

LAFCO MEETING AGENDA
Wednesday, February 14, 2007
1:15 p.m.

***Please note the
change in meeting
location***

Isaac Newton Senter Auditorium
70 West Hedding Street, First Floor
San Jose, CA 95110

CHAIRPERSON: Blanca Alvarado • VICE-CHAIRPERSON: Pete Constant
COMMISSIONERS: Don Gage, John Howe, Susan Vicklund-Wilson
ALTERNATES: Pete McHugh, Sam Liccardo, Terry Trumbull, Roland Velasco

The items marked with an asterisk (*) are included on 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.

Disclosure Requirements

1. 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.
2. Pursuant to Government Code Sections 56700.1 and 81000 et seq., any person or combination of persons who directly or indirectly contribute \$1,000 or more in support of or in opposition to a change of organization or reorganization that has been submitted to Santa Clara County LAFCO and will require an election must comply with the disclosure requirements of the Political Reform Act of 1974 which apply to local initiative measures. These requirements contain provisions for making disclosures of contributions and expenditures at specified intervals. Additional information about the requirements pertaining to the local initiative measures to be presented to the electorate can be obtained by calling the Fair Political Practices Commission at (916) 322-5660.

1. **ROLL CALL**
2. **WELCOME NEW COMMISSIONER PETE CONSTANT AND ALTERNATE COMMISSIONER SAM LICCARDO**
3. **[RESOLUTION OF COMMENDATION FOR FORMER COMMISSIONER LINDA J. LEZOTTE](#)**

4. 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.

5. APPROVE MINUTES OF DECEMBER 13, 2006 MEETING

PUBLIC HEARINGS

6. REVISED DRAFT AGRICULTURAL MITIGATION POLICIES (continued from December 13, 2006)

Possible Action: Accept and consider staff report, take public testimony, provide staff with direction and continue public hearing to the April LAFCO meeting.

7. MORGAN HILL URBAN SERVICE AREA (USA) AMENDMENT 2006 (BLACK ROCK)

A request by the City of Morgan Hill to amend its urban service area (USA) to include a property (APN 779-02-023) of approximately 18 acres, located at the intersection of Watsonville Road and Santa Teresa Boulevard outside of Morgan Hill.

Possible Action: Consider the request for USA amendment and staff recommendation.

ITEMS FOR COMMISSION DISCUSSION / ACTION

8. ISLAND ANNEXATIONS: EXTENSION OF THE LAFCO FEE WAIVER

Possible Action: Accept report and provide staff with direction.

9. UPDATE ON NORTH AND WEST VALLEY AREA SERVICE REVIEW AND SPHERE OF INFLUENCE STUDY

Possible Action: Accept report.

10. LAFCO BUDGET SUBCOMMITTEE FOR FISCAL YEAR (FY) 2007-2008

Possible Action: Establish a LAFCO Budget Subcommittee for FY 2007-08.

11. PUBLIC AND ALTERNATE PUBLIC MEMBER APPOINTMENT PROCESS

Possible Action: Determine process for appointment of LAFCO public and alternate public member whose terms expire in May 2007.

12. EXECUTIVE OFFICER'S REPORT

12.1 CALAFCO Annual Staff Workshop on April 11-13, 2007 in Newport Beach, California

Possible Action: Authorize staff to attend the workshop and authorize travel expenses funded by the LAFCO budget.

12.2 CALAFCO Workshop on Incorporations on February 22-23, 2007 in Sacramento, California

Possible Action: Authorize staff to attend the workshop and authorize travel expenses funded by the LAFCO budget.

12.3 Revisions to 2007 Schedule of LAFCO Meetings

Possible Action: Adopt revised 2007 schedule of LAFCO meetings and filing deadlines.

12.4 CALAFCO Annual Conference on August 28-31, 2007 in Sacramento, California

Information Only

12.5 Report on CALAFCO Workshop on Government Code §56133: Service Extensions Outside Jurisdictional Boundaries

Information Only

12.6 Update on California Public Utilities Commission (CPUC) and Private Water Companies

Information Only

13. COMMISSIONERS' REPORTS

14. WRITTEN CORRESPONDENCE

15. NEWSPAPER ARTICLES

16. PENDING APPLICATIONS / UPCOMING PROJECTS

San Martin Incorporation

17. ADJOURN

Adjourn to the next regular meeting on Wednesday, April 4, 2007.

NOTE TO COMMISSIONERS:

Upon receipt of this agenda, please contact Emmanuel Abello, LAFCO Clerk, at (408) 299-6415, 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 LAFCO Clerk 24 hours prior to the meeting at (408) 299-6415, or at TDD (408) 993-8272, indicating that message is for the LAFCO Clerk.

RESOLUTION OF COMMENDATION

WHEREAS, Linda J. LeZotte served on the Santa Clara County Local Agency Formation Commission (LAFCO) as a City of San Jose Representative from January 2001 to December 2006; and

WHEREAS, Linda J. LeZotte has committed herself to uphold the principles of LAFCO to encourage the orderly formation of local governmental agencies, preserve agricultural land and open space resources and discourage urban sprawl; and

WHEREAS, Linda J. LeZotte has demonstrated thought and insight in her role as a Commissioner and has added a unique perspective to LAFCO by virtue of her tenure with the San Jose City Council and numerous local and regional organizations; and

WHEREAS, LAFCO recognizes the contribution of Linda J. LeZotte to local government in Santa Clara County, including her tenure with the San Jose City Council since 1998, as well as her leadership roles with Santa Clara County Recycling and Waste Reduction Commission, Silicon Valley Pollution Prevention Board, Association of Bay Area Governments, Santa Clara Valley Transportation Authority Board, and San Jose Sports Authority:

NOW, THEREFORE, BE IT RESOLVED, that the Santa Clara County Local Agency Formation Commission does hereby commend

LINDA J. LEZOTTE

and express its sincere gratitude and appreciation for her generous contributions to local government in Santa Clara County.

PASSED AND ADOPTED, this fourteenth day of February, Two Thousand and Seven.

Pete Constant
Commissioner

Blanca Alvarado
Chairperson

Donald F. Gage
Commissioner

John Howe
Commissioner

Susan Vicklund-Wilson
Commissioner

**LOCAL AGENCY FORMATION COMMISSION OF
SANTA CLARA COUNTY
MINUTES
WEDNESDAY, DECEMBER 13, 2006**

1. ROLL CALL

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 13th day of December 2006 at 1:23 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 John Howe and Susan Vicklund-Wilson. Alternate Commissioners Terry Trumbull and Roland Velasco are also present. Commissioner LeZotte arrives at 1:24 p.m. Alternate Commissioner McHugh, representing Commissioner Blanca Alvarado, arrives at 1:25 p.m.

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

There are no public presentations.

3. APPROVE MINUTES OF OCTOBER 11, 2006 MEETING

On motion of Commissioner Howe, seconded by Commissioner Wilson, it is ordered on a 4-0 vote, with Alternate Commissioner McHugh abstaining, that the minutes of October 11, 2006 meeting be approved, as submitted.

4. REVISED DRAFT AGRICULTURAL MITIGATION POLICIES

This being the time and place set to consider LAFCO's Revised Draft Agricultural Mitigation Policies, Chairperson Gage declares the public hearing open and requests the staff report.

Ms. Palacherla directs attention to her staff report, dated December 13, 2006, and states that the purpose of the draft policies is to protect and preserve agricultural lands

by ensuring that the impact of the loss of agricultural land is reduced through mitigation, to provide the applicants and cities advance information on LAFCO's expectations and requirements for agricultural mitigation, and to serve as a guide to LAFCO in evaluating LAFCO proposals and other environmental documents.

LAFCO's current policies discourage the premature conversion of agricultural lands. State law and LAFCO policies require the Commission to guide development away from agricultural lands and ensure that vacant lands within the city boundaries are first developed before agricultural lands are converted. If conversion of agricultural lands is necessary, LAFCO's current policies require an explanation as to why these lands should be included and how the loss of these agricultural lands will be mitigated. The current policies provide examples of mitigation but do not provide details on how mitigation must take place. This is the gap that the proposed policies would fill in. The proposed policies will be triggered when an application to LAFCO, such as a USA amendment proposal, involves the conversion of agricultural lands or adversely impacts adjacent agricultural lands.

Explaining how the proposed policies relate to existing agricultural mitigation policies of the cities, Ms. Palacherla indicates that all LAFCO proposals converting agricultural lands would have to comply with LAFCO's policies. She indicates that since the proposed LAFCO policies are so broad, the cities are free to establish their own standards and criteria within this framework based on local circumstances and preferences. She indicates that LAFCO policies encourage cities with potential LAFCO applications involving agricultural lands to adopt mitigation policies consistent with LAFCO policies. She notes that Gilroy has agricultural mitigation policies that are for the most part substantially similar to the proposed policies and advises that the staff report includes a comparison of the two policies.

Ms. Palacherla states that in response to the questions about LAFCO's authority, Ms. Kretchmer, LAFCO Counsel, has issued a written opinion confirming that LAFCO has the legal authority to adopt agricultural mitigation policies. Ms. Kretchmer states that her memorandum concludes that Cortese-Knox-Hertzberg (CKH) Local Government Reorganization Act of 2000 empowers LAFCO to adopt policies

establishing minimum criteria for agricultural mitigation. The State legislature, through the CKH Act, provides LAFCO the exclusive authority on local government reorganizations and states that changes in organizations must be considered with the goal of preserving open space and agricultural lands. The preservation of prime agricultural lands is among the statutory purposes of LAFCO. She adds that arguments and concerns have been raised that the draft policies might be regulation of land use. Ms. Kretchmer notes that LAFCO does not have the authority to regulate land use but that LAFCO actions, by their very nature, impact land use. CKH Act even directs that land area and land use are factors to be considered in the review of a proposal. She notes that direct regulation of land use and impact on land use are two different things. She advises that these policies do not require that the land use of any property be changed, they only require the mitigation of agricultural land converted away from agriculture. The draft policies do not specify which land is to be preserved, nor do they require a change in land use designation. In this regard, she concludes, there is no direct regulation of land use. She indicates that LAFCO's authority under CEQA goes beyond providing comments. CEQA guidelines direct the responsible agency not to approve a project if that agency finds that any feasible mitigation measures that are within its powers exist that would lessen the impact on the environment. Thus, LAFCO may consider or impose mitigation consistent with its own policies. In conclusion, she advises that the State's interest in preserving and protecting agricultural lands is of compelling importance and is one of LAFCO's primary purposes, such that, existing LAFCO policies and the State law authorize the Commission to provide standards for agricultural mitigation. Ms. Palacherla adds that Yolo LAFCO has had an agricultural mitigation policy since the 1990s, very similar to the policies being proposed, that have not been legally challenged and have been strengthened over the years.

Ms. Palacherla continues her report by stating that staff is proposing to conduct further evaluation of the potential environmental impacts of the proposed policies in response to concerns by some stakeholders. She then outlines the timeline and process involved in the development of the proposed policies.

Ms. Noel then outlines the key revisions to the draft policies. Staff is proposing revisions in response to comments and letters received from various stakeholders to the October 26th version. An introductory paragraph has been added to describe LAFCO's mission as established by state law and to describe how LAFCO's draft policies relate to existing LAFCO policies about preserving agricultural lands. On Policy No. 5, the original draft policy requires cities to establish programs to improve community understanding of agriculture in the County. The revision provides for LAFCO to take this role. Policy No. 6 has been revised to allow LAFCO to review and revise the policies as necessary in order to address issues that may arise with the implementation of these policies. Policy No. 10 has been revised to clarify the requirements for location of mitigation lands and states that these lands be located within the city's sphere of influence to promote the definition of a permanent urban/agricultural edge. Policy No. 11 has been revised to encourage cities to adopt mitigation measures as necessary to reduce impacts to adjacent agricultural lands and provide examples of such measures. Policy No. 15 has been revised to increase time period of mitigation from two years to three years, following LAFCO's conditional approval. Policy No. 17 has been revised to provide a one-year extension following the three years allowed to complete mitigation. Policy No. 19 has been revised to discourage new proposals involving agricultural lands when mitigation is pending for prior proposals; the original draft disallows such submission. Ms. Noel continues her report by stating that further consultations have led to further revisions to the draft policies. She advises that Policy No. 2 has been revised to allow flexibility for the Commission to consider variations from the criteria on a case-by-case basis. Policy No. 7 has been revised to restate the definition of prime agricultural lands provided by the CKH Act, and delete the reference to agricultural lands identified on the State Department of Conservation's Important Farmlands Map.

Ms. Palacherla advises that despite these revisions there are still some concerns relating to the timing and fulfillment of mitigation. In this regard, she recommends that the Commission accept public testimony and continue the public hearing to February 14, 2007, establish a sub-committee composed of two Commissioners to submit recommendations to Commission relating to the two sections of timing and fulfillment

of mitigation, and plan for mitigation, and to direct staff to prepare an initial study to further evaluate the potential impact of adopting these draft policies.

Chairperson Gage opens the public comment period for this item.

Al Pinheiro, Mayor, City of Gilroy, proposes that the Commission expand the membership of the subcommittee to include the mayors of Gilroy and Morgan Hill.

Wendie Rooney, Community Development Director, City of Gilroy, requests the Commission to approve the staff recommendation to form a subcommittee because the City is concerned about the timing of mitigation. She expresses the City's desire to participate.

William Faus, Planning Manager, City of Gilroy, concurs with the staff recommendations and requests that LAFCO's draft policies recognize Gilroy's agricultural mitigation policy because the latter is a product of over two years of consultation. He expresses supports to staff recommendation to defer final action on the item and proposes that additional meetings be held in South County. In response to an inquiry by Commissioner Howe, Mr. Faus advises that final adoption of the draft policies on February 14, 2007 may not allow sufficient time to address all issues. He recommends advance notice of meetings be made to allow more stakeholders to participate.

Susan Orth, Sierra Club member, passed photographs showing an orchard which had been removed in March 2006 to give way to development. She urges that the policies protect agricultural lands that have been left fallow and recommends the adoption of an open space policy, stating that quality of life will erode if the County continues to lose agricultural lands.

Bob Power, Executive Director, Santa Clara Valley Audubon Society, urges the Commission to adopt the draft policies today and not to wait for a new set of commissioners. He recommends that the two-year timeline to fulfill mitigation should not be increased, mitigation ratio should be increased to 2:1 and that mitigation should be required for the conversion of open space lands.

Janet Espinosa, a resident in an unincorporated area near Gilroy, states that while recent revisions have weakened the draft policies, it is still a sound document and

adds that policies sections 2, 4, 11 and 19 are very important. She urges the Commission to protect her agricultural community and lifestyle because she cannot vote in Gilroy. She advises that excessive growth will destroy the rich agricultural land, deprive consumers of fresh agricultural products, and increase the risks for flooding because agricultural lands provide drainage for and natural absorption of flood water.

Chairperson Gage requests that speakers indicate their organizational affiliations.

Lee Wieder, land use consultant, advises the Commission to come up with a mitigation program that would work and one that can stand up against legal challenge. He proposes that the mayors of San Jose, Gilroy and Morgan Hill, cities with the most agricultural lands, be included on the subcommittee. He likewise requests that the subcommittee also take up other issues in addition to the two issues identified.

Carolyn Tognetti, Save Open Space-Gilroy, requests the subcommittee to work with staff to strengthen Policy No. 13 to build safeguards to ensure that the in-lieu mitigation fees are used in a timely manner to actually preserve agricultural lands.

Ted Fox, Saint Louise Regional Hospital, requests that the subcommittee take up additional issues, provide additional time, and allow stakeholders in the South County to participate. He cites a December 10, 2006 article in San Jose Mercury News entitled, "Droves say goodbye to the Golden State," relating to the housing price spiral and its impact. He advises the Commission to promote infill because the increasing housing costs are disastrous to low and middle income families. He informs that the Daughters of Charity is also conscious about the environment.

Daniel Ehrler, President and CEO, Morgan Hill Chamber of Commerce, directs attention to his November 28, 2006 letter, expresses appreciation for the revisions made and the extension of time provided. He recommends that representatives from Gilroy, Morgan Hill and San Jose be included on the subcommittee, that the discussion of the draft policies be extended beyond February 14, 2007, and to open up the items for discussion beyond the two issues indicated.

Larry Cope, Executive Director, Gilroy Economic Development Organization, requests the Commission to expand the membership of the subcommittee, extend time

to consider the policies beyond February 14, 2007, open up discussions on other issues, and solicit greater input from stakeholders, especially those who would be affected the most.

Craige Edgerton, Executive Director, Silicon Valley Land Conservancy, proposes that the subcommittee likewise address Policy No. 8c, particularly with regard to a provision which would address a possible scenario of insufficient in-lieu fees.

Connie Rogers, Save Open Space-Gilroy, talks about the conversion of a 181-acre USA project east of US Highway 101 and north of Pacheco Pass in 1993, conditioned on the completion of the South County Agricultural Preserve study. The area was annexed by Gilroy in 1994 and the study was completed in 1995. In 1996, a document, "Strategies to Balance Planned Growth and Agricultural Viability," was approved by the City, the Board of Supervisors and LAFCO reaffirming Gilroy's 20-year growth boundary east of US Highway 101 and requiring LAFCO endorsement if Gilroy revises the 1996 boundary. In 2002, however, Gilroy revised its General Plan and moved the 20-year boundary out to include 660 acres of prime agricultural land east of the Gilroy outlets. Through its General Plan process, the City developed its agricultural mitigation policy. But even with the mitigation policy in place, no mitigation has occurred for two very large projects because LESA model was used. She requests the Commission to develop strong policies stating that Gilroy's policy does not mitigate the loss of agricultural lands. She likewise requests that the Commission move forward with the draft policies because of speculations to covert 120 acres east of the outlets and another 90 acres in the Rincon Plaza lands.

Kathy Molloy-Previsich, Community Development Director, City of Morgan Hill, expresses support to delay action on the draft policies, stating that the subject includes significant and complex land use issues. She proposes the expansion of the subcommittee and extension of time to allow the development of a workable set of policies. She advises that the City of Morgan Hill is developing its own agricultural mitigation and open space preservation policies as part of its urban limit line greenbelt project. She expresses desire to work with LAFCO and other stakeholders to accommodate urban growth demands in a sustainable fashion while preserving

important open space and agricultural lands within the City's SOI. She indicates that Morgan Hill has a successful record of preventing premature conversion of open space and prime agricultural lands. She expresses support to develop a consensus to refine LAFCO's mitigation policies.

In response to an inquiry by Commissioner Howe, Ms. Previsich advises against adopting the draft policies on February 14, 2007 because more time is required.

Jenny Nusbaum, Senior Planner, City of San Jose, advises that the San Jose Mayor has sent a hand-delivered letter to the Commission stating that the draft policies would induce sprawl outside of SOIs and city boundaries and the environmental analysis provided does not adequately address the negative impact of the draft policies. She also proposes that the policies conflict with San Jose's land use authority and its growth management strategies. She recommends to continue the dialogue and extend time to allow for more outreach activities.

Ken Bone, property owner in an unincorporated area outside Gilroy, expresses support for the staff recommendation and requests finalization of the policies as soon as possible. He directs attention to his letter to the Commission, requesting the mitigation for conversion of habitat lands, fallow lands, unseeded lands, lands valued for open space, and lands with the potential to be productive.

Alan Waltner, Bingham McCutchen, representing Shapell Homes with a potential project on Thomas Road requiring annexation in the future, requests the Commission to determine whether Gilroy's agricultural mitigation policies are adequate and to indicate whether the Commission would intrude in the CEQA responsibilities of the cities. He notes that Gilroy policy differs from the draft policies particularly on its use of LESA model, exemption of public facilities from mitigation, and payment of mitigation fee only when the final map is approved or when the grading or building permit is issued.

Melissa Hippard, Director, Sierra Club-Loma Prieta Chapter, urges the Commission to approve the draft policies which are reasonable and advises against extending the process because of the amount of outreach already made. She recommends that the mitigation ratio be increased to 2:1 because there is little prime

agricultural land left. She indicates that LAFCO has a unique regional role to protect agricultural lands for future generations and the obligation to fulfill that role. She advises that urban development should not come at the cost of less sustainable environment. Finally, she proposes that agricultural mitigation policies of cities should complement, and not be an alternative to, LAFCO's policies.

Susan Valenta, President and CEO, Gilroy Chamber of Commerce, expresses appreciation to the Commission for continuing the hearing to February 14, 2007, allowing other stakeholders to look at the two sections. She calls on the Commission to adopt policies that would meet the needs of the County.

Annie Mudge, Morrison and Forester, counsel to Coyote Housing Group and the Home Builders Association (HBA) of Northern California, requests that the subcommittee look at the policy as a whole. She opines that there is an authority issue involved on the draft policies because the CKH Act does not authorize LAFCO to impose mitigation measures, it limits how LAFCO could condition boundary changes, and prohibits regulating land use. She advises that the permanent restriction on the use of agricultural lands within a city's SOI is a direct form of land use or super-zoning and notes that the city of San Jose, HBA and Ventura LAFCO's counsel believe that the Commission lacks the authority to impose these policies because mitigation is a CEQA function.

John Beall, resident of Sunnyvale, states that preservation of agricultural land is the statutory responsibility of LAFCO and expresses support for a 1:1 mitigation ratio. He notes that San Jose has a unique responsibility to support these policies because of the agricultural lands brought into that city. On Policy No. 5, he talks about the importance of training new farmers and informs that the University of California-Santa Cruz has an internship program for farmers.

Michele Beasley, Greenbelt Alliance, encourages the immediate adoption of the draft policies, stating that LAFCO has the right to condition the approval of annexations involving agricultural land conversions on mitigation. She advises that this is a statewide concern and the draft policies attempt to provide a regional approach to this issue. She expresses agreement with the 1:1 mitigation ratio and the current definition

of agricultural land, and adds that cities should first use lands within their boundaries more efficiently before converting agricultural lands.

Jenny Derry, Santa Clara County Farm Bureau, proposes that the Commission expand the composition of the subcommittee to be similar to that of the Williamson Act committee. She advises that the soil type should not be the only basis in defining prime agricultural lands because many high value crops are grown in nurseries. She advises that farmers must continue farming into the future, those who want to sell lands should be fairly compensated for their investments, and mitigation policies should include a formula for the in-lieu fees because the purchase of agricultural lands and conservation easements are the only way to preserve agriculture in the County.

Eric Carruthers, former principal planner in the County of Santa Clara, notes that the adoption of USA boundaries had been a radical idea many years ago and the same is true today for the draft policies today. He advises that since LAFCO has the responsibility, obligation and the power to implement the draft policies, the only remaining issue should be how to make these policies work. He notes that the future of agriculture in the County will be small parcels on the edge of metropolitan areas.

Matt Baldzikowski, Midpeninsula Regional Open Space District, expresses support for the policies, recommends that the Commission increase the mitigation ratio to 2:1 and requests more details on the in-lieu fees. He requests that the draft policies include a provision to limit the implementation of mitigation to public conservation entities with public oversight to ensure permanent conservation.

Beverly Bryant, Executive Director, Home Builders Association of Northern California, Southern Division, requests that the composition of the subcommittee be broadened to include other stakeholders. She states that LAFCO does not have the authority to require agricultural mitigation because this is a CEQA function and adds that annexations must not be delayed because of mitigation requirements. She likewise advises that there will not be enough time if the draft policies are set for final adoption on February 14, 2007.

Jim Foran, Boardmember, Santa Clara County Open Space Authority, and President, Special Districts Association of Santa Clara County, states that the County's

economy has transitioned into a portable, knowledge-based industry, and preserving agriculture and the quality of life attract and retain that workforce. In addition, as food becomes scarcer, preserving prime agricultural land would retain an enduring, non-portable industry. He adds that if the subcommittee is ever expanded, the special districts should also be represented. Finally, he proposes that if mitigation policies would be studied for a long time, the Commission should place a moratorium to prevent agricultural land conversion in the meantime.

Martha Beattie, League of Women Voters, advises that mitigation policies must be put in place while there are still farmlands left. She adds that agricultural mitigation funds and programs should be administered only by public agricultural conservation entities.

Brian Schmidt, Committee for Green Foothills, states that his organization continues to stand by the comment letter he submitted. He advises that if the subcommittee is expanded and the consultation process further extended, there should be a moratorium on agricultural land conversion. Relating to the timing issue, he advises that the Commission should condition approval of USA amendments impacting agricultural lands until the required mitigation is completed.

Michael McDermott, a resident of Gilroy and a landowner, indicates that the Gilroy agricultural mitigation policy should be used as the benchmark for LAFCO's mitigation policies. He proposes that mitigation should only occur when the land is actually lost, and comments that the requirement that mitigation lands be located within the SOIs of the cities is like establishing an urban limit line.

Kerry Williams, Coyote Housing Group, expresses appreciation for the revisions made to Policy No. 2 which adds more flexibility to accommodate alternative proposals. She proposes that the subcommittee also look at the other items on the policies. She notes that Policy No. 15 creates a jurisdictional limbo that is problematic for cities and developers, stating that developers would only be able to raise money when the project has a final approval. In this regard, she proposes that the subcommittee consult developers and city planners who are more familiar with the common practices and the practical problems involved on this issue.

The Chairperson determines that there no other members of the public who wish to speak on the item and orders that the public hearing be closed.

The Chairperson expresses appreciation to staff for understanding the position of stakeholders and for revising the policies based on public input. He proposes that the subcommittee be composed of the Chairperson and the representative to be appointed by the City of San Jose. He likewise proposes to remove the word "permanent" under Policy No. 10 because cities need to grow. He proposes that the policies should be brought back on April 11, 2007 to allow sufficient time for all stakeholders to provide their input and to ensure that the policies reflect the Commission's mandate under CKH Act and the roles given by other State laws.

