

**LAFCO WORKSHOP  
AND MEETING AGENDA**

**Wednesday, May 30, 2007**

**Informational Workshop on Incorporations: 10:30 AM to 12:00 Noon**

**LAFCO Meeting: 1:00 PM**

**Board of Supervisors' Chambers  
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.

**10:30 AM to 12:00 Noon -**

**[LAFCO INFORMATIONAL WORKSHOP ON THE PROPOSED  
INCORPORATION OF THE TOWN OF SAN MARTIN](#)**

1. ROLL CALL

2. PUBLIC PRESENTATIONS

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

3. APPROVE MINUTES OF APRIL 4, 2007 MEETING

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CONSENT ITEMS

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4. APPROVE CONSENT CALENDAR

\*4.1 CUPERTINO SANITARY DISTRICT ANNEXATION: PROSPECT ROAD NO. 6

A request by Cupertino Sanitary District (CSD), on behalf of property owners, to annex a parcel with an area of approximately 1.14 acres, located at 21781 Prospect Road within the City of Saratoga.

**Possible Action:** Approve annexation to CSD subject to certain terms and conditions, and waive further protest proceedings.

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PUBLIC HEARINGS

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5. OUT OF AGENCY EXTENSION OF WATER SERVICE TO 2404 URIDIAS RANCH ROAD BY THE CITY OF MILPITAS

A request by the City of Milpitas to extend water service to a property (APN 092-42-001) located at 2404 Uridias Ranch Road, outside the city limits of Milpitas.

**Possible Action:** Consider the request for extension of water service and staff recommendation.

6. FINAL LAFCO BUDGET FOR FISCAL YEAR 2007-2008

**Possible Action:** Consider and adopt the final LAFCO budget for Fiscal Year 2007-08.

7. INCORPORATION POLICIES AND FILING REQUIREMENTS

**Possible Action:**

- a. Consider and adopt LAFCO Incorporation Policies.
- b. Adopt the Filing Requirements for Incorporation Proposals.

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**ITEMS FOR COMMISSION DISCUSSION / ACTION**

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**8. PROPOSED INCORPORATION OF TOWN OF SAN MARTIN****8.1. RFP FOR CONSULTANT TO PREPARE A CEQA INITIAL STUDY FOR THE PROPOSED INCORPORATION OF SAN MARTIN****Possible Action:**

- a. Authorize staff to issue a Request for Proposals (RFP) for a consultant to prepare a CEQA Initial Study for the proposed incorporation of the Town of San Martin.
- b. Delegate authority to the LAFCO Executive Officer to enter into an agreement with the most qualified consultant in an amount not to exceed \$25,000 and to execute any necessary amendments subject to LAFCO Counsel review and approval.

**8.2. INDEMNIFICATION AGREEMENT BETWEEN LAFCO AND THE PROPONENTS OF SAN MARTIN INCORPORATION****Possible Action:**

Approve the proposed Indemnification Agreement between LAFCO and the proponents of the San Martin Incorporation proposal.

**8.3. REQUEST FOR FEE WAIVER AND/OR PAYMENT OPTIONS BY THE PROPONENTS OF SAN MARTIN INCORPORATION****Possible Action:**

Consider proponents' request and provide direction.

**9. COMMITTEE FOR GREEN FOOTHILLS' LETTER DATED APRIL 25, 2007, REGARDING LAFCO'S ACTION ON MORGAN HILL 2006 USA EXPANSION****Possible Action:**

- a. Accept staff report and provide additional direction if desired.
- b. Authorize staff to send a letter to the cities and special districts requesting that complete analysis of impacts to agricultural land as defined in LAFCO's policies and identification of feasible mitigation measures be included in environmental documents when LAFCO is identified as a responsible agency for the project.

**10. CLARIFICATION OF "AGRICULTURAL USE"****Possible Action:**

Accept staff report on clarification of "agricultural use".

**11. AGREEMENT BETWEEN LAFCO AND COUNTY OF SANTA CLARA FOR LEGAL SERVICES FOR FISCAL YEAR 2008**

**Possible Action:** Approve agreement with County of Santa Clara for legal services for the fiscal year 2008.

**12. UPDATE ON COYOTE VALLEY SPECIFIC PLAN**

**Possible Action:** Accept Staff Report.

**13. EXECUTIVE OFFICER'S REPORT**

**13.1 CALAFCO Annual Conference in Sacramento on August 28-31, 2007**

**Possible Action:** Authorize commissioners and staff to attend the 2007 CALAFCO Annual Conference and authorize travel expenses funded by LAFCO budget.

**13.2 Nominations for CALAFCO Executive Board**

**Possible Action:** Nominate Commissioner Wilson to a third term on the CALAFCO Executive Board.

**13.3 Report on the CALAFCO Staff Workshop held in Newport Beach, April 2007**

Information only.

**14. COMMISSIONERS' REPORTS**

**15. WRITTEN CORRESPONDENCE**

**15.1 LAFCO staff's May 17, 2007 letter to Debbie Pedro, Planning Director, Los Altos Hills re: sewer extension requests.**

**15.2 LAFCO staff's May 17, 2007 letter to Peter J. Wilkins re: Beckwith Linda Vista Sewer District.**

**16. NEWSPAPER ARTICLES**

**17. PENDING APPLICATIONS / UPCOMING PROJECTS**

**18. ADJOURN**

Adjourn to the next regular meeting on Wednesday, August 1, 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.



## INCORPORATION of SAN MARTIN The LAFCO Process

San Martin Workshop  
May 30, 2007  
Roseanne Chamberlain  
Chamberlain Consulting

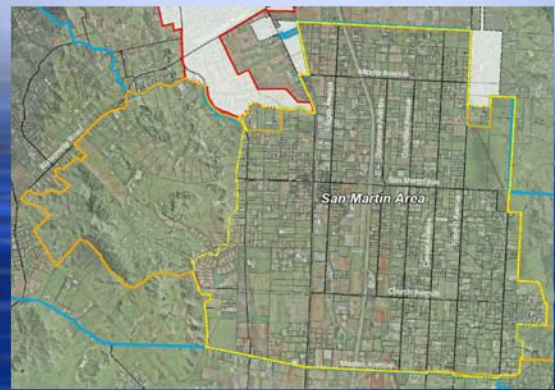
## WORKSHOP GOALS

- ◆ Review the Proposed Incorporation of the Town of San Martin
- ◆ Clarify the Incorporation Process
- ◆ Review Legal Requirements
- ◆ Review Financial Considerations
- ◆ Discuss Proposed Santa Clara LAFCO Incorporation Policies
- ◆ Discuss Desired Time Line & Challenges
- ◆ Answer Questions

## Proposed Incorporation of the Town of San Martin

- ◆ **Reasons for the Proposal (Petition)**
  - ◆ Gain local control of land use, growth, planning policy and other governmental activities
  - ◆ Town Council
    - ◆ Locally Accessible Leadership
    - ◆ Accountable and Focused on San Martin Needs
  - ◆ Intent is to preserve rural residential qualities of the community
  - ◆ No change in nature of services

## Proposed Boundaries for New Town



## What A New City Means

- ◆ **Locally Elected City Council**
  - ◆ Accessible Leadership, Local Control & Focus
  - ◆ Customize Local City Services, Some Still County/District
  - ◆ Future Council Decisions Will Shape the City
- ◆ **New Government**
  - ◆ Land Use, Zoning and City General Plan (Development)
  - ◆ Business & Building Permits, etc.
  - ◆ New City Ordinances
- ◆ **Tax Shifts to City to Support Services**
  - ◆ Capture and Retain Share of Local Tax Dollars
  - ◆ Prop 13 & Prop 218: No New Taxes without Vote
  - ◆ State Funding for Cities (VLF)

## What Incorporation Won't Do

- ◆ **Will Not Trigger Urban Development**
  - ◆ City Council has land use power
  - ◆ Adoption of City General Plan
- ◆ **Will Not Increase Property Taxes**
  - ◆ State Laws and Constitution (Prop. 13)
  - ◆ County Assessed Values & Process Unchanged
- ◆ **Won't Automatically Change Services**

## How Is A New City Created?

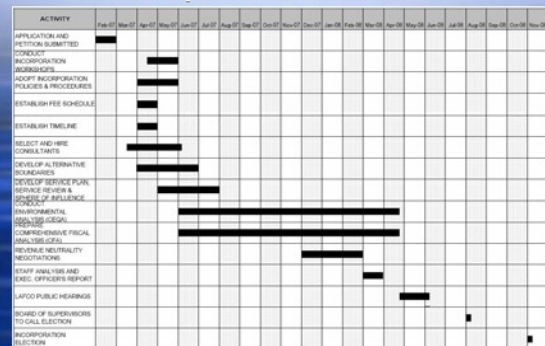
### 5 MAJOR STEPS

1. Start With Petition of Registered Voters
2. Complete the Application Package  
(Information for LAFCO & Public)
3. LAFCO Hearing and Decision
4. Election (Called by Board of Supervisors)  
*Usually takes a minimum of 9-12 months*
5. Completion, Filings, Recording & Transmittal

**Team Work Needed All the Way**

*LAFCO Staff, Consultants, Proponents, County, Other Affected Agencies*

## Proposed Timeline



## Legal & Regulatory Framework

- ◆ Process is Defined by:
  - a. Provisions of the State Constitution
  - b. Cortese-Knox-Hertzberg Act - LAFCO Laws (Government Code Section §56000et.seq.
  - c. Revenue & Taxation Code
  - d. California Environment Quality Act
  - e. Locally adopted LAFCO policies
- ◆ Complex For A Reason:
  - ◆ Ensures All Parties' Interests are Represented

## STEP #1: The Petition to LAFCO

- ◆ Signed by registered voters
  - ◆ Shows proposed boundaries and intended services
  - ◆ "Certificate of Sufficiency" March 6, 2007
  - ◆ Formal Initiation Date is date of "CoS"
- ◆ Comparison to Citizen Initiative Petitions
  - ◆ Different than Ballot Proposition
  - ◆ Initiates review by LAFCO - leads to election
  - ◆ Does not directly initiate the election

## STEP #2 Application Elements

- ◆ Forms & Signatures, Fee Payment Arrangements
- ◆ Map and Boundary Alternatives
- ◆ Fiscal Analysis (CFA)
  - ◆ Base Costs, Services, Projected Revenues
  - ◆ Projected City Budgets (10 years)
  - ◆ Analysis and Basis for Revenue Neutrality Agreement
- ◆ CEQA- potential environmental effects
- ◆ Certificate of Filing

## CFA-FISCAL ANALYSIS

- ◆ Assesses Feasibility
  - ◆ Proposed City Costs & Revenues
  - ◆ 3 years--Minimum Feasibility
  - ◆ 10 years--Long Term Viability (State Revenues)
- ◆ Calculates "Base Year" Cost
- ◆ Calculates City's Base Property Tax
  - ◆ Auditor's Ratio (property taxes + all revenues)
  - ◆ Ratio x Cost of Services Transferred to City
- ◆ Data From Most Recent Fiscal Year (06-07)
- ◆ Current & Useful for Only One Year





## REVENUE NEUTRALITY

- ◆ Revenues Transferred = Cost of Services
- ◆ Negotiations & Agreement
  - ◆ between County/Agencies and Proponents
  - ◆ Includes Fiscal mitigation, tax sharing, etc.
  - ◆ Prospective, not just base year
  - ◆ payment plans, creative ideas to achieve equal transfer
- ◆ LAFCO must determine that transfer of revenue and services are "substantially equal"
- ◆ Fiscal Conditions by LAFCO bind the future city



## CEQA-Environmental Review

- ◆ CEQA Requires Pre-Decision Disclosure of Environmental Effects of Incorporation
- ◆ All LAFCO Decisions subject to CEQA
- ◆ Project Description and "Initial Study"
  - ◆ Analyze & Identify Potential Effects
  - ◆ Consultation and Comment Process
  - ◆ Incorporation: New Administration, Governance
  - ◆ Could Incorporation Trigger Environmental Impacts?

## Executive Officer's Report Integrated Analysis

- ◆ "Factors" Analysis in Gvt. Code 56668
- ◆ City Services
- ◆ Boundaries, Boundary Alternatives
- ◆ Effect of the Incorporation on Others
- ◆ Fiscal Effects and Effect of Transfers
- ◆ Environmental Effects (CEQA)
- ◆ Alternatives and Modifications

## Revenues

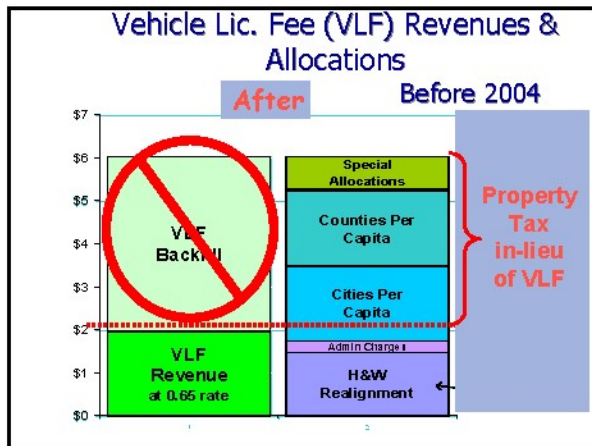


## Sources of Municipal Revenue To City From County

- ◆ Property Tax
- ◆ Sales Tax
- ◆ Real Property Transfer Tax
- ◆ Transient Occupancy Tax, Business License Tax
- ◆ Franchise Fees, Unitary Tax
- ◆ Planning & Permit Fees
- ◆ Fines and Penalties
- ◆ Interest/Investment Earnings

## Sources of Municipal Revenues New Revenue To Cities

- ◆ State "Subventions" Vehicle License Fees
- ◆ State Subvention Funding (Before 2004)
  - ◆ VLF fees distributed to counties and cities
  - ◆ Calculation based on Population
  - ◆ Population Subsidy for New Cities (3 x Voters)
- ◆ Changes in VLF Revenue Formulas - Critical for Financial Viability



- ### AB1602 (Laird 2006): A Remedy to VLF – PropTax Swap Problems
- ◆ Incorporations after August 2004
    - ◆ New VLF allocation \$50+ per capita ... including population growth over time. [Rev&Tax §11005(c)] Compensation for lack of PropTax in Lieu of VLF
    - ◆ New VLF "bump" [Rev&Tax § 11005.3(c)]
      - ◆ 150% of actual population in the first year of incorporation,
      - ◆ 140% in the second year,
      - ◆ 130% in the third year,
      - ◆ 120% in the fourth year, and
      - ◆ 110% in the fifth year.
      - ◆ Also applies to allocations of Highway User Tax (Gasoline Excise Tax)
    - ◆ Sunsets July 1, 2009. Only incorporations prior to July 1, 2009 will qualify.

- ### Quick Review
- ◆ STEP #1: The Petition to LAFCO
  - ◆ STEP #2: Application Elements
  - ◆ STEP # 3: LAFCO Hearings & Decision

- ### STEP # 3 LAFCO Public Hearings
- ◆ Maps Prepared for Boundaries & Alternatives
  - ◆ Charges Paid & Current
  - ◆ Public Review Draft Fiscal Analysis (CFA)
    - ◆ Feasibility
    - ◆ Base Year Costs, Projected City Budget
  - ◆ Revenue Neutrality Agreement
    - ◆ Cost of Services is Substantially Equal to Revenues Transferred
  - ◆ CEQA Disclosure and Documentation
  - ◆ Executive Officer's Report

- ### LAFCO Decision Points
- 
- ◆ Boundaries for the City
  - ◆ Financial Feasibility of the City
  - ◆ Services Assumed & Service Costs Transferred
  - ◆ Property Taxes Transferred (Statutory Formula)
  - ◆ Other Taxes & Payments (Revenue Neutrality)
  - ◆ Disposition of Assets and Responsibilities
  - ◆ Effective Date of Incorporation
  - ◆ CEQA Adequacy: Disclosure, Findings, Mitigations if Needed, etc.

- ### PUBLIC HEARINGS LAFCO DECISION
- ◆ Approve/Deny
  - ◆ Amend & Modify
  - ◆ Add Conditions
  - ◆ Make Determinations
  - ◆ Make Findings
  - ◆ Set Provisional Gann Limit
-



## STEP #4: Election

### •Impartial Ballot Analysis

- 500 Words
- Reviewed by Counsel
- Approved by Commission

### •Ballot Information

- Terms and Conditions
- Map of City Limits

### • Election

- ◆ Placed on Ballot by Board of Supervisors
- ◆ Planned: November 08
- ◆ Majority Vote to Pass
- ◆ BoS certifies election results



## PLANNED SCHEDULE

### ◆ CEQA Work:

- ◆ Summer 07: Initial Study, Consultation
- ◆ Determine if EIR or Neg Decis needed

### ◆ CFA & Revenue Neutrality:

- ◆ Summer/Fall 07: Research & Analysis
- ◆ Early 08: Draft CFA & Revenue Neutrality Negotiations
- ◆ Spring 08: RN Agreement Finalized

### ◆ LAFCO Actions:

- ◆ Spring/Summer 08: Hearing(s) on Incorporation & Decision

### ◆ Election

- ◆ November 08: Election by Area Voters

- ◆ Final Filings, Transmittals and Completion Dec. 2008

## Estimated Cost of Incorporation Proceedings

- ◆ Petition Verification Costs: \$3,600
- ◆ Comprehensive Fiscal Analysis: \$88,810
- ◆ LAFCO Staff/Counsel: \$100,000 approx.
- ◆ Initial Study/Neg. Dec.: \$15,000-25,000
- ◆ EIR: \$100,000 - \$150,000 approx.
- ◆ Misc. (noticing, maps...): \$3,000 approx

Proponents are responsible for these costs

## LAFCO Policies

- ◆ Adoption on May 30
- ◆ Available on Website
- ◆ Purpose:
  - ◆ Implement Laws
  - ◆ Ground rules for all
  - ◆ Certainty & Clarity

### Policy Topics

- ◆ Fees, Timing, Time Limits
- ◆ Boundaries & Services
- ◆ CEQA Process
- ◆ Financial Assumptions
- ◆ Financial Assumptions
- ◆ Revenue Neutrality Process

## POLICIES: General, Fees, Timing

- ◆ Integration with OPR Guidelines and State Law
- ◆ LAFCO staff "best efforts" to expedite
- ◆ 24 Months if needed
- ◆ Mechanics for Fee Payment
  - ◆ Consultants - prepay each phase
  - ◆ LAFCO "in-house" monthly installments in arrear
- ◆ Indemnification

## POLICIES: Boundaries, Services, Districts

- ◆ Consistent with Existing Policies
- ◆ Boundaries Linked to Services
- ◆ City to assume all "Feasible" services
- ◆ Districts
  - ◆ Avoid Splitting Districts
  - ◆ Avoid "orphan" areas

### POLICIES: SPHERES OF INFLUENCE

- ◆ Must Adopt within One Year
- ◆ City Application or Coterminous

### POLICIES: CEQA

- ◆ Project Description, Initial Study, Consultation
- ◆ Alternatives (Boundaries) Included
- ◆ Initiate As Early as Possible
- ◆ Goal: Cost Effective and Adequate

### POLICIES: Financial & CFA Assumptions

- ◆ Parameters for Costs and Revenues Calculation
  - ◆ Conservative Estimates and Projections
  - ◆ 10 Year for City Budget
- ◆ Base Year Cost Parameters
- ◆ Reserves 10% and Contingency of 10%
- ◆ Assume Existing Levels of Service

### POLICIES: CFA & Revenue Neutrality

- ◆ Timing, Coordination are Critical
  - ◆ Sequence, Roles and Deadlines Specified
  - ◆ Flow Chart
  - ◆ 90 Days for Agreement
- ◆ Comprehensive Fiscal Analysis
  - ◆ Draft for Revenue Neutrality Negotiations
  - ◆ Public Review Draft
  - ◆ Final (Post Hearing) CFA

### Review

- ◆ STEPS;
  - ◆ The Petition to LAFCO
  - ◆ Application Elements
  - ◆ LAFCO Hearings & Decision
  - ◆ Election
- ◆ Schedule, Costs
- ◆ Policies

### Conclusion

- ◆ Incorporation Has Significant Effects on Community, County & Region
- ◆ Incorporation is a Complex Process
  - ◆ Process is Designed to Inform All Parties
  - ◆ There are Safeguards To Protect the Rights of All
- ◆ LAFCO has Broad Discretion
  - ◆ Approve or Disapprove
  - ◆ Determine Costs, Set Revenue Transfers
  - ◆ Add Conditions and Make Modifications
- ◆ Ultimate Success Depends on:
  - ◆ Cooperation Among All Parties
    - ◆ County, Proponents, LAFCO, Citizens, Other affected agencies
  - ◆ Will of the People



### SOURCES AND RESOURCES

OPR Guide to the LAFCO Process for Incorporations  
[www.opr.ca.gov](http://www.opr.ca.gov)

Santa Clara LAFCO Policies  
[www.santaclaralafo.ca.gov](http://www.santaclaralafo.ca.gov)

Guide to the Cortese-Knox-Hertzberg Local Government  
Reorganization Act of 2000 -  
On-line or via Assembly Publications, 1020 N Street, Room  
151 Sacramento, CA 95814

**LOCAL AGENCY FORMATION COMMISSION OF  
SANTA CLARA COUNTY  
MINUTES  
WEDNESDAY, APRIL 4, 2007**

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**1. ROLL CALL**

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 4th day of April 2007 at 1:30 p.m. in the Isaac Newton Senter Auditorium, County Government Center, 70 West Hedding Street, San Jose, California, with the following members present: Chairperson Blanca Alvarado, Commissioners Pete Constant, Don Gage, John Howe and Susan Vicklund-Wilson. Alternate Commissioners Terry Trumbull and Roland Velasco are also present.

