its sphere of influence. This parcel is part of the 27 lot Spring Valley Heights residential development. Except for this parcel which is located on unincorporated land, the remaining parcels in the development are located within city limits. Please see attached map. The Spring Valley Mutual Water Company using wells provided the development's water supply. The wells have recently failed and the community is now trucking water for its needs. The City on behalf of the property owner is seeking LAFCO administrative approval to connect the property to the City water supply stating that an immediate public health danger is created since the property does not have an adequate water supply.

ENVIRONMENTAL ASSESSMENT

Categorically exempt per section 15301(b).

CONSISTENCY WITH LAFCO POLICIES

Criteria for Administrative Approvals

The proposal meets the criteria for requesting an administrative approval for the following reasons. The property is currently developed with a single-family residence. According to the application, the development has experienced severe potable water shortages for more than a year. Several wells used by the Water Company are no longer productive and have had to be abandoned. The original water system and well were constructed in 1978. When it went dry, a second well was constructed in 1997 to replace it. This well went dry too and was replaced by a third well in 2000. In 2002, when it was reported that the third well was dry, drilling of a fourth well was started. In December 2002, the City was informed that the fourth well would only provide temporary relief and was not adequate for the needs of the community. Currently, water is being trucked in from the City's water system to meet the community's needs. The community has since sought permanent connection to the City's water system. Attached is a letter from the Department of Health Services dated September 26, 2003, stating that the situation constitutes a critical health concern. Also attached, is the resolution from the City of Milpitas stating that an urgent health and safety concern exists, which requires immediate action.

Project Within Sphere of Influence (SOI)

The proposal is within the SOI of Milpitas. Local LAFCO policies state that proposals for extending services outside an agency's SOI will not be considered.

Annexation as Alternative to Service Extension

Annexation of this parcel to the City is not anticipated at this time. Although the property is contiguous to the City boundary, it is not within the City's urban service area (USA) or the urban growth boundary (UGB). Annexation of this property will require an USA amendment first.

Health and Safety/Public Benefit Issues

The property developed with a single-family home does not have a potable water supply source. The lack of an adequate supply of potable water constitutes a public health hazard as indicated in the letter from the Department of Health Services specialist. There appears to be no other water supply source for the property as wells drilled in the area have consistently failed over time.

Growth Inducing Impacts

The proposal does not directly induce growth as there is already an existing single family home on the property and there is no possibility of future subdivision of the parcel. The agreement or contract for providing water services is limited to this property outside the city limits. The other parcels seeking city water are currently within Milpitas's city limits. The City has ordinances that restrict the extension of City services beyond the UGB. However, this proposal meets the City criteria.

Premature Conversion of Agricultural or Open Space Land

The subject property is currently developed with a single family home. Extending services to this property will not constitute premature conversion of agricultural or open space land. No agricultural or open space lands would be impacted by the service extension.

Ability of City to Provide Service

The City is able to provide water service to this parcel without adversely affecting service provision to its current customers.