In response to the Chairperson's inquiry, Ms. Noel advises that the LESA model is an optional model, explaining that the draft policies are being approached through CKH Act and not CEQA. Furthermore, the LESA model, she notes, as mentioned in today's testimonies, tends to favor projects involving larger parcels located away from the urban areas. She advises that there are over 200 different LESA models being used throughout the nation designed to adapt to local conditions and objectives. The application of the state model does not address the local issues seen in Santa Clara County, which is an urban county.

The Chairperson moves to approve the staff recommendation, to designate the Chairperson and the incoming San Jose representative to be the two members of the subcommittee, and to direct staff to immediately establish subcommittee meetings dates and venues, and to send out information to stakeholders. The motion has no second. Commissioner Howe proposes that the two members of the subcommittee be named during this meeting and not to wait for the San Jose Mayor-elect to appoint that city's representative to LAFCO.

Commissioner Wilson states that LAFCO Commissioners must take off their County and city hats in considering the draft policies. She expresses willingness to sit on the subcommittee and indicates that the February 14, 2007 meeting allows enough time for the subcommittee report on the two sections of the draft policies and for their final adoption on April 11, 2007. She notes that there has been adequate time provided

for public and stakeholders consultations since the draft policies have been brought to continuing public review since August 2006.

Commissioner Wilson moves to approve the staff recommendation; name the two members of the subcommittee, expressing interest to serve on the subcommittee; direct the subcommittee to look at the timing and fulfillment of mitigation and the plan for mitigation, report back to the full Commission on February 14, 2007 and bring the policies for final adoption on April 11, 2007; and, to direct staff to look at the potential environmental impacts of the draft policies. Commissioner LeZotte seconds the motion.

Alternate Commissioner McHugh notes that the motion by Chairperson dies having no second and proposes to amend the current motion by designating Commissioner Gage to be a member of the subcommittee. The amendment has no second. Commissioner LeZotte offers to amend the motion by designating Commissioners Wilson and Howe as the two members of the subcommittee. Commissioner Wilson accepts the amendment.

Commissioner Howe expresses the need to allow the subcommittee to report to the Commission if there are other items in addition to the two issues identified, and comments that he may not be a good choice for the subcommittee, being a representative from the North County.

Alternate Commissioner McHugh proposes to add "and related issues" to the items that the subcommittee would discuss.

Commissioner LeZotte states that an open-ended number of items for subcommittee discussion will delay final action on the draft policies. She offers to amend the motion to state that if the subcommittee finds other issues, in addition to the Plan for Mitigation and Timing and Fulfillment of Mitigation, these be brought to the full Commission for further direction.

Chairperson Gage states that he represents a district composed of Gilroy, Morgan Hill, south San Jose, and unincorporated areas, in a supervisorial district covering about 800 square miles of the County, and that he has a good knowledge of agriculture. He adds that it is a good public policy to allow all stakeholders to address this issue.

Commissioner Wilson states that the Commission has already deferred consideration of the item and it is inherent in the authority of the Commission and the subcommittee to further extend discussions if more time and stakeholder input are needed.

On the request of the Chairperson, Commissioner Wilson restates the motion to approve items 1, 2 and 3 of the staff recommendation; hold a public hearing on February 14, 2007 and final action on April 15, 2007; and if the subcommittee finds issues in addition to Plan for Mitigation and Timing and Fulfillment of Mitigation, these be brought back to the Commission as part of the subcommittee report. Commissioner LeZotte seconds the motion.

The motion fails on roll call vote of 2-3, with Commissioners Wilson and LeZotte voting yes, and Commissioners Gage, Howe and McHugh voting no.

Commissioner Howe moves to approve items 1, 2 and 3 of the staff recommendation; direct the subcommittee to report on April 11, 2007 and also on February 14 if needed; and to limit subcommittee discussions to Plan for Mitigation and Timing and Fulfillment of Mitigation and bring to the Commission any additional issues. Commissioner McHugh seconds the motion.

Commissioner Wilson discusses the motion, stating that there is a problem on putting it on the April 2007 agenda because it must remain on the February 14 agenda in compliance with the noticing requirement. In response to Commissioner Wilson, Ms. Palacherla advises that as soon as the subcommittee issues its recommendations, staff will revise and circulate for discussion and comments those recommendations.

On the request of the Chairperson, Commissioner Howe restates his motion as approval of items 1, 2 and 3 of the staff recommendation; direction to the subcommittee to report to the Commission on February 14, 2007 and final adoption on April 11, 2007; and to limit subcommittee discussions to Plan for Mitigation and Timing and Fulfillment of Mitigation and bring back to the Commission any additional issues. Alternate Commissioner McHugh is amenable.

In response to Ms. Kretchmer, Commissioner Howe clarifies that his motion is for the subcommittee to only discuss the Plan for Mitigation and Timing of Mitigation

unless authorized by the Commission on its February 14, 2007 meeting. In response to inquiry by Commissioner Wilson, Commissioner Howe clarifies that his motion includes item 3 of the staff report. Alternate Commissioner McHugh is amenable. In response to an inquiry by Alternate Commissioner Velasco, Commissioner Howe states that the two commissioners on the subcommittee will be appointed after a vote on this motion.

On motion of Commissioner Howe, seconded by Commissioner McHugh, it is unanimously ordered on roll call vote of 5-0 that items 1, 2 and 3 of the staff report be approved; that final action on the draft policies be continued to April 11, 2007, and the subcommittee report be considered on February 14, 2007; that the subcommittee, composed of two LAFCO commissioners, will discuss Plan for Mitigation and Timing and Fulfillment of Mitigation, and the Commission could authorize the subcommittee to further discuss other issues; and, staff be directed to conduct further assessment of the potential environmental impacts associated with the adoption of the draft policies.

On motion of Commissioner Howe, seconded by Alternate Commissioner McHugh, it is unanimously ordered on roll call vote of 5-0 that Chairperson Gage and Commissioner Wilson be appointed as members of the subcommittee.

Chairperson Gage requests staff to organize the meetings and to invite all the stakeholders. The Chairperson calls for the next item on the agenda.

5. MAPS FOR EL CAMINO HOSPITAL DISTRICT, RANCHO RINCONADA RECREATION DISTRICT AND SARATOGA CEMETERY DISTRICT

This being the time and place set to consider adoption of boundaries and SOI maps of El Camino Hospital District, Rancho Rinconada Recreation and Saratoga Cemetery District, Chairperson Gage declares the public hearing open.

Commissioner Howe requests to defer from participating in consideration of this item on the agenda due to a possible conflict of interest. The Chairperson announces that Alternate Commissioner Velasco assumes representation.

Dunia Noel reports that the maps for El Camino Hospital District, Rancho Rinconada Recreation District and the Saratoga Cemetery District are current as of December 2006. These have been prepared based on research, information received

from the districts, and meetings and discussions with each of the districts, and each district has reviewed the maps. She advises that these will be the official maps for each of these districts which will be maintained by LAFCO with the assistance of the County's Information System Department (ISD) and included in the north and west valley service review and SOI update report.

Chairperson Gage determines that there are no members of the public who wish to speak on the item and declares the public hearing closed.

On motion of Chairperson Gage, seconded by Commissioner Wilson, it is unanimously ordered on 5-0 vote that maps be adopted depicting the boundaries and SOIs of El Camino Hospital District, Rancho Rinconada Recreation District and Saratoga Cemetery District.

Commissioner Howe resumes representation.

6. UPDATE ON CITIES' ISLAND ANNEXATION

Ms. Noel reports that the cities of Campbell, Cupertino, Los Altos, Milpitas, Morgan Hill, Mountain View, San Jose and Saratoga have completed have completed a total of 41 unincorporated island annexations with a combined area of approximately 765 acres. The City of San Jose plans to annex 49 additional unincorporated islands over the next four years. The City of Monte Sereno has started the process to annex its three remaining islands but was unable to receive City Council approval. Finally, she informs that the two-year LAFCO fee waiver for certain annexations that result in the elimination of an entire unincorporated island will expire on January 1, 2007.

Chairperson Gage, noting that this issue be reviewed on an annual basis, proposes that the LAFCO fee waiver extension be considered at the February 14, 2007 meeting.

On motion of Chairperson Gage, seconded by Commissioner Wilson, it is unanimously ordered that the report be accepted and that extension of the LAFCO fee waiver be considered at the February 14, 2007 meeting.

At this point Ms. Palacherla acknowledges the contributions of LAFCO staff to the successful island annexation program. She states that Dunia Noel put together a

report titled, "Making Your City Whole: Taking Advantage of the Current Opportunity to Annex Urban Unincorporated Pockets," which serves as an annexation guide for the cities. Ms. Noel provided excellent support to the cities in many aspects of their annexation process, including assisting them with community outreach, attending community meetings and providing information about the annexation process. Emmanuel Abello has coordinated with various County staff to finalize and record the annexations in time to meet the State Board of Equalization's (SBE) December deadline. Ginny Millar, County Surveyor's Office, has put in many long hours to gather information required by SBE to supplement the annexation maps. Ms. Palacherla informs the Commission that during the last two months, staff has processed about 25 annexations – the same number of annexations they process during a regular year. Chairperson Gage expresses appreciation to staff for the outstanding job, not only on island annexations but on other projects, such as the previous item.

7. APPOINTMENT OF CHAIRPERSON AND VICE-CHAIRPERSON FOR 2007

Ms. Palacherla advises that in view of the rotation schedule, the Chairperson for 2007 will be the representative from the City of San Jose, and Commissioner Blanca Alvarado, County representative, will be the Vice-Chairperson. Commissioner Howe notes that it would be more prudent for Commissioner Alvarado to be the chairperson in 2007.

On motion of Commissioner Howe, seconded by Commissioner LeZotte, it is unanimously ordered that the rotation schedule for Commission chairperson be skipped for one year, that Commissioner Alvarado be designated as the Chairperson for 2007, and the incoming City of San Jose representative be designated as the Vice-Chairperson.

8. 2007 SCHEDULE OF LAFCO MEETINGS

Commissioner Wilson moves for the adoption of the 2007 schedule of meetings and filing deadlines, requesting that the June 6, 2007 meeting be moved to May 30, 2007.

On motion of Commissioner Wilson, seconded by Commissioner Gage, it is unanimously ordered on 5-0 vote that the 2007 schedule of LAFCO meetings and application filing deadlines be approved, as amended.

9. COMMISSIONERS' REPORTS

On motion of Commissioner Howe, seconded by Alternate Commissioner McHugh, it is unanimously ordered on a 5-0 vote that a resolution to honor Commissioner LeZotte for her service to LAFCO be included on the February 14, 2007 agenda.

Commissioner Wilson expresses appreciation to Commissioner LeZotte, stating that she had been a great asset to LAFCO and has truly taken off her City of San Jose hat on many Commission decisions. Commissioner Howe and Alternate Commissioner Trumbull likewise express appreciation to Commissioner LeZotte. In response, Commissioner LeZotte thanks the members of the Commission and the staff.

Chairperson Gage informs that it has been an honor and a pleasure to serve as Chairperson in 2007.

10. WRITTEN CORRESPONDENCE

Chairperson Gage acknowledges receipt of hand-delivered letter from the City of San Jose and turns it over to staff.

11. NEWSPAPER ARTICLES

There are no newspaper articles.

12. PENDING APPLICATIONS

12.1 SAN MARTIN INCORPORATION

Ms. Palacherla reports that the San Martin Neighborhood Association (SMNA) has submitted a Notice of Intent to Circulate a Petition for the incorporation of the Town of San Martin and staff has sent copies to all affected agencies. She adds that SMNA has six months to collect signatures, thereafter, staff would verify the signatures to determine if the petition is valid. If it is valid, the proponents would be allowed to submit an application to LAFCO. She advises that CALAFCO is organizing a staff workshop on incorporations in February 2007.

In response to an inquiry by Chairperson Gage, Ms. Palacherla advises that the boundary being proposed by SMNA currently includes the Cordevalle Golf Club area. She adds that LAFCO would determine the final boundaries.

13. ADJOURN

On order of the Chairperson, there being no objection, the meeting is adjourned at 3:42 p.m.

The next regular LAFCO meeting is scheduled to be held on Wednesday, February 14, 2007 at 1:15 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California.

Donald F. Gage, Chairperson
Local Agency Formation Commission

ATTEST:

Emmanuel Abello, LAFCO Clerk

LAFCO
Meeting Date: February 14, 2007
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
Dunia Noel, LAFCO Analyst
SUBJECT: **LAFCO'S AGRICULTURAL MITIGATION POLICIES**
Agenda Item # 6

This staff report makes several references to the October 11, 2006 and December 13, 2006 staff reports on this issue. These staff reports are available at the LAFCO website, www.santaclara.lafco.ca.gov, under the "What's New?" section. If you are unable to download and would like these reports faxed or mailed to you, please call LAFCO staff at (408) 299-6415.

STAFF RECOMMENDATION

1. Accept and consider staff report, take public testimony and provide staff with direction.
2. Continue public hearing to the April LAFCO meeting.

DEVELOPMENT OF REVISED DRAFT AGRICULTURAL MITIGATION POLICIES

Background

In February 2006, LAFCO held a planning workshop that included a presentation by the Deputy County Agricultural Commissioner on Agriculture in Santa Clara County and LAFCO discussed its role in preserving agricultural lands. LAFCO, at its April 2006 meeting, directed staff to draft agricultural mitigation policies for LAFCO proposals that would result in the conversion of prime agricultural lands to urban uses in order to ensure that LAFCO's agricultural mitigation expectations and requirements are clear to applicants, cities, special districts and affected property owners. Staff was directed to prepare the policies for the Commission's consideration and approval in the Fall of 2006.

Public Review, Comment and Revision of the Draft Policies

August 2006 through October 2006

The Draft Agricultural Mitigation Policies were first circulated on August 14, 2006, for review and comment and scheduled for a public hearing for October 11, 2006. A workshop was held on August 28th to discuss the Draft Policies and take comment. To allow affected agencies and stakeholders additional time to provide comments and to allow LAFCO staff additional time to consider and address

stakeholder concerns, the October Public hearing was postponed to December 13th. At the October 11, 2006 LAFCO meeting, staff discussed the October, 2006 LAFCO staff report, provided an update and discussed the draft policies. The commission took public testimony and discussed the issues. LAFCO staff then revised the Draft Policies and released the Revised Draft Policies for public review and comment on October 26th with comments due on November 28th.

November 2006

Staff then held a workshop to discuss the policies on November 13, 2006 and another workshop in South County (as requested by the City of Gilroy) on November 27th. In addition, staff met with individual and stakeholder groups and made a presentation to the Gilroy Chamber of Commerce on November 17th.

December 2006

On December 6, 2006, the Revised Draft Policies were released for public review and comment. The majority of the revisions found in the October 26, 2006 and December 6, 2006 Revised Draft Policies were based directly on recommendations or suggestions made by stakeholders. Even with the revisions to the Draft Policies relating to "Timing and Fulfillment of Mitigation," many stakeholders remained concerned about these policies as mentioned in the December LAFCO staff report.

LAFCO, at its December 13, 2006 Meeting, formed a Subcommittee (consisting of Commissioners Don Gage and Susan Vicklund-Wilson) to recommend policies relating to two sections of the Revised Draft Policies namely: "Plan for Mitigation" and "Timing and Fulfillment of Mitigation" to the full Commission for final action. LAFCO limited the scope of the Subcommittee meeting to those two issues, but indicated that if additional issues were to arise at the Subcommittee meeting, the Subcommittee could seek the full Commission's approval to widen the scope of its review.

January 24, 2007 Subcommittee Meeting

The Subcommittee met on January 24, 2007 in Morgan Hill and discussed revisions to the two sections and accepted input from stakeholders. Please see **Attachment A** for list of Subcommittee meeting attendees. The subcommittee directed staff to bring the proposed revisions to the two sections to the full commission in February and provide the full commission with a summary of issues raised at the subcommittee meeting.

PROPOSED CHANGES TO THE DRAFT AGRICULTURAL MITIGATION POLICIES: JANUARY 24, 2007

At the subcommittee meeting, staff proposed a significant change in the provisions related to timing and fulfillment of mitigation. The proposed changes

were in response to requests from stakeholders for more flexibility in the time frame and process for fulfilling mitigation, and for better consistency with cities' existing processes. See **Attachment B** for proposed elements to revise LAFCO's Draft Agricultural Mitigation Policies and **Attachment C** for flowchart and comparison charts.

The following is a summary of the revisions proposed at the subcommittee meeting.

The proposed revisions do not provide a fixed time frame within which mitigation must take place and do not require that LAFCO approve a project on the condition that mitigation is fulfilled. Instead, the policies allow for the mitigation to be provided at the time of actual development, before the city's approval of a tentative map or issuance of a grading permit or building permit, whichever occurs first.

Since LAFCO has no authority over any further approvals for the project after a USA approval, LAFCO will need assurances from the cities that the mitigation requirements will be adequately enforced at the time of development. This assurance should be in the form of adopted city ordinances indicating that the city will ensure the fulfillment of mitigation at the time of city's approvals and/or permits. To enable LAFCO to evaluate the effectiveness of its policies and mitigation, the cities should provide LAFCO with an annual status report on the fulfillment of mitigation. In addition, a mitigation plan should be submitted with the LAFCO application. This Mitigation Plan should commit the property owner and establish the specifics of the mitigation in a legally binding agreement between the property owners, the city and/ or agricultural conservation entity. This agreement would be contingent on LAFCO USA approval and would be recorded against the property.

The following is a list of issues raised by stakeholders at the subcommittee meeting.

Issues Relating to "Timing And Fulfillment" and "Plan For Mitigation"

1. *How will LAFCO ensure that the agricultural mitigation policies are enforced and effective, since the mitigation will not occur at the time of LAFCO approval? Specifically,*
 - a. *Should audits be conducted by LAFCO as a way to measure the effectiveness of the policies?*

Under the proposed revisions, cities will provide LAFCO with a report on the status of mitigation fulfillment every year following LAFCO approval of the proposal until the agricultural mitigation requirements are fulfilled.

- b. *Should a city provide commitment to enforce the mitigation requirements by adopting ordinances or resolutions?*

Staff believes that a city ordinance would be a more effective means of ensuring that mitigation is fulfilled. Cities currently have ordinances pertaining to the timing and fulfillment of other types of mitigations and impact fees associated with approval and permitting of development.

- c. *Should LAFCO be a party to the mitigation agreement?*

LAFCO's role is to evaluate proposals for boundary changes against its established policies and to approve and deny proposals. Therefore, entering into such an agreement is not recommended.

2. *Should mitigation be provided prior to tentative map approval or prior to final map approval?*

As a means of ensuring that agricultural mitigation is fulfilled, the mitigation requirements should be included as conditions of a tentative map. All required mitigation should be completed prior to Final Map approval. Staff will revise proposed changes to reflect this.

3. *When will mitigation be fulfilled for projects that require multiple building permits?*

LAFCO does not deal with USA expansion proposals as individual development projects and it has no way of keeping track of development progress in each area. Whether the project involves a single building permit or several building permits, LAFCO policies will require that the mitigation must be fulfilled prior to the approval of final map or the issuance of the first building permit, whichever occurs first.

4. *How will LAFCO ensure that in-lieu fees are adequate to provide 1:1 mitigation when actual mitigation may not occur for many years? Specifically,*

- a. *Should LAFCO require higher mitigation ratios, for the in-lieu fee option to address increasing land costs when the time frame for fulfilling that mitigation is uncertain?*

Under the proposed changes, the time frame for fulfilling agricultural mitigation is uncertain and it is likely that land values will increase overtime which would also increase the costs of mitigation lands overtime. It is the intent of LAFCO that an equivalent amount and quality of agricultural land is preserved, regardless of whether that

land is preserved today or at some future date. The Draft Policies should be revised to reflect that intent. One way to address this issue is to ensure that the in-lieu fee calculation methodology accounts for changes in land values. Also, please refer to October 11, 2006 LAFCO Staff Report, Page 8 for additional information.

- b. How will LAFCO ensure that in-lieu fees are used by agricultural conservation entities in a timely manner?*

An agricultural conservation entity will report annually to LAFCO on the use of the in-lieu fees until the fees have been fully expended. Please also refer to the October 2006 LAFCO Staff Report, Page 14, Question #4 for additional information.

- 5. After LAFCO approval, how will LAFCO ensure that its agricultural mitigation requirements will apply to future property owners?*

The mitigation agreement would be recorded with the County Recorder's Office and against the property to be developed. The agreement would also state that it would run with the land and therefore apply to future property owners.

- 6. Should LAFCO discourage approval of USA amendments when mitigation is pending for prior USA amendments?*

The proposed changes no longer include a policy that discourages submittal to LAFCO or LAFCO's approval of USA amendments when mitigation is pending for prior USA amendments. However, LAFCO, as part of its proposal review process, will consider various factors, including the status of fulfillment of mitigation for previous approvals.

- 7. Should LAFCO policies require that mitigation must be fulfilled in 2 years and allow an extension of time only if applicant pays additional fees and demonstrates that they are actively in pursuit of obtaining mitigation?*

While a 2-year time-frame for the fulfillment of mitigation with the possibility of an extension is preferable for several reasons, many stakeholders commented that a more flexible time-frame and process is needed in order to address financing issues and unique or special circumstances. If the proposed procedure for mitigation fulfillment does not work to LAFCO's satisfaction, LAFCO has the ability to revisit the issue at a later date and revise its policies.

Other Issues (NOT Related to “Timing And Fulfillment” Or “Plan For Mitigation”)

Issues Previously Addressed

1. *Does LAFCO have the authority to require agricultural mitigation?*

LAFCO Legal Counsel has issued an opinion stating that LAFCO has the authority to require agricultural mitigation. Please see legal opinion from LAFCO Counsel (Attachment E in December 2006 LAFCO staff report).

2. *Why is LAFCO not using the Land Evaluation Site Assessment Model (LESA) to determine whether an application requires agricultural mitigation?*

Please refer to October 2006 LAFCO Staff Report, Page 6, Question #1.

3. *Will the adoption of the agricultural mitigation policies by LAFCO result in the unintended consequence of inducing urban development in the unincorporated county?*

Please refer to the December 2006 LAFCO Staff Report, Page 5, Question #6.

4. *Why do the Draft Policies require that agricultural mitigation occur at a 1:1 ratio and not at a higher or lower mitigation ratio?*

Please refer to the October 2006 LAFCO Staff Report, Page 8, Question #1.

New Issues and Concerns

1. *Will LAFCO’s Agricultural Mitigation Policies negatively affect housing affordability and drive up home prices in the area?*

Mitigation (agricultural, habitat, etc.) and other types of development fees (park fees, school fees, etc.) may affect housing prices. It would be speculative and impossible to accurately calculate at this time the specific effect that LAFCO’s agricultural mitigation policies will have on housing prices. The effect will depend on several factors such as, the price at which the developer purchased the land for, the type of development, the amount of return the developer expects to receive from the development, the specific mitigation option selected by the landowner, the value of agricultural lands at the time the mitigation is fulfilled, etc. However, there are also studies that indicate that homebuyers are willing to pay more for homes that are near preserved lands. It is possible that these two factors will offset each other to a degree. Also, one of the best ways to address traffic, air quality, and affordable housing issues is to discourage urban sprawl, prevent the premature conversion of agricultural lands, and to promote the efficient use of land through encouraging higher densities in cities, locating housing near

employment centers, and planning and improving local and regional transportation infrastructure.

2. *Are these Agricultural Mitigation Policies requirements or "policies"?*

The purpose of LAFCO's Agricultural Mitigation Policies is to guide the commission in evaluation of proposals pursuant to the authority vested in LAFCO by the CKH Act. These are policies only, however, agricultural mitigation will be a significant consideration in the review and analysis of proposals. Staff will review and modify language in the Draft policies to make sure that the language in the policies reflects this.

CORRESPONDENCE

Please see Attachment D for all the correspondence received on this issue since the December 13, 2006 LAFCO meeting.

NEXT STEPS

If the Commission so directs, LAFCO staff will revise the policies to include the elements of the proposed changes. The revised policies along with the CEQA analysis will be circulated/ made available on the LAFCO web site for public review and comment. A second subcommittee meeting will be held to discuss the revised policies and to obtain input from stakeholders. A LAFCO public hearing will be held in April to consider adoption of the agricultural mitigation policies.