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

The meeting is called to order by Chairperson Alvarado and the following proceedings are had, to wit:

**2. PUBLIC PRESENTATIONS**

Tom Davis, a resident of Cambrian Pocket No. 36, requests that this unincorporated island, which is currently within the sphere of influence (SOI) of San Jose, be annexed to Campbell. He then provides to the Commission a copy of the petition signed by 240 residents.

Chairperson Alvarado informs him that island annexation is a major undertaking of the Commission, however, it is the cities that initiate the annexation proceedings. Upon the request of the Chairperson, Ms. Palacherla advises that the City of San Jose, in a letter to Daniel Rich, Campbell City Manager, has indicated that it is unwilling to give up that territory. The Chairperson requests Mr. Davis to work with the City of San Jose to resolve this issue.

Michael Krisman, also a resident of Cambrian Pocket No. 36, informs that 98 percent of the residents desire to be annexed to Campbell because they believe Campbell is in a better position to serve them and because of their social and emotional ties with Campbell. He requests the Commission to be a catalyst in resolving this issue.

The Chairperson determines that there are no other members of the public who wish to speak on issues not in the agenda.

**3. APPROVE MINUTES OF FEBRUARY, 2006 MEETING**

On motion of Commissioner Gage, seconded by Commissioner Constant, it is unanimously ordered on a vote of 5-0 that the minutes of February 14, 2007 meeting be approved, as submitted.

**4. AGRICULTURAL MITIGATION POLICIES (CONTINUED FROM FEBRUARY 14, 2007)**

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

Ms. Palacherla reports that the Commission directed staff on February 14, 2007 to revise and release the draft agricultural mitigation policies for public review and comment. The revisions confirm that the policies are advisory and clarify the sections on timing and fulfillment of mitigation, and the plan for mitigation. At the Subcommittee meeting in Morgan Hill on March 13, 2007, the issue of LAFCO's authority was raised again. In response to this, Ms. Palacherla directs attention to page 4 of the staff report, stating that the LAFCO Counsel has confirmed that the Commission has the ability to deny a proposal if it does not result in orderly growth and development. She advises that the draft policies guide applicants on how agricultural mitigation will be provided, however, the Commission considers the impact to agricultural lands along with other existing LAFCO policies, such as infill opportunities, adequate water supply and logical boundaries among others. Existing policies discourage premature conversion of agricultural lands, guide development away from agricultural lands, and require the development of vacant lands within the city limits before agricultural lands are converted. The Commission considers and balances all these factors and, in some cases, one or more factors could have such great negative impact that even if mitigation is provided staff would still recommend denial of the proposal. She advises that other issues raised at the Subcommittee meeting are discussed and addressed in the staff report. She then recommends the adoption of the draft policies.



Ms. Palacherla requests Ms. Noel to provide a report on the CEQA analysis for the draft policies. Ms. Noel directs attention to Attachment B of the staff report and advises that LAFCO, as the lead agency, conducted an initial study to determine if the project has significant impact on the environment. The Initial Study finds that the project has "no impact" or "less than significant impact" for all environmental factors. The Notice of Intent to adopt the Negative Declaration was circulated for comment to all stakeholders, affected local agencies, State clearing house and the public. The public review period ended on March 31, 2007 and staff has received no substantive comments. Ms. Noel recommends the adoption of the Negative Declaration.

Chairperson Alvarado opens the public comment period for this item.

David Bischoff, City of Morgan Hill, expresses appreciation to the Commission for allowing the jurisdictions and stakeholders more time to consider the draft policies, for holding two workshops in the South County, and for making the draft policies advisory. He notes, however, that the 1:1 mitigation ratio may not be justifiable in all cases.

Annie Mudge, Coyote Housing Group, likewise expresses appreciation to the Commission for making the policies advisory and reiterates the suggestions she made in her letter dated March 27, 2007. She requests that the first sentence in the section, Purpose of the Policies, be revised to use the word "advice" instead of "guidance," and that the last sentence in that section be revised to read, "...involve conversion of agricultural lands" instead of "...involve or impact agricultural lands." Additionally, she suggests that the introductory statement in the section defining prime agricultural lands, Policy No. 6, mirror the language of CKH Act §56064. Further, she requests that mitigation be allowed anywhere in the County because requiring mitigation within a city's SOI is restrictive. Finally, she requests that the Commission allow the purchase of mitigation credits as another option for mitigation.

Chairperson Alvarado informs that staff has considered these comments.

Michelle Beasley, Greenbelt Alliance, commends the Commission for pursuing the agricultural mitigation policies because it falls directly within its mission, stating that Greenbelt Alliance supports the CKH Act definition of prime agricultural land and the minimum 1:1 mitigation ratio. She likewise expresses the need for cities to develop their

own mitigation policies. She advises that infill and transit-oriented development would create a sustainable lifestyle in the County.

Beverly Bryant, Homebuilders Association of Northern California (HBANC), expresses appreciation to the Commission and staff. She reiterates the request by Ms. Mudge to allow mitigation outside the SOIs of the cities and the option to purchase agricultural mitigation credits.

Melissa Hippard, Sierra Club, commends the Commission and staff for their work, stating that she personally saw how the draft policies evolved in response to comments by the stakeholders. She advises the Commission to adopt the policies today, with a 1:1 minimum mitigation ratio. She indicates that agricultural lands should be preserved to ensure food security, diversity of landscape, and percolation of storm water. She expresses hope that cities will also develop their own mitigation policies.

Brian Schmidt, Committee for Green Foothills, states that the only reason to delay the approval of draft policies is to increase the mitigation ratio or to include LAFCO as a party to the mitigation agreement. He also suggests that the statement in the staff report, "LAFCO's decision on the proposal will not be based solely on the issue of impact to agriculture or consistency to LAFCO agricultural mitigation policies" be revised to read, "LAFCO's decision on the proposal will consider all criteria not solely the impacts to agriculture or consistency with LAFCO's agricultural mitigation policies." At the request of the Chairperson, Ms. Palacherla expresses agreement stating that all factors would be taken into consideration and it is possible that the impact of one or more factors could be so great that it could result in denial.

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

Commissioner Constant recommends that LAFCO use the word-for-word definition contained in CKH Act referencing the missing first sentence of the definition in the proposed policies. Commissioner Gage comments that the mitigation land should be anywhere in the County and not necessarily within the SOI of a city, however, he notes that since the Commission has made a lot changes and a great deal of progress, even though these policies are not yet perfect, they could be adopted at this meeting to see how

it works and be amended in the future if necessary. He indicates that what is important is to preserve large chunks of agricultural lands in the South County.

Commissioner Gage moves to adopt the draft policies, with Policy No. 6 amended to mirror word-for-word the definition of prime agricultural land in CKH Act.

Commissioner Constant seconds the motion.

Chairperson Alvarado expresses agreement with the suggestion of Commissioner Gage, stating that it would make the policies consistent with CKH Act and essential in establishing a methodology to determine prime agricultural land. In response to the inquiry of the Chairperson, Ms. Kretchmer advises that the language in the draft policies is clearer because the CKH Act uses the term "agricultural use" which is not defined by that Act. In response to the inquiry of Commissioner Wilson, Ms. Kretchmer advises that for the purposes of reviewing a proposal, the draft policies consider "agricultural uses" as traditionally defined by LAFCO. Commissioner Wilson indicates that she would not support the motion, explaining that the draft policies, which are meant to be advisory, serve the public better when written as they are. Commissioner Constant states that the draft policies must be totally consistent with CKH Act. On the request of the Chairperson, Ms. Palacherla explains that the CKH Act does not define "agricultural use" and therefore the term is subject to interpretation. Commissioner Gage proposes to use the County's definition of "agricultural uses." On the request of the Chairperson, Ms. Kretchmer proposes that the draft policies be adopted with Policy No. 6 revised with the exact introductory language of CKH Act, and staff would provide the definition of agricultural uses at the May 30, 2007 meeting.

Commissioner Gage amends the motion to adopt the draft policies, with Policy No. 6 amended to use the exact language from CKH Act, and with direction to staff to bring back a clarification on "agricultural uses" at the May 30, 2007 meeting. Commissioner Constant is amenable to the amended motion.

Commissioner Wilson indicates support for the motion if the clarification to Policy No. 6 would come back as an amendment because Policy No. 10 already defines "agricultural uses" and staff would define something that is already in the policies. Commissioner Howe proposes to amend the motion to state that the clarification would

come back at the May 2007 meeting as an amendment and that the CEQA action for this be included in the motion. Commissioner Gage accepts the amendment to the motion and Commissioner Constant is amenable. Commissioner Howe expresses appreciation to Commissioners Gage and Wilson for their work on the Subcommittee, to other members of the Commission, and to Ms. Palacherla, stating that the Commission and staff worked out these excellent agricultural mitigation policies.

It is unanimously ordered on a vote of 5-0 that the agricultural mitigation policies be adopted, including the word-for-word CKH Act prime agricultural land definition, that the CEQA action be adopted, and that staff be directed to provide clarification on "agricultural uses" at the May 30, 2007.

Chairperson Alvarado states that this is a major milestone for LAFCO and recalls the discussion at the CALAFCO Conference in Monterey on the need to preserve what little agricultural land is left in the County. She notes that agriculture was a thriving industry in the Santa Clara decades ago, however, most agricultural lands have been lost to rapid urbanization for a variety of reasons. She expresses concern on how the Coyote Valley could be lost to urbanization. Chairperson Alvarado notes that while cities have to flourish, there is also a need to protect the finite land resources to ensure food security and quality of life to their residents, and provide habitat for endangered species. She adds that the Commission has the obligation to preserve agricultural lands for future generations. The policies adopted demonstrate the Commission's interest to work with property owners, homebuilders and other stakeholders to protect the limited agricultural lands and open space. Finally, Chairperson Alvarado expresses appreciation to Commissioners Gage and Wilson, other members of the Commission, staff and all the stakeholders.

**5. MORGAN HILL URBAN SERVICE AREA AMENDMENT 2006 (CONTINUED FROM FEBRUARY 14, 2007)**

This being the time and place set to consider Morgan Hill's application for urban service area (USA) expansion, Chairperson Alvarado declares the public hearing open and requests the staff report.

Ms. Palacherla reports that the City of Morgan Hill is requesting an expansion of its USA boundary to include an 18-acre parcel, currently zoned as agricultural medium-scale,



for eventual annexation and rezoning to residential estates or low-density residential for building 15 new homes. The parcel is located on the fringe of the City at the intersection of Santa Teresa Boulevard and Watsonville Road, adjacent to the City limits and USA on one side and unincorporated lands on three sides. The lands to the east of the subject property within the City are a residential subdivision, while lands to the west and southwest are rural residential, and to the south are hillsides. Ms. Palacherla continues her report by stating that inclusion of the area into the City's USA would contribute to urban sprawl and inefficient boundaries because the property is located on the southwestern fringe of the city surrounded by unincorporated lands on three sides. It is inconsistent with compact and concentric urban growth and would result in service inefficiencies. Further, she indicates that the proposal could have growth inducing impacts because roads, sewer and water services could put development pressures on adjacent rural residential lands. She adds that Morgan Hill's policy prohibits expansion of its USA if there is more than five years worth of undeveloped lands within its boundaries unless it is desirable infill. She reports that the City resolution requesting LAFCO approval considers this project as desirable infill. In terms of consistency with LAFCO policies, this project constitutes conversion of prime agricultural lands because it contains Class I soils. However, using the LESA Model, the City has found that the conversion requires no mitigation because impacts to agricultural land are less than significant. The City has nine years worth of vacant residential lands within the city limits, excluding the three years worth of lands allocated under Measure C. LAFCO policies require an explanation from the City as to why the expansion is necessary if it has more than five years worth of vacant lands. The City's explanation is that it meets its desirable infill policy. Ms. Palacherla recommends that the Commission deny the proposal because the City has more than five years supply of vacant residential lands, and because the project would result in premature conversion of agricultural lands, encourage urban sprawl, create inefficient boundaries, and put development pressures on adjacent rural residential lands.

On the request of Ms. Palacherla, Ms. Noel continues the staff report by discussing the CEQA action. She informs that LAFCO, as the responsible agency, had not been first notified of the City's Initial Study and Mitigated Negative Declaration (MND), and the

LESA was provided only as part of the application packet. Staff found out about the MND when the County's Planning Department provided LAFCO with a copy of its comments. Additionally, the MND adopted in April 2006 finds that the project has no significant impact on agricultural lands even if the LESA analysis itself was not completed until November 2006. Ms. Noel indicates that staff believes that the LESA analysis and determinations should have been completed at the time the City Council adopted the MND in April 2006. Finally, if the Commission decides to approve the USA expansion, she recommends that the MND be adopted, and the finding be made that the MND and Initial Study are complete and comply with CEQA and are adequate discussion of the environmental impacts of the project, and that the Commission has reviewed and considered all the effects of the project as shown in the Initial Study and the Mitigated Negative Declaration.

In response to the inquiry of Commissioner Gage, Ms. Palacherla advises that the City has indicated that adequate utilities, fire and police services can be provided.

Chairperson Alvarado opens the public comment period for this item.

David Bischoff, City of Morgan Hill, requests the Commission to include the area within the City's USA because it is surrounded by fully developed properties on three sides. He defends the use of the LESA Model because there are no mitigation policies in place. He states that there was an oversight on not having notified LAFCO of the MND and informs that the comment period had been extended as a result. Relating to the provision of service to the area, he indicates that the City can adequately provide fire and police services.

In response to an inquiry by Chairperson Alvarado, Mr. Bischoff informs that the first draft of Morgan Hill's agricultural mitigation policies would be available in the summer. In response to another inquiry by Chairperson Alvarado, Mr. Bischoff indicates there would be no mitigation for this project because the LESA analysis finds no need to mitigate. He explains that the LESA analysis is being used as the de facto model in the absence of mitigation policies. Commissioner Wilson questions how the project could be a desirable infill being located at the edge of the city. Mr. Bischoff has no response. In response to the inquiry of Commissioner Howe, Mr. Bischoff explains that the soil analysis

was conducted as a follow-up to MND. In response to a follow-up inquiry by Commissioner Howe, Mr. Bischoff indicates that the City Council did not take a second action on the MND when the LESA analysis was completed in November 2006, because it was assumed that additional environmental evaluation would be made prior to annexation. In response to an inquiry by Commissioner Constant, Ms. Palacherla informs that after staff had received a copy of the County's Planning Department letter, staff provided comments to Morgan Hill on March 26, 2007, which was five days after the deadline. She advises that the Commission is being informed about this because LAFCO should have been notified, being the responsible agency which would eventually decide on the USA amendment. Chairperson Alvarado calls on the other speakers.

Rocke Garcia, Blackrock, LLC, states an infill does not need to be completely surrounded by the city. He adds that the project has no growth inducing impact because the surrounding areas are fully developed. He also acknowledges that LAFCO had not been noticed for the MND and recalls that the action by the City had been delayed.

Chairperson Alvarado explains to Mr. Garcia that the role of LAFCO commissioners is very specific in preserving agricultural land, preventing urban sprawl and promoting orderly growth. In response to an inquiry by the Chairperson, Mr. Garcia expresses that, from the point of view of home builders, it is important for the cities to protect agricultural lands and to follow concentric growth. That is why home builders look for opportunities to develop lands that are no longer feasible to farm. Mr. Garcia expresses hope that Morgan Hill would promote agricultural preserves and open space within its southeast quadrant.

Michele Beasley, Greenbelt Alliance, enjoins the Commission to support the staff recommendation to deny the application because Morgan Hill has a large supply of vacant lands within its boundaries. Instead of converting agricultural lands, the downtown should be revitalized because orderly growth starts in the center of the cities and moves out. She notes that the annexation of this project is not infill being at the edge of the community. It is sprawl into agricultural and rural residential lands, and hillsides. Finally, she states that this project proves that the LESA model is inadequate.

Brian Schmidt, Committee for Green Foothills, expresses support of the staff recommendation to deny the application. He indicates that the inclusion of the area into Morgan Hill's USA is not necessary at this time because the City has nine years worth of residential lands in addition to three years allotted under Measure C. This proposal would create growth pressures on agricultural lands to the northwest, the hillsides on the southeast, and rural residential lands on the southwest. He notes that the CKH Act should be used because the LESA model finds that the conversion of Class I agricultural land has no significant impact.

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

Commissioner Wilson notes that it is premature to bring this area into the City at this time because it would create a domino effect on conversion of neighboring rural residential lands. She states that this application is not desirable infill given its location.

Commissioner Wilson moves to deny Morgan Hill's request for USA expansion. Chairperson Alvarado seconds the motion.