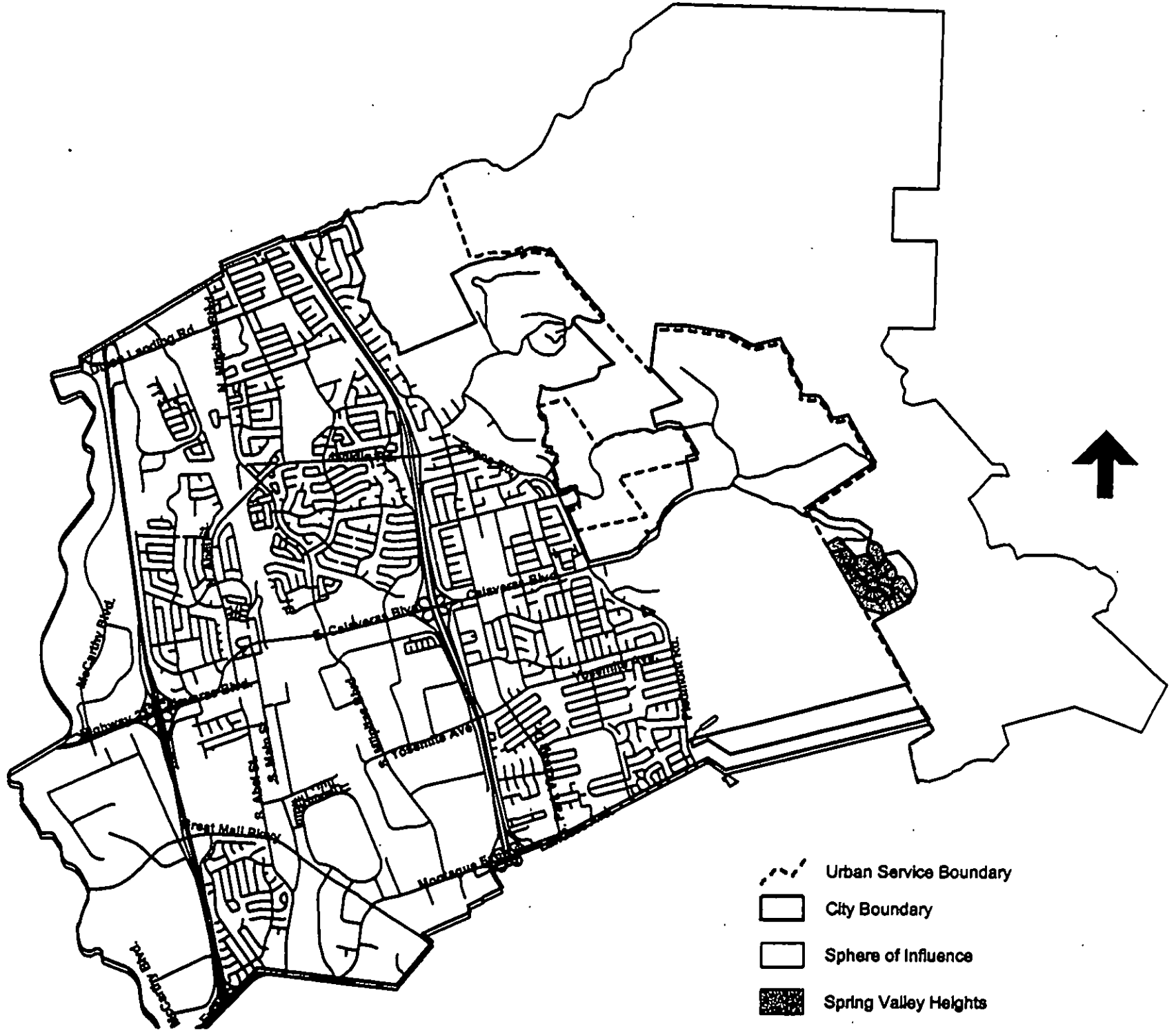
CONCLUSION

Extending water service to the single-family home outside Milpitas's city limits would alleviate an existing and immediate health and safety concern. No other feasible options for service seem to be available to the site. Annexation is also not a feasible alternative. There would be no direct growth inducing impacts or adverse impacts to agricultural or open space lands as a result of the service extension.

ATTACHMENTS

1. Map showing property and surrounding boundaries
2. Letter dated September 26, 2003 from the Department of Health Services
3. City of Milpitas Resolution Requesting LAFCO Administrative Approval
4. Agreement for Potable Water Services to Spring Valley Heights Community. Approved by Milpitas City Council on October 7, 2003; to be signed after approval from SFPUC.
5. Administrative Approval Letter to City of Milpitas

Figure 1





State of California—Health and Human Services
Department of Health Services

FOR INFORMATION ONLY
ITEM No. 6
DOCUMENT 3
(STAFF REPORT ATTACHMENT NO. 2)