ATTACHMENTS

- Attachment A: January 24, 2007 Subcommittee Meeting Attendees List
- Attachment B: Proposed Elements of a Proposal to Revise LAFCO's Draft Agricultural Mitigation Policies
- Attachment C: Proposed Process for Timing and Fulfillment of Agricultural Mitigation and Comparison of Processes for Timing and Fulfillment of Mitigation
- Attachment D: Comments received after December 13, 2006

LAFCO Subcommittee Meeting
on LAFCO's Draft Agricultural Mitigation Policies
Morgan Hill City Council Chambers
January 24, 2007

LIST OF ATTENDEES

1. Javier Aguirre Supervisorial District 2
2. Jim Apland Country News
3. Ken Bone Interested Party
4. Laura Branton Morgan Hill Chamber of Commerce
5. Beverly Bryant Home Builders Association of Northern California
6. Tony Burchyns Morgan Hill Times
7. Eric Carruthers Coyote Valley Specific Plan Task Force
8. David Collier Save Open Space -- Gilroy
9. Roger Costa *Not Indicated*
10. Tim Day Gilroy Planning Commission
11. Daniel Ehrler Morgan Hill Chamber of Commerce
12. Ted Fox Morgan Hill Chamber of Commerce
13. Pamela Guerra Gilroy Economic Development Corporation
14. Jared Hart City of San Jose
15. Melissa Hippard Sierra Club, Loma Prieta Chapter
16. Jane Howard Gilroy Visitors Bureau
17. Kai Lai Gilroy Camber of Commerce
18. Annie Mudge Coyote Housing Group, LLC
19. Jenny Nusbaum City of San Jose
20. Kevin O'Day SCC Department of Agriculture
21. Rob Oneto Gilroy Camber of Commerce
22. Al Pinheiro City of Gilroy
23. Carol Presley SCVWD / Pajaro Groundwater Preservation Project
24. Kathy Molloy-Previsich City of Morgan Hill
25. Brian Schmidt Committee for Green Foothills
26. Vera Todorov City of San Jose
27. Carolyn Tognetti Save Open Space - Gilroy
28. Colleen Valles Supervisorial District 1
29. Kerry Williams Coyote Housing Group, LLC
30. Gary Winzeler Coldwell Banker
31. Kristina Chavez Wyatt Armanasco Public Relations
32. Don Weden

**POTENTIAL ELEMENTS OF A PROPOSAL TO REVISE LAFCO'S DRAFT
AGRICULTURAL MITIGATION POLICIES**

For Discussion at January 2007 Agricultural Mitigation Policies Subcommittee Meeting

TIMING AND FULFILLMENT OF MITIGATION

1. LAFCO prefers that agricultural mitigation be in place at the time of LAFCO approval or as soon as possible after LAFCO approval. The mitigation (as detailed in the Plan for Mitigation) must be fulfilled no later than at the time of city's approval of the tentative map, or issuance of the grading permit or building permit, whichever occurs first.
2. Through the adoption of an ordinance/resolution, the city will assure LAFCO that the city will enforce the mitigation requirements no later than at the time of city's approval of the tentative map, or issuance of the grading permit or building permit, whichever occurs first. The City will adopt procedures for ensuring that the mitigation is fulfilled at the appropriate time.
3. City will provide LAFCO with a report on the status of mitigation fulfillment every year following LAFCO approval of the proposal until the agricultural mitigation requirements are fulfilled.

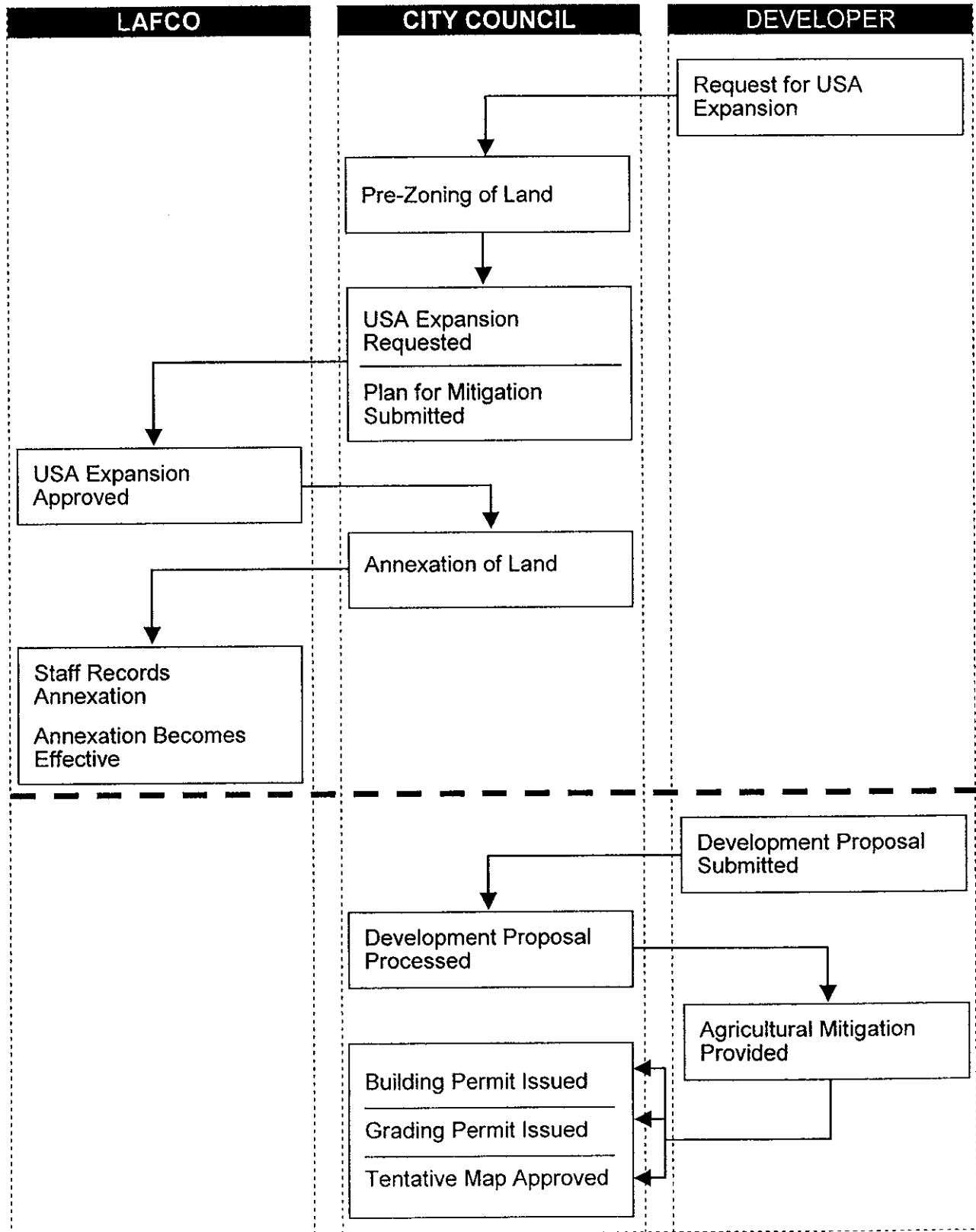
PLAN FOR MITIGATION

A Plan for Agricultural Mitigation that is consistent with LAFCO's Policies must be submitted at the time that a proposal impacting agricultural lands is filed with LAFCO. The Plan for Mitigation shall include all of the following:

1. An agreement between the property owner, city and agricultural conservation entity (if such an entity is involved) that commits the property owner(s) to provide the mitigation for the loss of prime agricultural lands and establishes the specifics of the mitigation in a manner consistent with these Policies. The agreement will specify:
 - a. The type of mitigation that will be provided in order to mitigate for conversion of agricultural lands. (purchase of fee title or easement or payment of in-lieu fees)
 - b. The agricultural conservation entity that will be involved in holding the lands, easements, or in-lieu fees.
 - c. The acreage that would be preserved through mitigation and /or the methodology to be adopted for calculating the in-lieu fees.
 - d. The location of the mitigation lands, where possible.
 - e. Information on the specific measures adopted by the city as encouraged in Policy #11 (mitigation for impacts to adjacent agricultural lands)
 - f. The time-frame within which the mitigation will be fulfilled, which must be no later than at the time of city's approval of the tentative map, or issuance of the grading permit or building permit, whichever occurs first.

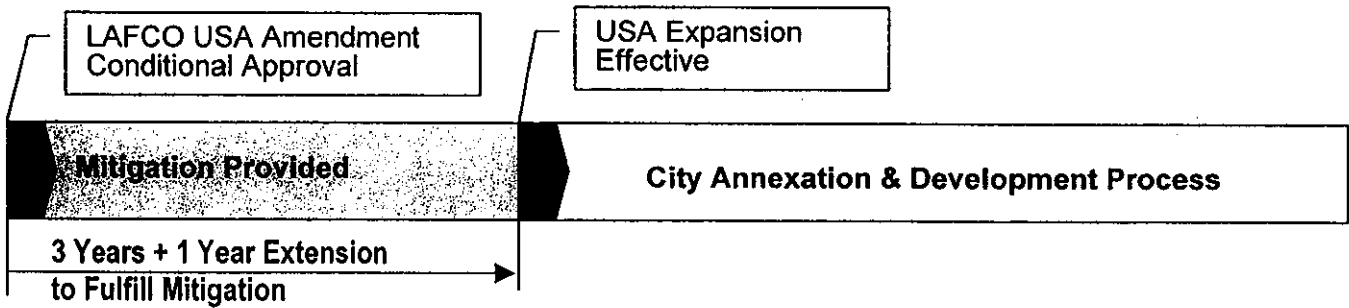
2. An ordinance/ resolution adopted by the City Council to establish a process to enforce the mitigation measures and confirming that the city will enforce the mitigation measures as specified in the agreement.
3. The agricultural conservation entity will report annually to LAFCO on the use of the in-lieu fees until the fees have been fully expended.
4. The mitigation agreement is to be contingent on LAFCO approval of the proposal.
5. Upon LAFCO approval of the proposal, the agreement will be recorded with the County Recorder's office against the property to be developed.
6. Applicant should provide all other supporting documents and information to demonstrate compliance with these Policies.

**PROPOSED PROCESS FOR
TIMING AND FULFILLMENT OF AGRICULTURAL MITIGATION**

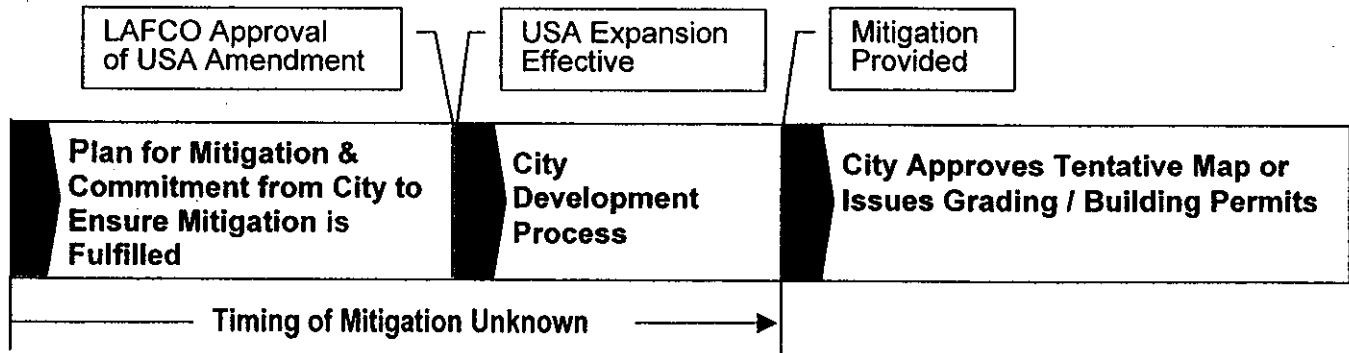


COMPARISON OF PROCESSES FOR TIMING AND FULFILLMENT OF MITIGATION

December 6th Version of Timing and Fulfillment of Mitigation



Proposed Revisions to Timing and Fulfillment of Mitigation





February 8, 2007

To: Santa Clara County Local Agency Formation Commission (LAFCO)

From: Trixie Johnson, Friends of Coyote Valley Greenbelt (FROG)

RE: LAFCO's Draft Agricultural Mitigation Policies

Progress Toward Achieving a Consensus Solution

The Friends of the Coyote Valley Greenbelt (FROG) again wishes to commend LAFCO and its staff for addressing the important and timely topic of mitigation for the loss of agricultural lands to urban development.

We believe that the refinements that the LAFCO staff has been making in LAFCO's draft agricultural mitigation policies have been responsive to stakeholder concerns and are moving in positive directions.

We hope that these and future refinements will lead to LAFCO adoption of agricultural mitigation policies that will be supported by each of the major groups of stakeholders FROG identified in its January 15, 2007 letter to LAFCO (including LAFCO, the cities, landowners and developers, open space advocacy organizations, and potential agricultural mitigation implementation agencies and/or organizations).

Two Basic Goals: Reasonableness and Effectiveness

As we indicated in our January 15th letter, FROG believes that there are two basic goals that should guide the development of LAFCO's agricultural mitigation policies – reasonableness and effectiveness.

Progress Toward Addressing Concerns Regarding Reasonableness

Recent revisions by LAFCO staff have made the proposed policies more reasonable by addressing some of the major concerns raised by the cities, and by landowners and developers. These have included, among other things:

1. Replacing the proposal for "conditional approval" of Urban Service Area expansions that would have:
 - a. Required that agricultural mitigation be accomplished before approval of a proposed urban service area boundary expansion would become final, and
 - b. Rescinded LAFCO's conditional approval of the proposed urban service area boundary if agricultural mitigations were not accomplished within a particular time period (e.g. three years)

This was replaced by a policy indicating that mitigation should be accomplished prior to the issuance of building permits, or at other appropriate times earlier in the cities' development approval processes.

2. Providing for flexibility with regard to the specific amount of mitigation to be provided. The original draft called for a rigid 1:1 mitigation standard (i.e. one acre preserved for each acre to be developed). Subsequent LAFCO staff revisions would allow for variations from this standard under certain conditions.

Through these and other revisions, LAFCO staff has been seeking to make the draft policies more reasonable.

Additional Concerns Regarding Reasonableness

There apparently remains, however, at least one more major issue of concern to the cities and the land development community – whether LAFCO should adopt agricultural mitigation policies or agricultural mitigation requirements. The cities and various organizations have stated opposition to LAFCO adopting requirements for agricultural mitigation, although they generally acknowledge LAFCO's authority to adopt agricultural mitigation policies indicating that proposed agricultural mitigations will be an important factor in its decisions regarding urban service area boundary proposals that would involve the development of prime agricultural lands

Need for Further Refinement to Ensure Effectiveness

While FROG agrees that whatever LAFCO adopts with regard to agricultural mitigation must be reasonable, FROG also believes strongly that whatever LAFCO adopts must be effective in permanently preserving significant amounts of prime agricultural lands, commensurate with the amount of land that will be lost to development through urban service area expansions.

Adopting agricultural mitigation policies that are reasonable, but ineffective, would be a charade. So it is critical that LAFCO achieve both of these goals with regard to agricultural mitigation.

Assuring That Agricultural Mitigation Will Be Effective

FROG would ideally prefer that LAFCO adopt agricultural mitigation requirements.

However, FROG would be willing to support LAFCO adoption of agricultural mitigation policies, so long as they contain certain provisions that FROG believes are important to help assure the effectiveness of agricultural mitigation.

Regardless of whether LAFCO decides to address agricultural mitigation in the form of policies or as requirements, FROG believes that LAFCO should include the following provisions, most of which are already in the current staff draft:

1. LAFCO should make it very clear that adequate and assured agricultural mitigation will be an important consideration in its decisions regarding whether or not to approve a city's proposal for expansion of its urban service area to include prime agricultural lands.
2. Each of the relevant cities should be encouraged to develop and adopt an explicit, citywide agricultural land mitigation "plan" consisting of the goals, policies,

procedures, and ordinances that it will apply to lands within areas it proposes to include in LAFCO urban service area boundary expansion requests.

- a. As part of these "plans," cities should be encouraged to adopt ordinances and procedures that assure that issuance of building permits for individual development projects within the urban service area expansion area will not occur until agricultural mitigation obligations have been fulfilled.
 - b. The basis for determining the amount of mitigation should be clear. This would generally be in the form of a ratio of land requiring mitigation to the amount of land to be preserved as mitigation. The basis may allow for some variation, as long as the variation serves an identified public rather than private interest.
 - c. The form(s) of mitigation that the city will consider acceptable (e.g. in lieu fees, donation of lands and/or easements, etc.) should be made clear.
FROG favors the payment of in lieu fees as the preferred mitigation method.
 - d. Other programs or activities the city is or will be carrying out to support local agriculture.
 - e. Cities should specify in their plan the explicit criteria for selection of a qualified public agency or nonprofit organization to administer the fees, purchase mitigations lands/easements, hold the lands/easements for the long term, and administer/manage them.
 - f. Cities should be encouraged to make written information regarding its agricultural mitigation policies, ordinances, and procedures easily available to landowners, developers, and the community at large.
3. LAFCO should be given an opportunity to review and comment on the each city's mitigation "plan" prior to its adoption by the city council.
 4. Each subsequent individual city application to LAFCO requesting expansion of its urban service area boundary to include prime agricultural lands should:
 - a. Indicate how the city's agricultural mitigation "plan" will be applied to lands within the area of the proposed expansion,
 - b. Include a written agreement between the city and a qualified public agency or nonprofit organization that will be responsible for acquiring, managing, or administering agricultural lands and/or agricultural conservation easements obtained under the city's agricultural mitigation "plan" if LAFCO approves the city's urban service area boundary expansion request.

The written agreement should specify how in lieu mitigation fees will be adjusted over time to account for increased acquisition, management, and administrative costs.
 5. LAFCO should establish the method(s) to be used in determining which lands within a proposed urban service area expansion area are potentially subject to mitigation, i.e. which ones are "prime agricultural lands."

- a. Use of the Land Evaluation and Suitability Assessment (LESA) model should not be allowed because (1) it is based on a traditional model of agriculture that does not reflect the many ways that agriculture is evolving throughout the United States, and (2) because it can easily be manipulated to avoid mitigation.
 - b. It may be desirable for LAFCO to make available an appropriate map (e.g. the California Department of Conservation's "Important Farmlands Map") that will provide the cities, landowners, developers, and the community at large with a general indication of the lands outside current city urban service areas that may be subject to agricultural mitigation if they are proposed for development.

(Note: The map should include appropriate disclaimers indicating that it is not an "official" agricultural mitigation map, since some additional lands may also qualify as "prime agricultural lands," based on other criteria established under state law.)
6. Each city – and any public agencies or nonprofit organizations with which it has contracted to administer its agricultural mitigation program – should submit annual reports to LAFCO indicating the status of the implementation of agricultural mitigations required for lands within urban service area boundary expansions approved subsequent to LAFCO's adoption of its agricultural mitigation policies or requirements.

File: FROG LAFCO Comments 2-8-07

LAFCO
County of Santa Clara
70 West Hedding Street
San Jose, CA 95110

Dear LAFCO members,

I hope that you will carefully weigh the problems inherent in annexation and development of the area known as the 660 acres currently in Santa Clara County near Gilroy. My name is Janet Espinosa, a long time resident of the area living within sight of the 660 acres.

I would love to construct two homes on my acreage in the country, but that is not how the area is zoned. I am surrounded by agriculture, and it is my hope and that of my neighbors that we continue to enjoy the quiet country life.

Let us get to a matter of utmost importance. There are several reasons why the land east of the freeway and next to Leavesley Road should not become a mall.

#1. Most important is that the land is both excellent for agriculture and is in a flood plain. We must look at the greater good for the local people, and that is not achieved by paving over this area. This is some of the richest agricultural acreage in the county and grows several crops each and every year. Development in the area would also be an immediate threat to our homes in the flood plain. In addition there are other suitable areas for the unnecessary mall, areas not currently in agriculture.

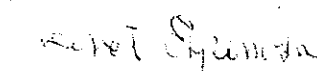
#2. The 660 acres were brought into the sphere of influence, future urban area of Gilroy under the pretext of having an industrial campus. Although that was a good way to get skilled jobs in the area, it was also the wrong area. That the Gilroy City Council should now even be considering annexation and piecemeal development is just plain wrong. Why should any development in that area proceed?

#3. There are numerous empty locations in Gilroy that need to be developed. I think they sometimes call it in-fill. Do we need more empty store fronts downtown, in the outlets, the old Wal-Mart, near tenth street, on first street, etc.? I don't believe so.

#4. Have you visited an attractive mega-mall recently? Oakridge, Northridge, Eastridge, other Westfield malls, etc., are not surrounded by beauty and quality residential developments. Santana Row is an exception which would be a better integration of retail, restaurants, office space and residential, but it doesn't look like the plans for this area. The plan presented at the City Council study session tonight might be an excellent way to revitalize Gilroy's downtown, especially if relocated near the train station and the new performing arts center. Some excellent possibilities here for mixed used development.

We need business and we need agriculture, each in the best possible location. Please protect the quality of life in Gilroy. Thank you for hearing our concerns.

Sincerely,



Janet Espinosa
8465 Marcella Ave.

Gilroy, CA 95020

1/24/07

LAFCO Commissioners Gage and Wilson
The LAFCO Commission
Neelima Palacherla, LAFCO Executive Officer

Public input and stakeholders comments on the LAFCO's draft policy "**Plan for Mitigation**" and "**Timing and Fulfillment of Mitigation**'s sections submitted by Ken Bone from Gilroy

Plan for Mitigation

- 12/6 Draft item # 13. A plan for [**open space habitat/nature and**] agricultural mitigation that is consistent with this Policy must be submitted at the time that the proposal impacting [**open space habitat lands and/or**] agricultural lands is filed [**and the application fees are paid.**]

12/6 Draft item # 14 The plan for mitigation shall include all of the following:

- 12/6 Draft item # 14 a. An agreement between the property owner(s) and the city or between the property owner, city and [**the open space habitat/nature or**] agricultural conservation entity [**that belongs to the Land Trust Alliance**] (if such an entity is involved)... .. mitigation for the loss of [**open space habitat/nature lands and**] prime agricultural lands ...
- 12/6 Draft item # 14 a. continued ... Upon LAFCO's conditional approval, the agreement must be recorded with the County Recorders' Office against the property to be developed [**and against the property that is mitigated, preserved, or set aside**]

Timing and Fulfillment of Mitigation

12/6 Draft item # 15. (Change back LAFCO Draft items #15, as previously written with the [**two (2)**] years of conditional approval. (that is 24 full months to comply which is enough time for the serious acquisition of the replacement open space habitat lands or agricultural lands or conservation easements to be acquired and transferred or the [**3:1**] in-lieu fees be paid, or the conditional approval may expire without any extensions.)

- 12/6 Draft item # 15. LAFCO will require as a condition of approval that the [**open space habitat/nature lands and the**] agricultural lands or conservation easements be acquired and transferred or the [**3:1**] in-lieu fees be paid within [**two (2)**] years of LAFCO's conditional approval.

12/6 Draft item # 17. (Change back LAFCO Draft items #17, as previously written with the [**two (2)**] years of conditional approval)

- 12/6 Draft item # 17. If the conditions of approval are not met within [**two (2)**] years, [**the conditional approval will expire unless the**] applicant [**pays the additional extension fees and re-applies**] to LAFCO [**within the last six (6) months of the initial two (2) year initial conditional approval period**] for [**a LAFCO**] extension [**including**

demonstrating the continuing active pursuit of the required land mitigation, and the demonstrated actual need for a LAFCO approved extension, not to exceed [**a maximum of one (1) additional**] year. [**All**] further consideration by LAFCO will require a new application [**and the payment of all new application fees. No additional extensions will be considered or allowed by LAFCO.**]

- 12/6 Draft item # 19. ... involving [**open space habitat/nature lands and**] agricultural lands if [**open space habitat/nature land mitigation and**] agricultural mitigation has not been completed for the city's previous approvals. Status of pending [**open space habitat/nature lands mitigation and**] agricultural mitigation will be a [**negative**] factor that ... involving [**open space habitat/nature lands and**] agricultural lands.

As a follow up to my presentation and recommendation letter to the Commissioners dated December 6, I am recommending the following specific Commission actions and summarizing specific benefits based on the adoption of recommendations.

Recommended Commission Actions:

- Open Space lands and Fallow Lands be included in all sections of the adopted LAFCO land mitigation policy along with prime agricultural land at no less than **a 2:1 ratio**, two (2) acres preserved for every one (1) acre converted
- Provide in-lieu mitigation fees at no less than a 3:1 ratio, three (3) acres preserved for every one (1) acre converted to an Open Space/Nature conservation Trust entity or agricultural conservation Trust entity that belongs to the Land Trust Alliance
- Provide two (2) years for mitigation completion with a possible **1-year extension based on a proven record of genuine compliance and a proven extension need by the applicant**
- Provide for **Open Space education and native plant and native animal restoration programs** for the mitigated Open Space Habitat Lands and the Fallow Open Space Lands

The Benefits to the Local Farmers:

- The protection and preservation of mitigated Open Space, especially Fallow Lands, benefits the farmers directly by providing a agricultural land bank on the rural edges of the County's cities
- The mitigated preserved lands will provide protected lands for future local food production and the protection of the agricultural way of life
- The mitigated preserved lands will provide protected lands for native species such as the endangered Burrowing Owl which feed on rodents protecting agricultural crops

The Benefits to the Local Communities and to the County:

- The protection and preservation of mitigated Open Space, especially Fallow Lands, benefits the local communities by providing a agricultural land bank on the rural edges of the County's cities for open space habitat education, for local farming, and for farming education.
- The Open Space mitigated land will attract people to the County's Open Space communities.

Benefits The Benefits to Santa Clara County:

- The protection and preservation of mitigated Open Space including the fallow and the mitigated agricultural lands benefits the local environment directly by providing a agricultural and open space land bank on the rural edges of the County's cities for all the County citizens to cherish and enjoy.
- "The valley of hearts delight" can still be enjoyed by our future generations, if we commit to it now by preserving Open Space and agricultural lands through mitigation!

The Benefits to the local Environment:

- The protection and preservation of mitigated Open Space including the fallow and agricultural lands benefits the local environment directly by providing a agricultural and Open Space Nature Preserve on the rural edges of the County's cities for the reintroduction of native plants and animals to be enjoyed by our future generations.

Respectfully,

Ken Bone
3290 Godfrey Ave.
Gilroy, CA 95020
408-848-1036



MORGAN HILL CHAMBER OF COMMERCE

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January 22, 2007

Santa Clara County LAFCO
Local Agency Formation Commission
70 West Heading Street
11th Floor, East Wing
San Jose, CA 95110

Re: LAFCO Sub-Committee to Review Proposed Ag Mitigation Policy

Dear LAFCO:

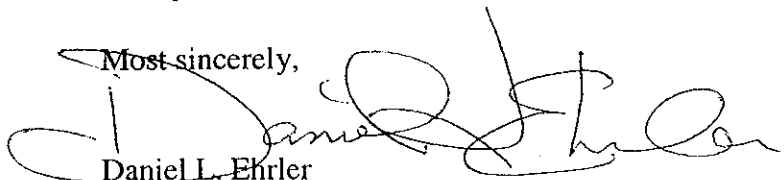
At the December 13, 2006, LAFCO Public Hearing, the Morgan Hill Chamber of Commerce was very pleased with the direction that the LAFCO Commission gave in regard to creating a sub-committee in order to examine the proposed Ag Mitigation Policy more closely. Even more significantly, we genuinely appreciated the LAFCO direction to include listening to the stakeholder comments that have been expressed in the last several months.