Commissioner Constant notes that inclusion of this area into Morgan Hill's USA will not result in sprawl if it is already surrounded by residential lands, and instead provides a logical transition between the residential subdivision and rural residential areas. Chairperson Alvarado notes that LAFCO policies discourage conversion of agricultural lands if there is sufficient land available within the city limits. She notes that there will be disorderly growth when small parcels are converted to urban uses. Chairperson Alvarado informs that LAFCO is required by State law to prevent urban sprawl and to mitigate the negative impacts of converting prime agricultural lands. Commissioner Constant notes that it is unfair to require the property owners of this project to mitigate because both Morgan Hill and LAFCO have no mitigation policies in place. Chairperson Alvarado explains that while the LAFCO mitigation policies have just been adopted, the CKH Act and existing LAFCO policies, which have been in effect for many years, require mitigation whenever agricultural lands are converted to other uses. Commissioner Constant expresses agreement with the Chairperson, however, he suggested that each proposal should be analyzed based on their specificity.



In response to an inquiry by Commissioner Howe, Ms. Palacherla advises that there are no other pending requests for USA expansions at this time.

The motion to deny the USA expansion fails on a vote of 2-3, Commissioners Constant, Gage and Howe opposed.

Commissioner Constant moves for the approval of Morgan Hill's USA expansion. Commissioner Gage seconds the motion. At the request of the Chairperson, Commissioners Constant and Gage clarify that the motion includes the finding that MND is complete and in compliance with CEQA.

It is ordered on a vote of 3-2, Chairperson Alvarado and Commissioner Wilson opposed, that Resolution No. 2006-01 be adopted, approving the expansion of the City of Morgan Hill's USA, and finding the MND to be complete and in compliance with CEQA.

In response to the inquiry of Commissioner Howe, Commissioner Constant clarifies that his motion does not require the property owners to mitigate. Commissioner Howe comments that this application should not be required to mitigate under the newly adopted agricultural mitigation policies, however, future applications should come with mitigation that is acceptable to LAFCO.

*Alternate Commissioner Velasco leaves at 3:04 p.m.*

#### **6. PROPOSED LAFCO BUDGET FOR FISCAL YEAR 2008**

On motion of Commissioner Gage, seconded by Commissioner Wilson, it is unanimously ordered that the proposed LAFCO budget for Fiscal Year 2007-08 be adopted, find that the proposed FY 2007-08 budget is expected to be adequate to allow the Commission to fulfill its statutory responsibilities, and that staff be authorized to transmit the draft budget adopted by the Commission, including the estimated agency costs, to each of the cities, the County and the Cities Association, and to provide notice for a public hearing on May 30, 2007 for the adoption of the final budget for Fiscal Year 2008.

**7. PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN**  
**7.1 CONSULTANT TO DEVELOP INCORPORATION POLICIES, CONDUCT WORKSHOPS AND ASSIST LAFCO STAFF WITH INCORPORATION RELATED TASKS**

Chairperson Alvarado requests the staff report. Ms. Palacherla reports that staff received an application for the incorporation of the Town of San Martin. The Registrar of Voters has verified the petition signatures and found that the petition is sufficient. She advises that staff require the assistance of a consultant in order to develop incorporation policies. The Budget Subcommittee had directed staff to use funds in the current year's budget to select and hire a consultant, and to seek ratification of the service agreement at this meeting. Ms. Palacherla reports that staff has selected and has started working with Roseanne Chamberlain. Ms. Chamberlain has over 22 years of experience in LAFCO, having served as executive officer of El Dorado LAFCO where she managed the proposed incorporation of El Dorado Hills. She is currently the Executive Officer of Amador LAFCO. Staff is requesting the Commission to ratify the services agreement between LAFCO and Roseanne Chamberlain in the amount not to exceed \$20,000 for preparing the incorporation policies and procedures, conducting incorporation workshops and providing assistance and advice to LAFCO staff for a period from May 21, 2007 to December 30, 2007. Staff is requesting for delegation of authority to execute any necessary amendments, including the increase of maximum compensation in an amount not to exceed \$30,000, subject to LAFCO Counsel's review and approval.

On motion of Commissioner Gage, seconded by Commission Howe, it is unanimously ordered on a vote of 5-0 that the service agreement between LAFCO and Ms. Chamberlain be ratified in an amount not to exceed \$20,000, and delegation of authority to the LAFCO Executive Officer be approved to execute any necessary amendments to the agreement, including increasing the maximum compensation in the amount not to exceed \$30,000, subject to LAFCO Counsel's review and approval.

## 7.2 OVERVIEW OF PROPOSED INCORPORATION OF THE TOWN OF SAN MARTIN

Chairperson Alvarado requests the staff report. Ms. Noel provides an overview of the incorporation process and timeline. She advises that staff will provide information on the process to the Commission, the proponents, residents in the community, affected agencies and other stakeholders. Staff plans to hold two informational workshops, one in the San Martin community and the other at the next LAFCO meeting. The Commission must adopt policies and procedures for processing the incorporation, as well as establish the fees and cost estimates. The cost of processing the incorporation, including staff time and consultant fees, will be borne by the proponents, except for development of the policies and the two informational workshops which will be funded by LAFCO.

Directing attention to Attachment C of the staff report, Ms. Noel proposes that the Commission establish a timeline for the process, taking into account the need to hold the election by November 2008 and for the incorporation to become effective by June 30, 2009. She then outlines milestone dates, indicating that LAFCO hearings need to take place between April and June 2008, and for the Board of Supervisors to call for the election no later than the first week of August 2008. She indicates that special Commission meetings may need to be scheduled to meet these deadlines. Ms. Noel advises that RFPs need to be issued for the fiscal and CEQA analyses. Other tasks include developing the incorporation boundaries, service plans, municipal service review, and SOI boundaries. Staff would then review and augment all consultant studies, reports and materials. The Executive Officer's report will synthesize and analyze the output of various consultants and provide the required findings, determinations, terms and conditions, and recommendations. If the Commission approves the incorporation, the Board of Supervisors would be requested to call for an election. A successful election requires majority of votes from registered voters within the incorporation boundaries.

Commissioner Gage informs that the June 30, 2009 deadline is a significant date because the Vehicle License Fees bill will expire at that time. If this deadline is not met, San Martin would not be incorporated.

Ms. Noel continues her report by stating that a \$9,968 deposit was received from the proponents. Based on information from a CALAFCO workshop, the incorporation costs would include the \$3,900 to verify the petition, \$90,000 for the comprehensive fiscal analysis, \$100,000 for LAFCO staff costs, \$25,000 for the initial study and negative declaration, \$100,000 to \$150,000 for the EIR, and \$3,000 for miscellaneous expenses, such as mapping and notices. She advises that staff is working with the proponents to establish a payment scheme with the understanding that work on the project would be suspended if the payment is delayed. Staff is working on indemnification language to hold the Commission and staff harmless in the event of litigation.

In response to the inquiry by Commissioner Howe, Ms. Noel explains that there will be one informational workshop in San Martin on May 17, 2007 and one for the Commission before the May 30, 2007 meeting. In response to the inquiry of Commissioner Wilson, Ms. Palacherla advises that staff will manage the consultant for the comprehensive fiscal analysis but will not be responsible for the cost. Commissioner Gage notes that this arrangement is very common.

On motion of Commissioner Gage, seconded by Commissioner Constant, it is unanimously ordered on a vote of 5-0 that the report be accepted.

### **7.3 RFP FOR CONSULTANT TO PREPARE THE COMPREHENSIVE FISCAL ANALYSIS FOR THE PROPOSED INCORPORATION**

Chairperson Alvarado requests the staff report. Ms. Palacherla reports the comprehensive fiscal analysis (CFA), which has to conform to the requirements of the CKH Act and the incorporation guidelines issued by the State Office of Planning and Research, is critical in evaluating the incorporation proposal. She requests the Commission to authorize the issuance of the RFP, inform staff if the Commission desires to designate a representative to the consultant selection committee, and authorize staff to enter into contract with the most qualified consultant in the amount not to exceed \$100,000 and to execute the necessary amendments, subject to LAFCO Counsel's review and approval.

Commissioner Howe advises staff to ensure that the Commission will not be made liable for the consultant fees when the proponents fail to pay.

On motion of Commissioner Howe, seconded by Commissioner Wilson, it is unanimously ordered on a vote of 5-0 that staff be authorized to issue an RFP for the preparation of CFA, and that delegation of authority to the LAFCO Executive Officer be approved to enter into an agreement with the most qualified consultant in an amount not to exceed \$100,000 and to execute any necessary amendments, subject to LAFCO Counsel's review and approval.

**8. CONSULTANT TO PREPARE SPHERE OF INFLUENCE  
RECOMMENDATIONS FOR SPECIAL DISTRICTS INCLUDED IN LAFCO'S  
COUNTYWIDE WATER SERVICE REVIEW**

Chairperson Alvarado requests the staff report. Ms. Palacherla advises that the CKH Act requires LAFCO to complete the service reviews and SOI updates by January 1, 2008. The assistance of a consultant is needed due to high staff workload this year. Staff recommends that unused funds allocated for consultants within the current budget be used for this purpose.

On motion of Chairperson Alvarado, seconded by Commissioner Howe, it is unanimously ordered on a vote of 5-0 that delegation of authority to the LAFCO Executive Officer be approved to execute contract with Dudek and Associates in the amount not to exceed \$10,280 to prepare the SOI updates for special districts included in the Countywide Water Service Review.

**9. APPOINTMENT OF PUBLIC MEMBER AND ALTERNATE PUBLIC MEMBER**

On motion of Commissioner Gage, seconded by Commissioner Constant, it is unanimously ordered on a vote of 4-0-1, Commissioner Wilson abstaining, that Commissioner Wilson be reappointed as Public Member and Commissioner Terry Trumbull be reappointed as Alternate Public Member to new four-year terms, for the period from May 2007 to May 2011.

**10. UPDATE ON NORTH COUNTY AND WEST VALLEY AREA SERVICE  
REVIEW AND SPHERE OF INFLUENCE STUDY (HELD FROM FEBRUARY 14,  
2007)**

Chairperson Alvarado requests the staff report. Ms. Noel reports that the North and West Valley Area Service Review Technical Advisory Committee (TAC) met in April 2007

to assess the status of the project, review data collected, and consider draft determinations for cities and special districts. Agency-specific determinations will be made available in May 2007 for technical review by the agencies. Ms. Noel adds that staff met on March 22, 2007 with representatives from Campbell, Cupertino, Los Altos, Los Altos Hills, Palo Alto, Saratoga and Sunnyvale to discuss potential SOI issues, such as those on Cambrian No. 36 and Altamont Circle. Cambrian No. 36 is an area within San Jose's SOI but residents desire to be annexed to Campbell. Altamont Circle is within Palo Alto's SOI but requires sewer service from Los Altos Hills. Staff and consultant will propose SOI boundaries for each of the cities and special districts. In terms of timeline, draft SOI determinations will be available for public review in late June 2007, a LAFCO public hearing on the draft service review report and SOI determinations will be held on August 1, 2007, and a public hearing on the final adoption of the service review document will be on October 3, 2007. Ms. Noel informs that the Commission will be provided with periodic status reports on this project.

On motion of Wilson, seconded by Commissioner Howe, it is unanimously ordered on a vote of 5-0 that the report be accepted.

## **11. EXECUTIVE OFFICER'S REPORT**

### **11.1 REVISED 2007 FILING DEADLINES**

Chairperson Alvarado requests the staff report. Ms. Palacherla recommends the approval of the corrected 2007 filing deadline schedule. Commissioner Howe proposes to move the meeting time back to 1:15 p.m.; however, Commissioner Gage suggests that meetings start at 1:00 p.m.

On motion of Commissioner Howe, seconded by Commissioner Gage, it is unanimously ordered on a vote of 5-0 that the revised filing deadlines be approved and the Commission meeting time be changed to 1:00 p.m.

### **11.2 CALAFCO ANNUAL CONFERENCE ON AUGUST 28-31, 2007 IN SACRAMENTO, CALIFORNIA (HELD FROM FEBRUARY 14, 2007)**

Ms. Palacherla advises that the annual conference of the California Association of LAFCOs (CALAFCO) will be held on August 28-31, 2007 in Sacramento. Staff will provide additional information as it becomes available. Commissioners Howe and Gage express interest in attending the conference.



On motion of Commissioner Howe, seconded by Commissioner Gage, it is unanimously ordered that the report be accepted.

**11.3 REPORT ON CALAFCO WORKSHOP ON GOVERNMENT CODE §56133: SERVICE EXTENSIONS OUTSIDE JURISDICTIONAL BOUNDARIES (HELD FROM FEBRUARY 14, 2007)**

Ms. Palacherla reports that CALAFCO held a workshop on Government Code §56133 which requires LAFCO approval before cities and special districts can extend services outside their jurisdictional boundaries. The workshop discussed how each LAFCO implements this law based on local context. She adds that staff attended the workshop to share information with other LAFCOs and to present a case study on how Santa Clara LAFCO implements §56133.

**11.4 UPDATE ON CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) AND PRIVATE WATER COMPANIES (HELD FROM FEBRUARY 14, 2007)**

Ms. Palacherla reports that CALAFCO officials, including Commissioner Wilson as CALAFCO Board Member, and representatives from the different LAFCOs attended a CPUC meeting in San Francisco to discuss how private water companies, which are not under LAFCO regulation, would coordinate with LAFCO. It was agreed that the LAFCOs would include the private water companies in the service reviews, and CPUC would adopt a resolution requiring private water companies to provide information to LAFCOs.

**12. COMMISSIONERS' REPORTS**

There are no reports by Commissioners.

**13. WRITTEN CORRESPONDENCE**

Ms. Palacherla informs that The Sphere, a CALAFCO publication, has been provided to the Commissioners.

**14. NEWSPAPER ARTICLES**

There are no newspaper articles.

**15. PENDING APPLICATIONS/UPCOMING PROJECTS**

Ms. Palacherla informs that staff has received an application from Cupertino Sanitary District to annex a parcel, and another application from the City of Milpitas to extend water service outside its boundary.

**17. ADJOURN**

On the order of Chairperson Alvarado, there being no objection, the meeting is adjourned at 3:31 p.m.

The next regular LAFCO meeting is scheduled to be held on Wednesday, May 30, 2007 at 1:00 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California.

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Blanca Alvarado, Chairperson  
Local Agency Formation Commission

ATTEST:

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Emmanuel Abello, LAFCO Clerk

**REPORT OF THE EXECUTIVE OFFICER**

**Type of Application:** Annexation to the Cupertino Sanitary District  
**Designation:** CUPERTINO SANITARY DISTRICT - Prospect Road No. 6 (Lands of Ball)  
**Filed By:** District Resolution  
**Support By:** Cupertino Sanitary District, per Resolution No. 1176 Dated 3/21/2007  
**LAFCO Meeting Date:** May 30, 2007 (Agenda Item # 4.1)

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**1. REVIEW OF PROPOSAL:**

**a. Acreage and Location of Proposal:**

The proposal consists of approximately 1.14 acres at 21781 Prospect Road in the City of Saratoga. The affected Assessor Parcel Number is: 366-32-002.

**b. Proposal is:**

Inhabited •  Uninhabited

**c. Are boundaries Definite and Certain?**

Yes  No

**d. Does project conform to Sphere of Influence?**

Yes  No

**e. Does project create island, corridor or strip?**

Yes •  No

**f. Does project conform to road annexation policy?**

Yes  No

**g. Does project conform to lines of assessment?**

Yes  No

If no, explain \_\_\_\_\_

**h. Present land use:** Single Family Residential.

**i. Proposed land use:** No Change

**j. Involves prime agricultural land or Williamson Act land?** No

**2. ENVIRONMENTAL REVIEW:**

The proposal is categorically exempt from the provisions of CEQA pursuant to CEQA Class 19, Section 15319 (b), and Class 3, Section 15303 (a) and (d).

**3. SUGGESTED CONDITIONS OR OTHER COMMENTS:**

See Exhibit C.

**4. PROTESTS:**

None

**5. RECOMMENDATIONS:**

1. Approve annexation to the Cupertino Sanitary District of area depicted in Exhibit A & B and subject to terms and conditions as described in Exhibit C.
2. Waive protest proceedings.
3. Take CEQA action as recommended in the LAFCO Analyst Report (Attachment 1)

By: Neelima Palacherla  
Neelima Palacherla, Executive Officer

Date: 5/24/07

**Hearing Date:** May 30, 2007

**To:** Local Agency Formation Commission of Santa Clara County  
**From:** Dunia Noel, Analyst *DN*  
**Subject:** Cupertino Sanitary District Annexation 2007- Prospect Road No. 6 (Lands of Ball)

**Recommended Environmental Action:**

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

**Reasons for Recommendation:**

The project is exempt under CEQA Class 19, Section 15319 (b); and Class 3, Section 15303 (a) and (d) that states:

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

*Section 15303: Class 3 consists of construction and location of limited numbers of new, small facilities or structures, installation of small new equipment and facilities in small structures... The number of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:*

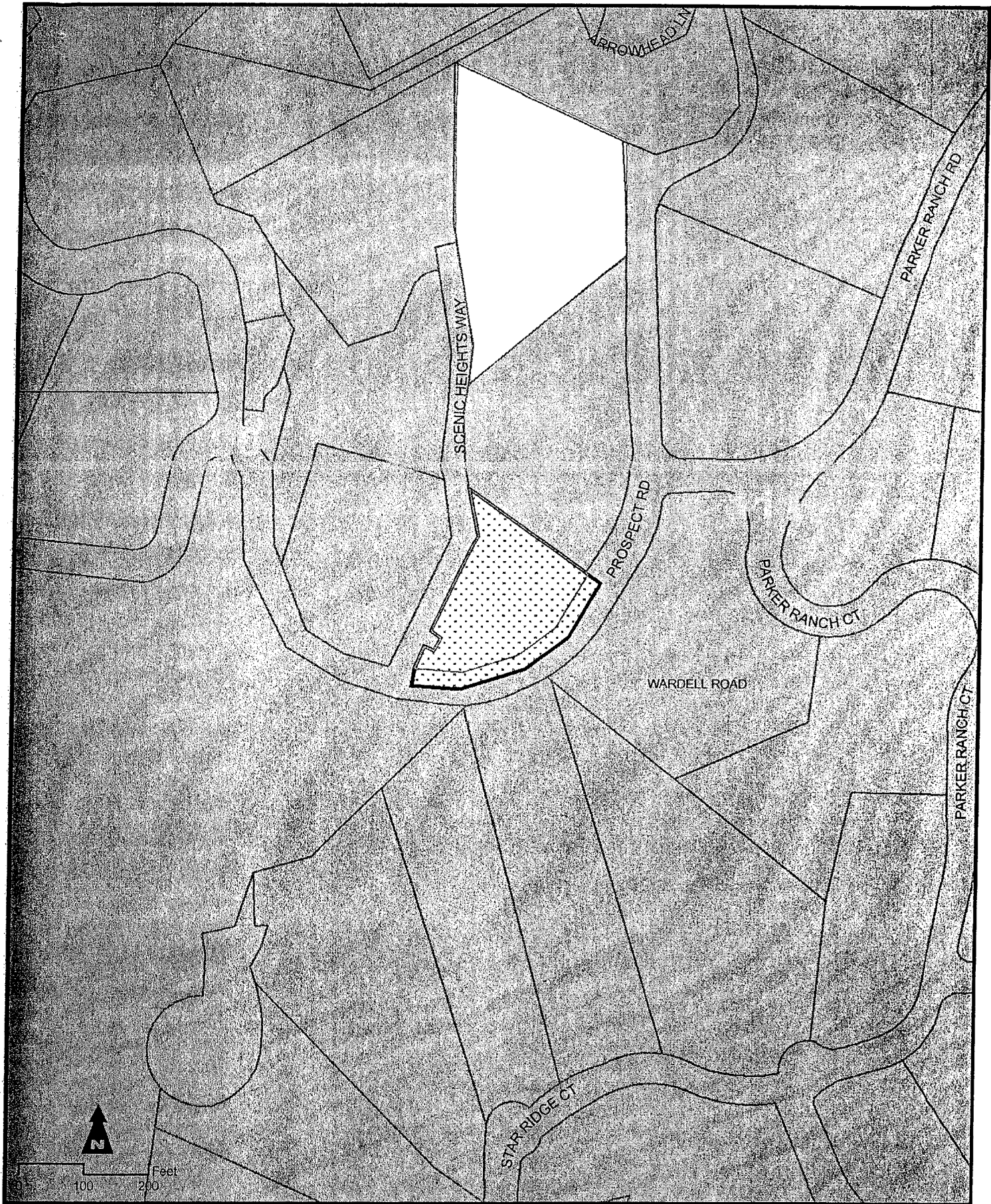
- (a) One single-family residence or a second dwelling unit in a residential zone.*
- (d) Water main, sewage, electrical, gas, and other utility extensions, including street improvements of reasonable length to serve such construction.*

**Background**

The Cupertino Sanitary District proposes to annex 1 parcel that totals approximately 1.14 acres. The property is located at 21781 Prospect Road in the City of Saratoga. The annexation area consists of Assessor Parcel Number 366-32-002.