RECEIVED

SEP 29 2003



GRAY DAVIS
Governor

DIANA M. BONTÁ, R.N., Dr. P.H.
Director

September 26, 2003

Mr. Darryl Wong
Utility Engineer
City of Milpitas
455 East Calaveras Blvd
Milpitas, CA 95035-5479

Dear Mr. Wong:

**EMERGENCY CONSTRUCTION OF POTABLE WATER SUPPLY PIPELINE TO SPRING VALLEY HEIGHTS SUBDIVISION
City of Milpitas, System No. 4310005**

This letter is to certify that Spring Valley Heights Mutual Water Company has been experiencing severe potable water shortage problems for more than a year. Several wells used by the water system no longer produce any water and have had to be abandoned. The one existing well has had to meet the water system's entire needs, requiring significant water conservation measures on the part of the homeowners. The problem has recently been compounded due to the well's production dropping off significantly; reportedly producing only 8-10 gallons per minute. The water system has been forced into hauling water from the City of Milpitas' (City) water system by truck to meet its water supply needs.

Hauling water should be done only when the circumstances require it and only as an interim, emergency measure due to the varied ways of contaminating the hauled water. However, the alternative of running out of water should be avoided at all costs. A water outage situation places the water system users at great risk to illness. When a water outage occurs, it usually requires that a boil water notice be issued to properly notify the users of the acute health risk they may encounter due to the questionable water quality.

The Department is deeply concerned when a water system has a continuing water supply shortage issue with a potential for a water outage. It represents a critical health concern. Spring Valley Heights is currently experiencing this type of situation.

The Department supports the City of Milpitas' efforts to provide a consistent and reliable water supply to the Spring Valley Heights subdivision by constructing a pipeline from the City's existing pipe network to Spring Valley Heights. The Department also supports the consolidation of Spring Valley Heights into the City's domestic water supply service area. In this manner, Spring Valley Heights would no longer exist as a public water system. If Spring Valley Heights chooses to pursue the former, please note that the Department cannot issue a permit to Spring Valley Heights if it is an unincorporated association organized under Title 3 (commencing with



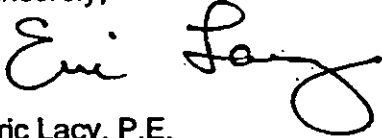
Do your part to help California save energy. To learn more about saving energy, visit the following web site:
www.consumerenergycenter.org/flex/index.html

Mr. Darryl Wong
Page 2
September 26, 2003

Section 20000) of Division 3 of the Corporations Code. (See Section 116540(b), Article 7, Health & Safety Code.)

If you have further questions regarding this letter, please contact me at (510) 540-2413.

Sincerely,

A handwritten signature in cursive script that reads "Eric Lacy". The signature is written in black ink and is positioned above the typed name.

Eric Lacy, P.E.
District Engineer
Santa Clara District
Drinking Water Field Operations Branch
Department of Health Services

cc: Santa Clara County Environmental Health Department

Mr. Ed Kandefer, President
Spring Valley Heights Mutual Water Company
514 Vista Spring Court
Milpitas, CA 95035

RESOLUTION NO. 7350**A RESOLUTION OF THE CITY OF MILPITAS REQUESTING APPROVAL OF A WATER SERVICE AGREEMENT WITH SPRING VALLEY HEIGHTS HOMEOWNERS ASSOCIATION BY THE SANTA CLARA COUNTY LOCAL AGENCY FORMATION COMMISSION**

WHEREAS, The Spring Valley Heights Mutual Water Company (SPVH-MWC) provides drinking water to the Spring Valley Heights subdivision, which is located primarily within the City of Milpitas but outside the City-established Urban Growth Boundary; and

WHEREAS, SPVH-MWC is experiencing a water supply shortage due to diminished well capacities that has critically impaired the system's ability to provide sufficient supply to meet the community's sanitary and fire safety needs; and

WHEREAS, SPVH-MWC requested temporary emergency water supply from the City of Milpitas; and

WHEREAS, SPVH-MWC has submitted a statement from an independent licensed professional engineer that an emergency due to water shortage exists and connection to City water is the only economically justifiable solution; and