However, according to the City of Gilroy, recent scheduling fliers circulated by LAFCO staff have limited the discussion to only two specific sections of the proposed policy, and further, require stakeholders to "set up" private meetings with staff. We join the City of Gilroy in saying that we clearly understood from LAFCO dialogue and direction on December 13, that stakeholder input would be in an open forum where all interested groups could share their thoughts openly and together.

In addition, the Morgan Hill Chamber of Commerce has received NOTHING regarding meetings of any kind, even those addressed by the City of Gilroy! We genuinely look forward to participating in this public review process and believe some meetings in a South County venue would be most helpful and productive.

Thank you for listening to our issues and concerns. I genuinely look forward to hearing from you, soon.

Most sincerely,


Daniel L. Ehrler
President / CEO



Friends of the Coyote Valley Greenbelt (FROG)

January 15, 2007

To: Santa Clara County Local Agency Formation Commission (LAFCO)

From: Trixie Johnson, Friends of Coyote Valley Greenbelt (FROG)

RE: LAFCO's Draft Agricultural Mitigation Policies

INTRODUCTION

A Leadership Opportunity for LAFCO

The Friends of the Coyote Valley Greenbelt (FROG) wishes to commend LAFCO and its staff for addressing the important and timely topic of mitigation for the loss of agricultural lands to urban development.

We believe that adoption of agricultural mitigation policies by LAFCO will be seen by future generations as one of the landmark decisions that played a major role in contributing to the quality of life in Santa Clara County – along with the decisions of your predecessors on LAFCO who adopted the countywide urban development policies back in the 1970's that have helped to guide urban development and to preserve open space in this county for more than three decades.

FROG Observations and Suggestions

In this letter, we will be presenting some general observations regarding LAFCO's draft agricultural mitigation policies, along with recommendations for bringing this process to a successful conclusion.

FROG's general recommendations are summarized at the end of this letter.

GENERAL OBSERVATIONS

1. A Consensus Outcome Is Desirable – and Possible

FROG believes that a successful program of agricultural mitigation in Santa Clara County requires the support of all the major stakeholders who will be affected by it – and who will be responsible for taking supportive actions to make it successful.

Consequently, we believe the agricultural mitigation policies that LAFCO eventually adopts should reflect a broad consensus, achieved through an understanding of and respect for each of the stakeholders' underlying needs and goals.

Despite the seemingly divergent opinions that were expressed at the LAFCO hearing on December 13, FROG believes that such a consensus is attainable and that LAFCO is moving in the right direction to attain it by establishing your Subcommittee to review and refine the "Plan for Mitigation" and "Timing and Fulfillment of Mitigation" sections.

2. Defining "Consensus"

A consensus solution, as we would define it, is a solution that all the major stakeholders can support (or at least live with) because it either meets their own underlying interests, needs and goals or at least does not adversely affect them to a significant degree.

Consensus solutions are often referred to as "win/win" solutions since the basic interests of all the affected stakeholders are advanced by the outcome.

They do not necessarily give any or all of the stakeholders 100% of what they would ideally want; but they are preferable to "winner-take-all" or "win/lose" outcomes, after which the "losers" seek to undermine or veto them.

With an issue as important to Santa Clara County's future as agricultural mitigation, FROG believes that pursuit of a workable, consensus outcome is highly desirable.

3. Achieving Consensus

Often, with important public policy issues where there are multiple stakeholders and significant differences of opinion among the stakeholders, processes are established for achieving consensus. These sometimes involve professional facilitators and lengthy processes that actively engage the major stakeholders in a dialogue intended to help them reach consensus.

With regard to LAFCO's agricultural mitigation policies, FROG believes that consensus can be achieved in a more efficient way that does not require hiring of professional facilitators or lengthy, time-consuming processes.

This letter provides observations regarding consensus building and suggests how LAFCO's draft agricultural mitigation policies could be revised to achieve consensus among the major stakeholders.

4. **Categorizing the Major Stakeholders in the Agricultural Mitigation Dialogue**

In order to achieve consensus, it is generally necessary to begin by identifying the major stakeholders whose interests need to be taken into consideration with regard to the issue at hand, and the basic underlying interests of each group.

At the risk of oversimplification, it appears that the major stakeholders with regard to the LAFCO agricultural mitigation policy can be grouped as follows:

- a. LAFCO and its Staff
- b. The Cities (primarily San Jose, Morgan Hill, and Gilroy)
- c. Landowners and Developers
- d. Environmental Advocacy Organizations
- e. Potential Agricultural Mitigation Implementors
(i.e. public agencies and/or nonprofit organizations that might accept responsibility for using agricultural mitigation fees and other funds for purchasing agricultural lands and/or easements, managing them, etc.)

Before proceeding further, it should be acknowledged that:

- a. There are a number of other individuals and organizations that are stakeholders in LAFCO's decision. However, their concerns are generally quite similar to those of one or more of the major stakeholders. Consequently, if the concerns of the major stakeholders are successfully addressed, most of the concerns of the other stakeholders are likely to be met as well.
- b. The interests of all the agencies, organizations, or individuals within each of these major categories are not necessarily identical. But, in general, they have more shared concerns than differences. Therefore, for purposes of seeking a broad overall consensus, they can be viewed as being relatively similar.

5. **An Overview of Stakeholder Interests**

Again at the risk of great oversimplification, it appears that the major underlying interests, needs, or goals of the major stakeholder groups, as they relate to agricultural mitigation, can generally be summarized as follows:

- a. **LAFCO's and Its Staff's Interests**
 1. To adopt agricultural mitigation policies that will carry out LAFCO's state mandate to preserve agricultural lands
 2. To have assurances that LAFCO's agricultural mitigation policies will be effectively implemented by the cities, developers, and agricultural conservation agencies/organizations
- b. **The Cities' Interests**
 1. To have flexibility with regard to the establishment of their own individual agricultural mitigation policies and procedures

2. To have LAFCO's agricultural mitigation policies be reasonable, from the cities' perspectives
 - a. To have agricultural mitigation policies that do not prevent the development of projects they feel are important to their community
 - b. To have the timing of agricultural mitigation implementation procedures be consistent with their normal land development procedures

c. Landowners' and Developers' Interests

Note: In general, it is probably true that landowners and developers would prefer not to have to mitigate for agricultural land losses; but, if agricultural land losses must be mitigated, they would probably prefer:

1. To have reasonable agricultural mitigation requirements that do not jeopardize the economic feasibility of their intended development projects
2. To have requirements and procedures that are fair, consistent, and predictable
3. To be able to fulfill their agricultural mitigation requirements in ways that are consistent with normal land development procedures

d. Environmental Advocacy Organizations' Interests

1. To have LAFCO adopt agricultural mitigation policies
2. To have assurances that LAFCO's agricultural mitigation policies will be effectively implemented by the cities and agricultural conservation agencies/organizations

e. Mitigation Implementors' Interests

1. To be able to determine the locations of the mitigation lands they will be responsible for
2. To be assured that any in lieu agricultural mitigation fees they receive are adequate to cover the costs of:
 - a. Acquiring fee title and/or agricultural conservation easements
 - b. Long term monitoring, managing, and/or enforcing the provisions of easement and/or lease agreements they may enter into
 - c. Conducting programs to support and promote local agriculture

6. Reasonableness and Effectiveness: The Two Keys to Agricultural Mitigation Consensus

Based on a review of the various comments LAFCO has received in writing and through testimony at its informational workshops and public hearings, there appear to be two major themes that underlie most of the comments:

- a. The need for LAFCO's agricultural mitigation policies to be *reasonable*, and
- b. The need for LAFCO's agricultural mitigation policies to be *effective*.

If these two basic concerns can be successfully and simultaneously addressed – and FROG believes they can – it should be possible for LAFCO to adopt agricultural mitigation policies with relatively widespread support.

7. Concerns Regarding *Reasonableness*

One of the draft LAFCO policies that has drawn the most comments with regard to reasonableness has been the proposal for “conditional approval” of city urban service area boundary (USA) expansions, that wouldn't become final until after mitigation has occurred and which would expire if the mitigation did not occur within a specified time period (currently proposed to be 3 years).

Landowners, developers, and cities have all commented that this is neither reasonable nor realistic, for a variety of reasons, including among others:

- a. Lending institutions may be unwilling to loan money for development projects until they have assurance that the lands involved have been annexed into the city where the development is proposed to occur.

This could create a “Catch 22” situation in which the developer can't pay the mitigation fees until they have obtained the loan, and they can't obtain the loan until they pay the mitigation fees.

- b. Since most urban service area expansion proposals encompass more than just one property and more than one owner, the “conditional approval” policy could create situations where the development plans of a number of property owners in the proposed USA expansion area could, in effect, be held hostage by one or more property owners in that area who were unable or unwilling to pay their agricultural mitigation fees.

Under those conditions, the property owners who were ready to pay their mitigation fees and proceed with development would not be able to do so because they cannot get annexed to the city until LAFCO has issued a “Certificate of Completion” for the USA expansion – which could not occur, under LAFCO's proposed policies, until all the agricultural mitigation fees for all of the properties had been paid.

Various other such examples could be presented illustrating the difficulties of making “conditional approval” of a USA expansion work in the “real world” where multiple parcels and multiple property owners are involved, and where it is often difficult, if not

impossible, to know with great certainty how much time may elapse between the time that lands are brought into a city's urban service area and when they will be developed.

The basic point to be made here is that the "conditional USA expansion approval" concept does not seem to be workable, except perhaps in a few cases where there is a single parcel involved, whose owner is ready to proceed with development soon after the USA expansion and annexation to the city have been approved.

Consequently, it does not appear to be reasonable from the perspectives of the cities or the landowners and developers. Achieving a consensus outcome that includes these major stakeholders will be difficult unless an alternative to the "conditional USA expansion approval" concept is adopted.

One potential solution that would probably be acceptable to these stakeholders would be for the cities to adopt ordinances requiring that agricultural mitigation fees must be paid, for example, when the subdivision map or development plan is approved or, alternatively, prior to the issuance of building permits. The cities' policies for when they require the payment of school impact fees might serve as a model for when agricultural mitigation fees should be collected for residential projects.

8. Three Concerns Regarding *Effectiveness*

While landowners, developers, and the cities have been most concerned about the *reasonableness* of LAFCO's proposed agricultural mitigation policies, LAFCO, the environmental advocacy organizations, and potential mitigation implementors have been primarily concerned about the *effectiveness* of the implementation of these policies by the cities.

This concern is particularly relevant since, under California state law, LAFCO relinquishes its control over the annexation of these lands once LAFCO has approved the urban service area boundary expansion.

Within the discussion over effectiveness, three basic issues have arisen:

- a. How can LAFCO and others be assured that the cities will follow through with the implementation of LAFCO's agricultural mitigation policies after LAFCO has approved an urban service area boundary expansion?
- b. How can the process of determining which lands will require agricultural mitigation if/when they are developed be made more transparent, consistent, predictable, and accessible?
- c. How to assure that agricultural mitigation fees will be set sufficiently high to assure that they will cover the costs associated with:
 1. Purchase of agricultural conservation easements (including acquisition costs, as well as long term monitoring and enforcement costs) and/or
 2. Purchase of fee title to agricultural lands (including acquisition costs, as well as long term land management costs), and
 3. Programs and activities to support and promote local agriculture

9. Providing Assurance that Cities Will Follow Through with Mitigations

As indicated above, the currently proposed mechanism for assuring that cities and developers follow through with agricultural mitigation involves the use of “conditional approval” of urban service area expansions.

That approach, as also indicated above, does not seem reasonable or workable to several of the key stakeholder groups, including cities, landowners, and developers.

FROG, which also is concerned about assuring that adequate and effective mitigation occurs, agrees that the “conditional approval” approach is problematic for a number of reasons.

As an alternative, FROG suggests that each city, as part of the “Plan for Mitigation” it submits to LAFCO, include, among other things:

- a. The city’s adopted ordinance that requires that agricultural mitigation fees must be paid at the time that building permits are issued, or at some other appropriate time earlier in the development approval process.
- b. A description of the city’s building permit issuance process that spells out the city’s procedures for assuring that no building permits will be issued until required agricultural mitigation fees have been paid, and
- c. Copies of the city’s current building permit sign off form or other appropriate documents that clearly require city staff to determine whether agricultural mitigation fees have been paid before they issue building permits for a project

Note: The above assurances would also be accompanied by an agreement between the city and an appropriate agricultural mitigation implementor (as already called for in LAFCO’s draft agricultural mitigation policies).

The agreement should indicate that the public agency or nonprofit organization has agreed to accept the agricultural mitigation fees collected by the city and use them to implement mitigation programs consistent with the city’s and LAFCO’s agricultural mitigation policies.

Although that alone would not provide absolute assurance that a city would not change its agricultural mitigation policies or ordinances after LAFCO approves its urban service area expansion request, it seems like a reasonable, workable approach.

10. Agricultural Mitigation Process Should Be Transparent, Consistent, Predictable, and Accessible

A second area of concern regarding the effectiveness of LAFCO’s proposed agricultural mitigation policies has to do with the way it is determined which agricultural lands must be mitigated if they are to be developed.

FROG believes that the method for making this determination should be transparent, consistent, predictable, and accessible.

By “transparent” we mean that the determination of which lands must be mitigated if they are developed, should occur in an open, observable public process.

Friends of the Coyote Valley Greenbelt (FROG) • PO Box 7665 • San Jose CA 95150

By “consistent” we mean that the method for determining which lands must be mitigated should be consistent throughout the county.

By “predictable” we mean that agricultural mitigation requirements should be established on an equitable, citywide basis, not a case-by-case, parcel-by-parcel basis.

By “accessible” we mean that it should be easy for everyone to obtain accurate information regarding which lands must be mitigated if they are developed.

The best way to achieve these goals, FROG believes, would be for LAFCO to prepare and adopt, along with its agricultural mitigation policies, an official, countywide map indicating which lands currently outside city urban service area boundaries must be mitigated if they are proposed for inclusion within a city’s urban service area.

11. Establishing Adequate Agricultural Mitigation In Lieu Fees

Although LAFCO’s draft agricultural mitigation policies provide several alternative ways that developers could fulfill their agricultural mitigation obligations, it appears to FROG that the payment of in lieu fees is most likely to be the preferred alternative, both for developers and for the mitigation implementation agencies/organizations.

Establishing the amounts of these fees, which could potentially vary from city to city, will be an important and potentially complex task that, ultimately, will most likely be arrived at through negotiations between individual cities and agricultural conservation agencies or organizations, with input from developers and the community at large.

We raise the issue in this letter simply to acknowledge its eventual importance.

FROG has no specific recommendation regarding the magnitude of such fees, other than they should be adequate to cover both short and long term costs, as well as programmatic costs associated with supporting and promoting local agriculture in Santa Clara County, and there should be provisions for periodically reviewing and raising them, if warranted.

12. The Essential Ingredients for a Consensus Solution

Achieving broad stakeholder consensus on LAFCO agricultural mitigation policies will require at least two essential ingredients:

- a. A revised LAFCO agricultural mitigation policies draft that addresses the major issues outlined in this letter, and
- b. A willingness among stakeholders to try to achieve consensus in support of a balanced, reasonable, and effective set of LAFCO agricultural mitigation policies

Responsibility for the first ingredient lies primarily with LAFCO and its staff.

Responsibility for the second ingredient lies with each of the individual stakeholders who have been or will become part of this dialogue regarding LAFCO agricultural mitigation policies.

It is FROG’s sincere hope that all stakeholders will see the benefits of pursuing a consensus solution and will make constructive efforts to help bring it about.

SUMMARY OF FROG RECOMMENDATIONS

Pursuit of a Consensus Solution

1. Seek to resolve the remaining issues in ways that will achieve a broad consensus of support among the major stakeholders.

Addressing Concerns Regarding Reasonableness

2. Replace the proposal for "conditional approval" of urban service area boundary expansions with one that requires cities to demonstrate that agricultural mitigation obligations will be fulfilled by developers at the time that their subdivision map or development plans are approved or, alternatively, before they are issued building permits for their projects.

Addressing Concerns Regarding Effectiveness

3. [same as #2 above]
4. Prepare and adopt along with LAFCO's agricultural mitigation policies an official map indicating which lands currently outside city urban service area boundaries must be mitigated if they are proposed for inclusion in a city's urban service area.

Make the official, countywide agricultural mitigation map readily available to the cities, landowners, developers, and the community at large.

File: FROG Ag Mit Ltr 1_15_07.doc



LAFCO of Santa Clara County
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

January 16, 2007

RE: LAFCO's Proposed Agricultural Mitigation Policies

Dear Ms. Neelima Palacherla,

Greenbelt Alliance commends LAFCO's pursuit of county-wide agricultural mitigation policies and remains very supportive of these efforts. Cities should be encouraged to grow within their boundaries, to use land more efficiently and to revitalize their downtowns and transit corridors. At the same time, the conversion of farmland to urban uses should be viewed as an absolute last resort. Farmland is an irreplaceable and valuable resource providing locally grown fresh produce. Communities can accommodate growth by building more compactly and thinking upwards instead of outwards.

To that end, Greenbelt Alliance would like to reiterate support for several elements within the agricultural mitigation policies.

Section 7 Definition of Prime Agricultural Lands: Fallow agricultural lands should be included within this definition. This would close the loophole that allows landowners to leave their land fallow for several years, thereby avoiding mitigation. Greenbelt Alliance also supports the statement by Melissa Hippard in her letter from the Sierra Club that the CA Department of Conservation's Santa Clara County Important Farmlands map be included in the definition.

Mitigation Requirements: Greenbelt Alliance supports nothing less than 1:1 mitigation for lands converted to urban uses and supports a higher ratio when lands with significant habitat or value are lost. In these cases, a ratio closer to 1.3:1 would address these concerns. Even with mitigation, only half of the County's remaining farmland will be preserved through these policies.

Timing and Fulfillment: Again, we would like to echo the Sierra Club in seeing that the policies tie approval of an USA expansion to certification of completion (of mitigation) of previous approvals and that a deed restriction be placed on newly incorporated properties so that all parties involved are aware of the mitigation requirement.

Greenbelt Alliance appreciates the opportunity to comment on the proposed policies and looks forward to seeing them approved. LAFCO is tasked with promoting orderly growth, preventing urban sprawl and preserving open space and agricultural lands. These proposed policies further that mission.

Sincerely,

Michele Beasley
South Bay Field Representative

January 12, 2007

Neelima Palacherla
Local Agency Formation Commission of Santa Clara County
70 West Hedding Street, 11th Floor, East Wing
San Jose, CA 95110

Email: neelima.palacherla@ceo.sccgov.org; dunia.noel@ceo.sccgov.org

Fax: (408) 295-1613

RE: Comments on Local Agency Formation Commission of Santa Clara County (LAFCO) Revised (12/06/06) Draft Agricultural Mitigation Policies regarding "Plan for Mitigation" and "Timing and Fulfillment of Mitigation"

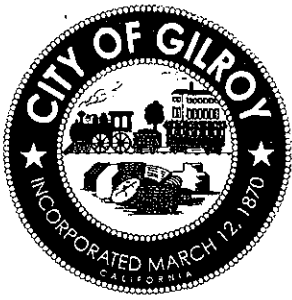
Dear Ms. Palacherla:

City of San Jose staff requests that the comments provided previously by the City of San Jose be considered by the LAFCO Subcommittee when the Subcommittee revisits the draft language of the Agricultural Mitigation Policies, as revised December 6, 2006, including the text for the "Plan for Mitigation" and "Timing and Fulfillment of Mitigation". In particular, we request that the letter from former Mayor Ron Gonzales, on behalf of the San Jose City Council, dated December 12, 2006, be considered and, as soon as possible, posted on the LAFCO web page with the other responses that are already posted. This will facilitate review of the suggestions by other interested parties who intend to participate in the meeting on January 24th.

I look forward to seeing you and attending the Subcommittee meeting on the 24th. If you have questions or comments prior to that meeting please contact me at (408) 535-7800. Thank you.

Sincerely,

Jenny Nusbaum, Senior Planner
Department of Planning, Building & Code Enforcement



City of Gilroy

COMMUNITY DEVELOPMENT DEPARTMENT

7351 Rosanna Street, Gilroy, CA 95020

Planning Division	(408) 846-0440	FAX: (408) 846-0429
Engineering Division	(408) 846-0450	FAX: (408) 846-0429
Building, Life & Environmental Safety Division	(408) 846-0430	FAX: (408) 846-0429
Housing & Community Development	(408) 846-0290	FAX: (408) 846-0429

January 12, 2007

ATT: LAFCO sub-committee - proposed Ag Policy
Local Agency Formation Commission
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

Re: Proposed Agricultural Mitigation Policy

Dear LAFCO;

Thank you for the opportunity to comment on the latest draft of the proposed Agricultural Mitigation Policy. We are especially pleased to hear that the LAFCO sub-committee has scheduled a meeting in South County. This is a significant gesture for many South County stake holders, as the proposed policy affects the entire South County region in so many important ways.

Notwithstanding all other prior comments expressed on the proposed policy, the following comment is considered one of our most significant concerns, and represents an important communication bridge that has not been crossed so far.

- Following two years of comprehensive study and deliberation by a large agricultural stake-holder task force, the City of Gilroy adopted an Agricultural Mitigation Policy on May 3, 2004 [*Which is currently, by far, the most comprehensive agricultural mitigation policy in Santa Clara County*]. This policy was the product of our City's General Plan update and environmental review process. LAFCO had significant input here, both at the General Plan development & mitigation stage and during policy formulation. The current LAFCO policy fails to recognize this important "South County" policy. Gilroy would strongly suggest that the proposed LAFCO policy work in parallel with the City's detailed agricultural policy and not totally ignore the significant achievements made by many agricultural stakeholders in the development of our "South County" Gilroy policy.

Gilroy truly believes that our two Agricultural Policies can work in tandem - with a little more work - and respect for all stakeholders that have come to the discussion table. We appreciate the opportunity to comment here and look forward to reviewing the next policy product.

Respectfully submitted;

William Faus

Planning Division Manager

faus@cityofgilroy.ca.us



San Mateo, Santa Clara & San Benito Counties

Neelima Palacherla, Executive Officer
LAFCO
County Government Center, 11th Floor, East Wing
70 West Hedding Street
San Jose, CA 95110

January 12, 2007

Ms. Palacherla,

The Sierra Club continues to be excited about Santa Clara County LAFCO's progress towards adopting agricultural mitigation policies. In light of the remaining 39,000 acres of prime agricultural land in Santa Clara County these policies are critical for ensuring the permanent viability of agriculture in the county. Not only will preserving prime agricultural lands be good for agriculture it is important for other conservation goals.

Slowing global warming is one of the Sierra Club's priority conservation efforts and the Loma Prieta chapter is focusing a large part of our resources on this goal locally. The agricultural sector has the potential not only to reduce their share of the greenhouse gas (GHG) emissions but also can significantly reduce net U.S. GHG emissions from other sectors. Carbon stocks in agricultural soils are currently increasing by 12 million metric tons (MMT) of carbon annually. If farmers widely adopt the best management techniques now available, an estimated 70 to 220 MMT of carbon could be stored in U.S. agricultural soils annually. Together with attainable nitrous oxide and methane reductions, these mitigation options represent 5 to 14 percent of total U.S. GHG emissions.¹ Santa Clara County can pursue local solutions to local GHG emissions by supporting strong agricultural mitigation policies and keeping agriculture viable.

In response to the most recent (12/6/2006) draft policies we would like to submit the following comments:

Section 7 Definition of Prime Agricultural Lands – the CA Department of Conservation's Santa Clara County Important Farmlands map must be included in the definition. This map provides a useful tool for the public, cities, and developers to quickly identify the lands covered by the new policies. These maps are widely used and are not subject to interpretation. Recognizing that on the ground conditions change over time we

¹ For more information about Agriculture's Role in Greenhouse Gas Mitigation please download this report by the Pew Foundation from http://www.pewclimate.org/global-warming-in-depth/all_reports/agriculture_s_role_mitigation/index.cfm

recommend that language be included to allow an applicant to challenge the definition of their land as prime. This opportunity must be guided by the definitions provided in the Cortese Knox Hertzberg Act and be at the applicant's expense.

Mitigation Requirements – a minimum of 1:1 mitigation is necessary. However, there are two reasons to consider a minimum of 1.3:1. Because all land is not equal it will be hard and harder over time, to find adequate land to replace land lost to development. Furthermore, some lands are just more valuable than others and their loss represents a unique loss. We would like to see some means for considering an application of a higher ratio of mitigation that addresses these concerns.

Timing and Fulfillment – we recognize the difficulty presented by the realities of growth and development. Given there are substantial opportunities for cities to grow within their existing urban footprints we wholly support LAFCO retaining control to the extent of their legal authority. To achieve this we would like to see the policies provide for the following:

- Tie approval of USA expansion to certification of completion of previous approvals. We suggest the following two step process: a city must present a mitigation plan consistent with the policies with their request for a USA expansion. If the plan meets the policy then they are given a conditional certificate. Once the mitigation is complete the city can apply for the certification of completion which would allow them to apply for another USA expansion.
- Deed restriction on lands moved into the new urban service area. Because of the lengthy time between application/approval of this step and the actual development it is critical to link the promise of mitigation to the land.

We applaud LAFCO commissioners and staff for their commitment to preserving agriculture in Santa Clara County. It is not too late to ensure the permanent protection of our agricultural heritage and provide for future food security and address global warming.

We look forward to continuing to work with you on this important issue.