The annexation to the District is proposed in order to provide sewer service to an existing single-family residence and in order to allow the property owner to abandon their existing septic system. According to the District, sewer service will be provided via installation of one private sanitary sewer street lateral per Cupertino Sanitary District standards. The lateral will connect to the existing sanitary sewer main that is located on Prospect Road. Regarding the annexation into the Cupertino Sanitary District, the parcel is currently

zoned by the City of Saratoga as HR (Hillside Residential) with a 2-acre minimum lot size, based on the slope of the property. The affected parcel is not eligible for further subdivision due to its size. Further development of the parcel would be subject to the City of Saratoga's Zoning Ordinance. The parcel is located inside of the City of Saratoga's Urban Service Area Boundary and the Sphere of Influence Boundary. The parcel is also located within Cupertino Sanitary District's Sphere of Influence Boundary. The proposed annexation to the Cupertino Sanitary District is thus exempt from CEQA because this special district annexation meets the requirements of the Class 19 and Class 3 exemptions.



Proposed Annexation to  
Cupertino Sanitary District  
Prospect Road No. 6



Proposed Annexation



Cupertino Sanitary  
District

**EXHIBIT A  
ANNEXATION TO THE CUPERTINO SANITARY DISTRICT  
PROSPECT ROAD No. 6**

All of that real property situate in the County of Santa Clara, State of California, Unincorporated Area, being a portion of the NE ¼ Sec. 35, T 7 S, R 2 W, M.D.B. & M. and described as follows:

**BEGINNING** at a point in the present boundary line of the Cupertino Sanitary District as established by annexation entitled "Prospect No. 3," annexed by resolution adopted October 1, 1986, at the intersection of the center line of Prospect Road and the southerly prolongation of the westerly line of that certain 1.1 acre parcel described in the grant deed to Nigel Ball and Pamela Ball, his wife, recorded document number 18817398, Santa Clara county records;

Course 1: thence leaving said center line of Prospect Road and proceeding along said present District boundary line and said prolongation N04°41'47"E 38.18 feet more or less; thence the following courses and distances:

Course 2: N22°43'10"E, 26.44 feet  
Course 3: S67°16'50"E, 20.00 feet  
Course 4: N22°43'10"E, 25.00 feet  
Course 5: N67°16'50"W, 20.00 feet  
Course 6: N22°43'10"E, 158.23 feet  
Course 7: N01°23'42"W, 81.88 feet  
Course 8: S52°38'45"E, 265.24 feet more or less to a point in the center line of Prospect Road, said point also being in the present District boundary as established by annexation entitled "Prospect No. 1," annexed by resolution adopted by the County of Santa Clara Board of Supervisors February 27, 1961,

Course 9: thence leaving aforementioned Prospect No. 3 annexation boundary and proceeding along said Prospect No. 1 boundary and the center line of Prospect Road S32°06'57"W, 101.56 feet; thence the following courses and distances:

Course 10: S52°16'34"W, 71.92 feet  
Course 11: S71°54'14"W, 104.12 feet  
Course 12: N83°07'51"W, 83.70 feet to a point in the aforementioned Prospect No. 3 annexation boundary of the Cupertino Sanitary District and the **POINT OF BEGINNING** of this description.

Containing 1.1 acres more or less and being a portion of the County of Santa Clara, State of California, Unincorporated Area.

April 30, 2007

J:\jobs\Ball Annex\BallAnnex.doc



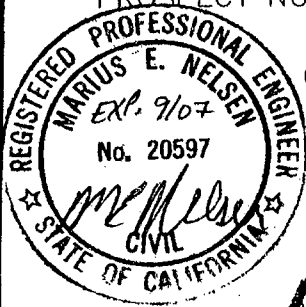


# EXHIBIT B MAP TO ACCOMPANY EXHIBIT A ANNEXATION TO THE CUPERTINO SANITARY DISTRICT PROSPECT ROAD No.6



SCALE: 1"=50'

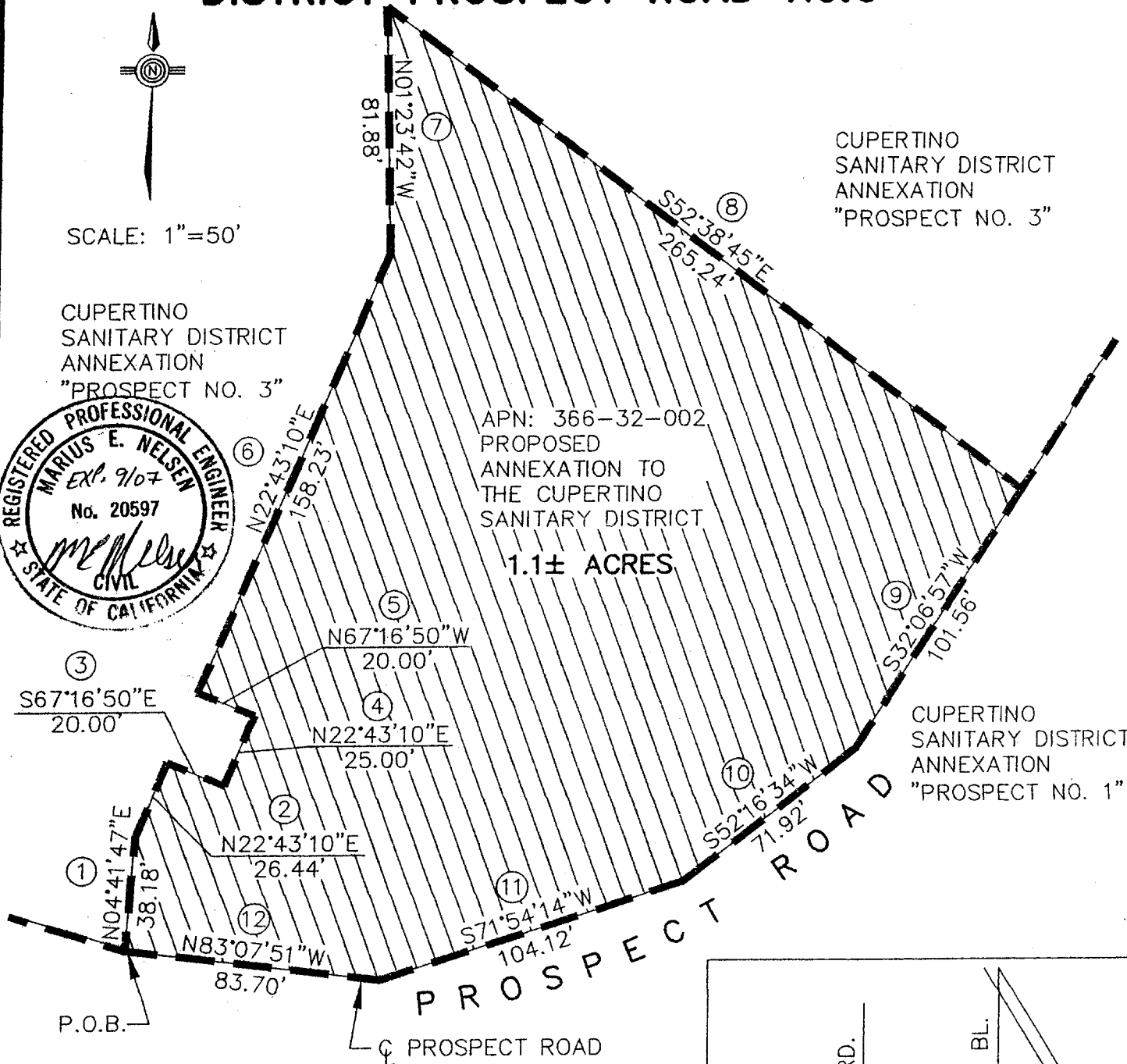
CUPERTINO  
SANITARY DISTRICT  
ANNEXATION  
"PROSPECT NO. 3"



APN: 366-32-002  
PROPOSED  
ANNEXATION TO  
THE CUPERTINO  
SANITARY DISTRICT  
**1.1± ACRES**

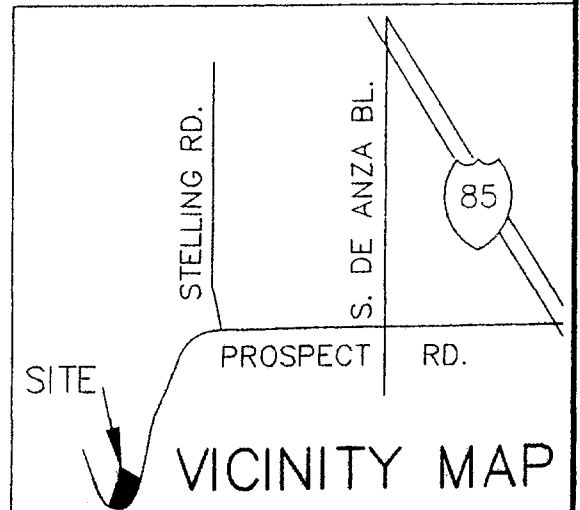
CUPERTINO  
SANITARY DISTRICT  
ANNEXATION  
"PROSPECT NO. 3"

CUPERTINO  
SANITARY DISTRICT  
ANNEXATION  
"PROSPECT NO. 1"



## LEGEND:

- CUPERTINO SANITARY DISTRICT LIMITS
- PROPOSED ANNEXATION LIMITS  
PORTION OF THE NE 1/4 SEC. 35,  
T7S, R2W, MDB&M



APRIL 30, 2007

## EXHIBIT C

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

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

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

LAFCO Meeting Date: May 30, 2007

**TO:** LAFCO

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

**SUBJECT:** Out of agency extension of water service (Milpitas)  
2404 Uridias Ranch Road (APN 092-42-001)  
Agenda Item # 5

**STAFF RECOMMENDATION**

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1. Approve Categorical Exemption for this proposal under Class 3, Section 15303(d).
2. Approve request for extension of water service by the City of Milpitas to a single-family residence located on 2404 Uridias Ranch Road in the unincorporated area.

**PROJECT DESCRIPTION**

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The City of Milpitas is seeking LAFCO approval for extending water service to an existing 1,600 sq.ft. single-family home (APN 092-42-001) located at 2404 Uridias Ranch Road. The property is located in the unincorporated area outside the City of Milpitas's urban service area (USA) and its urban growth boundary (UGB) but within its sphere of influence (SOI). Since the proposed extension of service will be outside of the City's jurisdictional boundaries, LAFCO approval is required. See attached map for property and its relationship to the City and USA boundaries. (Attachment A)

The extension of water service is being sought because of failure of the on-site well. The well produces only 12 gallons per hour which is considered to be an insufficient amount of water supply for a normal household according to the County Department of Environmental Health.

A City of Milpitas water line currently exists at the Uridias Ranch Road cul de sac, approximately 1000 feet from the property. Upon approval, the property owner will be required to install water pipeline and a water pump to pump water uphill from the cul de sac of Uridias Ranch Road to the subject property.

## **ENVIRONMENTAL ASSESSMENT**

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### **Categorical Exemption**

The project is categorically exempt from CEQA under Class 3, Section 15303 (d), "New Construction or Conversion of Small Structures" which states:  
Section 15303(d) Water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve construction and location of limited numbers of new, small facilities or structures.

## **CONSISTENCY WITH LAFCO POLICIES**

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### **Project within Sphere of Influence**

State law and local LAFCO policies allow consideration of an agency's proposals for extending services only within its SOI. This proposal is within the SOI of the City of Milpitas.

### **Annexation as Alternative to Service Extension**

LAFCO policies favor annexation over allowing a City to extend services outside of its boundaries. If immediate annexation is not a feasible alternative, then an extension of services may be approved in anticipation of a future annexation if the agency is able to provide LAFCO with a resolution of intent to annex as well as appropriate assurances.

Annexation of this parcel to the city is not anticipated. The property is not within the City's urban service area or its urban growth boundary (UGB).

In 1998, the voters of Milpitas passed Measure Z establishing an urban growth boundary for the City at the base of the foothills. The City's urban growth boundary is a long term boundary which indicates lands that Milpitas considers as appropriate for urban development and for providing with urban services. Milpitas's UGB is a 20-year boundary and is effective until December 31, 2018. Measure Z also directed the City to apply to LAFCO for an urban service area amendment to remove areas from the USA that are located outside the adopted UGB and make the USA coterminous with the UGB. The City applied to LAFCO for a retraction of its USA and in August 2006, LAFCO approved the retraction and removed approximately 37 parcels (including the subject parcel) from the City's USA. Since inclusion in the USA is a prerequisite to annexation, it is very unlikely that this property will be annexed to the City of Milpitas.

### **Growth Inducing Impacts**

The area is outside the City's USA and UGB, in the unincorporated County. Growth and development in the area will occur according to the County General Plan.

The current County general plan and zoning designation for the subject property and other surrounding parcels in this unincorporated area is HS (Hillsides). The project site is developed with a single family home and no further subdivision of the property is allowed by the current zoning. The application for this proposal does not indicate that this service extension request is in association with any expansion plans for the existing home onsite. However, connecting to the water supply would open up the possibility for future expansion of the home.

To the east of the project site is a low density residential sub division called the Spring Valley Heights located within the city limits of Milpitas but outside its urban growth boundary and urban service area. The City extended water to the 27-lot subdivision off Calaveras Road. County Environmental Health Department states that historically this area has proven to be a poor source of water. It is therefore possible that additional properties in the area could in the future be in a situation to request that the city extend water service to existing homes. The city has established certain criteria that should be fulfilled prior to city extending services outside its boundaries. Because no other parcels have signed under the sewer extension agreement for this application, future applications for extension of water service to other homes in the community would have to meet the city's criteria as well as would be subject to further CEQA analysis and LAFCO approval.

#### — **Health and Safety/Public Benefit Issues**

As mentioned previously, the onsite well is producing only 12 gallons per hour whereas the Santa Clara Well Ordinance requires a minimum water quantity of 2.5 gallons per minute in a 24-hour period for all new construction. The County Department of Environmental Health also notes that because of a high level of salt and total dissolved solids in the water along with the presence of total coliform, the water is considered non-potable and is considered a public health concern for those using the system.

Alternatives to extending the city water service include refurbishing the existing well and drilling a new well. Reports indicate that based on the water quality report and the general history of water supply in the area, refurbishing the existing well is not an option. Due to the hillside location and expected water table estimated at 500 feet, there are limited places for drilling a new well. Other wells in the area (Springs Valley Heights subdivision) have proven unreliable in supplying a sufficient and steady water source.

#### **City Policies for Extending Service Beyond its Limits**

Milpitas's policies allow the provision of urban services outside its urban growth boundary and outside its city limits only if certain criteria are met, including when an urgent health and safety concern exists, when the City supply is the only economically

justifiable solution to the public health concern, if the legal parcel had a vested right to develop prior to November 3, 1998 and the applicant is responsible for the cost of service. The City has determined that all the criteria are met for the proposed extension of service.

### **Ability of the City to Provide Services**

The City of Milpitas has stated that it has the capacity to serve this property and that serving this property outside its boundary will not reduce the level of services it provides to its current customers.

### **Premature Conversion of Agricultural or Open Space Land**

This property is developed with a single-family home on a 5-acre lot. There are no agricultural or open space lands that would be impacted by extending the water system.

### **CONCLUSION**

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Staff recommends approval of the water service extension. The on-site well on the property is not producing the minimum requirement of water supply for the existing single family home on the property. The insufficient water supply and the quality of the water are posing a public health and safety threat to those using the water. It has been determined that refurbishing the existing well or drilling of a new well is not possible because of the general unreliability of well water in the area. Connection to the City's water system is the only feasible alternative for obtaining water service for the existing home on the property. LAFCO policies generally discourage extension of urban services beyond an agency's boundaries unless it is in anticipation of a future annexation. However, in this case, the property is located outside the City's UGB and USA making annexation infeasible.

