

**LOCAL AGENCY FORMATION COMMISSION OF  
SANTA CLARA COUNTY  
MINUTES  
WEDNESDAY, OCTOBER 11, 2006**

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**1. ROLL CALL**

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 11th day of October 2006 at 1:22 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: Chairperson Donald F. Gage, Commissioners Blanca Alvarado, John Howe, Linda J. LeZotte and Susan Vicklund-Wilson. Alternate Commissioners Terry Trumbull and Roland Velasco are also present.

The LAFCO staff in attendance includes 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 the Chairperson and the following proceedings are had, to wit:

**2. PUBLIC PRESENTATIONS**

Brian Schmidt, Committee for Green Foothills, requests that the LAFCO website be made accessible to browsers other than Microsoft Internet Explorer, such as Mozilla Firefox. He likewise requests that the website include audio transcripts of the public meetings. Chairperson Gage informs him that staff will address the issue.

**3. APPROVE MINUTES OF AUGUST 9, 2006 MEETING**

On motion of Commissioner Howe, seconded by Commissioner Wilson, it is unanimously ordered on a 4-0 vote, with Commissioner Alvarado abstaining, that the minutes of August 9, 2006 meeting be approved, as submitted.

**4. CONSENT CALENDAR**

**4.1 CUPERTINO SANITARY DISTRICT – PIKE ROAD NO. 3**

On motion of Commissioner Howe, seconded by Commissioner Alvarado, it is unanimously ordered that Resolution No. 06-12 be adopted, approving the annexation of two parcels with a total area of approximately 2.19 acres, located on Pike Road in the

City of Saratoga, to Cupertino Sanitary District, and waiving further protest proceedings.

**5. UPDATE ON DEVELOPMENT OF LAFCO'S AGRICULTURAL MITIGATION POLICIES**

Neelima Palacherla, LAFCO Executive Officer, provides an overview of the draft Agricultural Mitigation Policies. She informs that the Commission held a planning workshop on February 16, 2006 which included a presentation by the County Deputy Commissioner of Agriculture. Discussions ensued at that workshop relating to the County's agricultural heritage, important crops, benefits of agriculture to the environment and local economy, the loss of agricultural lands, and LAFCO's role in preserving agricultural lands. She adds that on its April 12, 2006 meeting, the Commission directed staff to develop agricultural mitigation policies. She reports that on August 15, 2006, staff released the draft agricultural mitigation policies by mailing out copies to the cities and other stakeholders and posting it on the LAFCO website. Ms. Palacherla further reports that staff held a workshop on August 28, 2006 for cities and various stakeholders to discuss the draft policies. Since then, staff has received various written comments and held meetings and phone conversations with individuals and groups of stakeholders. She advises that a public hearing to adopt the policies was scheduled for October 11, 2006, however, many stakeholders have requested more time to review and comment. She states that this item is for information only.

Ms. Palacherla continues by saying that one of the issues raised by the stakeholders relates to the Commission's authority to require agricultural mitigation, its ability to condition approval of urban service area (USA) expansion on fulfillment of agricultural mitigation, and whether that situation constitutes regulating land use from which LAFCO is prohibited by the Cortese-Knox-Hertzberg (CKH) Act. Ms. Kretchmer advises that CKH Act grants authority to require agricultural mitigation through its mandate to LAFCO to preserve agricultural lands, explaining that when projects are brought before it, the Commission is required to look at the impact on agricultural lands and to ensure that mitigation is adequate.

In response to an inquiry by Chairperson Gage, Ms. Kretchmer advises that the draft policies are being developed to provide agricultural mitigation if the USA expansion by a city impacts agricultural lands. Chairperson Gage expresses concern that acquiring lands for mitigation would be difficult because the landowners would rather keep their lands to mitigate for their own projects. He adds that lands should be made available to accommodate the growing population. In response to another inquiry by Chairperson Gage, Ms. Kretchmer advises that mitigation can be done anywhere in the County because there is available land for that purpose. Chairperson Gage proposes that mitigation in other counties be allowed because most of the cities are completely built out. Ms. Kretchmer advises that the Commission may decide whether mitigation in other counties should be allowed. Along this line, Ms. Palacherla directs attention to the State Department of Conservation's Santa Clara County Important Farmland 2004 map, stating that there are agricultural lands within the spheres of influence (SOIs) of the cities and could be used for mitigation.