Melissa Hippard
Chapter Director

Save Open Space Gilroy
1495 E. Hillview Ct.
Gilroy, CA 95020

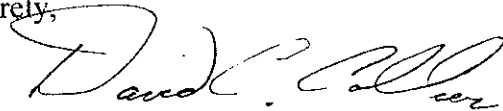
Friday, January 12, 2007

Neelima Palacherla, Executive Officer
Local Agency Formation Commission
70 West Heading Street
11th Floor, East Wing
San Jose, CA 95110

Dear Ms. Palacherla:

Enclosed please find a signed copy of the agricultural policy revision comment letter that SOS-Gilroy sent to you on Friday January 12, 2007 via email. Again, we very much appreciate the opportunity to submit our input on this important new policy. We look forward to its' adoption.

Sincerely,

A handwritten signature in cursive script that reads "David C. Collier". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

David C. Collier

Save Open Space Gilroy
1495 E. Hillview Ct.
Gilroy, CA 95020

Thursday, January 11, 2007

Santa Clara County LAFCO Members
Local Agency Formation Commission
70 West Heading Street
11th Floor, East Wing
San Jose, CA 95110

Re: Suggested revisions to the LAFCO Agricultural Mitigation Policy

Dear LAFCO Members:

Save Open Space Gilroy appreciates the opportunity to submit some final comments on Policy #14 & #19 of the revised agricultural mitigation policy since we see a serious problem with the in-lieu fees option that could undermine the effectiveness and success of the program.

The problem that we see can be best illustrated by the following likely scenario:

- First, an Urban Service area proposal is approved and within the specified 3 to 4 years the in-lieu fees are paid there-by satisfying the required mitigation set forth by LAFCO
- With mitigation dollars in the bank the agricultural conservation entity now goes looking for willing sellers in their target area close to the boundaries of the city (policy #10) but they are unsuccessful in finding such willing sellers due to a sharp increase in the speculative value of equivalent land in the intervening 3 to 4 years. In short, all landowners in the target area are now holding out for the more lucrative development dollars.
- Now another Urban Service Area proposal comes before LAFCO in the target area. It happens to be a great smart growth project with lots of included affordable housing and public amenities. The question then becomes whether LAFCO will hold up this great project simply because no willing sellers have been found to complete the previous mitigation. The likely answer will be NO since, after all, the in-lieu fees for the mitigation have already been paid and the development community has fully met their obligations under the LAFCO policy.

This scenario then is likely to be played out over many approved projects with little or no equivalent prime agricultural lands actually being preserved. The end result of this process could very well be a pile of mitigation money sitting in some bank account while the rest of Santa Clara County's prime farmland is paved over. SOS-Gilroy does not

believe that this is the intent of the new policy nor will it satisfy anyone, including the development community who will feel penalized for no redeeming purpose.

So, how should the policy be revised to deal with this problem? SOS-Gilroy sees three possible options which are given below with discussion:

1. Eliminate the in-lieu mitigation option.

From the point of view of the agricultural lands conservation program this is undoubtedly the preferred option for it leaves no uncertainty as to what lands will be protected at the time of a USA application. It also has the merit of placing the responsibility of agriculture preserve definition and development into the hands of those with the know-how and connections, namely the land development community itself. SOS-Gilroy, however, recognizes that in-lieu fees may still be the preferred mitigation route among land developers.

2. Set the in-lieu mitigation fees high enough so that they compete with what the speculative value of targeted equivalent land could be in four years.

If we always knew exactly what the market value of equivalent well-placed prime agricultural lands would be in four years then in-lieu fees would be an excellent option for mitigation – but we don't. Unfortunately, to have a good chance of meeting the goals of this policy, in the face of an uncertain future, it will be necessary to set the in-lieu fees into the upper reaches of what the speculative market value of equivalent land (in both size and location) could be in four years (the maximum time interval before payment is absolutely required). This may be more than the development community is willing to bear and, indeed, would be an unfair burden if the land market does not appreciate as forecasted.

*If this, however, is the accepted LAFCO revision to the policy then SOS-Gilroy recommends specific language be incorporated into Policy # 14 to indicate how the appropriate in-lieu fees were determined. The revised wording could be something like (w/ revisions in italics): "... with this Policy. *If in-lieu fees are to be the chosen mitigation mode then documentation will be provided to show the insured adequacy of the set in-lieu fee to meet the policy's goals in four years. This documentation shall include an extrapolation of expected market values of target mitigation lands over the four year period.* The agreement ..."*

3. Require the mitigation of a city's previous USA application to be fully finalized, with the actual purchase of agricultural land or easements, before the next one is approved.

The benefit of this requirement would be the generation of pressure from within the development community to adequately meet the mitigation of previous projects. It is our guess that willing sellers would appear under these circumstances and true preservation of prime agricultural lands would occur. In

effect, this requirement makes the option of in-lieu fees similar to the other options of the actual purchase of land or development rights with the difference being that more flexibility is given over the four years in identifying what lands will be permanently set aside.

SOS-Gilroy suggests that if this was the desired revision that it could be incorporated into the language of policy #19 in the following manner:

Policy #19: LAFCO will not accept other USA amendment proposals from the city until the agricultural mitigation for the city's previous USA approvals is finalized through the actual purchase of mitigation lands or conservation easements.

This is essentially the original language of Policy #19 but with the additional clarification of what provision of previous agricultural mitigation means.

SOS-Gilroy hopes these observations and suggestions are helpful to LAFCO in formulating a workable and effective program of prime agricultural land conservation for Santa Clara County. We applaud your efforts.

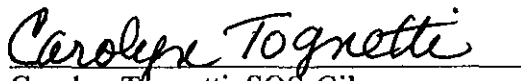
Sincerely,



David Collier, SOS-Gilroy



Connie Rogers, SOS-Gilroy



Carolyn Tognetti, SOS-Gilroy

1/12/07

LAFCO Commissioners
Neelima Palacherla, Executive Officer
LAFCO staff
c/o Emmanuel Abello, LAFCO Clerk

Requested public input on LAFCO's draft policy "Plan for Mitigation" and "Timing and Fulfillment of Mitigation" sections by today's date, 1/12/07

Plan for Mitigation

- 12/6 Draft item # 13. A plan for **[open space habitat/nature and]** agricultural mitigation that is consistent with this Policy must be submitted at the time that the proposal impacting **[open space habitat lands and/or]** agricultural lands is filed **[and the application fees are paid.]**

12/6 Draft item # 14 The plan for mitigation shall include all of the following:

- 12/6 Draft item # 14 a. An agreement between the property owner(s) and the city or between the property owner, city and **[the open space habitat/nature or]** agricultural conservation entity **[that belongs to the Land Trust Alliance]** (if such an entity is involved)... .. mitigation for the loss of **[open space habitat/nature lands and]** prime agricultural lands ...
- 12/6 Draft item # 14 a. continued ... Upon LAFCO's conditional approval, the agreement must be recorded with the County Recorders' Office against the property to be developed **[and against the property that is mitigated, preserved, or set aside]**

Timing and Fulfillment of Mitigation

12/6 Draft item # 15. (Change back LAFCO Draft items #15, as previously written with the **[two (2)]** years of conditional approval. (that is 24 full months to comply which is enough time for the serious acquisition of the replacement open space habitat lands or agricultural lands or conservation easements to be acquired and transferred or the **[3:1]** in-lieu fees be paid, or the conditional approval may expire without any extensions.)

- 12/6 Draft item # 15. LAFCO will require as a condition of approval that the **open space habitat/nature lands and the** agricultural lands or conservation easements be acquired and transferred or the **3:1** in-lieu fees be paid within **two (2)** years of LAFCO's conditional approval.

12/6 Draft item # 17. (Change back LAFCO Draft items #17, as previously written with the **two (2)** years of conditional approval)

- 12/6 Draft item # 17. If the conditions of approval are not met within **two (2)** years, **the conditional approval will expire unless the** applicant **pays the additional extension fees and re-applies** to LAFCO **within the last six (6) months of the initial two (2) year initial conditional approval period** for **a LAFCO** extension **including demonstrating the continuing active pursuit of the required land mitigation, and the demonstrated actual need for a LAFCO approved extension**, not to exceed **a maximum of one (1) additional** year. **All** further consideration by LAFCO will require a new application **and the payment of all new application fees. No additional extensions will be considered or allowed by LAFCO.**
- 12/6 Draft item # 19. ... involving **open space habitat/nature lands and** agricultural lands if **open space habitat/nature land mitigation and** agricultural mitigation has not been completed for the city's previous approvals. Status of pending **open space habitat/nature lands mitigation and** agricultural mitigation will be a **negative** factor that ... involving **open space habitat/nature lands and** agricultural lands.

As a follow up to my presentation and recommendation letter to the Commissioners dated December 6, I am recommending the following specific Commission actions and summarizing specific benefits based on the adoption of recommendations.

Recommended Commission Actions:

- Open Space lands and Fallow Lands be included in all sections of the adopted LAFCO land mitigation policy along with prime agricultural land at no less than a 2:1 ratio, two (2) acres preserved for every one (1) acre converted

- Provide in-lieu mitigation fees at no less than a 3:1 ratio, three (3) acres preserved for every one (1) acre converted to an Open Space/Nature conservation Trust entity or agricultural conservation Trust entity with the standards of the Land Trust Alliance
- Provide two (2) years for mitigation completion with a possible 1-year extension based on a proven record of genuine compliance and a proven extension need by the applicant
- Provide for Open Space education and native plant and native animal restoration programs for the mitigated Open Space Habitat Lands and the Fallow Open Space Lands

The Benefits to the Local Farmers:

- The protection and preservation of mitigated Open Space, especially Fallow Lands, benefits the farmers directly by providing a agricultural land bank on the rural edges of the County's cities
- The mitigated preserved lands will provide protected lands for local food production and the protection of the agricultural way of life
- The mitigated preserved lands will provide protected lands for native species such as the endangered Burrowing Owl which feed on rodents protecting agricultural crops

The Benefits to the Local Communities and to the County:

- The protection and preservation of mitigated Open Space, especially Fallow Lands, benefits the local communities by providing a agricultural land bank on the rural edges of the County's cities for open space habitat education, for local farming, and for farming education.
- The Open Space mitigated land will attract people to the County's Open Space communities.

Benefits The Benefits to Santa Clara County:

- The protection and preservation of mitigated Open Space including the fallow and the mitigated agricultural lands benefits the local environment directly by providing a agricultural and open space land bank on the rural edges of the County's cities for all the County citizens to cherish and enjoy.
- "The valley of hearts content" can still be enjoyed by our future generations, if we commit to it now by preserving Open Space and agricultural lands through mitigation!

The Benefits to the local Environment:

- The protection and preservation of mitigated Open Space including the fallow and agricultural lands benefits the local environment directly by providing a agricultural and Open Space Nature Preserve on the rural edges of the County's cities for the reintroduction of native plants and animals to be enjoyed by our future generations.

As an unincorporated Santa Clara County property owner, I am in strong support of the adoption of LAFCO's Agricultural Mitigation Policies at today's hearing.

I also request that my suggested policy changes and the inclusion of required open space land mitigation to the December 6th draft LAFCO Agricultural Mitigation Policy be considered and adopted today. I'm presenting my suggested changes and recommendations directly to you today, February 13, 2007, for your individual and the Commission's consideration and adoption action. I further request that my Commission's agricultural mitigation policy adoption support and written policy requested changes be part of today's hearing minutes and record.

The current December 6th draft needs to include the mitigation of a broad range of open space lands and overlooks and fails to address the protection and preservation of the valuable open space habitat lands, including fallow (unseeded) agricultural open space lands. A planted orchard is considered agricultural land, but is not considered open space or open space habitat land whereas a fallow field is considered open space land and needs to be specifically included, protected, and preserved in the LAFCO mitigation policy to protect those valuable habitat lands.

Focusing on the stated LAFCO mission of protecting and preserving the remaining open space and the prime agricultural lands, it is very apparent to me that LAFCO needs to strengthen the proposed draft of LAFCO's Agricultural (and Open Space) Mitigation Policies by including open space habitat land protection and preservation, and by making the preserved ratio 2 acres preserved for every one

acre converted instead of the proposed 1:1 ratio. The following changes must be added to strengthen the December 6th draft policy:

Modify (indicated by brackets [] and bold underlining) the first 12/6 draft mission paragraph statement to read:

- LAFCO's mission is to discourage urban sprawl, preserve open space [**habitat lands, including fallow (unseeded) agricultural open space lands,**] and prime agricultural lands, promote the efficient provision of government services and encourage the orderly formation of local agencies...

Modify the second 12/6 draft mission paragraph to read:

- It is the intent of LAFCO to set forth through written policies, LAFCO's standards and procedures for providing [**open space habitat land, including fallow (unseeded) agricultural open space land, and prime**] agricultural [**land**] mitigation for LAFCO proposals involving [**open space habitat lands, including fallow (unseeded) agricultural open space lands, and prime**] agricultural lands, consistent with LAFCO's current policies and LAFCO's mandate.
- LAFCO must make air-tight definitions of the terms and restrictions used in the mitigation policy as did the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, including adding a definition section to the document.

My recommended changes of the following December 6th draft General Policies are indicated by the brackets [] and bold underlining:

- 12/6 Draft item # 1. LAFCO'S Agricultural Mitigation Policies establishes minimum criteria and standards for providing [**open space habitat land, including fallow (unseeded) agricultural open space land, and**] agricultural [**land**] mitigation for LAFCO proposals involving [**open space habitat lands, including fallow agricultural open space lands, and prime**] agricultural lands.
- 12/6 Draft item # 2. LAFCO requires [**open space and**] agricultural mitigation as specified herein for all LAFCO applications that impact or result in loss of [**open space habitat lands, including fallow (unseeded) agricultural open space lands, and**] prime agricultural lands. Prime agricultural lands [**are**] defined in Policy # 75.

- 12/6 Draft item # 4. When LAFCO proposal impacts or involves a loss of [open space habitat lands, including fallow (unseeded) agricultural open space lands, and] prime agricultural lands, ...

Definition of Prime Agricultural Lands

- 12/6 Draft item # **7. section a.** Land [**may qualify,**] ...
- 12/6 Draft item # **7. section b.** Land [**may qualify if rated**] ...
- 12/6 Draft item # **7. section c. must be omitted** because the section is too vague, the type of livestock is not identified, no known unincorporated non-irrigated acreage can support one cow per acre. (Delete this section to avoid unethical land manipulation of years, livestock numbers, or monetary amounts just to avoid this required mitigation and avoid legal challenges)
- 12/6 Draft item # **7. section d. needs to be shortened** to state: "Land planted with fruit or nut-bearing trees, vines, bushes, or crops." (This will avoid unethical land manipulation of years or monetary amounts prior to applying just to avoid this required mitigation and avoid legal challenges)
- 12/6 Draft item # **7. section e. needs to be shortened** to state: "Land that has returned from the production of unprocessed agricultural plant products." (This will avoid unethical land manipulation of years or monetary amounts prior to applying just to avoid this required mitigation and avoid legal challenges)
- 12/6 Draft item # 7 needs to have an **item # 7 f. added** that states: [**7 f. "All land that has the potential to be productive agricultural land"**] (This will avoid land manipulation prior to applying just to avoid this required mitigation and avoid legal challenges)

After 12/6 Draft item # 7 a **new section number 8** needs to be added.

- **Section [8 Definition of Open Space Habitat Lands.] [Protection and preservation of all habitat lands that are undeveloped, undisturbed, or lie fallow (unseeded), or unused for crops or agriculture of any kind are valued for its natural open space setting and are valued for providing an open space habitat that may be utilized by native plants and animals (such as the burrowing owl) and by re-introduced native plants and animals.]**

Mitigation Requirements

- 12/6 Draft item # 8. Proposals involving the conversion of [**open space habitat lands, including fallow agricultural open space lands, and**] prime agricultural lands shall not be approved unless one of following mitigations is provided at a not less than [**2:1 preservation**] ratio (**two (2) acres**) preserved for every [**one (1)**] acre converted...
- 12/6 Draft item # 8.a. The acquisition and transfer of ownership of [**open space habitat land, including fallow (unseeded) agricultural open land, and prime**] agricultural land to an [**open space/nature Trust and/or**] an agricultural conservation [**Trust**] entity [**belonging to the Land Trust Alliance**] ...
- 12/6 Draft item # 8. b. The acquisition and transfer of [**an open space/nature Trust or an**] agricultural conservation easement to an [**open space/nature Trust or an**] agricultural conservation [**Trust**] entity [**with the standards of the Land Trust Alliance**] for permanent protection of the [**open space habitat land, including fallow agricultural open space land, and prime**] agricultural land.
- 12/6 Draft item # 8. c. The payment of in-lieu fees [**at not less than a ratio of 3:1 (three (3)) acres preserved for every one (1) acre converted**] to an [**open space/nature Trust or**] agricultural conservation [**Trust**] entity [**with the standards of the Land Trust Alliance**] ...
- 12/6 Draft item # 8. c. 1. The acquisition of [**open space habitat lands, including fallow agricultural open space lands, and/or prime**] agricultural lands or [**open space/nature and**] agricultural conservation easements for permanent protection, and
- 12/6 Draft item # 8. c. 2. The cost of administering, managing, monitoring, and enforcing the [**open space habitat lands, including the fallow agricultural open space lands, and/or prime**] agricultural lands or [**open space habitat lands, including fallow agricultural open space lands, and/or**] agricultural conservation easements as well as the costs of promoting [**open space habitat lands, including open space habitat education and supervised programs of volunteers to eradicate invasive non-native species (such as the Star Thistle)**] and the re-introduction of native plant and animal species [**to the mitigated open space habitat lands including the fallow agricultural**]

lands (such as the Burrowing Owl), and] agriculture on the mitigated [agricultural] lands.

- 12/6 Draft item # 9. [Open space habitat lands and] agricultural lands or conservation easements acquired and transferred to an [open space/nature Trust or] agricultural conservation [Trust] entity must be located in Santa Clara County ...
- 12/6 Draft item # 10. The [open space and] agricultural mitigation [must] result in preservation of land that [will] promote the definition [and] creation of a permanent [open space habitat edge and/or] agricultural edge and must be:
- 12/6 Draft item # 10 a. [Open space habitat land and/or] agricultural land of equivalent [or better] quality and character ...
- 12/6 Draft item # 10 b. Located within the city's sphere of influence in an area Planned/envisioned for [open space habitat and/or] agriculture [that would otherwise be threatened / impacted in the reasonably foreseeable future by development, and] ...
- restore 12/6 Draft item # 10. c. [Will promote the definition and/or creation of a permanent urban / [open space habitat lands including fallow agricultural lands, and/or agricultural edge or contribute to a local open space environmental nature conservation preserve project such as the Nature Conservancy's Pajaro River Soap Lake Preserve.]

restore 12/6 Draft item # 11. ... (remove: encourages – restore) [requires]

- 12/6 Draft item # 11 a. Establishment of an [open space habitat and/or] agricultural buffer...
- 12/6 Draft item # 11 a. continued ... LAFCO [requires] (delete “encourages”)
...
- 12/6 Draft item # 11 a. continued ... (add back in must) Such measures [must] include, but are not limited to:
- 12/6 Draft item # 11 c. Development of programs to promote the continued viability of the surrounding [open space habitat land and/or] agricultural land.

Add a new section item # 11 d. [Development of an open space education program and supervised volunteer programs for the removal of invasive

non-native plants and animals and the reintroduction of native plants and animals (such as the burrowing owl) to the open space habitat lands including fallow agricultural lands.

- **[Open Space Habitat /] Agricultural Conservation Entity Qualifications**
- 12/6 Draft item # 12. The [**open space habitat/nature and/or**] agricultural conservation entity must be a city or a public or non-profit agency [**such as the Land Trust Alliance**]. The [**open space habitat/nature and/or**] agricultural conservation entity must:
 - 12/6 Draft item # 12. a. Be committed to preserving local [**open space habitat and**] local agriculture and must have a clear mission along with strategic goals or programs for promoting [**open space habitat/nature and**] agriculture in the areas that [**are**] preserved through mitigation.
 - 12/6 Draft item # 12. b. Have the legal and technical ability to hold and administer [**open space habitat/nature lands and**] agriculture lands and [**open space habitat/nature and**] agricultural conservation easements and in-lieu fees for the purpose of conserving and maintaining [**open space habitat/nature lands and**] lands in agricultural ...
 - 12/6 Draft item # 12. c. Have adopted written standards, policies and practices [**as high**] as the Land Trust Alliance's for holding and administering [**open space habitat/nature lands and**] and agriculture lands, [**open space habitat/nature and**] agricultural conservation easements ...

Plan for Mitigation

- 12/6 Draft item # 13. A plan for [**open space habitat/nature and**] agricultural mitigation that is consistent with this Policy must be submitted at the time that the proposal impacting [**open space habitat lands and/or**] agricultural lands is filed [**and the application fees are paid.**]

12/6 Draft item # 14 The plan for mitigation shall include all of the following:

- 12/6 Draft item # 14 a. An agreement between the property owner(s) and the city or between the property owner, city and [**the open space habitat/nature**]

or] agricultural conservation entity [**that belongs to the Land Trust Alliance**] (if such an entity is involved)... ... mitigation for the loss of [**open space habitat/nature lands and**] prime agricultural lands ...

- 12/6 Draft item # 14 a. continued ... Upon LAFCO's conditional approval, the agreement must be recorded with the County Recorders' Office against the property to be developed [**and against the property that is mitigated, preserved, or set aside**]

Timing and Fulfillment of Mitigation

12/6 Draft item # 15. (Change back LAFCO Draft items #15, as previously written with the [**two (2)**] years of conditional approval. (that is 24 full months to comply which is enough time for the serious acquisition of the replacement open space habitat lands or agricultural lands or conservation easements to be acquired and transferred or the [**3:1**] in-lieu fees be paid, or the conditional approval may expire without any extensions.)

- 12/6 Draft item # 15. LAFCO will require as a condition of approval that the [**open space habitat/nature lands and the**] agricultural lands or conservation easements be acquired and transferred or the [**3:1**] in-lieu fees be paid within [**two (2)**] years of LAFCO's conditional approval.

12/6 Draft item # 17. (Change back LAFCO Draft items #17, as previously written with the [**two (2)**] years of conditional approval)

- 12/6 Draft item # 17. If the conditions of approval are not met within [**two (2)**] years, [**the conditional approval will expire unless the**] applicant [**pays the additional extension fees and re-applies**] to LAFCO [**within the last six (6) months of the initial two (2) year initial conditional approval period**] for [**a LAFCO**] extension [**including demonstrating the continuing active pursuit of the required land mitigation, and the demonstrated actual need for a LAFCO approved extension**], not to exceed [**a maximum of one (1) additional**] year. [**All**] further consideration by LAFCO will require a new application [**and the payment of all new application fees. No additional extensions will be considered or allowed by LAFCO.**]

- 12/6 Draft item # 19. ... involving [**open space habitat/nature lands and**] agricultural lands if [**open space habitat/nature land mitigation and**] agricultural mitigation has not been completed for the city's previous

approvals. Status of pending **[open space habitat/nature lands mitigation and]** agricultural mitigation will be a **[negative]** factor that involving **[open space habitat/nature lands and]** agricultural lands.

It is appropriate for Santa Clara County's LAFCO under the State's mandate to aggressively protect and preserve the remaining open space habitat lands, including fallow agricultural lands, and the remaining agricultural lands for future generations with required strong land mitigation protection and preservation policies. It is also appropriate for the developers, their investors, and the cities to understand that the protection, preservation, and mitigation of both the open space habitat lands including the fallow lands and agricultural lands for future Santa Clara County generations must come up front in the development and city expansion application processes.

I am available to discuss my policy and procedure recommendations with any of the LAFCO commissioners and LAFCO staff members. Again, I am in strong support of the adoption of LAFCO's Agricultural Mitigation Policies.

Respectfully,

Ken Bone
3290 Godfrey Ave.
Gilroy, CA 95020
408-848-1036
fishbone1@earthlink.net

✦ Santa Clara County LAFCO's Land Mitigation Draft Policy Changes

- Recommendations by Ken Bone
- Unincorporated Santa Clara County property owner
- As a member of the Loma Prieta Chapter of the Sierra Club, Santa Clara Valley Audubon Society, The Nature Conservancy, National Wildlife Federation, and the Pajaro River Watershed Committee

✦ Recommended LAFCO Actions

- Adopt a land mitigation policy that includes both Open Space and Fallow Lands in all sections of the policy at not less than a 2:1 preservation ratio
- Provide 2 years for mitigation completion with a possible 1-year extension based on a proven record of genuine compliance and a proven extension need
- Provide in-lieu fees at not less than 3:1 ratio (acres preserved for every one acre converted) to an [open space/nature Trust or agricultural conservation Trust entity belonging to the Land Trust Alliance
- Provide for Open Space education and native plant and animal restoration programs

✦ Recommended LAFCO Actions

- Add a Definition section similar to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 that:
 - demonstrates beyond a doubt that Fallow (unseeded) Lands are specifically included in the final LAFCO mitigation policy
 - Includes Open Space Lands (such as the Eagle Ridge and Coyote Housing Group development type elevated hillside lands) are specifically included in the final LAFCO mitigation policy

✦ LAFCO & Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000

- Chapter 2 Definitions, page 2
- 56016 "Agricultural lands" means land currently used for the purpose of producing an agricultural commodity for commercial purposes, land left fallow under a crop rotational program or land enrolled in an agricultural subsidy or set-aside program (including Santa Clara County's Wilson Act past, present, and future properties)

✦ Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000

- Chapter 2 Definitions, page 8
- 56059 "Open space" means any parcel or area of land or water which is substantially unimproved and devoted to an open-space use as defined in Section 65560.
- No Open Space or Fallow lands were specifically included in either the Gilroy City or in the LAFCO draft policies apparently due to both City and developer political pressures

✦ Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000

- Chapter 2 Definitions, page 9
- 56064 "Prime agricultural lands" are defined a - e. as stated in the Gilroy City and proposed LAFCO mitigation policy.
- No where in the Act does it restrict land mitigation to only "Prime" Agricultural Land as was done in the 2003 Gilroy and now as proposed in the LAFCO mitigation policy
- Both the Gilroy and LAFCO policies have incorrectly narrowed the mitigation lands due to political pressures rather than preservation

Why are Open Space and Fallow Lands unspecified in the draft policy?