### **ATTACHMENTS**

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- |               |  |
|---------------|--|
| Attachment A. | Map of subject property and jurisdictional boundaries.   |
| Attachment B  | City of Milpitas Resolution requesting LAFCO approval  |
| Attachment C  | Water Service Agreement between the City of Milpitas and Property Owner at 2404 Uridias Ranch Road |
| Attachment D  | Letter from DEH dated October 11, 2006   |



**PHIL AND RUTH DAHM  
2404 URIDIAS RANCH ROAD  
APN 092-42-001**

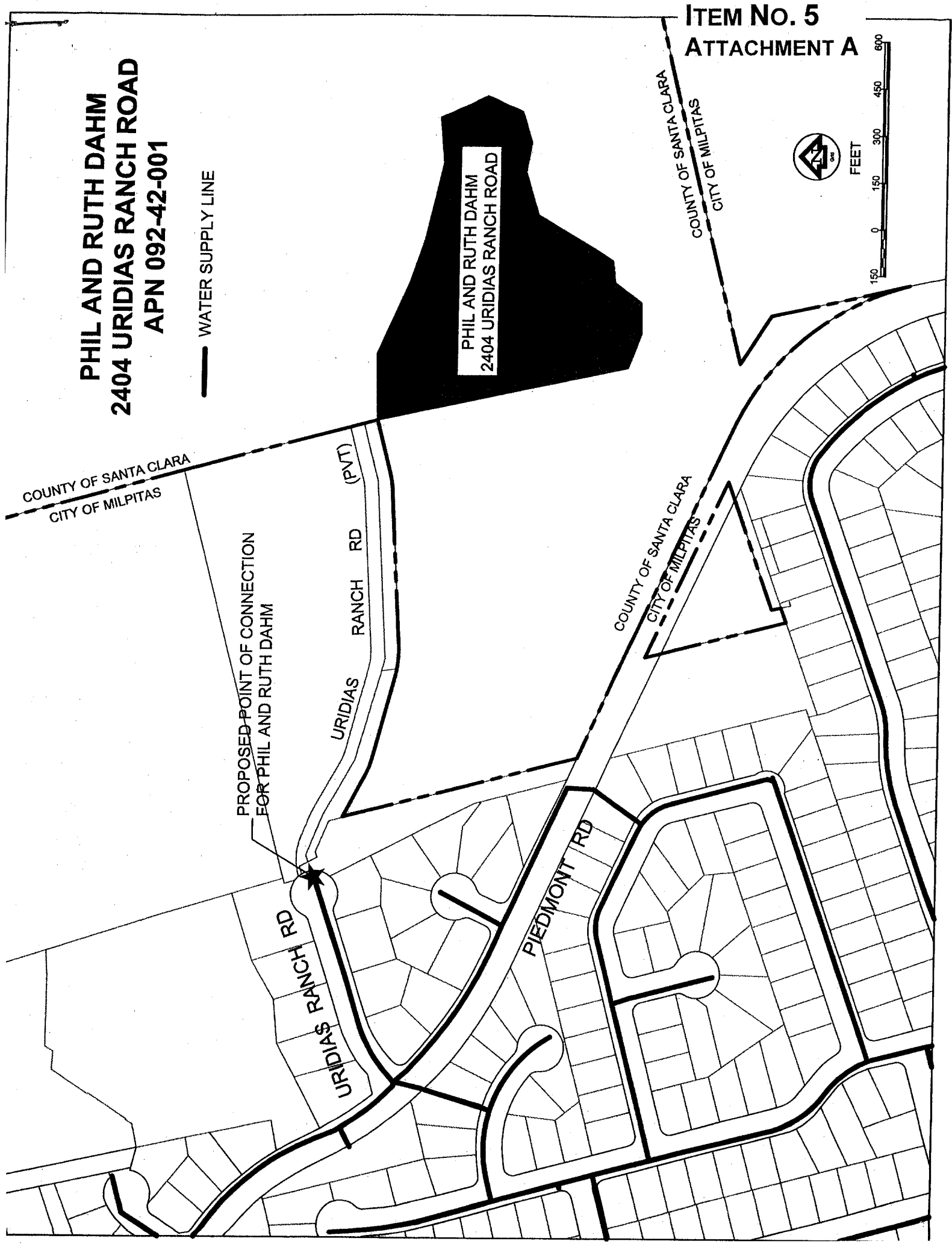
— WATER SUPPLY LINE

**PHIL AND RUTH DAHM  
2404 URIDIAS RANCH ROAD**

**ITEM No. 5  
ATTACHMENT A**



FEET



PROPOSED POINT OF CONNECTION  
FOR PHIL AND RUTH DAHM

COUNTY OF SANTA CLARA  
CITY OF MILPITAS

COUNTY OF SANTA CLARA  
CITY OF MILPITAS

COUNTY OF SANTA CLARA  
CITY OF MILPITAS

URIDIAS RANCH RD (PVT)

URIDIAS RANCH RD

PIEDMONT RD

**RESOLUTION NO. 7660**

**A RESOLUTION OF THE CITY OF MILPITAS FINDING AN URGENT PUBLIC HEALTH AND SAFETY CONCERN EXISTS AT 2404 URIDIAS RANCH ROAD AND REQUESTING APPROVAL OF A WATER SERVICE AGREEMENT WITH PHIL AND RUTH (HAYNES) DAHM BY THE SANTA CLARA COUNTY LOCAL AGENCY FORMATION COMMISSION**

**WHEREAS**, a private well provides drinking water to 2404 Uridias Ranch Road, which is located outside the City of Milpitas and outside the City-established Urban Growth Boundary; and

**WHEREAS**, 2404 Uridias Ranch Road is experiencing insufficient water supply due to diminished well capacities that has critically impaired the system's ability to provide the residents' drinking, sanitary, and fire safety needs; and

**WHEREAS**, 2404 Uridias Ranch Road is experiencing well water of poor quality that does not meet health and safety standards and is insufficient for human consumption; and

**WHEREAS**, Phil and Ruth (Haynes) Dahm have submitted a statement from an independent licensed professional engineer that an insufficient and unreliable water supply exists and connection to City water is the only economically justifiable solution; and

**WHEREAS**, the City of Milpitas operates a water distribution system and can provide water to 2404 Uridias Ranch Road; and

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

**WHEREAS**, Phil and Ruth (Haynes) Dahm have requested connection to the City's water system for which the City needs approval from the Santa Clara County Local Agency Formation Commission (LAFCO) as 2404 Uridias Ranch Road is located in the county.

**WHEREAS**, Resolution No. 6796 allows the City Council to approve water supply to areas outside the Urban Growth Boundary of the City when the following four criteria are met:

- An urgent health or safety concern exists.
- An independent licensed professional engineer has concluded that connection to the City's water supply is the only economically justifiable solution.
- The legal parcel had a vested right to develop prior to November 3, 1998.
- The Applicant has agreed to pay for water supply extension costs.

**WHEREAS**, the four criteria have been satisfied as follows:

- The Santa Clara County Department of Environmental Health has determined that inadequate water supply exists. The well produces an insufficient supply of only 12 gallons per hour, far below the Santa Clara County requirement of 2-1/2 gallons per minute (150 gallons per hour) for all new well construction. Also, based on the well's water quality sampling report, the water indicates a high level of salt and total dissolved solids (TDS) along with the presence of total coliform, thus it is considered nonpotable and a public health concern.

- An independent licensed professional engineer has concluded that connection to the City's water supply is the only economically justifiable solution.
- Santa Clara County issued building permits #91915 and 10183 prior to November 3, 1998.
- Phil and Ruth (Haynes) Dahm have agreed to pay for all costs associated with the water system connection.

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

1. The City Council hereby finds that:
  - (a) The lack of a potable water supply source constitutes an immediate health and safety concern.
  - (b) The property to which service is being requested is currently developed.
  - (c) An agreement with Phil and Ruth (Haynes) Dahm, as shown in Attachment A, can be adopted.
  
2. Staff is hereby authorized to submit the following documents to LAFCO:
  - (a) Council Resolution requesting LAFCO administrative approval.
  - (b) Letter from Santa Clara County Department of Environmental Health stating that a health and safety concern exists.
  - (c) The terms of the agreement with Phil and Ruth (Haynes) Dahm.
  
3. The City Council hereby requests that LAFCO Executive Officer and ChairPerson grant administrative approval in support of this request.

PASSED AND ADOPTED this 20<sup>TH</sup> day of March, 2007, by the following vote:

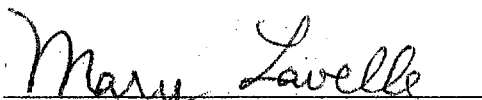
AYES:           (4)     Mayor Esteves, Vice Mayor Livengood, and Councilmembers Giordano and Polanski

NOES:           (0)     None

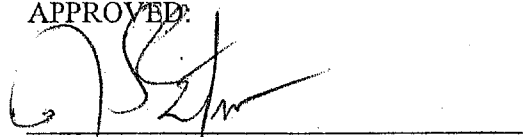
ABSENT:       (1)     Councilmember Gomez

ABSTAIN:       (0)     None


ATTEST:

  
 Mary Lavelle, City Clerk

APPROVED:

  
 Jose S. Esteves, Mayor

APPROVED AS TO FORM:

  
 Steven T. Mattas, City Attorney

**Control No. 2007-011**

Recording requested by:

**City of Milpitas**

When recorded mail to:

**City of Milpitas**

**City Clerk's Office**

**455 E. Calaveras Blvd.**

**Milpitas, CA 95035**

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

THIS AGREEMENT, made and entered into this 20<sup>TH</sup> day of March 2007, by and between the City of Milpitas, a municipal corporation, hereinafter referred to as "CITY," and Phil and Ruth (Haynes) Dahm, located at 2404 Uridias Ranch Road, hereinafter referred to as "PHIL DAHM".

**WHEREAS**, an existing private well provides water supply to PHIL DAHM; and

**WHEREAS**, PHIL DAHM is located outside the Milpitas city limits, and therefore requires Local Agency Formation Commission ("LAFCO") approval in order for the City to provide service outside of its boundaries; and

**WHEREAS**, the Santa Clara County Department of Environmental Health has declared that the well produces insufficient water supply for a home and considers the well water quality nonpotable and a public health concern; and

**WHEREAS**, PHIL DAHM desires a permanent connection to the CITY'S municipal water supply; and

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

**WHEREAS**, PHIL DAHM is willing to design and construct a permanent water connection to the CITY'S municipal water supply in accordance with CITY standards at its own cost and to purchase water from the City.

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

**SECTION 1.** Subject Property. The properties to be served by water supplied to PHIL DAHM by the City shall be solely that property located at 2404 Uridias Ranch Road (APN 092-42-001).



SECTION 2. Conditions for Receipt of Water Service. PHIL DAHM shall comply with all laws, codes, ordinances and policies relating to potable water service within the City of Milpitas ("the Rules"). Upon request by CITY, PHIL DAHM agrees to disconnect water service due to failure to comply with the Rules.

SECTION 3. Construction of Necessary Facilities. PHIL DAHM shall prepare plans and specifications, subject to approval by the City, for installation of a connection to the City's existing potable water system that terminates at the City's water main on Uridias Ranch Road through which water will be provided to 2404 Uridias Ranch Road. PHIL DAHM shall install a potable water lateral within Uridias Ranch Road, connecting into the existing City's water main, and a water meter, all subject to approval by the City, and in accordance with the then-existing CITY standards.

SECTION 4. Costs. PHIL DAHM shall pay the following costs as set forth below:

A. PHIL DAHM shall pay all costs to the City associated with the Water System Connection. These costs shall include the City's costs incurred in project coordination, plan check, inspection, and acceptance associated with the Water System Connection. The amount of such costs shall be based upon standard City of Milpitas labor and material rates paid to the City pursuant to City Private job (PJ) cost reimbursement process. PHIL DAHM provided a deposit in the amount of \$2,000 on September 8, 2006. If said costs exceed the amount of the deposit, as determined by the City, PHIL DAHM agrees to immediately replenish the deposit in the amount requested by the City Engineer. If the costs do not exceed the amount of the deposit, the City shall refund the remaining deposit amount to PHIL DAHM.

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

C. Upon completion of the Water System Connection and prior to the commencement of water service, PHIL DAHM shall make a lump-sum payment equal to the City's then-current water connection fee. PHIL DAHM acknowledges that the City may withhold issuance of building permits if such connection fees are not paid.

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

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

SECTION 5. PHIL DAHM shall be responsible for all acquisition of any necessary right-of-way for the Water System Connection, prepare necessary environmental documents, and

construct the Water System Connection in accordance with all laws, codes, ordinances and policies of CITY in effect at the time of construction.

SECTION 6. PHIL DAHM shall dedicate all newly constructed public potable water supply facilities (to the new water meter) to CITY, in consideration of permission to connect to City's systems.

SECTION 7. It is understood and agreed that CITY will own and maintain all public potable water facilities (from the existing water main in Uridias Ranch Road to the new water meter) installed by PHIL DAHM that have been inspected and approved by CITY after the system is dedicated to the CITY.

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

SECTION 9. PHIL DAHM expressly agrees that all maintenance of the potable water distribution system after the water meter shall be the responsibility of PHIL DAHM. PHIL DAHM shall keep the potable water distribution system under its ownership in good condition and shall promptly repair the same following damage or disrepair in accordance with applicable laws, codes, ordinances, and policies.

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

SECTION 11. PHIL DAHM further agrees that its on-site water system shall only serve 2404 Uridias Ranch Road (APN 092-42-001) and does not extend outside of said property.

SECTION 12. This Agreement shall be binding upon the successors, heirs, or assigns of PHIL DAHM.

SECTION 13. The parties agree that this Agreement for Potable Water Services shall be recorded in the office of the County Recorder of Santa Clara County, California, at PHIL DAHM's cost and expense.

SECTION 14. This Agreement shall become null and void and without any further force or effect if the connection of services described hereunder are not approved by LAFCO on or before December 31, 2007, unless extended by written mutual agreement.

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

Dated: April 4, 2007

PHIL DAHM:

RUTH DAHM:

Phil Dahm Ruth Dahm

Dated: APRIL 2, 2007

CITY:

CITY OF MILPITAS, a municipal corporation

By: Jose S. Esteves  
Jose S. Esteves, Mayor

ATTEST:

Mary Lavelle  
Mary Lavelle, City Clerk

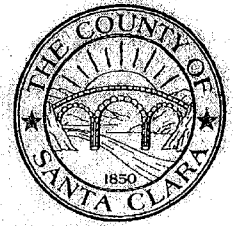
APPROVED AS TO FORM:

Steven T. Mattas  
Steven T. Mattas, City Attorney

**County of Santa Clara**

Department of Environmental Health

1555 Berger Drive, Suite 300  
San Jose, California 95112-2716  
(408) 918-3400 FAX (408) 298-6261  
www.EHinfo.org



October 11, 2006

UTILITY ENGINEERING DEPARTMENT  
c/o MARILYN NICKLE (ASSOCIATE CIVIL ENGINEER)  
455 EAST CALAVERAS RD  
MILPITAS CA 95035

**RE: Phil Dahm residence located at 2404 Uridias Ranch Rd., Milpitas**

Due to insufficient and unreliable water sources the Spring Valley Height Subdivision located off Calaveras Rd., in Milpitas was recently given permission to hook up to city water. Historically this area has proven to be a poor source of water. The Dahm property is located in the nearby vicinity of this subdivision.

Currently the Dahm's are trucking in water to supplement their water supply as their well produces only 12 gallons per hour. This is not considered a sufficient amount of water to supply a normal household. The Santa Clara County Well Ordinance (section B11-119) requires a water quantity minimum of 2.5 gallons per minute in a 24-hr period for all new well construction.

The Department of Environmental Health (DEH) has had an opportunity to review Mr. Dahm's water quality report from the existing well. The water quality report indicates a high level of salt and total dissolved solids (TDS) in the water along with the presence of total coliform. This water is considered nonpotable and is considered a public health concern for anyone using this water system.

Based upon the general history of this area's water supply and Mr. Dahm's water quality and quantity reports, DEH is recommending that Mr. Dahm be allowed to hook up to the nearby public water system (City of Milpitas Water Company).

If there are any questions please feel free to contact me at (408) 918-3411.

Sincerely,

Suzanne Muzzio, R.E.H.S.  
Senior Environmental Health Specialist  
Consumer Protection Division

Cc: Phil Dahm

LAFCO Meeting: May 30, 2007  
TO: LAFCO  
FROM: Neelima Palacherla, Executive Officer  
SUBJECT: **Proposed Final Budget FY 2007-2008**  
Agenda Item # 6

### **STAFF RECOMMENDATION**

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1. Adopt the Final LAFCO Budget for fiscal year 2007-2008. (Attachment A)
2. Find that the Final FY-08 Budget is expected to be adequate to allow the Commission to fulfill its statutory responsibilities.
3. Authorize staff to transmit the final budget adopted by the Commission including the estimated agency costs to each of the cities, the County and the Cities Association.
4. Direct the County Auditor-Controller to apportion LAFCO costs to cities and the County using the most recent edition of the Cities Annual Report published by the Controller, and collect payments pursuant to GC § 56381.

### **BACKGROUND**

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#### **LAFCO Budget and Adoption Process**

The Cortese Knox Hertzberg Local Government Reorganization Act of 2000 (CKH Act) which became effective on January 1, 2001, requires LAFCO to annually adopt a draft budget by May 1 and a final budget by June 15 at noticed public hearings. Both the draft and the final budgets are required to be transmitted to the cities and the County. The CKH Act establishes that at a minimum, the budget must be equal to that of the previous year unless the Commission finds that reduced staffing or program costs will nevertheless allow it to fulfill its statutory responsibilities. Any unspent funds at the end of the year may be rolled into the next fiscal year budget. After the adoption of the final budget, the County Auditor is required to apportion the net operating expenses of the Commission to the agencies represented on LAFCO.



## **CHANGES TO THE DRAFT / PRELIMINARY BUDGET**

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The Commission on April 4, 2007, adopted the preliminary budget for Fiscal Year 2007-2008. The preliminary budget was prepared using the best information available at that time. Since then, staff has been able to make closer estimates for end of year expenses and is proposing revisions based on this information. Also, LAFCO has received higher revenues in the current year than was estimated in the preliminary budget.

Taking all these changes into consideration, **the actual operating expenses are reduced to \$543,283, which represents a small reduction in LAFCO's net operating costs from the draft preliminary budget.** Presented below are the proposed revisions to items:

### **EXPENDITURES**

#### **5258200 INTRA-COUNTY PROFESSIONAL (end of year projection for FY 2007)**

The end of year estimate for this item is being increased by \$10,000 to \$122,400. During the current fiscal year, LAFCO has exceeded the budgeted number of hours for the services of county counsel. LAFCO had budgeted for 300 hours for FY 2007. To date we have used 340 hours.

#### **5250250 PUBLICATIONS AND LEGAL NOTICES (end of year projection for FY 2007)**

The end of year estimate for this item is being increased by \$1,500. The State Department of Fish and Game has increased their charges for filing the Notice of Determination.

### **REVENUES**

#### **4103400 LAFCO APPLICATION FEES (end of year projection for FY 2007) (Increase from \$40,000 to \$58,000)**

LAFCO collected about \$18,000 more in revenues than what was anticipated in the year-end projections, which was estimated at \$40,000. Depending on application activity prior to close of this fiscal year, it is possible that additional revenues may be collected.

#### **4301100 INTEREST (end of year projection for FY 2007) (Increase from \$14,000 to \$16,500)**

It is estimated that LAFCO will receive \$2,500 more in interest than the \$14,000 that was projected for the end of this current year.

**NET LAFCO OPERATING EXPENSES  
(Decrease from \$548,683 to \$543,283)**

As a result of the above listed estimated changes in costs and revenues, the net operating expenses of LAFCO for FY 2007 are reduced from \$548,683 in the Draft Budget to \$543,283 in the Final Budget. This would correspondingly reduce the costs to agencies.

**BUDGET RELATED ISSUE: LAFCO STAFF RECLASSIFICATION STUDY**

In June 2003, LAFCO requested the County to establish unique classifications for the LAFCO Executive Officer and LAFCO Analyst positions pursuant to the MOU between the County and LAFCO. It is expected that the classification study will be completed soon. It is also possible that the study will have budget implications for LAFCO due to potential changes in position salaries. Staff will keep the LAFCO budget subcommittee informed and will bring the issue back to the full commission for any necessary final action with the subcommittee recommendation.

**COST APPORTIONMENT TO CITIES AND COUNTY**

The CKH Act requires LAFCO costs to be split in proportion to the percentage of an agency's representation (excluding the public member) on the Commission. Since the City of San Jose has a permanent membership on Santa Clara LAFCO, the law requires costs to be split between the County, the City of San Jose and the remaining cities. Hence the County pays half the LAFCO cost, the City of San Jose a quarter and the remaining cities the other quarter. The cities' share (other than San Jose's) is apportioned in proportion to each city's total revenue as reported in the most recent edition (2004-2005) of the Cities Annual Report published by the Controller, as a percentage of the combined city revenues within a county.

The CKH Act requires the County Auditor to apportion the costs to the various agencies and to request payment from the cities and the County no later than July 1 of each year for the amount each agency owes based on the net operating expenses of the Commission and the actual administrative costs incurred by the Auditor in apportioning costs and requesting payment.

Provided in the table is the draft apportionment to the agencies based on LAFCO's net operating expenses for FY-08 (\$543,283). Cost to individual cities is detailed in Attachment B.