Commissioner Alvarado comments that by adopting the draft policies in December 2006, the Commission will strengthen its legal mandate to preserve prime agricultural lands. She recalls that participants in the 2006 CALAFCO Conference in Monterey, California, have been made aware about the huge loss of agricultural lands in the State. She adds that it is the interest of the Commission to preserve the limited remaining agricultural lands in the County. She notes that while the California Environmental Quality Act (CEQA) allows the Commission to consider environmental issues at the time of USA expansion, the draft policies attempt to emphasize the need to maintain the productive use of remaining agricultural lands. Commissioner Alvarado continues to state that severe environmental degradation in the last 50 years prompted the Federal government to enact the Endangered Species Act and the Environmental Protection Act, among others, to protect natural resources and to avert calamities triggered by environmental degradation. She informs that there is a need to elevate the preservation of agricultural lands in the County to a status of greater importance. Commissioner Alvarado indicates that if the land conversion trend continues, the County will have no more agricultural land left in 30 years and that would result in

serious economic situation. She proposes that the Commission show to the next generations how lands play a very important role in our lives, indicating that the most fundamental reason for an agricultural mitigation policy is the need to preserve agriculture, nature, open space and a way of life.

Chairperson Gage comments that land deemed as prime agricultural lands does not always mean that it is good for crops in the County, explaining that mushrooms are grown in sheds rather than on land, and that most of the garlic are grown outside of the County. He adds that other factors, such as the cost of water and relocation of processors, makes farming difficult. Chairperson Gage proposes that the draft policies should have flexibility in this regard because it would be difficult to amend it once it is in place.

Ms. Palacherla advises that LAFCO is trying to balance the demands for growth and the State's mandate to preserve open space and agricultural lands by guiding development away from existing agricultural lands, and encouraging infill of vacant lands within the cities prior to converting agricultural lands. She notes the draft policies would allow the need for growth provided that the resulting loss of agricultural land be mitigated. She continues by stating that if the draft policies are adopted, they would be applied in conjunction with existing LAFCO policies. Existing LAFCO policies provide that there should be no premature conversion of agricultural lands when there are infill opportunities within the cities. She advises that the draft policies provide details for mitigating the conversion of agricultural lands.

Ms. Palacherla continues by saying that the purpose of the draft policies is to ensure that impacts of the loss of agricultural lands are mitigated and such mitigation results in permanent preservation of agricultural lands; and, to provide advance notice of the Commission's requirements for agricultural mitigation. She indicates that staff will revise the draft policies to include a statement of purpose or intent as suggested by stakeholders.

In response to another issue raised by some stakeholders, Ms. Palacherla states that LAFCO's mitigation policies will be independent of the mitigation policies of the cities, stating that any application to LAFCO impacting agricultural lands should be

consistent with LAFCO's mitigation policies. In this regard, she advises that the draft policies encourage cities to adopt mitigation policies that are consistent with LAFCO's policies. She notes that the draft LAFCO mitigation policies are very broad to allow cities to specify the mitigation requirement suited to their local needs.

In response to an inquiry by Commissioner Alvarado, Ms. Noel advises that there are several definitions of prime agricultural lands being used in planning and agricultural circles. The draft policies define prime agricultural land using the CKH Act definition, and agricultural lands on the California's Department of Conservation's Important Farmlands Map of 2004. She also advises that grazing lands are defined as prime agricultural lands because the CKH Act defines it as such. However, the County's Department of Agriculture has informed staff that this definition would be insignificant since most grazing lands in the County are way beyond the SOIs of the cities and are unlikely to be converted. For now, that item would remain on the draft policies because it is part of the definition within the CKH Act.