- Clearly the proposed policy does not attempt to properly or adequately address Open Space or Fallow (unseeded) Land protection
- LAFCO's Mission Statement States "LAFCO's mission is to discourage urban sprawl, preserve open space and prime agricultural lands, promote the efficient provision of government services and encourage the orderly formation of local agencies..."
- Only half of the Mission Statement is being addressed in the draft policy, it must also protect and preserve our Open Space

HWY 152, 100 fallow acre Open Space development example of the protection need

- Gilroy's 100 acre McCarthy Business Park "fallow land" project did not identify or mitigate the land or the endangered (species of special concern) Burrowing Owl
- At least one Burrowing Owl was killed
- One Burrowing Owl flew into the Barnes & Noble bookstore windows on Camino Arroyo
- One Injured Burrowing Owl was taken to the Wildlife Education and Rehabilitation Center
- None were identified as living there and none were protected. Where are the Owls to go if no fallow land is protected or preserved?

Open Space and Fallow (unseeded) Agricultural Lands

- Open Space includes Open Space Habitat Lands for both Endangered and for Native Plants and Animals such as the Burrowing Owl (Helps the Farmers)
- Fallow Lands Are not specified in the proposed Mitigation Policy. Why leave it to interpretation which may change over time?
- Unless preserved now, today's valuable Fallow Lands will become Extinct and will not be available to be tomorrow's Prime Agricultural Lands. "Buy Local" fresh produce and support our farmers on preserved lands!

First Mission Statement paragraph recommended change

- LAFCO's mission is to discourage urban sprawl, preserve Open Space [habitat lands, including fallow (unseeded) agricultural open space lands,] and prime agricultural lands, promote the efficient provision of government services and encourage the orderly formation of local agencies...

Second Mission Statement paragraph recommended change

- "It is the intent of LAFCO to set forth through written policies, LAFCO's
- standards and procedures for providing [open space habitat land, including fallow (unseeded) agricultural open space land, and prime] agricultural [land] mitigation for LAFCO proposals involving [open space habitat lands, including fallow (unseeded) agricultural open space lands, and prime] agricultural lands, consistent with LAFCO's current policies and LAFCO's mandate."

Open Space Habitat Lands and Fallow (unseeded) Agricultural Lands statement additions

- I have presented to the Commission copies of your December 6th draft with Open Space Habitat Lands and Fallow (unseeded) Agricultural Lands statements added in a bracketed, bold, and underlined format to each of the draft policy sections where they should be included.
- Please refer to my recommended draft revisions for your review and adoption.

#7 Specific Additional Recommendations

- **Definition of Prime Agricultural Lands**
- 12/6 Draft item # **7. section a.** Land [may qualify.] ...
- 12/6 Draft item # **7. section b.** Land [may qualify if rated] ...
- 12/6 Draft item # **7. section c.** **must be omitted** because the section is too vague, the type of livestock is not identified, no known unincorporated non-irrigated acreage can support one cow per acre. *(Add these words to avoid unethical land manipulation of years, livestock numbers, or monetary amounts to avoid the required mitigation and to avoid legal challenges to LAFCO)

#7 Shortening 7d. & e. Recommendations

- 12/6 Draft item # **7. section d.** **needs to be shortened** to state: "Land planted with fruit or nut-bearing trees, vines, bushes, or crops."
- 12/6 Draft item # **7. section e.** **needs to be shortened** to state: "Land that has returned from the production of unprocessed agricultural plant products."

(This will avoid unethical land manipulation of years or monetary amounts prior to applying just to avoid this required mitigation and to avoid legal challenges to LAFCO)

#7 Potential to be Productive Land Recommendation

- 12/6 Draft item # 7 needs to have an item # 7 f. added that states: [7 f. "All land that has the potential to be productive agricultural land"]

(This will avoid land manipulation prior to applying just to avoid this required mitigation and avoid legal challenges to LAFCO)

#7 Adding Open Space Definition Recommendation

- After 12/6 Draft item # 7 a new section number 8 needs to be added.
- **Section [8 Definition of Open Space Habitat Lands.] [Protection and preservation of all habitat lands that are undeveloped, undisturbed, or lie fallow (unseeded), or unused for crops or agriculture of any kind are valued for its natural open space setting and are valued for providing an open space habitat that may be utilized by native plants and animals (such as the endangered Burrowing Owl) and by re-introduced native plants and animals.]**

#8 Adding Open Space/Fallow Land and a 2:1 Recommendation

- **Mitigation Requirements**
- 12/6 Draft item # 8. Proposals involving the conversion of [open space habitat lands, including fallow agricultural open space lands, and] prime agricultural lands shall not be approved unless one of following mitigations is provided at a not less than [2:1 preservation] ratio [two (2) acres] preserved for every [one (1)] acre converted...

8 Land Trust Alliance Recommendation

- 12/6 Draft item # 8.a. The acquisition and transfer of ownership of [open space habitat land, including fallow (unseeded) agricultural open land, and prime] agricultural land to an [open space/nature Trust and/or] an agricultural conservation [Trust] entity [belonging to the Land Trust Alliance] ...

8 In-Lieu Fees 3:1, 3 acres preserved Recommendation

- 12/6 Draft item # 8. c. 2.
- The payment of in-lieu fees [at not less than 3: 1 (3 acres preserved for every one acre converted)] to an [open space/nature Trust or] agricultural conservation [Trust] entity [with the standards of the Land Trust Alliance] that are sufficient to fully fund: ...

8 Habitat Education Recommendation

- 12/6 Draft item # 8. c. 2. ...as the costs of promoting [open space habitat lands, including open space habitat education and supervised programs of volunteers to eradicate invasive non-native species (such as the Star Thistle) and the re-introduction of native plant and animal species to the mitigated open space habitat lands including the fallow agricultural lands (such as the Burrowing Owl), and] agriculture on the mitigated [agricultural] lands.

10 Better Quality & Open Space Habitat Land Threatened / Impacted Recommendations

- 12/6 Draft item # 10 a. [Open space habitat land and/or] agricultural land of equivalent [or better] quality and character ...
- 12/6 Draft item # 10 b. Located within the city's sphere of influence in an area planned/envisioned for [open space habitat and/or] agriculture [that would otherwise be threatened / impacted in the reasonably foreseeable future by development, and] ...

10 Restore 10 c.Edge Recommendation

- Restore 12/6 Draft item # 10. c. [Will promote the definition and/or creation of a permanent urban / open space habitat lands including fallow agricultural lands, and/or agricultural edge or contribute to a local open space environmental nature conservation preserve project such as The Nature Conservancy's Pajaro River Soap Lake preserve.]

11 d. Adding Open Space Education Program Recommendation

- Add a new section item # **11 d.**
- [Development of an open space education program and supervised volunteer programs for the removal of invasive non-native plants and animals and the reintroduction of native plants and animals (such as the Burrowing Owl) to the open space habitat lands including fallow agricultural lands.]

14 Land Trust Alliance Protection Recommendation

- 12/6 Draft item # 14 a. An agreement between the property owner(s) and the city or between the property owner, city and [the open space habitat/nature or] agricultural conservation entity [that belongs to the Land Trust Alliance] (if such an entity is involved)... .. mitigation for the loss of [open space habitat/nature lands and] prime agricultural lands ...

14 Preserved Property Recorded Protection Recommendation

- 12/6 Draft item # 14 a. continued ... Upon LAFCO's conditional approval, the agreement must be recorded with the County Recorders' Office against the property to be developed **and against the property that is mitigated, preserved, or set aside**

15 Two Year Conditional Approval, 3:1 In-Lieu Fees Recommendation

- **Timing and Fulfillment of Mitigation**
12/6 Draft item # 15. (Change back LAFCO Draft items #15, as previously written with the **[two (2)]** years of conditional approval. (that is 24 full months to comply which is enough time for the serious acquisition of the replacement open space habitat lands or agricultural lands or conservation easements to be acquired and transferred or the **[3:1]** in-lieu fees be paid, or the conditional approval may expire **[without a demonstrated need for a one year extension].**)

17 Two Years Conditional Approval with Demonstrated Need Recommendation

- 12/6 Draft item # 17. (Change back LAFCO Draft items #17, as previously written with the **[two (2)]** years of conditional approval)
- 12/6 Draft item # 17. If the conditions of approval are not met within **[two (2)]** years, **[the conditional approval will expire unless the] applicant [pays the additional extension fees and re-applies] to LAFCO [within the last six (6) months of the initial two (2) year initial conditional approval period] for [a LAFCO] extension [including demonstrating the continuing active pursuit of the required land mitigation, and the demonstrated actual need for]...**

17 Max. One Year Extension With New Application Fees Recommendation

- 12/6 Draft item # 17. (Change back LAFCO Draft items #17 continued)
- **...[a LAFCO approved extension], not to exceed [a maximum of one (1) additional] year. [All] further consideration by LAFCO will require a new application [and the payment of all new application fees. No additional extensions will be considered or allowed by LAFCO.]**

19 Pending Land Mitigation a Negative Factor Recommendation

- 12/6 Draft item # 19. ... involving **[open space habitat/nature lands and] agricultural lands if [open space habitat/nature land mitigation and] agricultural mitigation has not been completed for the city's previous approvals. Status of pending [open space habitat/nature lands mitigation and] agricultural mitigation will be a [negative] factor that ...**

Protection and Preservation of Open Lands

- It is appropriate for Santa Clara County's LAFCO under the State's mandate to aggressively protect and preserve the remaining open space habitat lands, including fallow agricultural lands, and the remaining agricultural lands for future generations with required strong land mitigation protection and preservation policies.

Protection and Preservation of Open Lands

- It is also appropriate for the developers, their investors, and the cities to understand that the protection, preservation, and mitigation of both the open space habitat lands, including the fallow lands, and agricultural lands for future Santa Clara County generations must come up front in the development and city expansion application processes.

The Benefits to the Local Farmers

- The protection and preservation of Open Space, especially Fallow Lands, benefits the farmers directly by providing a agricultural land bank on the rural edges of the County's cities
- These preserved lands will provide protected lands for local food production and the protection of the agricultural way of life
- These preserved lands will provide protected lands for the Burrowing Owl which feed on rodents protecting crops

The Benefits to the Local Communities and the County

- The protection and preservation of Open Space, especially Fallow Lands, benefits the local communities by providing a agricultural land bank on the rural edges of the County's cities for open space habitat education, for local farming, and for farming education.
- Open Space will attract people to the County's Open Space communities rather than to the crowded big cities.

The Benefits to Santa Clara County

- The protection and preservation of Open Space, including the fallow and agricultural lands, benefits the local environment directly by providing a agricultural and open space land bank on the rural edges of the County's cities for all the citizens to cherish and enjoy.
- "The valley of hearts content" can still be enjoyed by our future generations, if we commit to it now!

The Benefits to the local Environment

- The protection and preservation of Open Space, including the fallow and agricultural lands, benefits the local environment directly by providing a agricultural and Open Space Nature Preserve on the rural edges of the County's cities for native plants and animals to be enjoyed by our future generations.
- we commit to preserve land now!

The Commission's Required Action to Protect Open Space

- Today is the time to act and accept the Commission's responsibility to protect and preserve Open Space, Fallow Lands, and agricultural lands for the coming generations.
- Set aside the self interests of the developers, their colleagues, and their staff
- Adopt a strong land mitigation policy today that includes Open Space Habitat Land and Fallow Land protections in a 1:2 ratio and within a 2 year mitigation completion period.

Thank the Commission for the Opportunity to Give My Input and Recommendations

- I would like to thank the Commission for the opportunity to give my input and recommendations to the Commission
- I am very passionate about providing Open Space and it's environments for our County and our coming generations
- I hope that I have passed that passion on to the Commission for their fallow land consideration and inclusion, and Open Space mitigation inclusion and adoption

Recommended LAFCO Actions

- Adopt a land mitigation policy that includes both Open Space and Fallow Lands in all sections of the policy at not less than a 2:1 preservation ratio
- Provide 2 years for mitigation completion with a possible 1-year extension based on a proven record of genuine compliance and a proven extension need
- Provide in-lieu fees at not less than 3:1 ratio , acres preserved for every one acre converted)) to an [open space/nature Trust or agricultural conservation Trust entity belonging to the Land Trust Alliance
- Provide for Open Space education and native plant and animal restoration programs

Recommended LAFCO Actions

- Add a Definition section similar to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 that:
 - demonstrates beyond a doubt that Fallow (unseeded) Lands are specifically included in the final LAFCO mitigation policy
 - Includes Open Space Lands (such as the Eagle Ridge and Coyote Housing Group development type elevated hillside lands) are specifically included in the final LAFCO mitigation policy



"Ken Bone"
<fishbone1@earthlink.net>

12/15/2006 01:50 PM
Please respond to
fishbone1

To: "Blanca Alvarado" <blanca.alvarado@bos.sccgov.org>, "Don Gage" <don.gage@bos.sccgov.org>, "John Howe" <jh2@aol.com>, "Linda LeZotte" <linda.lezotte@ci.sj.ca.us>, "Susan Vicklund Wilson" <susan@svwilsonlaw.com>, "Pete McHugh" <Peter.Mchugh@bos.sccgov.org>, "Roland Velasco" <rvelasco@ci.gilroy.ca.us>, "Chuck Reed" <District4@ci.sj.ca.us>, "Terry Trumbull" <TerryT1011@aol.com>
cc: "Neelima Palacherla" <neelima.palacherla@ceo.sccgov.org>, "Dunia Noel" <dunia.noel@ceo.sccgov.org>, "Emmanuel Abello" <emmanuel.abello@ceo.sccgov.org>
Subject: 1968 Napa Valley enacted the nation's first Agriculture Preserve

Commissioners,

I am concerned that the LAFCO Commission seems to be slowly drifting more towards land development concerns than open space and agricultural land preservation concerns.

Thought that Napa county's insight and attitude might be of interest to the commissioners. Shows what the agricultural and community interests can do if willing to work together for land preservation. Ken Bone

Open Space and Agricultural Land Preservation

While it may appear to the casual observer that Napa County is bursting with grape vines, the truth is that **only nine percent of Napa County is planted in vineyards and less than three percent remains suitable for grape planting**, according to the findings of the Napa County Watershed Task Force. Napa County encompasses 485,120 acres in total and just 45,275 acres are planted in vineyards.

In the late 1950s and early 1960s, landowners realized that the encroaching urban growth to the south all but guaranteed that their land values were about to increase exponentially. Left unchecked much of the Valley could by now have become paved over and covered in tract-homes and strip-malls similar to Santa Clara Valley, once a thriving agricultural area.

In 1968, Napa Valley vintners and others in the community had the forethought to preserve open space and prevent future over-development by enacting the nation's first Agriculture Preserve. Since its adoption, not one acre of land has been removed from the preserve. This land-zoning ordinance established agriculture and open space as the "best use" for the land in the "fertile valley and foothill areas of Napa County." Initially the ordinance protected 23,000 acres of agricultural land stretching from Napa in the south to Calistoga. **Today, more than 30,000 acres are contained within the Preserve.**

Thirty years ago, in the formative stages of today's Napa Valley wine industry, local vintners joined the community's successful opposition to Caltrans plans for a freeway running up the valley. Twenty years ago, vintners and others promoted the successful passage of Measure A. Eleven years ago, the "2020 Initiative" was passed to hold all county land zonings in place through the year 2020 unless changed by a 2/3 vote of the people.

Local vintners are well into a second-generation effort to preserve the Valley. Working with the the Land Trust of Napa County, vintners are joining other property owners in placing their land into Conservation Easements. These easements dictate how designated parcels will be used in perpetuity - without a sunset date.

Of the approximately 11,000 acres of Napa County acreage that is forever guaranteed to remain rural through the Conservation Easement program, 5,100 acres been set aside by vintners. Those who place their land in these easements are making a bottom line sacrifice. Another 16,000 acres are protected under the Williamson Act, a program that provides incentives to keep land in agriculture production and open space.

Vintners have played a big role in the history of Napa Valley's preservation. And we will continue to play a vital role in ensuring that the pastoral beauty and intact natural environment that we all enjoy today still exists for future generations.

Ken Bone

fishbone1@earthlink.net

Support Urgently Needed to Include Open Space Habitat Lands at the December 13 LAFCO Agricultural Mitigation Policy Meeting

Published December 13, 2006 in the Gilroy Dispatch Letters to the Editor section under the Editor's heading: Mitigation Policies Essential if Any Rural Land is to Survive Development

Dear Editor,

Thank you for the opportunity to clarify the shared goals and the mitigation processes of both the Gilroy City and Santa Clara County's LAFCO Agricultural Mitigation Policies. These preservation Agricultural Mitigation Policies are not denying full market value sale prices to land owners, nor are they to be used for eminent domain actions by the State or municipalities.

To better understand and become familiar with these important needed Agricultural Mitigation Policies, their goals, and stated protections, please go online to: www.ci.gilroy.ca.us/planning/pdf/AgPolicy505.pdf to read Gilroy's current adopted policy and go to www.santaclara.lafco.ca.gov to read the current LAFCO mitigation draft policy listed under "What's New."

The city and county developers should be willing, and if not, required to protectively mitigate both the open space habitat lands, including the fallow (unseeded) agricultural lands, in addition to mitigating the "prime" agricultural lands. The projects that they are applying to develop within in the cities or applying through the cities to annex to the cities for development need open space land mitigation. The problem is that the mitigating agricultural land policies currently do not include open space habitat lands for required mitigation.

The developers, through the city agencies, should be willing, and if not, required to select and complete one of the three proposed LAFCO annexation mitigation processes within 24 months to preserve both our open space habitat lands and our prime agricultural lands in the unincorporated county:

- 1. The acquisition and transfer of ownership of agricultural land to an agricultural conservation entity for permanent protection of the agricultural land or**
- 2. The acquisition and transfer of agricultural conservation easements to an agricultural conservation entity for permanent protection of the agricultural land or**

3. The payment of in-lieu fees to an agricultural conservation entity that are sufficient to fully fund:
- The acquisition of agricultural lands or agricultural conservation easements for permanent protection, and
 - The cost of administering, managing, monitoring and enforcing the agricultural lands or agricultural easements, as well as the costs of promoting agriculture on the mitigation lands.

At least a 1:1 agricultural land annexation conversion ratio (I prefer a 2:1 ratio) would help preserve a vanishing rural agricultural edge for each of the Santa Clara County cities. Every county taxpayer pays a very high price for development and for city expansion. It's in everyone's best interest to preserve both open space habitat lands and the prime agricultural lands, and to control urban sprawl for the future benefit of all the citizens. This is especially true for the city residents having to endure the added competition for limited water and energy, the added traffic and transportation problems, and the strained vital city services including sewage treatment and waste disposal.

Please attend the LAFCO's December 13; 1:15 pm public hearing in the San Jose Board of Supervisor's Chambers at 70 West Hedding Street. The Commissioners will consider and perhaps adopt the Santa Clara County's LAFCO annexation Agricultural Mitigation Policy at the meeting.

Please speak out for the inclusion of open space habitat lands and fallow agricultural lands as well as in support of the protection and preservation of our county's remaining unincorporated prime agricultural lands.

Respectfully,

**Ken Bone
Gilroy resident
408-848-1036
fishbone1@earthlink.net**



January 5, 2007

Santa Clara County LAFCO Commissioners
Local Agency Formation Commission
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

Re: LAFCO sub-committee to review proposed Agricultural Mitigation Policy

Dear LAFCO Commissioners:

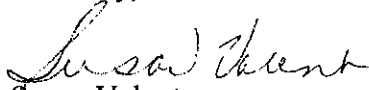
The Gilroy Chamber of Commerce extends its appreciation for the open dialogue offered to stakeholders at the December 13, 2006 hearing. We were also impressed with the direction that the LAFCO Commission recommended that resulted in a sub-committee directed to examine the draft Agricultural Mitigation Policy more closely. The recognition of stakeholder input resounded as an important objective for LAFCO, and we appreciate and applaud the continuing efforts.

It has come to our attention that recent scheduling fliers circulated by LAFCO staff have limited the discussion to only two specific sections of the proposed policy and requires stakeholders to set up private meetings with staff. Our representatives from the Gilroy Chamber of Commerce Board of Directors, the Government Relations Committee, and Gilroy Chamber of Commerce and Economic Development Corporation staff, clearly understood from the LAFCO dialogue and direction at the December 13 hearing that stakeholder input would be in an open forum.

On behalf of the Gilroy Chamber of Commerce, we respectfully request that the LAFCO sub-committee hold their meetings in the South County, that stakeholders are notified of the meeting date, time, and location, and that we all can be a part of this public review process.

Again, thank you for your time and consideration.

Sincerely,


Susan Valenta
President/C.E.O.

Cc: Gilroy Chamber of Commerce Board of Director
CC: Supervisor Don Gage
CC: Susan Vicklund-Wilson

January 9, 2007

Mayor Protempore Dion Bracco
City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020

Re: LAFCO subcommittee on agricultural mitigation policy

Dear Dion:

Thank you for your letter regarding the LAFCO subcommittee meeting scheduled for Jan. 24.

I should clarify that at the Dec. 13 meeting, the Commission itself voted to narrow the scope of the agricultural mitigation policy issues that the subcommittee, composed of myself and Commissioner Wilson, would consider. This was not a decision made by LAFCO staff.

The Commissioners decided to have the subcommittee look only at the "Plan for Mitigation" and "Timing and Fulfillment of Mitigation" sections of the policy and to make recommendations to the full Commission for final action. While that will be the focus of the upcoming subcommittee meeting, we will gladly accept comment on the entire proposed ag mitigation policy.

If, after considering the two sections, we decide that we need to broaden our review, we will ask the full Commission for approval to take a look at the other sections that we think need more study.

We will report back to the full Commission at the Feb. 14 meeting, but the full Commission won't take action until the April meeting.

If you have suggestions for the proposed policy before the meeting, you can send them in to LAFCO staff, to give them a chance to analyze any proposed alternatives before the Jan. 24 meeting. If they choose,

stakeholders can meet with LAFCO staff before the subcommittee meeting to discuss their suggestions.

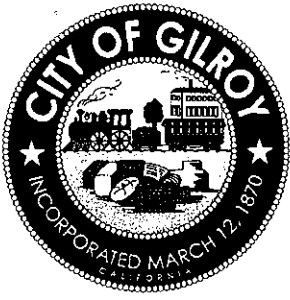
If you have any questions, please feel free to contact me at (408) 299-5010 or LAFCO staff at (408) 299-6415.

Sincerely,

A handwritten signature in black ink, appearing to read 'Don', written in a cursive style.

Donald F. Gage
LAFCO Agricultural Mitigation Policy Subcommittee Member

cc: LAFCO Commissioners
Gilroy Mayor Al Pinheiro



City of Gilroy

7351 Rosanna Street
Gilroy, California
95020-6197

Business (408) 842-4619
Residence (408) 848-6202
Email: apinheiro@ci.gilroy.ca.us
<http://www.ci.gilroy.ca.us>

AL PINHEIRO
MAYOR

January 3, 2007

Santa Clara County LAFCO

Local Agency Formation Commission
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

Re: LAFCO sub-committee to review proposed **Ag Mitigation Policy**

Dear LAFCO;

At the recent public hearing on December 13, 2006, the City of Gilroy was very pleased with the direction that the LAFCO Commission gave in regard to creating a sub-committee in order to examine the subject policy more closely. But more importantly, Gilroy was applauding LAFCO direction to include listening to the stakeholder comments that have been expressed in the last several months.

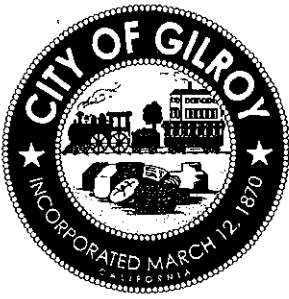
However, recent scheduling fliers circulated by LAFCO staff have limited the discussion to only two specific sections of the proposed policy, and further, require stakeholders to "set up" private meetings with staff. Gilroy clearly understood from LAFCO dialogue and direction on December 13, that stakeholder input would be in an open forum where all interest groups could share their thoughts openly and together.

In addition, the City of Gilroy looks forward to participating in this public review process – hopefully with some meetings in a South County venue. Again, thank you for listening to our issues and concerns.

Sincerely,

Dion Bracco
Mayor Protempore,
City of Gilroy

DB:bf



City of Gilroy

7351 Rosanna Street
Gilroy, California
95020-6197

Business (408) 842-4619
Residence (408) 848-6202
Email: apinheiro@ci.gilroy.ca.us
<http://www.ci.gilroy.ca.us>

AL PINHEIRO
MAYOR

December 22, 2006

Santa Clara County LAFCO members

Local Agency Formation Commission
70 West Heading Street
11th Floor, East Wing
San Jose, CA 95110

Re: Proposed LAFCO Agricultural Mitigation Policy

Dear LAFCO members;

Thank you for the opportunity to speak at your December 13th public hearing on the proposed LAFCO agricultural mitigation policy. Although there were many interested stakeholders at your South County briefing held on November 27 in Gilroy, this hearing had even a wider spectrum of individuals, agencies, and special interests at the microphone. This strong interest clearly illustrates the wide array of interest on this matter [from both sides of the arena], and the need to proceed carefully.

The City of Gilroy is very pleased with the direction the LAFCO Commission has chosen in regard to creating a sub-committee and listening to the many stakeholders that are expressing their interest on this important matter. Gilroy looks forward to participating in all parts of this public review process, including a meeting or two in the South County region.