WHEREAS, the voters of the City of Milpitas by approving Ordinance No. 38-742 enacted an Urban Growth Boundary in 1998, which generally restricts the provision of City services outside of the Urban Growth Boundary; and

WHEREAS, the City Council of Milpitas has previously determined that emergency water supply is needed, and has granted emergency water supply from the City water system; and

WHEREAS, Spring Valley Heights Homeowners Association (Association) has requested permanent connection to the City's water system for which City needs approval from the Santa Clara County Local Agency Formation Commission (LAFCO) as one of the homes is located in the county.

WHEREAS, the Association is willing to assume private water distribution system duties and disband the SPVH-MWC upon approval by San Francisco Public Utility Commission (SFPUC) in order to meet Raker Act requirements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILPITAS THAT:

1. The City Council hereby finds that:

- (a) The lack of a potable water supply source constitutes an immediate health and safety concern.
- (b) The property to which service is being requested is currently developed.
- (c) There are physical restrictions to the property that prohibit a conventional service delivery method typically suited to unincorporated area.

(d) An agreement with Association as shown in Attachment A can be considered for adoption contingent upon approval of SFPUC water supply to the Spring Valley Heights community by SFPUC.

2. Staff is hereby authorized to submit the following documents to LAFCO:

- (a) Council Resolution requesting LAFCO administrative approval.
- (b) Letter from State Department of Health Services stating that a health and safety concern exists.
- (c) The terms of the agreement with Association contingent upon approval of service by SFPUC.

3. The City Council hereby requests that LAFCO Executive Officer and ChairPerson grant administrative approval in support of this request.

PASSED AND ADOPTED this 7th day of October, 2003, by the following vote:

AYES: (5) Mayor Esteves and Councilmembers Dixon, Gomez, Livengood, and Polanski

NOES: (0) None

ABSENT: (0) None

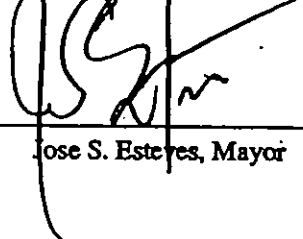
ABSTAIN: (0) None

ATTEST:



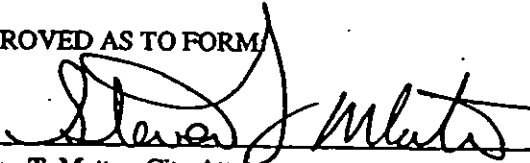
Gail Blalock, City Clerk

APPROVED:



Jose S. Esteves, Mayor

APPROVED AS TO FORM:



Steven T. Mattas, City Attorney

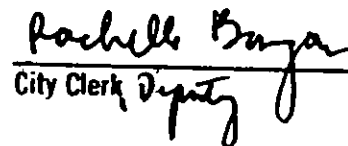
I CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT
COPY OF RESOLUTION NO. 7350

ON FILE IN THIS OFFICE.

ATTEST:

16 OCT 2003

Date



City Clerk Deputy

Control No. _____

Recording requested by:

City of Milpitas

When recorded mail to:

City of Milpitas

City Engineer's Office

455 E. Calaveras Blvd.

Milpitas, CA 95035

**AGREEMENT FOR THE PROVISION OF CITY POTABLE WATER SERVICE
(INCLUDING PROPERTY LOCATED OUTSIDE THE CITY LIMITS)**

THIS AGREEMENT, made and entered into this _____ day of _____, 20__, by and between the City of Milpitas, a municipal corporation, hereinafter referred to as "CITY," and Spring Valley Heights Homeowners Association, hereinafter referred to as "ASSOCIATION."

WHEREAS, ASSOCIATION is a homeowners' association made up of the owners of the 25 lots in the Spring Valley Heights subdivision, which owners are referred to herein as "the Members."

WHEREAS, the 25 lots of the Spring Valley Heights Subdivision plus one additional lot together make up the Spring Valley Heights Community (Community).