**Costs to Agencies**

	FY 06-07 Costs	FY 07-08 Costs
County of Santa Clara	\$215,205	\$271,642
City of San Jose	\$107,603	\$135,821
Remaining 14 cities in the County	\$107,603	\$135,821

**ATTACHMENTS**

Attachment A: Final Budget for FY 2007-2008

Attachment B: 2007-2008 LAFCO Cost Apportionments to Cities and the County

FINAL LAFCO BUDGET FISCAL YEAR 2007-2008

ITEM No. 6  
ATTACHMENT A

ITEM #	TITLE	APPROVED FY 06-07 BUDGET	END OF FY 2007 PROJECTIONS	FINAL FY 07-08 BUDGET
<b>EXPENDITURES</b>				
Object 1:	Salary and Benefits	\$307,637	\$307,637	\$331,889
Object 2:	Services and Supplies			
5258200	Intra-County Professional	\$112,400	\$122,000	\$134,200
5255500	Consultant Services	\$100,000	\$60,000	\$100,000
5210100	Food	\$750	\$600	\$750
5220200	Insurance	\$281	\$281	\$447
5250100	Office Expenses	\$2,000	\$1,000	\$2,000
5255650	Data Processing Services	\$15,689	\$5,000	\$13,459
5225500	Commissioners' Fee	\$5,400	\$4,500	\$5,400
5260100	Publications and Legal Notices	\$1,000	\$2,500	\$2,500
5245100	Membership Dues	\$4,000	\$4,000	\$5,500
5250750	Printing and Reproduction	\$1,500	\$1,500	\$1,500
5285800	Business Travel	\$10,500	\$10,500	\$10,500
5285300	Private Automobile Mileage	\$1,200	\$1,200	\$1,500
5285200	Transportation&Travel (County Car Usage)	\$1,500	\$1,500	\$1,500
5281600	Overhead	\$27,531	\$27,531	\$42,492
5275200	Computer Hardware	\$2,000	\$2,000	\$2,000
5250800	Computer Software	\$2,000	\$2,000	\$2,000
5250250	Postage	\$2,000	\$2,000	\$2,000
5252100	Staff Training Programs	\$2,000	\$1,000	\$2,000
5701000	Reserves	\$90,000	\$0	\$100,000
<b>TOTAL EXPENDITURES</b>		<b>\$689,388</b>	<b>\$556,749</b>	<b>\$761,637</b>
<b>REVENUES</b>				
4103400	Application Fees	\$30,000	\$58,000	\$50,000
4301100	Interest: Deposits and Investments	\$5,000	\$16,500	\$7,000
<b>Total Interest / Application Fee Revenue</b>		<b>\$35,000</b>	<b>\$74,500</b>	<b>\$57,000</b>
4600100	Cities (Revenue from other Agencies)	\$215,205	\$215,205	
5440200	County	\$215,205	\$215,205	
<b>Savings/Fund Balance from previous FY</b>		<b>\$223,978</b>	<b>\$213,193</b>	<b>\$161,354</b>
<b>TOTAL REVENUE</b>		<b>\$689,388</b>	<b>\$718,103</b>	
<b>NET LAFCO OPERATING EXPENSES</b>		<b>\$430,410</b>		<b>\$543,283</b>
<b>COSTS TO AGENCIES</b>				
	County	\$215,205		\$271,642
	City of San Jose	\$107,603		\$135,821
	Other Cities	\$107,603		\$135,821

**2007/2008 LAFCO COST APPORTIONMENT**

**Estimated Costs to Agencies Based on the FINAL Budget**

<b>LAFCO Net Operating Expenses for 2007/2008</b>				<b>\$543,283</b>
<b>Jurisdictions</b>	<b>Revenue per 2004/2005 Report</b>	<b>Percentage of Total Revenue</b>	<b>Allocation Percentages</b>	<b>Allocated Costs</b>
County	N/A	N/A	50.0000000%	\$271,641.50
San Jose	N/A	N/A	25.0000000%	\$135,820.75
Campbell	\$33,583,551	2.3221444%	0.5805361%	\$3,153.95
Cupertino	\$44,567,482	3.0816315%	0.7704079%	\$4,185.49
Gilroy	\$87,762,328	6.0683516%	1.5170879%	\$8,242.08
Los Altos	\$29,341,524	2.0288282%	0.5072070%	\$2,755.57
Los Altos Hills	\$9,803,619	0.6778741%	0.1694685%	\$920.69
Los Gatos	\$29,227,240	2.0209260%	0.5052315%	\$2,744.84
Milpitas	\$79,213,756	5.4772581%	1.3693145%	\$7,439.25
Monte Sereno	\$1,926,533	0.1332107%	0.0333027%	\$180.93
Morgan Hill	\$62,734,560	4.3377994%	1.0844498%	\$5,891.63
Mountain View	\$149,284,097	10.3222922%	2.5805731%	\$14,019.81
Palo Alto	\$304,096,000	21.0268062%	5.2567015%	\$28,558.77
Santa Clara	\$384,386,866	26.5785414%	6.6446354%	\$36,099.17
Saratoga	\$15,767,551	1.0902519%	0.2725630%	\$1,480.79
Sunnyvale	\$214,534,993	14.8340844%	3.7085211%	\$20,147.76
<b>Total</b>	<b>\$1,446,230,100</b>	<b>100.0000000%</b>	<b>100.0000000%</b>	<b>\$543,282.98</b>
<b>Total Cities</b>				<b>\$135,822.73</b>

\* The 2004-2005 Report is the most current available to date.



LAFCO Meeting Date: May 30, 2007

**TO:** LAFCO

**FROM:** Neelima Palacherla, Executive Officer

**SUBJECT:** LAFCO's Incorporation Policies  
Agenda Item # 7

**STAFF RECOMMENDATION**

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1. Adopt the Incorporation Policies to be effective immediately. See Attachment A for the Policies.
2. Adopt the Filing Requirements for Incorporation Proposals. See Attachment B for Filing Requirements.

**BACKGROUND**

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In 2002, the State Office of Planning and Research (OPR) published the "Incorporation Guidelines" which provides detailed information on the incorporation process / requirements. This document is available on the OPR web site at [www.opr.ca.gov](http://www.opr.ca.gov). The Incorporation Guidelines are advisory. In addition to using these guidelines, LAFCO will adopt new written policies and procedures specific to processing incorporations in Santa Clara County .

LAFCO consultant, Roseanne Chamberlain, working with LAFCO staff has developed the proposed incorporation policies. The purpose of these policies is to establish ground rules and clarity for the incorporation process. The policies address topics related to fees, timing and time limits for processing an incorporation, boundaries and services of an incorporation, as well as the CEQA process, financial assumptions, CFA requirements and revenue neutrality process.

In addition to the Incorporation Policies, staff has also developed filing requirements for incorporation proposals listing submittal requirements for a complete incorporation application.

Staff and consultant have met with the proponents to discuss the proposed policies. Copies of the policies were provided at the Incorporation Workshop on May 17<sup>th</sup> in San Martin. The proposed policies are posted on the LAFCO web site.

DRAFT May 16, 2007

## **INCORPORATION POLICIES**

These policies augment the Governor's Office of Planning and Research (OPR) "Guide to the LAFCO Process for Incorporations". Where these local policies differ from the OPR Guidelines the local policies shall apply. These policies are not intended to preempt state law. Should these policies conflict with the provisions of law, the provisions of the CKH Act and related statutes shall prevail. Unless otherwise specified herein, proposals for incorporation are subject to all policies and requirements that apply to proposals and applications submitted to Santa Clara LAFCO.

### **1. CERTIFICATE OF FILING AND TIME LIMITATIONS**

- a. In order to deem the incorporation application filed, issue the Certificate of Filing and set a hearing date for the proposal, all application requirements must be completed (§56651). The Certificate of Filing will not be issued by the Executive Officer until all of the filing requirements have been met including the comprehensive fiscal analysis and information sufficient to facilitate an environmental determination pursuant to CEQA.
- b. To ensure that the petition signatures remain sufficient and that the proposal remains current, the application requirements must be completed within 24 months following the date of the Certificate of Sufficiency or the date of adoption of the resolution making the application.
- c. If the application remains incomplete after 22 months, LAFCO staff will notify the proponents at least 60 days before the 24-month deadline. The Commission may allow an extension of the 24-month time period, on a case by case basis.
- d. LAFCO staff will use its best efforts to ensure timely completion of each procedural requirement in the incorporation process, including, but not limited to, preparing requests for financial information as early as possible following the close of the fiscal year; giving appropriate notice; initiating agency consultations; and convening meetings related to revenue transfers.

### **2. INCORPORATION PROCESSING FEES**

- a. The actual costs for processing the incorporation application are the proponent's responsibility. Application costs include consultant costs for preparing the comprehensive fiscal analysis and the environmental review documents, LAFCO staff time, legal counsel costs and other related expenses incurred by LAFCO in the incorporation proceedings.
- b. Incorporation proposals are charged on an actual cost basis with a deposit required when the proposal is initiated. The cost of the proceedings will be

much higher than the initial deposit. The deposit allows staff to open a file and initiate the determination of petition sufficiency and begin meetings with the proponents to develop a time frame and cost estimates.

- c. LAFCO staff will provide the proponents an initial estimate of the costs of the incorporation proceedings. The payment of the fees will be linked to the processing of the incorporation. LAFCO staff will provide the proponents with monthly invoices of LAFCO staff/ legal counsel costs and related expenses to date. Payments must be made by proponents within 30 days of the date of the invoice. If payment is not received within 30 days of the date of the invoice, work on the incorporation will be suspended until payment is received.
- d. Consultants will be hired for the preparation of the comprehensive fiscal analysis and CEQA analysis / documents. Each consultant's total cost will be divided into costs for each sub task. Prior to commencement of each sub task, the proponents must make a deposit in the amount of the estimated cost for that task. LAFCO will not authorize the consultant to commence work on the task until the funds are received. At the end of each task a final accounting will be done. Any amounts due must be paid within 30 days. Any refunds will be applied to the subsequent task or refunded. The actual amounts of the deposits will be determined after the consultant contracts are negotiated.
- e. Proponents must sign an agreement reflecting their responsibilities for proposal costs.

### **3. INDEMNIFICATION OF LAFCO**

- a. As part of the application, proponents shall sign an agreement to defend, indemnify, hold harmless and release LAFCO, its officers, employees, attorneys, or agents from any claim, action or proceeding brought against any of them, the purpose of which is to attack, set aside, void, or annul, in whole or in part, LAFCO's action on the proposed incorporation or on the environmental documents submitted to or prepared by LAFCO in connection with the proposed incorporation. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney fees, and expert witness fees that may be asserted by any person or entity, including the proponents, arising out of or in connection with the application. In the event that such indemnification becomes necessary, LAFCO expressly reserves the right to appoint its own counsel and provide its own defense and such actions shall not limit proponents' obligations to indemnify and reimburse reasonable defense costs. LAFCO shall notify the

proponents promptly of any claim, action or proceeding and cooperate fully in the defense. The proponents shall not be obligated, however, to indemnify LAFCO from a claim if it is determined by a court of competent jurisdiction that such claim was caused by the sole negligence or willful misconduct of LAFCO.

**4. INCORPORATION BOUNDARIES**

- a. The Commission will review proposal boundaries, as submitted by proponents. Alternatives to the proposal must also be considered by LAFCO. The Executive Officer will convene a meeting to identify logical boundary alternatives for the new city at the earliest date possible. The meeting will include the proponents.
- b. The Commission may modify proposed boundaries and order the inclusion or deletion of territory to accomplish its goal of creating orderly boundaries.
- c. A proposed incorporation must satisfy a demonstrated need for services, and promote the health, safety, and welfare of the community.
- d. A proposed incorporation or formation must not conflict with the normal and logical expansion of adjacent governmental agencies.
- e. An area proposed for incorporation must be compact and contiguous, and possess a community identity.
- f. The proposal boundaries and alternatives shall not create islands or areas that would be difficult to serve.
- g. Areas included within the proposed incorporation boundaries should consist of existing developed areas and lands, which are planned for development.
- h. Inclusion of agricultural and open space lands within the boundaries of a proposed city is discouraged.
- i. Incorporation boundaries should be drawn so that community based special districts are wholly included within or excluded from the incorporation area, unless the Commission determines that there is either an overriding benefit to dividing the district or that there is no negative impact from dividing the district.

**5. SERVICES TO INCORPORATION AREA**

- a. Applicants must demonstrate to LAFCO that the proposed city will have the ability to provide adequate facilities and services in the incorporation area, at no less than the level of services provided in the area prior to incorporation.

- b. New cities should assume jurisdiction over as many services in the incorporation area as are feasible.

**6. SPECIAL DISTRICTS AFFECTED BY INCORPORATION PROPOSAL**

- a. District territory included in an incorporation area should be detached from the district or the district dissolved unless LAFCO determines that there is an overriding reason to retain the district.
- b. Detachment of territory from a region-wide special district which provides service to multiple communities outside the incorporation area is discouraged, unless the Commission determines that there is an overriding reason for the detachment.

**7. TIMING AND INITIATION OF NEW CITY'S SPHERE OF INFLUENCE**

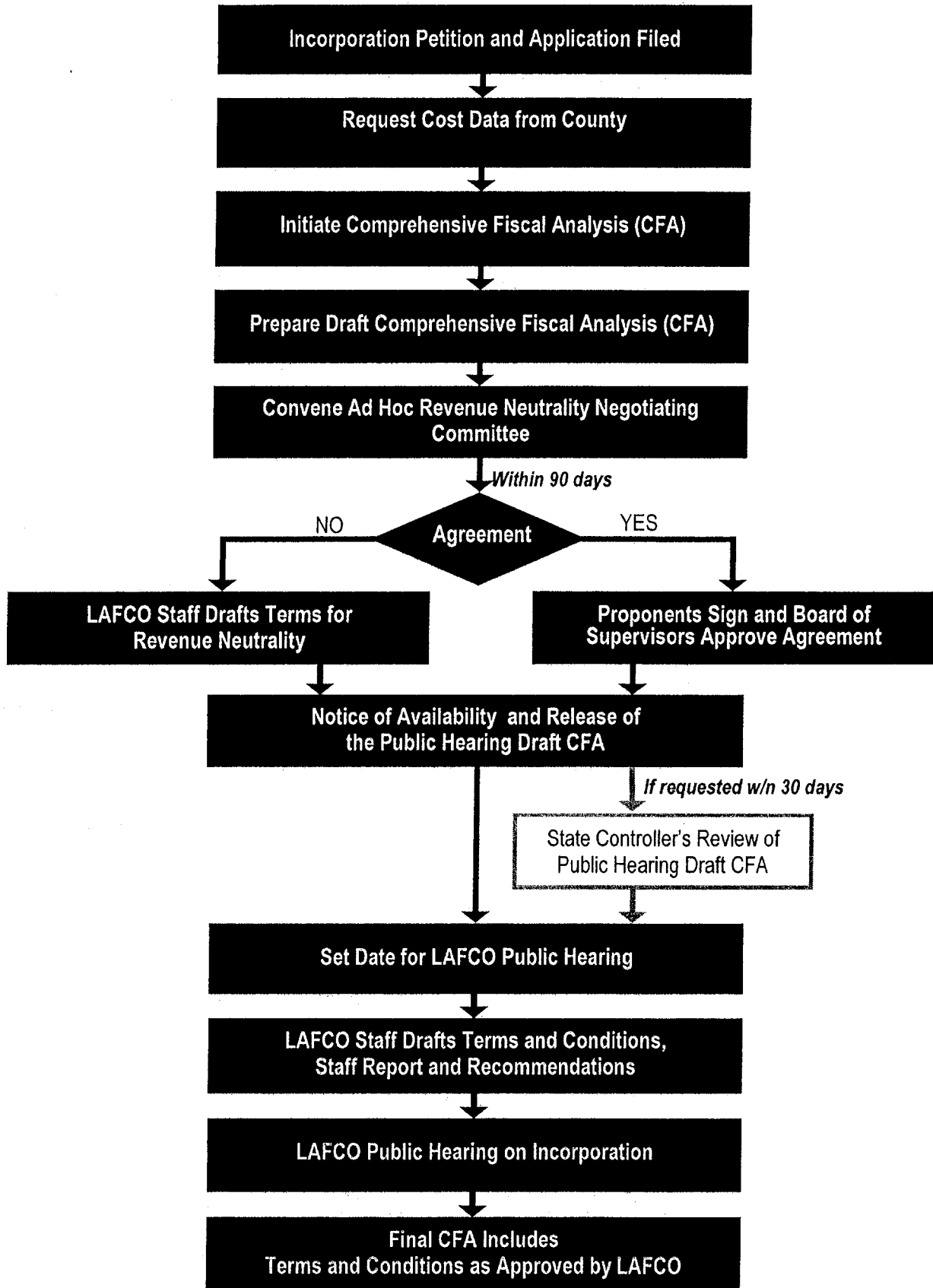
- a. The Commission may determine the sphere of influence for the new city at the time the incorporation is approved or no later than one year from the effective date of incorporation. The new city may initiate a Sphere of Influence application. In the absence of an application within the time frame necessary for sphere adoption, the Commission will adopt an initial Sphere of Influence boundary for the city which will be coterminous with the city's boundaries.

**8. ENVIRONMENTAL REVIEW OF INCORPORATION PROPOSALS - CEQA**

- a. LAFCO is the Lead Agency for incorporation proposals.
- b. The Executive Officer is the Environmental Coordinator for LAFCO, and is responsible for the environmental review process.
- c. The Environmental Coordinator will prepare the Project Description.
- d. The Project Description will include the proposal as submitted. The Project Description may identify alternatives being considered for the project and a sphere of influence boundary for the proposed city.
- e. Under the direction and management of the Environmental Coordinator, the environmental review will be initiated as early as feasible and will be completed as cost-effectively as possible.

**9. COMPREHENSIVE FISCAL ANALYSIS AND REVENUE NEUTRALITY NEGOTIATION PROCESS**

The general process for preparing the comprehensive fiscal analysis and negotiating the revenue neutrality is outlined in the flow chart on the following page.





**9.1 Initiate Comprehensive Fiscal Analysis**

- a. LAFCO will retain a financial consultant qualified to prepare the Comprehensive Fiscal Analysis (CFA) and related documents necessary for the project, consistent with LAFCO's usual and customary contract procedures.
- b. The fiscal analysis will evaluate the proposal as submitted as well as the identified alternatives.
- c. A detailed timeline for the CFA process will be developed by LAFCO in consultation with the consultants hired to prepare the CFA.
- d. The Draft CFA will be prepared as early as possible to support revenue neutrality discussions.

**9.2 Ad Hoc Revenue Neutrality Negotiating Committee**

- a. The LAFCO Executive Officer will convene an ad hoc revenue neutrality negotiating committee to develop a revenue neutrality agreement as soon as possible after the draft CFA information becomes available.
- b. Members of the ad hoc revenue neutrality negotiating committee shall include representatives of the County and representatives of the incorporation proponents and other affected agencies, as needed.
- c. At the commencement of the negotiations or earlier, each party will provide a list of its representatives and designate one principal representative. Additional members may be added after negotiations commence with the agreement of both parties.
- d. LAFCO staff will attend meetings of this committee in order to facilitate discussion, provide technical assistance and ensure compliance with LAFCO policies. LAFCO staff has the discretion to request attendance by its consultants.

**9.3 Timing and Adoption of Revenue Neutrality Agreement**

- a. The Draft CFA is a prerequisite to revenue neutrality negotiations.
- b. The ad hoc revenue neutrality negotiating committee will have up to 90 days to negotiate a revenue neutrality agreement. The 90 days commences from the first meeting of the ad hoc committee following the release of the Draft CFA.
- c. Within the 90 day period, if the parties reach agreement, they shall provide a written revenue neutrality agreement to the Executive Officer; the agreement will be signed by proponents. County representatives to the

committee will place the agreement on the County Board of Supervisors agenda within the 90 day period.