Again, thank you for listening to our issues and concerns.

Sincerely;

Al Pinheiro
Mayor, City of Gilroy



Carmelbay42@aol.com

To: palacherla@ceo.sccgov.org

12/15/2006 12:01 PM

cc:

Subject: Draft Farm Land Mitigation Plan.

Dear Ms. Palacherla : I am a resident of Gilroy. After watching how the current and past City Councils have addressed the impacts of rapid development in the City, I am convinced the function of LAFCO is more important than ever. There seems to be too close a bond between the bigger developers in this City than there should be to work in the best interest of all residents. I hope LAFCO will approve a policy in April, 2007, that requires farm land replacement if development takes a like amount out of circulation. If the City of Gilroy is left to its own devices, it will pave the countryside!

Very truly yours

Bruce E. Kirk

LAFCO Meeting: February 14, 2007
Date: February 7, 2007
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
SUBJECT: **Morgan Hill Urban Service Area (USA) Amendment (2006)
Black Rock**
Agenda Item # 7

RECOMMENDATION

1. Project Action

Deny the inclusion of the project site containing 18 acres, into Morgan Hill's Urban Service Area.

Should the Commission wish to consider approval of the USA amendment, staff recommends that the item be continued to the April meeting to allow staff to prepare the CEQA action and appropriate recommendation.

PROJECT DESCRIPTION

The City of Morgan Hill proposes to expand its Urban Service Area (USA) boundary to include one 18-acre parcel (APN: 779-02-023) located at the intersection of Watsonville Road and Santa Teresa Boulevard. See Attachment A for map of the project site and surrounding area. The project site is being proposed for inclusion in the City's USA to allow for residential development within the City of Morgan Hill.

BACKGROUND

Existing and Proposed Land use and designations for Project Site and Surrounding Areas

The project site currently has a County General Plan designation of "Agriculture-Medium Scale", with a zoning designation of A-20Ac-d1-sr. A Christmas tree farm exists on the property, and was actively farmed until 2001. In addition to the Christmas trees, a single family home is also located on the property.

The City has applied a General Plan designation of "Residential Estate" and a pre-zoning designation of "RE-40,000 RPD" with a condition that the density of the development on the parcel will transition from minimum one-acre parcels on the eastern side of the site to

two and a half acres on the western side of the site. This would allow a potential development of a maximum of 15 houses on the property after annexation.

The project site is surrounded on three sides by unincorporated lands used for rural residential or large lot (20 acre) residential development. Lands to the east of the project site are within the city and are developed with a residential subdivision.

Table: Land Use Designations for Project Site and Surrounding Areas

	General Plan Designation		Zoning Designation		Existing Land Use	
	Current County	Agriculture-Medium Scale	Current County	A-20Ac-d1-Sr	Current use	Christmas tree farm
Project Site	Proposed City	Residential Estate	Proposed City	RE-40,000 RPD	Proposed use	Low density residential
	County: Agriculture Medium Scale		A-20Ac-sr		Flower stand	
Properties to north	County: Hillside		HS-d1		Hayes Valley Estate	
Properties to south	County: Rural Residential		RR-d1		Rural residential	
Properties to west	City: Single Family Medium		R-1 7,000 RPD		Residential subdivision	
Properties to east						

Morgan Hill's Policies on Seeking USA Expansion

Section 18.78.070 (A) of the Morgan Hill Municipal Code establishes restrictions on when the City may request USA expansions and states that the City shall neither apply to LAFCO, nor otherwise request or support, the addition of any land to its USA, until such time as the City Council finds that the amount of undeveloped residentially developable land within the existing USA is insufficient to accommodate five years' worth of residential growth beyond that required to accommodate the number of development allotment available in the next competition. The projected rate of growth for the purposes of this determination shall be the rate of growth provided for by the general plan and the Residential Development Control System. After making such a finding of land

insufficiency, the City may support the addition of land to the USA only to the extent necessary to support five or fewer years of growth.

However, the City's code provides for minor exceptions from the above USA requirements for desirable infill. Desirable Infill (codified into section 18.78.070(B) of the City's Municipal Code) is defined as a tract of land not exceeding twenty acres in size and abutted on two sides by the city limits or on one side by the city limits and having two other sides within a quarter mile of a city limit, as determined by a perpendicular line drawn from the side of the parcel to the city boundary, and whose inclusion into the USA would not unduly burden city services and would beneficially affect the general welfare of the citizens of the City. The Morgan Hill City Council adopted a policy setting forth criteria for "Desirable Infill Standards". In December 1992, LAFCO agreed to consider minor urban service area amendments submitted by the City of Morgan Hill which meets the City's Desirable Infill standards.

ENVIRONMENTAL CONSIDERATIONS

Initial Study and Negative Declaration

Staff has reviewed the Initial Study and Negative Declaration prepared for the proposal by the City of Morgan Hill. See Attachment E for a copy. However, staff is recommending denial of the project and therefore is not including a recommendation for a CEQA action. If the Commission wishes to consider approval, staff will prepare a CEQA recommendation for commission action.

CONSISTENCY WITH MORGAN HILL GENERAL PLAN

Urban Growth Boundary

Morgan Hill's urban growth boundary is intended to differentiate lands within the sphere of influence intended for urbanization over the next 20 to 25 years from land that would remain rural and unincorporated over that period. The project site was included in the city's UGB on April 5, 2006.

Desirable Infill Standard

Since the project site has a residential land use designation, pursuant to the City's Municipal Code, it may be included in the USA if it is consistent with the city's Desirable Infill Standard.

According to the City Council resolution (See Attachment B), the area meets all of the criteria for the desirable infill standard by:

1. Meeting the physical / locational requirement,
2. Receiving a passing score under Part 1 of RDCE which evaluates the city's ability to provide services to the area and,

3. Being considered orderly and contiguous to the current USA and providing a beneficial element to the city. The City Council resolution states that including this area in its USA would benefit the City by obtaining dedication of a well site and by installation of an asphalt overlay on Watsonville Road along the property frontage.

CONSISTENCY WITH COUNTY GENERAL PLAN

The proposal area is partially consistent with Policy C-GD 3, which states that urban service areas should include only those areas suitable for urban development by being: reasonably serviceable with public services, relatively free from risks associated with natural hazards, that do not create substantial adverse environmental impacts, and that are not likely to create severe off-site impacts on the surrounding areas or to any natural resource.

The proposal is also only partially consistent with policy C-GD 8. Although the area is contiguous to the existing urbanized area, and all needed public services and facilities can be provided within 5 years without lessening existing levels of service, it is inconsistent with the policy because the city already has more than a 5 year supply of vacant residential land within its USA. Please see detailed discussion below.

CONSISTENCY WITH LAFCO POLICIES

Conversion of Prime Agricultural Lands and Open Space

The project site consists of Class I soils and is considered prime agricultural land based on the definition of prime agricultural lands in the CKH Act. Until 2001, the property was a Christmas tree farm. Currently, although Christmas trees remain on the project site, it is not actively farmed. Inclusion of the area in the city's urban service area will result in the conversion of prime agricultural lands. LAFCO's USA policies require an explanation for why the inclusion of the agricultural lands is necessary and how the loss of agricultural lands will be mitigated. The City did not provide any explanation of how the loss of these agricultural lands will be mitigated. Instead, the City, using the Agricultural Land Evaluation and Site Assessment (LESA) model, determined that the conversion of the agricultural land at the project site is less than significant. It missed being considered a significant impact by a 0.5 point. See Attachment C for the City's LESA analysis.

Logical, Orderly and Efficient Boundaries

The proposed expansion is adjacent to the current city boundary and USA on one side (to the east). The project site is located at the southwestern limits of the city adjacent to rural development in the county on three sides and extends beyond Santa Teresa Boulevard, which generally separates the city from the unincorporated lands to its west. Due to its location on the fringe of the city, the proposed expansion is not

consistent with compact, concentric urban growth and would result in service inefficiencies.

Growth Inducing Impact

Inclusion of the property in the City's USA and its future development would put development pressures on adjacent unincorporated lands that are designated for agricultural or rural residential uses. Extension of services such as sewer and water lines and potential road improvements could generate growth prematurely on the surrounding unincorporated lands and contribute to sprawl.

Five-Year supply of Vacant Land

According to the information provided by the city, there is 9 years worth of vacant residential land within the city limits, with some additional vacant lands available outside the city limits but within the current USA. However, based on the information in the recently adopted South and Central County Service Review report, there is about 32 years worth of vacant residential lands within the city's urban service area.

In any case, when there is more than 5 years worth of vacant land within the existing boundaries, LAFCO policies require the City to explain why the additional land is necessary to be included at this time. The City states that the project site meets the desirable infill criteria, which allows the city to add lands to its USA even if there is more than 5 years worth of vacant land. Additionally, the property owner has committed to installing an asphalt overlay on Watsonville Road fronting the property and will dedicate a new well site to the city.

Ability of City to Provide Urban Services

Fire Protection Services

The City of Morgan Hill contracts with the Santa Clara County Fire Protection District for fire protection services. The fire district does not anticipate that the proposed development would significantly reduce the current level of service that the district provides the city. However, the district notes that this development along with other future growth could increase the demand for fire protection services in the area.

Police Services

Morgan Hill Police Department does not anticipate the need for additional staff to serve potential development of the site. Although future cumulative development may result in a need for additional officers, there is currently capacity at the existing police station to accommodate additional officers.

Sewer Service

A 8-inch sewer line is stubbed to the property line of the project site on the southeastern side from the residential subdivision located within the city. South

County Regional Wastewater Authority (SCRWA) treats the wastewater for the City of Morgan Hill. SCRWA has stated that there is currently sufficient wastewater capacity available to serve the proposed homes and the proposed development would not require the construction of any new wastewater treatment facilities or expansion of existing facilities.

Water Service

A 8-inch water line is stubbed to the property line of the project site on the southeastern side from the residential subdivision located within the city. The City's Public Works Department states that there is currently sufficient water quantity available to serve the proposed homes and that there is no need for additional facilities.

Ability of School District to Provide School Facilities

Annexation and development of the area would result in a maximum of 15 new housing units. Based on an estimate of about 0.72 students per housing unit, a total of 11 new students would be generated as a result of the new development.

The City's General Plan includes actions that direct the City to approve residential projects only if adequate school facilities are available or will be available upon project completion. The Initial Study indicates that schools are at or over capacity. Staff is verifying this information with the City and Morgan Hill Unified School District.

Fiscal Impacts Analysis

It is estimated that the new development (15 new homes) would generate about 45 new residents at the rate of 3 persons per housing unit.

Fiscal Impact to City

The city will experience a positive fiscal impact with the development of the project site. The proposed development of the site will generate \$22,200 in property tax in year 2011 and \$36,000 in year 2016. In addition, other revenues will be generated through sales taxes, and motor vehicle in-lieu fees among others.

Fiscal Impact to County of Santa Clara

It is estimated that the development of the project site would result in a County deficit of about \$4,600 annually in year 2011 and \$8,600 annually in year 2016.

Fiscal Impact to Morgan Hill Unified School District (MHUSD)

Each year, the State Department of Education establishes a revenue limit for the school district that is adjusted according to changes in districts' average daily

attendance. The state provides the district with operating revenues so that the district's local property tax revenue plus the state provided funding equals the revenue limit. So, as the public school attendance rises (addition of 15 new students), MHUSD should expect school revenues and expenditures to increase.

Fiscal Impact to the South Santa Clara County Fire Protection District

The project site is currently within the boundaries of the South Santa Clara County Fire Protection District. Upon inclusion in the urban service area and annexation to the city, the area will be detached from the district and the city will be responsible for fire protection services. The share of property tax that the District currently receives will be transferred to the city.

CORRESPONDENCE

Staff has received two letters expressing opposition to the inclusion of the property in the USA. See Attachment D.

CONCLUSION

Staff recommends that the project site be denied for inclusion in the urban service area at this time as there currently exists at least 9 years and possibly up to 32 years worth of vacant residential land within the city limits. The project site consists of prime agricultural land and is located on the southwestern fringes of the City surrounded on three sides by unincorporated rural lands designated for agriculture and rural residential uses. To insure more compact development and to discourage premature conversion of agricultural and open space lands, it is important that the City use up the vacant land within its boundaries before seeking to add more land for development.

ATTACHMENTS

Attachment A: Map of the Area

Attachment B: Morgan Hill City Council Resolution requesting USA expansion

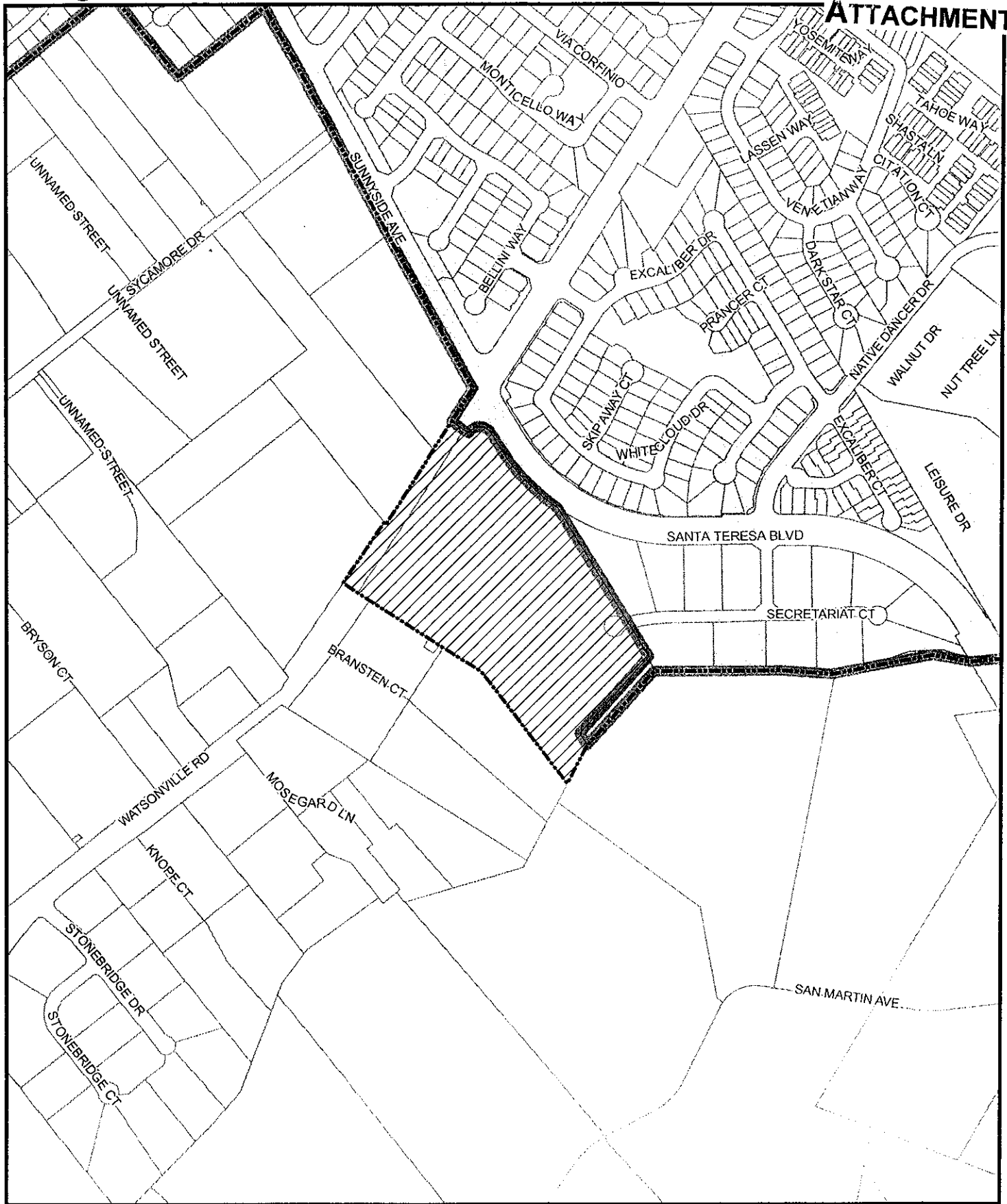
Attachment C: LESA analysis



Attachment D: Comment letters on the proposed expansion of the USA

Attachment E: Initial Study and Negative Declaration

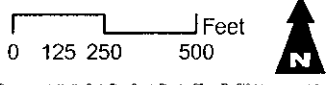
Morgan Hill 2006 USA Amendment (Black Rock) ITEM No. 7

ATTACHMENT A



 Proposed USA
 Existing USA

 Morgan Hill



This map created by the Santa Clara County Planning Office. The GIS data was compiled from various sources. While deemed reliable, the Planning Office assumes no liability. 1/17/2007 - V. Gentry USA/usa_morgan_hill_2007.mxd

ITEM No. 7

Attachment B

RESOLUTION NO. 5998

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING URBAN SERVICE AREA APPLICATION USA-05-01: SANTA TERESA – BLACK ROCK LLC

WHEREAS, such request was considered by the City Council at their regular meetings of April 5 and April 19, 2006, at which time the City Council approved Urban Service Area Application USA-05-01: Santa Teresa – Black Rock; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:

- SECTION 1.** The proposed expansion of the Urban Service Area is consistent with the Zoning Ordinance and the General Plan. The proposed expansion is consistent with the City Council policy titled Criteria for Adjustment of the Urban Service Boundary (Desirable Infill Policy).
- SECTION 2.** The proposed expansion of the Urban Service Area would not unduly burden city services as it would qualify for a passing score of eight points under Part 1 of the RDCS. That section of the RDCS evaluates the impact that development of property would have upon local public facilities and services.
- SECTION 3.** Obtaining dedication of a well site in a location approved by the Public Works Director, and installation of an asphalt overlay on Watsonville Rd. along the property frontage would help to improve water service within the City and improve traffic safety in the area and thereby beneficially affect the general welfare of the citizens of the City.
- SECTION 4.** An environmental initial study has been prepared for this application in conjunction with GPA 05-05. That study has been found complete, correct and in substantial compliance with the requirements of the California Environmental Quality Act. Mitigation measures have been developed for all potentially significant impacts that will reduce their effect to a less than significant level. A Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program were adopted for this application as part of GPA 05-05.

SECTION 5. The subject 18 acres shown in attached Exhibit "A" is hereby included within the Urban Service Area, subject to the following conditions:

1. Prior to LAFCO approval of expansion of the Urban Service Area, the applicant must enter and record against the property a legally binding agreement with the City committing the applicant to the provision of a well site and asphalt overlay on Watsonville Rd. along the property frontage.
2. The well site must be dedicated to the City and asphalt overlay of Watsonville Rd. along the property frontage must be installed within five years of LAFCO's action including the subject property within the Urban Service Area or upon the property's award of allocation, whichever occurs first.
3. Should the legally binding agreement not be completed or the well site not be dedicated to the City or asphalt overlay of Watsonville Rd. along the property frontage not be installed within the time periods specified above, the City Council will schedule a hearing to consider removal of the subject 20 acres from the Urban Service Area and city limits.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 19th Day of April, 2006 by the following vote.

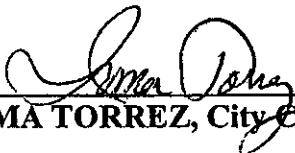
AYES:	COUNCIL MEMBERS:	Larry Carr, Dennis Kennedy, Greg Sellers
NOES:	COUNCIL MEMBERS:	Mark Grzan, Steve Tate
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

☛ CERTIFICATION ☛

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. 5998, adopted by the City Council at a Regular Meeting held on April 19, 2006.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: May 11, 2006



IRMA TORREZ, City Clerk



November 15, 2006

David Bischoff
Project Manager
CITY OF MORGAN HILL
COMMUNITY DEVELOPMENT DEPARTMENT
17555 Peak Avenue
Morgan Hill, CA 95037-4128

**RE: AGRICULTURAL LAND EVALUATION AND SITE ASSESSMENT
MODEL – BLACK ROCK PROPERTY**

Dear David:

The City prepared a Mitigated Negative Declaration and Initial Study for the *City of Morgan Hill Urban Limit Line and Greenbelt Study General Plan Amendment and Related Actions* in February 2006. Mitigation Measure B.1 in the Mitigated Negative Declaration and Initial Study required that the impacts to the agricultural lands on Assessors Parcel Number 779-02-002 (otherwise known as the Black Rock property) be assessed according to the California Agricultural Land Evaluation and Site Assessment (LESA) Model to confirm the extent of Prime Farmland at the project site. Therefore, the LESA model was used to determine the quality of the agricultural land at the Black Rock property.

Setting

The project site is located at 14905 Santa Teresa Boulevard in the City of Morgan Hill and consists of approximately 17.5 acres of rural residential uses, including approximately 7.65 acres of inactive agricultural land that was in production as a Christmas tree farm until around 2001. According to the California Department of Conservation, Division of Land Resource Protection (DOC) *Important Farmlands Map for Santa Clara County*, the project site includes up to 7.75 acres of 'Prime Farmland' along Santa Teresa Boulevard. The LESA model evaluates a project site's agricultural productivity as a whole. Therefore, the entire 17.5-acre Black Rock property was evaluated using the LESA model, not just the Prime Farmland area.

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Methodology

The California Department of Conservation, Division of Land Resource Protection recommends using the LESA model, a point-based approach, to rate the relative value of agricultural land resources. The LESA model defines and measures two separate sets of factors: 1) a 'Land Evaluation' factor, which measures the inherent soil-based qualities of land as they relate to agricultural suitability, and 2) a 'Site Assessment' factor, which measures social, economic, and geographic attributes that also contribute to the overall value of the agricultural land. This evaluation is based on information contained within the following documents, as well as information provided by the City of Morgan Hill, Santa Clara Valley Water District, Santa Clara County Assessor's Office and the project applicant:

- Department of Conservation, Office of Land Conservation. *California Agricultural Land Evaluation and Site Assessment Model*. 1997.
- Department of Conservation, Office of Land Conservation. *Important Farmlands Map for Santa Clara County*. 2003.
- Morgan Hill, City of. *Draft Mitigated Negative Declaration and Initial Study for the City of Morgan Hill Urban Limit Line and Greenbelt Study General Plan Amendment and Related Actions*. EIP Associates. February 2006.
- Natural Resources Conservation Service (NRCS). *Soil Survey of Eastern Santa Clara County via the National Cooperative Soil Survey, Web Soil Survey*. 1974, accessed 2006.

Results

The project site has a total LESA score of **69.00** points. The 'Land Evaluation' factor score is **49.50** and the 'Site Assessment' score is **19.50**. According to the Department of Conservation, LESA scores between 60 and 79 points are considered significant only if the 'Land Evaluation' and 'Site Assessment' sub-scores each are greater than or equal to 20 points. Since the 'Site Assessment' sub-score for the proposed project is less than 20 points, conversion of the agricultural land at the project site is considered to be **less than significant** under the LESA model.

The following section provides an overview of the LESA model and the LESA model results.

Land Evaluation. The 'Land Evaluation' portion of the LESA model includes two separate factors: 1) The Land Capability Classification (LCC) rating, and 2) the Storie Index rating. According to the *Soil Survey of Eastern Santa Clara County* approximately 40.1 percent of the project site, or 7.2 acres, is comprised of the Pleasanton loam, 0 to 2 percent slopes (PoA) soil series and approximately 59.8 percent of the project site, or approximately 10.3 acres, is comprised of Zamora clay loam, 0 to 2 percent slopes (ZbA) soil series, as shown

in **Figure 1, Soil Map**. Both the Pleasanton loam and the Zamora clay loam soil series have a LCC rating of I and a Storie Index rating of 98. Using the numerical conversion of LCC provided in the *California Agricultural LESA Model Instruction Manual* (DOC 1997) and the Storie Index rating, the LCC score and the Storie Index rating score were calculated for the project site based on the percentage of each soil series at the project site. As shown in **Table 1, Land Evaluation Worksheet**, the project site has an overall LCC score of 100 and a 'Storie Index' score of 98. Using the weighting factors in the *California Agricultural LESA Model Instruction Manual*, the land evaluation score would be **49.50**.

Table 1
Land Evaluation Worksheet

Land Capability Classification (LCC) and Storie Index Scores								
	A	B	C	D	E	F	G	H
Soil Map Unit	Project Acres	Proportion of Project Area	LCC	LCC Rating	LCC Score (C x E)	Storie Index	Storie Index Score (F x G)	
Pleasanton loam, 0 to 2 percent slopes (PoA)	7.2	0.411	I	100	41.1	0.98	40.28	
Zamora clay loam, 0 to 2 percent slopes (ZbA)	10.3	0.589	I	100	58.9	0.98	57.72	
Totals	17.5	(Must Sum to 1.0)		LCC Total	100	Storie Index Total	98	

Source: Department of Conservation and PMC

Site Assessment. The 'Site Assessment' portion of the LESA model rates four factors separately, including the following: 1) project size, 2) availability of irrigation water, 3) surrounding agricultural land, and 4) surrounding protected agricultural land (e.g. under a Williamson Act contract or conservation easement).

1. **Project Size.** The project size component relies upon the LCC rating and the acreage of each soil type at the project site. As discussed above, the Pleasanton loam, 0 to 2 percent slopes (PoA) soil series, which has a LCC rating of I, comprises approximately 7.2 acres of the project site. The Zamora clay loam soil series, 0 to 2 percent slopes (ZbA), which has a LCC rating of I, comprises approximately 10.3 acres of the project site. According to the *California Agricultural LESA Model Instruction Manual* (DOC 1997), a project site that consists of 10 to 19 acres of soils with a LCC rating of I or II receives a 'Project Size' score of 30. Since the 17.5 acre project site consists of soils that have a LCC rating of I, the highest 'Project Size' score would be 30, as shown in **Table 2, Project Size Score Worksheet**.