In response to an inquiry by Chairperson Gage, Ms. Noel explains that non-irrigated prime agricultural lands used to grow hay could be considered as prime agricultural land based on the soils. Ms. Palacherla adds that as long as the land meets any one criteria on the draft policies, it would be considered as prime agricultural land as per the CKH Act.

Chairperson Gage comments that landowners acquire lands for a planned agriculture business regardless of the soil classification, however, they have stopped farming because it is increasingly difficult to farm in the County. Ms. Palacherla advises that while agriculture trends are changing, with some crops moving out and others gaining importance, depending on the market preferences, climate, and foreign trade, among other considerations, the quality of soil remains constant.

Ms. Noel continues her presentation by stating that the draft policies require a 1:1 mitigation ratio, or one acre preserved for every acre converted, which is commonly used in California. She indicates that even at that ratio, the impact is only partially reduced because the net effect is still a 50 percent loss. She indicates that a group of stakeholders requests that the mitigation ratio be increased to account for the potential

failure of mitigation and to further reduce the impact of the 50 percent loss. On the other hand, another group of stakeholders indicated that an increase in mitigation ratio would cause financial hardship because of prohibitive cost of lands in the County. Therefore, she continues, the 1:1 ratio is a reasonable balance between these two positions.

In response to an inquiry by Chairperson Gage, Ms. Noel advises that the mitigation ratio covers only prime agricultural lands, as defined. In response to a follow-up inquiry by Commissioner Gage, Ms. Noel informs that in cases where there are pockets of lands of lesser value within an area classified as prime agricultural land, the applicant has to demonstrate how their land had been misclassified. She adds that while the State's soil classification in the County is old, the results of new survey affirm the original classifications.

In response to an inquiry by Alternate Commissioner Velasco, Ms. Palacherla advises that while there are various arguments relating to viability of agriculture, such as the urban/agriculture edge conflict, and changing market trends and ways of farming among others, the draft policies focuses on the soil as defined by CKH Act. Alternate Commissioner Velasco expresses concern that a blanket policy would require mitigation for prime agricultural lands that are not viable for agriculture. Commissioner LeZotte explains that the Commission's mandate is to preserve agricultural lands. She continues by stating that the Commission cannot deviate from this mission to consider individual interests or specific concerns about economic viability and crop preferences. She explains that the role of LAFCO is to defend prime agricultural land and the only consideration is when something happened that the soil classification has changed. Commissioner LeZotte continues to state that the draft agricultural mitigation policies only come into play when a city is completely built out and agricultural lands needed to be converted.

Commissioner Gage proposes that the draft policies exempt prime agricultural lands that cannot be farmed because it is too close to residential areas. In this regard, Ms. Palacherla advises that the draft policies, in fact, provide a way out to landowners wanting to convert their prime agricultural land if they preserve other prime

agricultural land. Along this line, Commissioner Wilson observes that premature conversions created small agricultural lands surrounded by urban development. She notes that the draft policies would address not only the issue of premature conversion but also facilitate orderly growth. Commissioner Wilson indicates that there are tremendous amounts of infill opportunities within the boundaries of cities that should be developed first before converting prime agricultural lands.

Ms. Noel continues her report by discussing the three commonly used options for mitigation and advises that in-lieu fees should be sufficient to pay the cost of administering, managing, and enforcing agricultural lands or agricultural easements, and promoting agriculture. She informs that in response to inquiries by some stakeholders, staff would include examples of agricultural promotion, marketing the produce, and obtaining grants to support agriculture on mitigation lands. Ms. Noel likewise advises that the draft policies provide that mitigation lands and easements will be located within the County since there are still available agricultural lands that could be used for mitigation, as well as to ensure that mitigation lands are accessible to the cities and agricultural conservation entities.