WHEREAS, the existing private water system that serves the Spring Valley Heights Community is operated by the Spring Valley Heights Mutual Water Company ("the Company").

WHEREAS, one lot in the Community is outside the Milpitas city limits, and therefore Local Agency Formation Commission ("LAFCO") approval is required in order for the City to provide service outside of its boundaries; and

WHEREAS, the Company's existing groundwater supply has diminished and is now inadequate to provide for health and safety needs of the ASSOCIATION; and

WHEREAS, the Company is receiving temporary emergency water supply from the CITY'S municipal water supply for the Spring Valley Heights Subdivision; and

WHEREAS, the State of California Department of Health Services has evaluated the Company's existing groundwater supply and instructed the Company to develop a new water source or supply; and

WHEREAS, the Company developed a new well and determined that it was of inadequate quantity and quality for potable water purposes; and

WHEREAS, ASSOCIATION desires a permanent connection to the CITY'S municipal water supply to serve the Community; and

WHEREAS, CITY finds that adequate utility capacity exists to provide such service within its San Francisco Public Utility Commission water supply service area; and

WHEREAS, the San Francisco Public Utility Commission has approved use of this water contingent upon ASSOCIATION, rather than the Company, supplying water to the lots within the Spring Valley Heights subdivision in order to comply with the provisions in the Raker Act, which prohibit supplying water to private companies for resale; and

WHEREAS, ASSOCIATION is willing to design and construct a permanent water connection to the CITY'S municipal water supply in accordance with CITY standards at its own cost and to provide retail water service to the Members through a master meter.

NOW, THEREFORE, in consideration of the promises herein and for further good and valuable consideration hereinafter set forth, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

SECTION 1. Subject Property. The properties to be served by water supplied to the ASSOCIATION by the City shall be solely those properties described on Exhibit A which is attached hereto and incorporated herein by this reference. The term "Member" as used herein shall refer to the owners of the property described in Exhibit A.

SECTION 2. Conditions for Receipt of Water Service. ASSOCIATION may provide potable water service to the properties described in Exhibit A provided that ASSOCIATION and its members shall comply with all laws, codes, ordinances and policies relating to potable water service within the City of Milpitas ("the Rules"). Upon request by CITY, ASSOCIATION agrees to disconnect or otherwise discontinue providing water service to a Member for the Member's failure to comply with the Rules.

SECTION 3. Construction of Necessary Facilities. ASSOCIATION shall prepare plans and specifications for installation of an extension of the City's existing potable water system that terminates at a master water meter ("the Master Meter") through which water will be provided to the Members, which plans shall be subject to approval of the City. The Water System Extension

may include piping, pumps, pump stations, controls, emergency generators, programmable logic controller, and other necessary appurtenances. ASSOCIATION shall install potable water mains in the public street, in an existing public service easement or in an approved easement from ASSOCIATION's property to the public potable water system connection point, all subject to approval by the City and in accordance with the then-existing CITY standards.

SECTION 4. Costs. The ASSOCIATION shall pay the following costs as set forth below:

A. The ASSOCIATION shall pay all costs to the City associated with the Water System Extension. These costs shall include the City's costs incurred in project coordination, plan check, inspection, and acceptance associated with the Water System Extension. The amount of such costs shall be based upon standard City of Milpitas labor and material rates paid to the City pursuant to City Private job (PJ) cost reimbursement process. The ASSOCIATION has provided a deposit in the amount of \$5,000 on August 1, 2003. If said costs exceed the amount of the deposit, as determined by the City, ASSOCIATION agrees to immediately replenish the deposit in the amount requested by the City Engineer. If the costs do not exceed the amount of the deposit, the City shall refund the remaining deposit amount to the ASSOCIATION.

B. The ASSOCIATION shall pay the City's costs for processing the Out of Agency Request to Santa Clara County Local Agency Formation Commission ("LAFCO") approval. The ASSOCIATION shall in addition pay all LAFCO application and processing fees. These costs may be deducted from the PJ account balance.