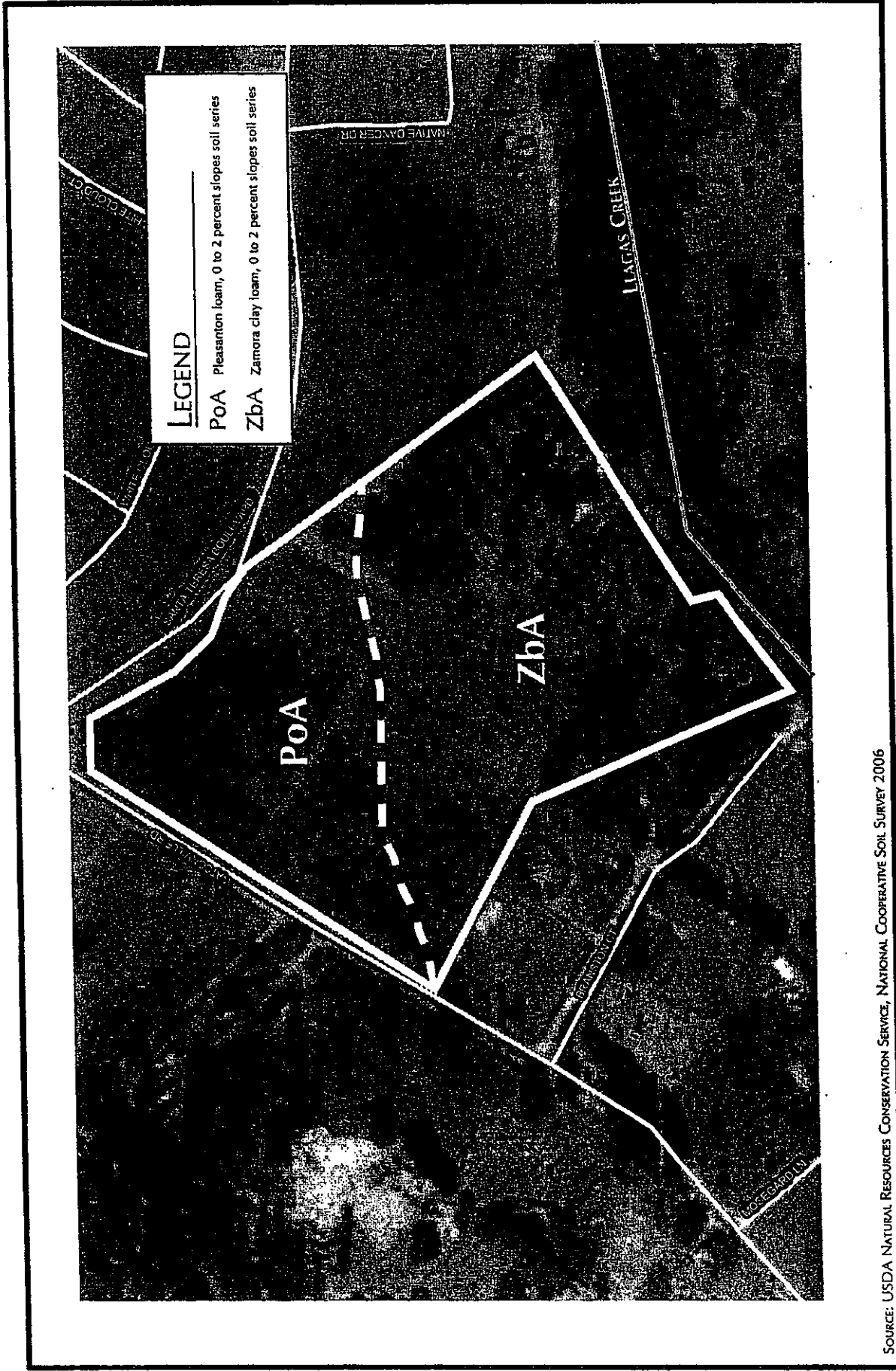


FIGURE 1
SOIL MAP



**TABLE 2
 PROJECT SIZE SCORE WORKSHEET**

A	I	J	K
Soil Map Unit	LCC Class I-II	LCC Class III	LCC Class IV - VIII
Pleasanton loam, 0 to 2 percent slopes (PoA)	7.2	0	0
Zamora clay loam, 0 to 2 percent slopes (ZbA)	10.3	0	0
Total Acres	17.5	0	0
Project Size Score	30	0	0
Highest Project Size Score	30		

Source: Department of Conservation and PMC

2. Water Resource Availability. The water resources availability component is based upon identifying the various water sources that would supply water to the project site and determining whether restrictions in supply are likely to take place in years characterized as being periods of drought and non-drought. The project site is served by two private wells that are under the jurisdiction of Santa Clara Valley Water District (SCVWD). One well serves the residential uses and the second well formerly served the agricultural uses on the project site. The project site has irrigation in place but is not currently irrigating the former Christmas tree lot. According to the SCVWD, there are no regulations restricting water production or implementing rate increases during either the drought or non-drought periods (Personal Communication between Pamela Lapham, PMC and Darren Taylor, SCVWD on November 6, 2006). Thus, agricultural production is feasible at the project site during non-drought and drought years with no physical or economic restrictions. Therefore, the project site was given a 'Water Resource Availability' score of 100, as shown in **Table 3, Water Resources Availability Worksheet.**

**TABLE 3
 WATER RESOURCES AVAILABILITY WORKSHEET**

A	B	C	D	E
Project Portion	Water Source	Proportion of Project Area	Water Availability Score	Weighted Availability Score (C x D)
1	Groundwater	1.0	100	100

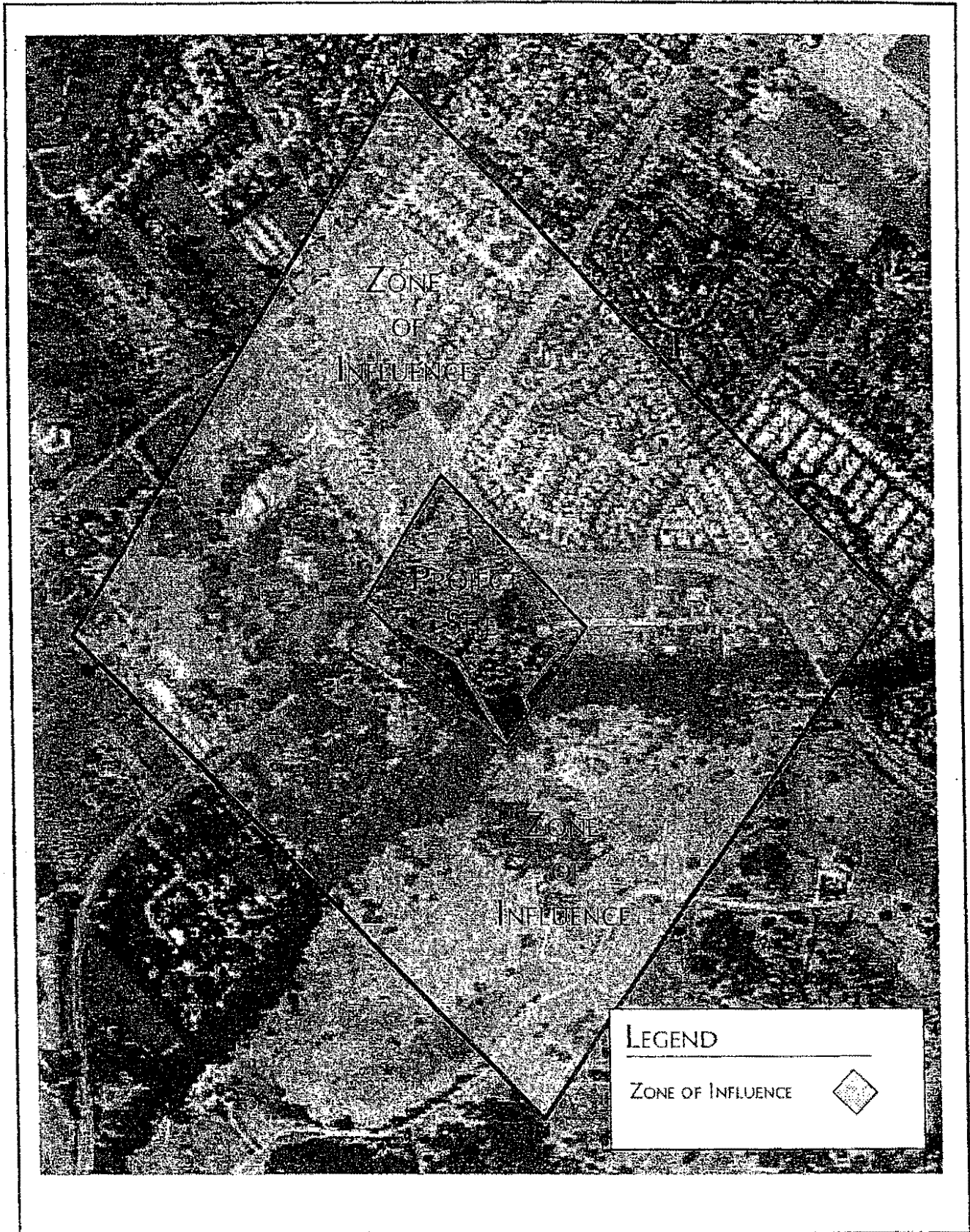
Source: Department of Conservation and PMC

3. Surrounding Agricultural Land. Surrounding agricultural land or Zone of Influence (ZOI) is defined as the land near a given project, both directly adjoining and within a quarter mile that is likely to influence, and be influenced by the agricultural land use of the project site. Points are given for the percentage of agricultural land in the ZOI.

The ZOI for the proposed project consists of approximately 366.39 acres, as shown in **Figure 2, Zone of Influence**. Within the ZOI, only three parcels (Assessor Parcel Numbers: 773-24-002, 773-24-068, and 773-24-050) consisting of 17.11 acres are currently producing agricultural crops. Only portions of these parcels are in agricultural production. Due to the surrounding existing development and agricultural land, the percentage of surrounding agricultural land is approximately 4.67 percent of the ZOI, conservatively. Since the area of surrounding agricultural land is less than 40 percent of the ZOI, it receives a 'Surrounding Agricultural Land' score of zero, as noted in the *California Agricultural LESA Model Instruction Manual* (DOC 1997).

4. **Surrounding Protected Resource Land.** Protected resource lands are those lands with long-term use restrictions that are compatible with or supportive of agricultural uses. Protected resource lands include Williamson Act Lands, publicly owned lands such as park, forest or watershed resources, and lands with agricultural, wildlife habitat, open space, or other natural resource easements that restrict the conversion of such land to urban or industrial uses. The ZOI was used to determine the percentage of surrounding properties that are considered protected resource land. According to the Santa Clara County Assessor's Office, none of the assessor parcel numbers within the ZOI are under Williamson Act contracts (Personal Communication between Pamela Lapham, PMC and Frank Giordiano, Santa Clara County Assessor's Office on November 7, 2006). There is an open space easement along the creek adjacent to the project site that encompasses 0.493 acres. In addition, there are other open space parcels located in the subdivisions east of the project site. However, these open space parcels appear to be part of the subdivision and would not be considered compatible with or supportive of agricultural uses. As with the 'Surrounding Agricultural Land' score, if the surrounding protected resource land located within the ZOI is less than 40 percent, the 'Surrounding Protected Resource Land' score is zero (DOC 1997). Since the protected resource land consists of 0.13 percent of the ZOI, the 'Surrounding Protected Resource Land' score is zero.

LESA Score. A single LESA score is generated for a given project after all the individual 'Land Evaluation' and 'Site Assessment' factors have been scored and weighted as described above. The LESA Model is weighted so that 50 percent of the total LESA score is derived from the 'Land Evaluation' factors and 50 percent from the 'Site Assessment' factors. Scoring thresholds for projects are based upon both the total LESA score as well as the 'Land Evaluation' and 'Site Assessment' sub-scores, as shown in **Table 4, LESA Model Scoring Thresholds**.



ZONE
OF
INFLUENCE

PROJECT

ZONE
OF
INFLUENCE

LEGEND


ZONE OF INFLUENCE 



FIGURE 2
ZONE OF INFLUENCE

**TABLE 4
 LESA MODEL SCORING THRESHOLDS**

Total LESA Score	Scoring Decision
0 – 39 Points	Not Considered Significant
40 – 59 Points	Considered Significant <u>only</u> if LE <u>and</u> SA sub-scores are each <u>greater</u> than or equal to 20 points
60 – 79 Points	Considered Significant <u>unless</u> either LE <u>or</u> SA sub-scores is <u>less</u> than 20 points
80 – 100 Points	Considered Significant

Source: Department of Conservation and PMC.

The LESA model score for the proposed project site is **69.0**, as shown in **Table 5, Final LESA Score Worksheet**. The overall score is greater than 60 points; however, the 'Site Assessment' sub-score for the proposed project is less than 20 points. According to the Department of Conservation, LESA scores between 60 and 79 points are considered significant only if the 'Land Evaluation' and 'Site Assessment' sub-scores are each greater than or equal to 20 points. Since the 'Site Assessment' sub-score for the proposed project is less than 20 points, conversion of the agricultural land at the project site is considered **less than significant** under the LESA model.

**TABLE 5
 FINAL LESA SCORE WORKSHEET**

A Factor Name	B Factor Rating (0-100 points)	X	C Factor Weighting (Total = 1.00)	=	D Weighted Factor Rating
Land Evaluation					
1. Land Capability Classification	100	X	0.25	=	25.00
2. Storie Index Rating	98	X	0.25	=	24.50
Subtotal					49.50
Site Assessment					
1. Project Size	30	X	0.15	=	4.50
2. Water Resource Availability	100	X	0.15	=	15.00
3. Surrounding Agricultural Lands	0	X	0.15	=	0
4. Protected Resource Lands	0	X	0.05	=	0.00
Subtotal					19.50
Total LESA Score					69.00

Source: Department of Conservation and PMC


Please contact me if you have any questions at (831) 644-9174, Extension #209.

Sincerely,

PACIFIC MUNICIPAL CONSULTANTS



Erika Spencer
Senior Planner/Soil Scientist



Pamela Lapham
Assistant Planner/Soil Scientist

ITEM No. 6
ATTACHMENT D



"mark wiselogel"
<wizakrmw@hotmail.com>
om>

To: dunia.noel@ceo.sccgov.org
cc: wizakr1tree@hotmail.com
Subject: morgan hill urban service area -- apn 779-02-023

02/05/2007 02:31 PM

Dunia,

would you please include the following in the package for the hearing on wed. feb 14th 2007 on parcel apn 779-02-023 watsonville rd and santa teresa blvd. As I will not be able to attend the meeting.

I believe the amount of development ready land in the current morgan hill urban service area is sufficient for current development plans and many years into the future.

I am concerned that the addition of this parcel to the available morgan hill land base is not driven by need, but rather by the desire of the owner / developer/ member of the urban limit line committee to profit from this change.

I have lived adjacent to the property for over 11 years. It that time it has gone from a pristine well maintained christmas tree farm, to recently, due to minimize maintenance an overgrown field. After calling weed control several times in the past years it now sees what I would call minimize maintenance. The parcel lives in this state waiting for this addition to the urban service area.

I attended the urban limit meeting held on this parcels addition to the urban limit line. Changes were made in the wording of the development of the property. I want to insure these changes that include 'feathering' the lot sizes from 2.5 acres to 1 acre going from watsonville rd and moving south are still included in the future when the zoning of this parcel takes place. The intent of this wording was to keep larger parcels near the branston ct properties and watsonville rd while allowing one acre parcels towards the south of the parcel.

I believe the city of morgan hill has sufficient land available for development for many years to come.

In time this property should be considered for addition to the city under the urban limit committee zoning description. I propose delaying the addition of this property to the morgan hill urban service area for a minimum of 5 years.

Mark Wiselogel

Check out all that glitters with the MSN Entertainment Guide to the Academy Awards® <http://movies.msn.com/movies/oscars2007/?icid=ncoscartagline2>

February 5, 2007

To: Local Agency Formation Commission of Santa Clara County (LAFCO)

From: Bruce and Carol Schlegel

Thank you for the opportunity to comment on the proposed request for expanding Morgan Hill's Urban Service Area as it pertains to parcel APN 779-02-023.

We respectfully oppose such an expansion.

The reasons we have are several and are a product of our having resided in a nearby parcel on Branston Court since approximately 1984.

The current line separating the county from the City at Santa Theresa Road seems to make sense. Arbitrarily extending the line across the street destroys the obvious boundary and makes further creep of county land the likely result. This is all the more important when one considers that the existing City boundary has open area to fill in and build homes before extending outward.

The four residents on Branston Court have their own shared well and holding tank for their drinking water. The boundary of the well is less than 50 feet from the property in question. Currently since the parcel is not developed this is fine but with residential housing abutting the boundary the portability of our drinking water is potentially sacrificed. When the well was developed it was never contemplated for housing to be this dense.

There is potential traffic issues not only with more residents but it would be unsafe to allow motorists from this parcel to enter and exit onto Watsonville Road. There would not be enough space to allow this safely.

As was explained to us during the time that we have lived on this property, Llagas Creek which is immediately south of the parcel is a protected rookery for nesting Blue Herons. These beautiful birds are compromised with the congestion that would occur both during construction and following. If it is true that this is a protected area, we hope that the necessary studies are conducted and validated before approval to annex and develop is provided.

Similar to the anecdotal information on the Blue Herons, is that the area in question might have been an important Native American occupation area including possible burial

grounds. Our property has uncovered lots of artifacts from such people and again the information passed down from people who have lived in this area for longer than we have described this possibility.

I am sorry that my job does not allow me to be present during this hearing to present this information personally. Thank you again for letting us express our strong feelings of opposition to this proposal.

Respectfully,

Bruce and Carol Schlegel

LAFCO Meeting: February 14, 2007

TO: LAFCO

**FROM: Neelima Palacherla, Executive Officer
Dunia Noel, Analyst**

**SUBJECT: Update on Cities' Island Annexations and Extension of
LAFCO's Island Annexation Fee Waiver**

Agenda Item #8

STAFF RECOMMENDATIONS

1. Accept Report.
2. Consider extension of LAFCO's fee waiver for annexations that result in the elimination of entire unincorporated islands and provide staff with direction.

BACKGROUND

LAFCO Island Annexation Fee Waiver Expired January 1, 2007

LAFCO, as part its adoption of Island Annexation Policies in February 2005, authorized a 2-year fee waiver for annexations that result in the elimination of entire unincorporated islands. The current LAFCO fee is \$959 for each annexation area. Forty-one island annexations were completed in 2006. Therefore, LAFCO waived approximately \$39,319 in fees in 2006. Under LAFCO's Island Annexation policies, the fee waiver expired on January 1, 2007, which was the sunset date for the island annexation law. However, the sunset date was recently extended to January 1, 2014.

Potential 1-Year Extension of LAFCO Island Annexation Fee Waiver

In December 2006, LAFCO indicated that they would like to consider the possibility of extending the fee waiver on an annual basis. The Commission directed staff to include this item on the February 2007 agenda for their consideration. It is difficult to accurately predict how many additional island annexations will be completed in 2007, as that number depends on the plans and actions of each of the cities that still have unincorporated islands. LAFCO staff anticipates that the total number of completed island annexations in 2007 will be no greater than the 41 island annexations completed in 2006. Therefore extending the fee waiver an additional year would result in LAFCO waiving no greater than an additional \$39,319 in fees in

2007. LAFCO staff has reviewed LAFCO's Budget and has found that providing a 1-year extension of the fee waiver would not significantly affect the budget.

Forty-One Unincorporated Islands Annexed in 2006

The Cities of Campbell, Cupertino, Los Altos, Milpitas, Morgan Hill, Mountain View, San Jose and Saratoga completed a combined total of 41 unincorporated island annexations (see Attachment), consisting of approximately 765 acres in 2006. In doing so, the cities of Campbell, and Los Altos have annexed all of their unincorporated islands that are ≤ 150 acres in size and eligible for annexation under the streamlined island annexation law.

The City of San Jose has indicated that they plan to annex 49 additional unincorporated islands over the next 4 years. The City of Los Gatos indicated that they would not pursue annexation of their unincorporated islands without first receiving substantial support from the landowners within these unincorporated islands. The City of Monte Sereno was able to start their island annexation process in 2006, but was not able get a majority of the City Council to support the annexation of their three remaining islands. Some city officials have expressed interest in trying to complete the process this year.

LAFCO Staff Helps Coordinate Overall Island Annexation Program

Working with the cities and the County, LAFCO staff helped coordinate the overall island annexation program. LAFCO staff assisted and advised cities on their public outreach process, attended island annexation community meetings and hearings, provided technical assistance on the island annexation process and law, and worked with and completed all necessary paperwork as required by the State Board of Equalization. All necessary documents and fees were provided to the State Board Equalization by December 1, 2006 ensuring that the completed annexations will be reflected on the next tax roll. Although completed successfully, the aforementioned activities have required a substantial amount of LAFCO staff time, and much of that staff time was in addition to the staff work that would typically be covered by LAFCO fees.

NEXT STEPS

Following the Commission's action, LAFCO staff will notify cities regarding the status of LAFCO's island annexation fee waiver. LAFCO staff also recommends that the fee waiver provision be removed from LAFCO's Island Annexation Policies, since any such fee waiver would be handled administratively.

LAFCO Meeting: February 14, 2007

TO: LAFCO

FROM: Neelima Palacherla, Executive Officer
Dunia Noel, Analyst

**SUBJECT: Update on North County and West Valley Area
Service Review and Sphere of Influence Update**

Agenda Item # 9

For Information Only

Staff will meet with the North and West County Service Review Technical Advisory Committee (TAC) and consultants in late March (date not yet determined). The purpose of this meeting will be to provide the TAC with a status report on the Service Review Project, and to discuss the upcoming city and special district review of the data collected and their review of the draft service review determinations for cities and special districts. Agency specific data and draft service review determinations will be available for the respective agency's technical review beginning in early April.

LAFCO staff will also update the TAC on LAFCO staff's and the consultant's current process for reviewing and updating each city's Sphere of Influence Boundary. As part of this review process, LAFCO staff will meet with staff from each of the affected cities in order to provide them with an opportunity to recommend any changes to their city's Sphere of Influence Boundary. LAFCO staff will update the TAC on the results of those meetings. Since Sphere of Influence Boundaries for cities in Santa Clara County serve multiple purposes, LAFCO staff and the TAC will also discuss these purposes at their March TAC meeting. The consultants and LAFCO staff will then develop a draft sphere of influence boundary recommendation for each of the cities and special districts.

Lastly, LAFCO staff and the Consultant will also review the revised project timeline with the TAC. The revised timeline tentatively includes releasing a public draft of the report in early June for a 30 day review and comment period, holding a public hearing in August on the draft document, and adopting the Service Review and Sphere of Influence Recommendations at a final public hearing in early October.

Staff will continue to provide the Commission with status reports as this project progresses.

LAFCO

MEETING: February 14, 2007

TO: LAFCO

FROM: Neelima Palacherla, Executive Officer

SUBJECT: Budget Subcommittee 2007-2008

Agenda Item # 10

Appointment of Budget Subcommittee

Recommendation

Establish a Budget Subcommittee to provide direction to staff and develop a proposed budget for the upcoming fiscal year.

Staff recommends that the Commission appoint a budget sub committee composed of two commissioners and staff to develop the budget for FY 07-08. The time commitment from commissioners serving on this committee would be limited to 2-3 meetings between February and July, plus some phone conversations.

LAFCO

MEETING : February 14, 2007

TO: LAFCO

FROM: Neelima Palacherla, Executive Officer

**SUBJECT: Process for Appointment of LAFCO Public Member and Alternate
Public Member
Agenda Item # 11**

RECOMMENDED ACTION

1. Determine process for appointment of LAFCO public and alternate public member whose terms expire in May 2007. Appointment will be made at the April 2007 LAFCO meeting.

BACKGROUND

LAFCO public member, Susan Wilson's and alternate public member, Terry Trumbull's terms expire in May 2007. Both the commissioners have expressed interest in being reappointed to LAFCO for 4-year terms starting in May 2007.

Government Code Section 56327 requires that the public member be appointed by the four members of the commission. The statute leaves the public member selection process to the discretion of the four commission members except to provide (applicable to Santa Clara County only) that the public member must not be a resident of a city which is already represented on the commission.

Two Options

With regard to appointment of the public member and alternate public member, LAFCO has two options:

1. Reappoint Public Member Susan Wilson and Alternate Public Member Terry Trumbull to another 4-year term.

It has been the practice of several LAFCOs statewide to reappoint well-qualified and interested public members. This LAFCO has had a tradition as well of reappointing the

public member; former commissioner Sig Sanchez represented LAFCO as public member for 12 years until 1995. When Mr. Sanchez stepped down from his position,

Commissioner Wilson was chosen through an interview process. She was reappointed to a second term in 1999 and a third term in 2003. Commissioner Wilson has been an active and involved member of the commission. Commissioner Wilson is serving her second term on the CALAFCO Executive Board where she has made significant contributions. She has attended several CALAFCO annual conferences and has volunteered to serve on various sub-committees of the commission.

Alternate Commissioner Terry Trumbull was appointed to serve as alternate public member in 2003 through an interview process. He has also been an active participant on LAFCO, regularly attending LAFCO meetings and CALAFCO conferences.

2. Use a formal recruitment process to fill the public member and alternate public member positions

LAFCO may advertise in the newspaper and/or ask each commissioner to recruit for the position of the LAFCO public member and alternate public member. Information regarding the positions would be prepared and available to commissioners for distribution. A filing period will be established. Interested candidates would be required to submit a resume and participate in a group interview to be jointly conducted by the city and county members of the commission using questions prepared beforehand. Selection would be made at the end of the interview.

LAFCO

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