In response to a suggestion by Chairperson Gage, Commissioner Alvarado indicates that a provision to allow mitigation in other counties is not needed at this time because the County has sufficient agricultural lands for mitigation. She states that since the total build-out may occur 20 to 30 years down the road, the LAFCO at that time may allow mitigation in other counties. Commissioner LeZotte expresses agreement with Commissioner Alvarado, stating that she will be a part of a consensus to disallow mitigation outside of the County. She recalls that the City of San Jose has failed to mitigate for burrowing owls because the mitigation provided was too far from the original habitat. In response to an inquiry by Commissioner Howe, Chairperson Gage explains that he is providing input to the draft policies even it is an information only item because all options should be included when the draft policies are heard by the Commission on December 13, 2006.

Ms. Noel continues her report by stating that mitigation lands or easements must be prime agricultural of equivalent quality and character to the land being converted;

should be located in the area planned or envisioned for agriculture but would otherwise be threatened or impacted by development; and, preferably, promote the creation of a permanent urban/agriculture edge. She reports that, in response to questions by some stakeholders, the policy will be revised to indicate that mitigation lands should be within a city's SOI and located in an area planned or envisioned for urban development.

Ms. Noel informs that the draft policies would likewise be revised to allow cities to adopt measures minimizing urban/agriculture edge conflict, such as the promotion of local farmers' markets and community garden programs, local farm features on the cities' websites, and community education, among others, to create sustainable communities with viable agriculture. Commissioner Alvarado requests staff for a list of ideas. Chairperson Gage informs that the cities of Gilroy and Morgan Hill have farmers' market. Commissioners Alvarado and LeZotte discusses farmers market and community gardens in San Jose, stating that there is a growing movement to buy fresh produce. In response to an inquiry by Alternate Commissioner Velasco, Ms. Noel explains that the draft policies encourage cities to employ measures to minimize urban/agriculture edge conflict and to promote agriculture. In response to a comment by Alternate Commissioner Velasco, Ms. Noel advises that the draft policies provide flexibility for cities to adopt measures that would work best for them.

Ms. Noel continues by stating the qualification criteria for a conservation entity. She indicates that staff, in response to comments from some stakeholders, would request prospective conservation entities to submit documentation to establish their compliance with these criteria. Based on experience over time, the Commission would approve a list of qualified conservation entities.

*Chairperson Gage leaves at 2:39 p.m. Vice-Chairperson LeZotte presides at the meeting.*

Ms. Palacherla advises that when a city submits a proposal involving agricultural lands, the plan for mitigation must include an agreement between the property owner, the city, and an agricultural conservation entity. Such agreement details the mitigation for conversion of agricultural land and how the applicant proposes to mitigate the impacts on adjacent agricultural lands, along with other information to demonstrate



compliance to the draft policies. If the Commission adopts the draft policies, staff proposes to develop a checklist to guide the applicants.

Ms. Palacherla notes that the timeline for mitigation is a major concern among stakeholders. She states that some stakeholders have proposed a three-year time period with one-year extension after a LAFCO review. On why LAFCO is unable to approve a project without completion of mitigation, Ms. Palacherla states that it is LAFCO's responsibility to ensure that the agreed mitigation is implemented and that responsibility should not be delegated to another agency. She informs that LAFCO loses authority to enforce mitigation once the USA boundary amendment is approved. She adds that once mitigation is fulfilled, LAFCO will issue a certificate of completion, the boundary change becomes effective, and the city can annex the lands and begin land development. However, if mitigation requirements are not fulfilled, as the draft policies state, the conditional approval will expire. While the implementation of mitigation is pending, the city may not submit another application involving agricultural lands.

*Chairperson Gage returns at 2:43 p.m.*

Ms. Palacherla continues that after revising the draft policies staff will hold another workshop on the revised draft policies. Staff proposes that the draft policies will be heard on December 13, 2006. Staff report and draft policies will be available on the LAFCO website prior to the meeting. In response to an inquiry by Commissioner Howe, Ms. Palacherla explains that agricultural mitigation would not be required for agricultural lands that are within a city's boundary.

In response to an inquiry by Commissioner Alvarado, Ms. Kretchmer advises that in response to the letter by the Coyote Housing Group, LLC, the main authority for the draft policies is the CKH Act, indicating that there are very few cases brought to the courts affecting LAFCOs. Ms. Kretchmer adds that she would gather more information about this matter.