C. Upon completion of the physical connection of the public potable water system to the Master Meter and prior to the commencement of water service, the ASSOCIATION shall make a lump-sum payment equal to the City's then-current water connection fee for each structure connecting to the system. Upon the proposed connection of additional structures to the system and prior to the issuance of building permits for said structures, the individual property owners shall pay a fee equal to the amount of the then-current connection fee. The ASSOCIATION acknowledges that the City may withhold issuance of building permits if such connection fees are not paid.

D. The ASSOCIATION shall pay the City's costs of operating and maintaining the Water System Extension (including any necessary pump stations) and Master Meter including labor, pipeline and equipment replacement, and routine material consumed during operation of the system. The City shall determine the costs of operating and maintaining the Water System Extension and provide an invoice for such costs each year by January 31. The ASSOCIATION

shall pay the invoice within 30 days of the date of the invoice. The City will consider alternate means, such as the formation of an assessment district, to assist the ASSOCIATION in financing the construction, operation, and maintenance of the Water System Extension.

E. The ASSOCIATION shall pay to the City water meter and water quantity charges on the City's standard billing cycle based on the water supplied to the Master Meter and as required by the City's then-current water rates, whether adopted by ordinance, resolution, or otherwise.

F. In addition, the ASSOCIATION shall, on request by CITY, reimburse CITY for any other reasonable costs that are a direct or indirect result of the Water System Extension to the extent such costs are not otherwise covered herein.

Unless otherwise set forth herein, all fees and charges described above will be due and payable at the time said fees are usually and customarily collected by CITY under its rules and regulations respecting such fees and charges.

SECTION 5. ASSOCIATION shall be responsible for all acquisition of any necessary right-of-way for the Water System Extension, prepare necessary environmental documents, and construct the Water System Extension in accordance with all laws, codes, ordinances and policies of CITY in effect at the time of construction. The ASSOCIATION shall cause the designer of the Water System Extension to develop and provide to the City prior to the City's acceptance an operation and maintenance manual.

SECTION 6. ASSOCIATION shall dedicate all newly constructed public potable water supply facilities (up to the Master Meter) to CITY, in consideration of permission to connect to City's systems.

SECTION 7. It is understood and agreed that CITY will own and maintain all public potable water facilities (up to the Master Meter) installed by ASSOCIATION that have been inspected and approved by CITY after the system is dedicated to the CITY.

SECTION 8. Further, CITY shall not be liable in any way for damages to ASSOCIATION or ASSOCIATION's property resulting from acts of God or any other act or acts beyond the control of CITY which may in any way cause interruption or discontinuance of the potable water service(s) provided hereunder.

SECTION 9. ASSOCIATION expressly agrees that all maintenance of the potable water distribution system after the Master Meter shall be the responsibility of ASSOCIATION and the Members. ASSOCIATION shall keep the potable water distribution system under its ownership

in good condition and shall promptly repair the same following damage or disrepair in accordance with applicable laws, codes, ordinances, and policies.

SECTION 10. Upon ASSOCIATION's breach of or failure to timely perform any of the terms of this Agreement, this Agreement may be terminated at CITY's sole option, and CITY may discontinue service.

SECTION 11. ASSOCIATION further agrees that its on-site distribution system shall only serve the parcels described in Exhibit "A", and does not extend to any additional subdivision of said property.

SECTION 12. CITY may allow extensions or connections onto this Water System Extension to serve third parties. ASSOCIATION is entitled to apply for reimbursement for capital construction costs in accordance with Milpitas Municipal Code Title VIII, Chapter 1.

SECTION 13. This Agreement shall be binding upon the successors, heirs, or assigns of ASSOCIATION.

SECTION 14. The parties agree that this Agreement for Potable Water Services shall be recorded in the office of the County Recorder of Santa Clara County, California, at ASSOCIATION's cost and expense, and that the provisions contained herein relative to the real property described in Exhibit "A" shall operate as covenants and restrictions thereon.