- d. The terms of the Revenue Neutrality Agreement will be included in the budget projections and feasibility analysis in the Public Hearing Draft CFA.
- e. If agreement does not occur within the 90-day negotiating period, LAFCO staff will draft proposed terms and conditions for use in the Public Hearing Draft Comprehensive Fiscal Analysis and for recommendation to the Commission at its public hearing.
- f. The revenue neutrality committee may reduce the time period for reaching agreement with the consent of all parties.

#### **9.4 Public Hearing Draft CFA**

- a. A Notice of Availability will be prepared by LAFCO staff and the Public Hearing Draft CFA will be circulated and made available to the public no less than 30 days prior to LAFCO's hearing on the proposal. The Public Hearing Draft CFA includes terms of the revenue neutrality agreement, if agreement has been reached or terms to be determined by LAFCO if agreement has not been reached.

#### **9.5 State Controller Review of Comprehensive Fiscal Analysis, if Requested**

- a. Any party may request review of the Public Hearing Draft Comprehensive Fiscal Analysis within 30 days of the release of the Notice of Availability of the Public Hearing Draft CFA. The written request shall be made to the LAFCO Executive Officer and should identify the specific elements that the State Controller is being requested to review and state the reasons for review of each of the elements.
- b. The requestor is responsible for all costs related to the request, and shall sign an agreement to pay such costs.
- c. The requestor shall deposit a fee in the amount of the total estimated cost of the review at the time the request for review is filed. The deposit will include the estimated charge by the State Controller, LAFCO staff costs, and costs for any consultants required to assist the State Controller with the review. The difference between the actual cost and the estimate shall be refunded / charged to the party initiating the request after the review is complete.

**9.6 Final CFA**

- a. The Final CFA will include the terms and conditions approved by LAFCO and will be prepared following the Commission's determinations and approval of the incorporation.

**10. FINANCIAL ASSUMPTIONS AND FISCAL ANALYSIS REQUIREMENTS**

- a. All assumptions and calculation methodologies used for the fiscal calculations shall be clearly identified and detailed in the CFA.
- b. The CFA shall calculate the proposed city base year costs consistent with the OPR Guidelines (Section V. 3.)
- c. The base year or "prior fiscal year" shall be the basis of financial calculations and determinations, as defined in Government Code 56810(g) as follows: "the most recent fiscal year for which data on actual direct and indirect costs and revenues needed to perform calculations required by this section are available preceding the issuance of the certificate of filing".
- d. Costs of services in the proposal area shall be based on existing levels of service provided in the proposal area by the County and other agencies during the "base year".
- e. When proposed city functions and services have not previously been provided by an agency prior to incorporation (e.g. new city general administration costs that are not transferred from another agency), the cost projection basis for the proposed city's future expenditures for those services and functions shall be based on cities with similar population and geographic size that provide similar level and range of services.
- f. Revenue projections for anticipated future city revenues will be "conservative"; where the revenue projection is estimated as a range, the lowest number in the range will be used for calculating future city budgets.
- g. Property tax projection calculations for projecting the future city revenues will include the rate of increase in the assessed value (not greater than 2% annually). Property tax revenue projections based on market driven property tax reassessments (e.g. increases in home re-sale values) should not be relied upon for calculating future year city budgets and determining feasibility.
- h. The CFA shall include the proposed city budget, projected for a minimum of ten years in order to 1) evaluate long term feasibility, 2) consider the effects of the new city's repayment to the County for its first year services and 3) project the effects of foreseeable shifts in state subventions, etc.

- i. The CFA should include an annual appropriation in the new city budget for contingencies of 10% in each budget year evaluated. The CFA should include an additional reserve of 10% in any given year in the new city's budget projection.
- j. The CFA will calculate the estimated property tax transfer and the total net agencies' cost of providing service in the proposed incorporation area. The Commission makes the final determination of costs and the transfer of property taxes.
- k. Financial feasibility shall be based on the ability of the new city to maintain pre-incorporation service levels.
- l. The CFA will include revenue sources that are currently available to all general law cities. Projections will not be based on potential revenue sources not currently applicable in the area or new revenues which might become available through the discretionary actions of a future city council.

#### **11. BASIS AND ASSUMPTIONS FOR REVENUE NEUTRALITY**

Revenue neutrality intends that any proposal that includes an incorporation should result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city, and other subject agencies. It is the further intent of the Legislature that an incorporation should not occur primarily for financial reasons (§56815). Pursuant to Government Code §56815 LAFCO will make findings and/or impose conditions/mitigations to equalize the transfers of revenue and service.

- a. The revenue neutrality agreement or any proposal for LAFCO terms and conditions for revenue neutrality shall **include**:
  - A criteria and a process for modification by the affected agency and the city after incorporation
  - A description of methodologies and assumptions leading up to the terms of the agreement
  - Identifiable and recurring revenues and expenditures only
- b. The revenue neutrality agreement or any proposal for LAFCO terms and conditions for revenue neutrality shall **exclude**:
  - Anticipated or projected revenue growth or sources of revenue dependent on discretionary actions by a future city council
  - Services funded on a cost recovery basis (such as permits/building inspection) which are, by definition, revenue neutral

- Costs of capital improvements
- c. The following additional policies apply to the revenue neutrality agreement or any proposal for LAFCO terms and conditions for revenue neutrality:
- Fiscal impacts to restricted and unrestricted revenues should be evaluated separately. A city may pay a portion of its annual revenue neutrality payment with restricted funds if both agencies agree, and if a legal exchange mechanism can be created to do so.
  - Fees charged by the county for services to other jurisdictions (such as property tax administration fees or jail booking fees) should be included as an off-setting county revenue in the calculation of fiscal effects on the county.
  - Countywide costs of regional services and general government, including the County Administration, Clerk of the Board, Auditor-Controller and other administrative government functions which are required to support county governance of both incorporated and unincorporated areas should not be included in defining services or revenues transferred to the new city.

**12. EFFECTIVE DATE OF INCORPORATION**

- a. The effective date of incorporation should be considered in revenue neutrality negotiations. LAFCO will establish the effective date. The effective date should be set to allow adequate initial account balances for the new city as it assumes service responsibilities, but should not otherwise conflict with the intent of fiscal neutrality or exacerbate County revenue losses.

**LOCAL AGENCY FORMATION COMMISSION OF SANTA CLARA COUNTY**

County Government Center, 11<sup>th</sup> Floor, East Wing  
70 West Hedding Street, San Jose, California 95110  
(408) 299-5127 (408) 295-1613 Fax

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**FILING REQUIREMENTS**

**INCORPORATION PROPOSALS**

The following requirements must be met in order to deem an incorporation application filed:

1. One certified resolution from agency requesting LAFCO action (if proposal is initiated by local agency resolution) **OR**

One copy of the petition (if proposal is initiated by petition, landowner or registered voter)

2. Proposal justification information
3. A map and general description of boundary sufficient to describe the proposed incorporation. The metes and bounds legal description and a map acceptable to the State Board of Equalization are submitted following LAFCO approval of final incorporation boundaries. Legal descriptions and boundaries other than those shown on previously recorded legal documents shall be prepared by a person authorized to practice land surveying (i.e., any licensed land surveyor, or any civil engineer registered prior to January 1, 1982, pursuant to California Business and Professions Code sections 8700-8806)
4. LAFCO is lead agency for CEQA. One copy of the completed *Environmental Information Form* is required to facilitate LAFCO's environmental review.
5. One copy of a plan for services is required to be prepared in compliance with California Government Code section 56653
6. A preliminary feasibility analysis that estimates potential municipal costs and revenues for city services. Incorporation proponents or their contractors may perform the preliminary feasibility analysis which should include the following.
  - a. Inventory of presently reviewed local government services.
  - b. Roster of agencies that provide present services.
  - c. Determination of desired changes in governmental services, both in type and area served. The "area" concept will be considered both



from the standpoint of efficient service territory, and for determining the level of environmental review necessary, pursuant to the California Environmental Quality Act (CEQA).

- d. The feasibility study shall address issues and factors of consideration specified in Government Code Sections 56425 (Sphere of Influence issues), 56653 (plan for services), and 56841 (factors to be considered in review and proposal).

The study shall also consider appropriate alternatives which may include, but not be limited to continuing the status quo; establishing a Municipal Advisory Council; forming a County Service Area; consolidating existing special districts within a Community Service District; annexing to an existing city; and incorporating a new city.

- e. Financial feasibility component consisting of projected revenues and expenditures that would result from incorporation.

A comprehensive Fiscal Analysis will be prepared by a financial consultant retained by LAFCO.

- 7. An agreement to pay incorporation costs signed by proponents,
- 8. An indemnification agreement signed by proponents
- 9. Party Disclosure forms signed by proponents and any other affected party or agent included in the proposal.
- 10. Lobbying Disclosure forms filed by the applicant listing all lobbyists hired to influence the action taken by LAFCO on the application. Must be updated one week prior to hearing date, if necessary.
- 11. Any additional information required by the Executive Officer.
- 12. LAFCO Filing fees and the State Board of Equalization fees.

#### **Disclosure Requirement**

This disclosure requirement is in addition to Items No9nd 10 above. 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.



## San Martin Neighborhood Alliance

**“Together We Make A Difference”**

May 30, 2007

TO: SANTA CLARA COUNTY LAFCO BOARD OF COMMISSIONERS

SMNA, Inc. is the proponent of the San Martin incorporation effort. The petitioners are the registered voters in the proposed incorporation boundaries. Over the past few months the proponent has become increasingly frustrated by the approach of LAFCO staff and the lack of respect afforded to the proponent. Information is generally slow to come to the proponent related to LAFCO's activities related to the incorporation. The proposed guidelines before the Board now were presented to the proponent without any advance notice at a meeting on May 3, 2007. Proponent suggested many changes to the proposed guidelines. Very few of the changes suggested by the proponent were made in the May 16, 2007 draft that is before the Board now. The proponent suggested more changes after reviewing the May 16 draft and asked for a redline version. The proposed changes were communicated verbally to LAFCO as there was no real procedure or opportunity to present written suggestions. Proponent was told a redline version to see what changes were made is unavailable. On or about May 23 LAFCO staff suggested that proponent should write a letter if they wanted a waiver of fees. Proponent did so within 24 hours. Proponents at this time were still waiting for a new draft of the proposed policies. Proponent did not see what was to be presented to the LAFCO Board on May 30, 2007 until May 29, 2007. While these comments may seem late, proponent could not respond sooner because it was unclear what version of the policies would be submitted to the Board. The untimeliness of the LAFCO responses to the petitioner to date do not set a good precedent for future coordination between LAFCO and the petitioner as the incorporation moves forward.

Most recently, on May 29, 2007, the proponent was alarmed when LAFCO staff told proponent that only LAFCO is allowed to talk to the consultants for the incorporation application. The proponent represents taxpayers and voters who are paying for the consultants to conduct a study to determine the feasibility of the proposed incorporation. There is no reason the proponents should not be able to communicate with the consultants. This is part of an open democratic process. How can the proponent possibly educate the residents of San Martin of the issues involved without communicating with the consultants? Also, the proposed Policy 5 requires proponents to demonstrate feasibility of the incorporation. How can that be done if the proponent cannot communicate directly with the consultant? This unwritten policy will only increase the cost and delay the process of the incorporation. The proponent is very disappointed with the "we will try to tell you what we have done after we spend your money" attitude. At this point, the proponents do not feel relevant to, or a part of, the process. We are given the appearance of being treated as just a funding source and a potential adversary. There must be a better working relationship established if this incorporation is to be successful.

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The LAFCO approach is also contrary to the intent of the Comprehensive Fiscal Analysis. The Request for Proposals stated that LAFCO "desires to contract with a qualified consultant to prepare an independent and impartial fiscal analysis for the proposed incorporation of San Martin." How can this be done if the consultant only hears from LAFCO and not the proponent? In addition, the Scope of Services calls for public involvement in the process.

Therefore, the proponent of the Proposed San Martin Incorporation objects to the adoption of the proposed incorporation guidelines (discussed in Agenda Items 7, 8.1 and 8.2).

**ITEM 7** related to adoption of the Incorporation Policies, proponent has several objections. These are addressed by the relevant policy number.

**Policy 2.** With respect to the proposed policies, the proponents continue to object to the fee schedule. The proponents are taxpayers and voters. They are not developers looking for a profit from the proposed action. SMNA is a nonprofit corporation that has accepted the task of raising funds for the incorporation effort. LAFCO is a government agency charged with orderly development of governmental boundaries within the County. As such, LAFCO should not create roadblocks to the orderly creation and development of cities. We are concerned that the open ended fee schedule is tantamount to a confiscatory fee schedule. LAFCO staff has proposed that the cost to the proponents for LAFCO staff time will be at least \$100,000. LAFCO is funded by the County and cities representing a population base of close to 1.7 million people. Last year, they paid about \$500,000 to fund LAFCO. In a recent study (according to the Santa Barbara County LAFCO Executive Officer), less than 10 percent of LAFCO budgets normally come from application fees which are almost universally paid by developers with a profit motive. Yet, LAFCO staff is proposing that the 6,000 or so citizens of San Martin pay about 20 percent of LAFCO's annual revenues. The citizens of San Martin represent only 1/3 of one percent of the population of the County. Clearly, the open ended fee schedule where this small number of residents is required to fund such a large part of the LAFCO annual budget seems confiscatory and contrary to the democratic process. This policy certainly will have a chilling effect on the incorporation process.

The \$100,000 figure suggested for LAFCO staff time on the incorporation application does not match the proposed 2007-2008 budget which the commissioners addressed today under **Item 6**. Under the proposed timeline for incorporation, almost all of the LAFCO staff time will be spent during the 2007-2008 fiscal year. LAFCO staff projects only \$50,000 in revenue from all fees collected throughout the County including this incorporation application. Assuming there will be other application fees collected similar to those of last year (\$40,000), the budget only calls for fee revenue of \$10,000 from the incorporation proponent. The budget is silent on outside expenses and is likely treated as a pass through with no net effect on the budget. It is therefore apparent that LAFCO can

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Operate comfortably including pay increases for its employees and a \$90,000 reserve set aside with only \$10,000 in revenue from the San Martin incorporation proponent.

Keeping the foregoing in mind, proponent requests that LAFCO provide some form of assistance to insure that the incorporation process may proceed smoothly to the projected vote in November 2008. Some alternatives have previously been sent to LAFCO for your consideration.

**Policy 3.** On the issue of the indemnification agreement, we have spoken to other LAFCO executives who confirmed that it is not general practice to require the proponents to sign a separate indemnity agreement. This is again another roadblock for the incorporation process. It is not appropriate to make the proponents insurers of this process. While SMNA, Inc. is the proponent, the citizens who signed the petition are the real parties. These are taxpayers that do not have any financial profit motives for this application. The incorporation of San Martin provides significant benefits to the county and the cities within the County. It will provide for more orderly management of government services. It is simply not fair to place such an additional open-ended financial burden on this small group of citizens.

The policy requires that the indemnity applies to actions by the proponent as well as third parties. This is completely unacceptable. Under this scenario, if LAFCO makes improper decisions on matters which require judicial action by the proponent, the proponent would have to pay for LAFCO's legal costs, even if the proponent prevails in the action. This approach where LAFCO is not responsible for any of its actions (except willful misconduct) and the proponents have to pay for it is wrong. The proponent should not have to insure the competence of LAFCO, especially given the lack of cooperation and communication with proponent shown to date.

**Policy 4.** The incorporation boundaries Policy 4.h. is unclear and is contrary to the goals of the proponent. It has been the express desire of the residents of San Martin to maintain a rural residential town that encourages small-scale agricultural uses. Proponents will not oppose this language if it applies to Santa Clara County zoning which designates most of San Martin as "rural residential." Proponents strongly object to this language if it applies generally to agricultural uses which are spread throughout the proposed incorporation boundary.

**Policy 5.** This policy mandates that the "applicants" must demonstrate the feasibility of the incorporation of San Martin. Proponent assumes that "applicants" means proponent. Given the unwritten policy that proponent may not communicate directly with consultants and the current relationship between staff and proponent, it may be difficult for proponent to demonstrate anything to LAFCO. How can proponent demonstrate anything if all the information is controlled and filtered (at proponent's expense) by LAFCO staff?

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**Policy 9.** This policy contains a general and vague description of the incorporation process. There should be a mandate in the policy for LAFCO to create a specific timeline for the incorporation process. With the degree of control over the process that staff is demanding, proponent should at least have the benefit of an enforceable timeline to ensure that the process can be completed within the 24 months mandated by Policy 1. Proponents feel that the process is already falling behind schedule. With no accountability to the proponents, LAFCO may not have sufficient incentive to complete the incorporation application in a timely manner.

**Policies 10.e. and 10.f.** The proposed policies related to financial assumptions place undue restrictions on the professional consultants hired by LAFCO to conduct the financial feasibility of the incorporation application. These policies developed by nonfinancial professionals do not allow the consultants to develop appropriate methodologies and assumptions unique to the San Martin area.

**Policy 10.g.** The proponents are very concerned with Policy 10.g. limiting property tax revenues to 2 percent per year and ignoring market driven property tax reassessments. These reassessments are the backbone of our property tax system. No city in the State could survive on 2 percent per year property tax growth, which does not even keep pace with inflation. Ignoring the market driven reassessments for future revenue projections will significantly impede any possibility of establishing feasibility.

**Policy 10.i.** The proponents are also concerned with the requirement of an annual 10 percent appropriation for contingencies and an additional 10 percent reserve. This 20 percent contingency and reserve may render the incorporation unfeasible at the outset. There are very few cities that can sustain a 20 percent surplus in these days of budget shortfalls. This arbitrary requirement of 20 percent reserves should not be imposed by way of a policy. This is an issue that should be determined in consultation with LAFCO, the consultant and the proponents and as part of the revenue neutrality negotiations.

The policy would be acceptable if the 20 percent reserve is written as a goal rather than a requirement. Thus, if it reads "the CFA should include if feasible an annual appropriation..." the language would be acceptable to proponent.

**Policy 10.l.** There is no reason why revenues should be limited only to those available to general law cities. A comparison to all incorporated cities is appropriate.

**ITEM 8.1.** Under the requirements of the incorporation application, Agenda **Items 7 and 8** should be deleted. The requirement of an agreement to pay incorporation costs is not necessary as the policies eventually adopted will set forth the payment requirements for the application. The application itself will constitute acknowledgment by the proponent of the payment obligations associated with the application. A separate agreement would be

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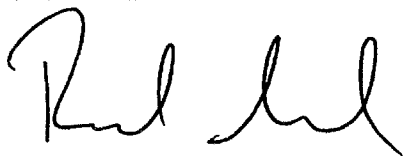
redundant and possibly impose additional obligations not set forth in the application process. The requirement of an indemnity agreement is addressed above.

**ITEM 8.2.** If the policy is adopted requiring an indemnity agreement, proponent objects to the form of the agreement. Proponents informed LAFCO staff of its objections at the May 3, 2007 meeting. A draft of the revised proposed indemnity was not given to the proponent until May 29, 2007. The content of the agreement has a major obstacle. The indemnity calls for indemnity for any action brought by any person including the proponents. Proponent thinks this may be a typo with the word "not" before the word "including" having been omitted. The provision should read that the proponent will indemnify LAFCO for any litigation expense arising out of any action by any person not including the proponent. Otherwise the indemnity agreement is overly broad and one sided.