Chairperson Gage calls on the public speakers. Ms. Kretchmer clarifies that the Commission may give referrals to staff should not take action at this meeting.

Jenny Nusbaum, Planning Staff, City of San Jose, expresses support for the development of agricultural mitigation policies and directs attention to the letter

submitted by the City of San Jose. She proposes that LAFCO conduct CEQA analysis for the draft policies and solicit comments from State and Federal agencies. Secondly, she notes that restriction on new USA expansion when an earlier USA expansion is awaiting completion of mitigation should include an exemption when such USA expansion involves public safety. Ms. Nusbaum urged that, rather than use CKH Act in defining prime agricultural land, LESA model be used because it could be adjusted to suit local needs.

Commissioner Alvarado requests for a copy of the letter from the City of San Jose. In response to an inquiry by Supervisor Alvarado, Ms. Noel explains that LESA, which is an optional system used to analyze agricultural lands, was developed at the national level. States and local agencies have developed their own LESA models with the State of California having a generic version favoring larger-sized parcels located away from the urban centers. She indicates that the trend in this County is conversion of smaller parcels along the urban edge and the LESA model would not adequately meet our needs.

Brian Schmidt, Committee for Green Foothills, requests that the Commission carefully consider comments on draft policies because land developers would take advantage of any loophole, and the LESA model has loopholes. He adds that there is no need to mitigate outside of the County at this time. He expresses concern about balancing the mitigation ratio between those who wanted less with those who wanted more, noting that since the City of Davis finds 2:1 ratio feasible, there is an obligation to impose that higher ratio. He notes that CEQA requires LAFCO to impose agricultural mitigation to reduce the impact of the loss of agricultural lands. He adds that LAFCO has the authority to impose these conditions and that the draft policies do not need a CEQA document because it improves the environmental quality in the County.

Lee Wieder, Access Land Development, states that the other mission of LAFCO is to promote orderly growth. He informs that the City of Gilroy wants to grow in an orderly manner through the neighborhood districts program. He proposes that LAFCO extend the conditional approval beyond the two-year period, stating that the City cannot implement its neighborhood districts program until an area comes under the

City's jurisdiction and the specific plan has been prepared. He informs that preparation of the specific plan alone would take over two years and, in addition, more time is needed to prepare the tentative map and the final map before development could begin.

Alan Waltner, Partner, Bingham McCutchen, LLC, directs attention to his comment letter and requests the Commission to clarify to the contractors starting new projects in Gilroy which of the mitigation policies to use.

Kerry Williams, Coyote Valley Housing Group, states that the CKH Act authorizes LAFCO to approve or deny boundary extensions but does not give authority to impose mitigation if it directly regulates land use. She observes that the draft policies regulate land use because they permanently prohibit development through conservation, in-lieu fees, easements or fee-title acquisition. She requests that the mitigation policies use the LESA model and use CEQA's definition of farmlands. She expresses concern on the ability of the draft policies to accommodate creative agricultural mitigation programs like those envisioned by the Coyote Valley Specific Plan.

Chairperson Gage determines that there are no more speakers from the public and calls for the next item on the agenda.

**6. UPDATE ON NORTH COUNTY AND WEST VALLEY AREA SERVICE REVIEW**

Ms. Noel reports that staff met with the North County and West Valley Area Technical Advisory Committee (TAC) on September 14, 2006 to introduce the TAC members to the consultants, finalize the issues to be addressed, consider the service review process, allow the consultants to present the outline of information to collect, and review the project schedule. Future TAC meetings are tentatively scheduled in early January 2007 and late February 2007. In addition to Commissioner John Howe and LAFCO staff, the TAC consists of Debra Figone, Town Manager, Town of Los Gatos, representing the County/Cities Managers Association; Steve Psiasecki, Community Development Director, City of Cupertino, representing the Planning Officials Association; Glenn Roberts, Public Works Director, City of Palo Alto, representing the Public Works Officials Association; and Pete Siemens, Board Member, Midpeninsula

Regional Open Space District, representing the Special Districts Association. Ms. Noel further reports that staff held a separate kick-off meeting on September 14, 2006, attended by staff from affected agencies, to discuss the statutory requirements for service reviews, scope of service reviews, information needs, methods collecting information, pending applications and SOI changes, and the project schedule.