SECTION 15. This Agreement shall become null and void and without any further force or effect if the extension of services described hereunder are not approved by LAFCO on or before December 31, 2003, unless extended by written mutual agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective the day and year first above written.

Dated: _____, 20__

ASSOCIATION:

Dated: _____, 20__

CITY:

CITY OF MILPITAS, a municipal corporation

By: _____

Jose S. Esteves, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Steve Mattas, City Attorney

Exhibit . Properties governed by this Agreement

APN 42-30-026	3547 Vista Norte Court
APN 42-30-027	2553 Vista Norte Court
APN 42-30-028	3561 Vista Norte Court
APN 42-30-004	3545 Vista Norte Court
APN 42-30-005	3550 Vista Norte Court
APN 42-30-025	350 Vista Ridge Drive
APN 42-30-006	375 Vista Ridge Drive
APN 42-30-029	531 Vista Ridge Drive
APN 42-30-015	529 Vista Ridge Drive
APN 42-30-14	527 Vista Ridge Drive
APN 42-30-013	525 Vista Ridge Drive
APN 42-30-012	523 Vista Ridge Drive
APN 42-30-008	489 Vista Ridge Drive
APN 42-30-011	521 Vista Ridge Drive
APN 42-30-010	519 Vista Ridge Drive
APN 42-30-009	517 Vista Ridge Drive
APN 42-30-007	461 Vista Ridge Drive
APN 42-30-017	510 Vista Spring Court
APN 42-30-018	514 Vista Spring Court
APN 42-30-019	518 Vista Spring Court
APN 42-30-021	500 Vista Spring Court
APN 42-30-024	410 Vista Ridge Drive
APN 42-30-022	490 Vista Ridge Drive
APN 42-30-023	422 Vista Ridge Drive
APN 42-30-020	524 Vista Ridge Drive
APN 42-31-002	548 Vista Ridge Drive and 550 Vista Ridge Drive (COUNTY PARCEL)

November 17, 2003

Darryl Wong
455 East Calaveras Blvd.
Milpitas, CA 95035

**Re: Spring Valley Heights, 550 Vista Ridge Drive (APN 042-31-002)
Request for Extension of Water Services**

Dear Mr. Wong:

This is to inform you that the LAFCO Chairperson and Executive Officer have administratively approved your request for extending water services to the above mentioned property located on 550 Vista Ridge Drive. As provided for under the local LAFCO policies for "Out of Agency Contract for Service Requests", the Chair and the Executive Officer may give administrative approvals for requests with an urgent health and safety concern, if the proposal meets certain criteria.

Attached is a staff report describing how the proposal meets the required criteria and how it complies with applicable LAFCO policies. This staff report will be presented to the full LAFCO at its December 10 meeting as an informational item.

You may contact Neelima Palacherla at 408/299-5127 if you have any questions regarding this issue.

Sincerely,



Blanca Alvarado
LAFCO Chairperson



Neelima Palacherla
LAFCO Executive Officer

**2004 SCHEDULE OF MEETINGS
AND APPLICATION FILING DEADLINES**

FILING DEADLINE	LAFCO MEETING*
Wednesday, December 17, 2003	Wednesday, February 11, 2004
Wednesday, February 18, 2004	Wednesday, April 14, 2004 <i>Finance meeting 2:00 PM</i>
Wednesday, April 21, 2004	Wednesday, June 9, 2004
Wednesday, June 16, 2004	Wednesday, August 11, 2004
Wednesday, August 18, 2004	Wednesday, October 13, 2004
Wednesday, October 20, 2004	Wednesday, December 8, 2004

TIME OF MEETINGS: 1:15 PM

LOCATION OF MEETINGS: Board of Supervisors' Chambers
County Government Center
70 West Hedding Street, 1st Floor
San Jose, CA 95110

FILING LOCATION: County Government Center
70 West Hedding Street, 11th Floor
San Jose, CA 95110
(408) 299-5088

*Every second Wednesday of even months