She advises that LSA Associates, consultant for the project, will prepare an administrative draft for review by staff and affected agencies. The draft will then be revised based on comments received and be released for public review in March 2007. The tentative hearings are scheduled in April and June 2007.

*Commissioner LeZotte leaves at 2:56 p.m.*

Commissioner Howe requests not to participate in discussions relating to El Camino Hospital District due to a potential conflict of interest. On motion of Commissioner Alvarado, seconded by Commissioner Gage, it is unanimously ordered on 4-0 vote, with Commissioner LeZotte absent, that Commissioner Howe be excused from participating in service review discussions relating to El Camino Hospital District.

On motion of Commissioner Alvarado, seconded by Commissioner Howe, it is unanimously ordered on 4-0 vote, with Commissioner LeZotte absent, that the report be accepted.

#### **7. UPDATE ON CITIES ISLAND ANNEXATION EFFORTS**

Ms. Noel reports that island annexations have been completed in Cupertino, Los Altos, Morgan Hill, Mountain View and Saratoga, and are underway in Campbell, Milpitas, Monte Sereno and San Jose. Staff and the County are finalizing completed annexations in order to provide all documents and fees to the State Board of Equalization by December 1, 2006.

She likewise advises that Governor Arnold Schwarzenegger signed into law AB 2223 (Salinas) on October 20, 2006, extending the sunset date of the streamlined annexation process from January 1, 2007 to January 1, 2014. However, she recommends that cities continue with their pocket annexations because annexing populated pockets

involves longer process, and that streamlined island annexation may not be extended further.

On motion of Commissioner Alvarado, seconded by Commissioner Wilson, it is unanimously ordered on 4-0 vote, with Commissioner LeZotte absent, that the report be accepted.

**8. REPORT ON THE 2006 CALAFCO ANNUAL CONFERENCE**

Ms. Noel reports that the 2006 CALAFCO Annual Conference in San Diego included several planning discussions on LAFCO's role in the Bay Area's regional housing needs assessment process, determination of water availability for LAFCO proposals, annexation and social equity issues, activities after the municipal service review and SOI updates, when is the proposed government service is too small, formulas for successful reorganization, LAFCO ethics, and legislative update. LAFCO staff, Commissioner Wilson and Javier Aguirre, Commissioner Alvarado's Policy Aide, attended the Conference. The next CALAFCO Annual Conference will be held in late August 2007 in Sacramento.

On motion of Commissioner Alvarado, seconded by Commissioner Howe, it is unanimous ordered on 4-0 vote, with Commissioner LeZotte absent, that report be accepted.

**9. COMMISSIONERS' REPORTS**

Commissioner Wilson informs that she and Ms. Palacherla will attend a meeting of the State Public Utilities Commission in San Francisco relating to land use oversight on private water companies. Representatives from other LAFCOs will also attend the meeting.

**10. WRITTEN CORRESPONDENCE**

There are no written correspondence.

**11. NEWSPAPER ARTICLES**

There are now newspaper articles.

**12. PENDING APPLICATIONS**

**12.1 SAN MARTIN INCORPORATION**

Ms. Palacherla informs that staff met with proponents of the San Martin incorporation relating to the petition and the notice of intent to circulate a petition. Staff is reviewing these documents before they are circulated. She notes that the incorporation proponents have indicated to move forward with this project as soon as possible, are looking into the requirements for incorporation, and are working with the Registrar of Voters.

**13. ADJOURN**

On order of the Chairperson, there being no objection, the meeting is adjourned at 3:06 p.m.

The next regular LAFCO meeting is scheduled to be held on Wednesday, December 13, 2006 at 1:15 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California.

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Donald F. Gage, Chairperson  
Local Agency Formation Commission

ATTEST:

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Emmanuel Abello, LAFCO Clerk