Based on these concerns, SMNA, Inc., the proponent of this incorporation application, respectfully requests that this board continue the request to adopt these policies and direct LAFCO staff to work more closely and in cooperation with proponent in drafting the policies.

Yours sincerely,

SAN MARTIN NEIGHBORHOOD ALLIANCE



Richard van't Rood  
Incorporation Committee Chair

RVR/djk  
Enclosures

**LAFCO**

**Meeting Date:** May 30, 2007

**TO:** LAFCO

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

**SUBJECT:** Request for Proposals (RFP) for preparing a CEQA Initial Study for Proposed Incorporation of Town of San Martin  
  
Agenda Item # 8.1

**STAFF RECOMMENDATION**

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1. Authorize staff to issue a Request for Proposals (RFP) for a consultant to prepare a CEQA Initial Study and a recommended environmental determination for the proposed incorporation of the Town of San Martin. (See attachment A for RFP)
2. Delegate authority to the LAFCO Executive Officer to enter into an agreement with the most qualified consultant in an amount not to exceed \$25,000 and to execute any necessary amendments subject to LAFCO Counsel review and approval.

**BACKGROUND**

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**San Martin Incorporation Proposal**

LAFCO received a petition and application for the incorporation of the Town of San Martin in February of 2007. The petition was signed by about 31% of the registered voters in the area. The population of the area is estimated at about 5,000 persons, with 2,824 registered voters. The proposed new town includes lands bounded by the sphere of influence of Gilroy to south, the sphere of influence of Morgan Hill to the North, Watsonville Road to the west and New Avenue to the east.

Incorporations are a project under the California Environmental Quality Act (CEQA) and require environmental review. An Initial Study must be completed prior to consideration of the proposal. LAFCO of Santa Clara County is the lead agency. The Initial Study must conform to the requirements of the CEQA, LAFCO's Incorporation Policies, and LAFCO's Procedures for Preparing and



Processing Environmental Documents. If the CEQA Initial Study process shows no substantial evidence that the project will create significant adverse environmental impacts, LAFCO may adopt a negative declaration. If the Initial Study process concludes that the project may produce significant environmental impacts, the preparation of an environmental impact report is required.

Santa Clara LAFCO desires to contract with a qualified consultant to prepare an independent and impartial CEQA Initial Study for the proposed incorporation of the town of San Martin.

### **Request for Proposals**

Attached is the Draft RFP for preparing the CEQA Initial Study for the proposed incorporation of San Martin. Staff will compile a list of consultants to whom the RFP will be mailed. The RFP will also be posted on the Santa Clara LAFCO website and on the CALAFCO website for other interested firms.

The RFP will be mailed out following the LAFCO meeting with a deadline for proposals set for the third week of June. Interviews will be held during the last week of June and the consultant selected soon after. It is expected that the service agreement will be executed in early July.

### **Evaluation Criteria and Selection Process**

Firms will be selected for further consideration and follow-up interviews based on the following criteria:

- Relevant work experience
- Completeness of the responses
- Overall project approaches identified
- Qualification of key project team members
- Reference checks
- Proposed project budget

An interview/selection committee will conduct interviews and the most qualified firm will be selected based on the above evaluation criteria. Following the selection of the most qualified firm, a final services agreement including budget, schedule, and final scope of services statement will be negotiated before executing the contract.

The delegation of authority to the LAFCO Executive Officer to negotiate and execute the agreement with the consultant subject to review and approval of LAFCO Counsel will expedite the process.

### **ATTACHMENTS**

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Attachment A: Draft RFP for CEQA Initial Study for the Proposed Incorporation of San Martin.

**REQUEST FOR PROPOSALS**  
**CEQA Initial Study for the**  
**Proposed Incorporation of San Martin**  
(DUE DATE AND TIME: Monday June 18, 2007 at 5:00 PM)

**I. Objective**

The Local Agency Formation Commission (LAFCO) of Santa Clara County is seeking written proposals from environmental consulting firms to prepare an Initial Study pursuant to the California Environmental Quality Act for the proposed incorporation of the town of San Martin.

**II. Background**

LAFCO received a petition and application for the incorporation of the Town of San Martin in February of 2007. The petition was signed by approximately 31% of the registered voters in the area. The population of the area is estimated at about 5,000 persons, with 2,824 registered voters. The proposed new town includes lands bounded by the sphere of influence of Gilroy to the south, the sphere of influence of Morgan Hill to the north, Watsonville Road to the west and New Avenue to the east. **Attachment A** shows the proposed boundaries.

The stated reasons for the incorporation of San Martin are to have local control of land use and growth, to create a locally accountable governing body that is more visible and accessible to the local residents and to legally recognize San Martin as a community with the attributes of a town.

An Initial Study and environmental determination must be completed prior to LAFCO's consideration of the incorporation proposal. Santa Clara LAFCO desires to contract with a qualified environmental consultant to prepare an independent and impartial CEQA Initial Study for the proposed incorporation of the town of San Martin. The final report will become the property of LAFCO and will be the subject of LAFCO review and public hearings and will form the basis for environmental determination and findings related to the proposed incorporation.

**III. Proposed Plan for Services**

See **Attachment B** for proposed San Martin Municipal Services Plan.

**IV. Legal Requirements**

Incorporations are a project under the California Environmental Quality Act (CEQA) and require environmental review. An Initial Study must be completed prior to consideration of the proposal. LAFCO of Santa Clara County is the lead agency. The Initial Study must

conform to the requirements of the CEQA, LAFCO's Incorporation Policies, and LAFCO's Procedures for Preparing and Processing Environmental Documents. If the CEQA Initial Study process shows no substantial evidence that the project will create significant adverse environmental impacts, LAFCO may adopt a negative declaration. If the Initial Study process concludes that the project may produce significant environmental impacts, the preparation of an environmental impact report is required.

Relevant to the environmental analysis is the statutory requirement of Government Code section 57376 which states that "If the newly incorporated city comprises territory formerly unincorporated, the city council shall, adopt an ordinance providing that all county ordinances previously applicable shall remain in force and effect as city ordinances for a period of 120 days after incorporation, or until city council has enacted ordinance superseding the county ordinances, whichever occurs first."

## **V. Scope of Services**

Under the direction of LAFCO, the consultant will prepare a CEQA Initial Study for the proposed incorporation of the community of San Martin. Duties include the following and any other duties that might be necessary to accomplish these specified duties.

- Gather and analyze data. As part of this task, review background reports, files and related materials such as the incorporation statutes in the Government Code, the Santa Clara County General Plan, LAFCO's Service Reviews, and the San Martin Proposed Incorporation Comprehensive Fiscal Analysis study that is in progress,
- Confer, as needed, with LAFCO and County staff and with the proponents who have initiated the incorporation,
- Prepare Initial Study,
- Prepare and circulate a Notice of Availability that includes a recommended determination of whether there are significant impacts requiring preparation of an Environmental Impact Report or whether a Negative Declaration can be prepared,
- Attend up to two meetings of the LAFCO Commission and provide support to LAFCO staff in the presentation of environmental findings pursuant to CEQA, including at least one oral presentation at a LAFCO Public Hearing, and
- Submit all documents in printed form and on a CD-ROM format using MicroSoft Word

The final scope of services will be based on Consultant's approach to the project and will be negotiated with the firm selected and will be included in the services agreement.

## **VI. Budget**

Consulting firms should include a detailed project budget for the scope of services. The anticipated project cost of the proposal is between \$15,000 and \$25,000 depending on the scope of services.

The preparation of the CEQA Initial Study will be managed by LAFCO and the funding will be provided by the proponents of the San Martin incorporation. Subject to negotiation of a final agreement, it is anticipated that payments will be tied to task completion increments or other milestones. Work will not be authorized beyond what the proponents have deposited with LAFCO at any given time. LAFCO will not be liable for payment beyond the balance of the proponent's deposits.

## VII. Schedule

It is anticipated that the firm will start work in **July 2007**. Timing is a concern to LAFCO. It is strongly desired that a preliminary draft initial study be completed within six weeks of execution of a professional services agreement and a draft available for public review, approximately two weeks after receipt of LAFCO staff comments. The final overall schedule for this project will be negotiated with the firm selected for the work prior to an agreement. A tentative timeline for proposed incorporation including the environmental review process is attached (**Attachment C**).

## VIII. Proposal Requirements

Response to this RFP must include all of the following:

1. A statement about the firm that describes its experience as well as the competencies and resumes of the principal and all professionals who will be involved in the work. This statement should describe the firm's level of expertise in the following areas:
  - Experience in environmental analysis, preferably involving incorporations
  - Familiarity with CKH Act, the role and functions of LAFCO, and the incorporation process
  - Understanding of how the full range of municipal services are delivered
  - Ability to analyze and present information in an organized format
  - Familiarity with public input processes and experience in handling the presentation and dissemination of public information for review and comment
  - Ability to provide alternatives where necessary to resolve environmental issues
2. Identification of the lead professional responsible for the project and identification of each professional(s) who will be performing various aspects of the day-to-day work.
3. A list of similar projects completed by the firm with references for each such project, including the contact name, address and telephone number.
4. A sample CEQA Initial Study and Environmental Determination for a similar project.
5. A statement regarding the anticipated approach for this project, and a scope of work outlining and describing the main tasks and work products.

6. Identification of any information, materials and/or work assistance required from LAFCO and / or involved agencies or proponents to complete the project.
7. An overall project schedule, including the timing of each work task.
8. Information about the availability of all professionals who will be involved.
9. The anticipated project cost, including:
  - a. A not-to-exceed total budget amount.
  - b. The cost for each major sub-task identified in the scope of work.
  - c. The hourly rates for each person who will be involved in the work.
10. A statement regarding the firm's ability to comply with the standard provisions of the Agreement including insurance requirements. **See Attachment D.**

#### **IX. Submission Requirements**

DUE DATE AND TIME: **Monday June 18, 2007 at 5:00 PM**

Proposals received after this time and date may be returned unopened.

NUMBER OF COPIES: 4 original copies and 1 fully reproducible copy

DELIVER TO: Neelima Palacherla  
LAFCO of Santa Clara County  
70 West Hedding Street, 11<sup>th</sup> Floor  
San Jose, CA 95110

*Note:* If delivery is to be in person, please first call the LAFCO office (408-299-6415 or 5127 or 5148) to arrange delivery time.

#### **X. Evaluation Criteria and Selection Process**

Firms will be selected for further consideration and follow-up interviews based on the following criteria:

- Relevant work experience
- Completeness of the responses
- Overall project approaches identified
- Qualification of key project team members
- Reference checks
- Proposed project budget

An interview/selection committee will conduct interviews and the most qualified firm will be selected based on the above evaluation criteria. Interviews will tentatively be held **between June 25<sup>th</sup> and June 29<sup>th</sup>**. The selection committee is expected to make a decision soon after. Following the selection of the most qualified firm, a final services agreement including budget, schedule, and final Scope of Services statement will be negotiated before executing the contract.

LAFCO reserves the right to reject any or all proposals, to issue addenda to the RFP, to modify the RFP or to cancel the RFP.

**XI. LAFCO Contact**

Neelima Palacherla, Executive Officer  
LAFCO of Santa Clara County  
Voice: (408) 299-5127  
Fax: (408) 295-1613  
Email: neelima.palacherla@ceo.sccgov.org

**XII. Attachments (To be Attached to Final RFP)**

- Attachment A: Map of proposed boundaries for San Martin
- Attachment B: Proposed San Martin Municipal Services Plan
- Attachment C: Tentative Timeline for Proposed San Martin Incorporation
- Attachment D: Draft Professional Services Agreement and insurance obligations

**XIII. Reference Information**

For general information about LAFCO of Santa Clara County, refer to its website:  
[www.santaclara.lafco.ca.gov](http://www.santaclara.lafco.ca.gov)

For the State Office of Planning and Research's Incorporation Guidelines, visit the website: [www.opr.ca.gov](http://www.opr.ca.gov)

**LAFCO**  
**Meeting Date:** May 30, 2007  
**TO:** LAFCO  
**FROM:** Neelima Palacherla, Executive Officer  
Kathy Kretchmer, LAFCO Counsel  
**SUBJECT:** **Indemnification Agreement for San Martin Incorporation Proposal**  
Agenda Item # 8.2

**STAFF RECOMMENDATION**

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1. Approve the Indemnification Agreement between LAFCO and the proponents of the San Martin Incorporation proposal.

**BACKGROUND**

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The LAFCO policies on Incorporations (see Agenda Item # 7) require the incorporation proponents to sign an agreement and indemnify LAFCO should Santa Clara LAFCO be named as a party to any litigation in connection with the San Martin incorporation proposal. See Attachment A for the indemnification agreement.



INDEMNIFICATION AGREEMENT FOR THE  
SAN MARTIN INCORPORATION PROPOSAL

This indemnification agreement is entered into this \_\_\_ day of \_\_\_\_\_, 2007, by and between the Proponents of the San Martin Incorporation Proposal (Proponents) and the Local Agency Formation Commission of Santa Clara County (LAFCO).

RECITALS

WHEREAS, the Proponents have submitted a petition and an application to LAFCO for the incorporation of San Martin; and

WHEREAS, LAFCO's consideration of and action on the San Martin incorporation proposal has the potential to result in legal challenges; and

WHEREAS, the Proponents understand and agree that subject to the terms and conditions of this agreement, Proponents shall take responsibility for the indemnification and defense of LAFCO for the work done and action taken on the San Martin incorporation proposal;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. Incorporation. The above Recitals are hereby incorporated herein and made a part hereof.

2. Indemnification. Proponents agree to defend, indemnify, hold harmless and release LAFCO, its officers, employees, attorneys, or agents (hereinafter collectively referred to as LAFCO) from any claim, action or proceeding brought against any of them, the purpose of which is to attack, set aside, void, or annul, in whole or in part, LAFCO's action on the proposed San Martin incorporation or on the environmental documents submitted to or prepared by LAFCO in connection with the proposed incorporation (hereinafter collectively referred to as "Claim"). This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney fees, and expert witness fees that may be asserted by any person or entity, including Proponent, arising out of or in connection with the application. In the event that such indemnification becomes necessary, LAFCO expressly reserves the right to appoint its own counsel and provide its own defense and such actions shall not limit Proponents obligations to indemnify and reimburse reasonable defense costs. LAFCO shall notify Proponent promptly of any claim, action or proceeding and cooperate fully in the defense. The Proponents shall not be obligated, however, to indemnify LAFCO from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of LAFCO.

3. Term. This Agreement is effective upon execution by both Parties. It shall remain in effect until the final resolution of any Claim filed against LAFCO and until the

statute of limitations period for filing any Claim against LAFCO has expired.

4. Notices. All notices and other communications hereunder shall be in writing and shall be given by hand delivery or by certified mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or at such other address as the Parties may designate by written notice in the above matter.

Proponents: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LAFCO: LAFCO Executive Officer  
Local Agency Formation Commission of Santa Clara County  
70 West Hedding Street, 11<sup>th</sup> Floor East Wing  
San Jose, CA 95110

The communications may also be given by facsimile transmission, provided the communications is concurrently given by one of the methods above. Notices shall be deemed effective upon receipt, or upon attempted delivery thereof if delivery is refused by the intended recipient or if delivery is impossible because the intended recipient has failed to provide a reasonable means for accomplishing delivery.

5. Miscellaneous. This agreement may be modified or amended only by a writing duly executed by both Parties. This Agreement shall be construed according to and governed by the laws of the State of California.

IN WITNESS WHEREOF, the Parties have entered into this Agreement by the authorized representatives of the Parties as of the dates shown below.

LAFCO

PROPOSANTS

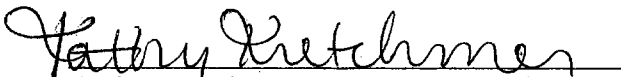
\_\_\_\_\_  
Chair, Local Agency Formation Commission  
of Santa Clara County  
Date:

\_\_\_\_\_  
By:  
Title:  
Date:

ATTEST:

\_\_\_\_\_  
Emmanuel Abello, LAFCO Clerk

APPROVED AS TO FORM AND LEGALITY

  
Kathy Kretchmer, LAFCO Counsel 5-23-07

LAFCO Meeting Date: May 30, 2007

**TO:** LAFCO

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

**SUBJECT:** Committee for Green Foothills' Letter dated April 25, 2007,  
regarding LAFCO's Action on Morgan Hill 2006 USA Expansion  
Agenda Item # 9

### **STAFF RECOMMENDATION**

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1. Accept staff report and provide additional direction if desired.
2. Authorize staff to send a letter to the cities and special districts requesting that complete analysis of impacts to agricultural land as defined in LAFCO's policies and identification of feasible mitigation measures be included in environmental documents when LAFCO is identified as a responsible agency for the project.

### **DISCUSSION**

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LAFCO has received a letter dated April 25, 2007, from Paul Carroll, Attorney at Law, representing the Committee for Green Foothills regarding the action that the commission took at the April 4, 2007 meeting on the Morgan Hill 2006 USA Amendment.

The letter questions LAFCO decision and CEQA action on the Morgan Hill USA expansion project. It alleges that LAFCO should have assumed the role of a lead agency and prepared an EIR/supplemental EIR because of the flaws in the Negative Declaration or should have denied the project because of its inconsistency with LAFCO policy. It concludes that LAFCO should reconsider its decision.

LAFCO in making its decision, considered the staff reports and testimony, made the findings and took the CEQA action. The Cortese Knox Hertzberg Act of 2001 establishes the criteria for reconsideration of a LAFCO resolution in Government Code Section 56895. The law requires that a request for reconsideration be submitted within 30 days of the date of the LAFCO resolution and must state

what new or different facts that could not have been presented previously are claimed to warrant the reconsideration.

In addition, a reconsideration request must include fees per the LAFCO fee schedule. LAFCO did NOT receive a request for reconsideration during the 30-day period that meets the above criteria.

As noted in the staff report, there were several issues with the CEQA process and analysis including issues related to deferring analysis of impacts to agricultural lands to a later time, use of the LESA model, and not considering the CKH Act's definition of prime agricultural lands, among others.

In order to ensure that future projects don't result in these CEQA issues, LAFCO will send a letter to cities and special districts requesting that the environmental documents associated with projects that require LAFCO approval (i.e., when LAFCO is a responsible agency) and which identify impacts to agricultural lands disclose the degree of impact according to the definition of prime agricultural land as defined in the recently adopted LAFCO's agricultural mitigation policies. Also, the letter will request that environmental documents include an analysis of potentially feasible mitigation measures to minimize the loss of agricultural lands. LAFCO's recently adopted Agricultural Mitigation Policies include recommendations on mitigation measures.

Additionally, LAFCO staff will carefully review and comment on CEQA documents for which LAFCO is a responsible agency. Staff will inform the commission in a timely manner on issues with the CEQA documents and the options available to LAFCO to address the issues.

Staff has received a letter in response to Paul Carroll's letter from Barton Hechtman, representing Blackrock LLC, the applicants for the Morgan Hill 2006 USA Amendment. Please see Attachment B.

## **ATTACHMENTS**

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- Attachment A: Letter from Paul Carroll dated April 25, 2007, regarding LAFCO's action on Morgan Hill USA amendment application.
- Attachment B: Letter from Barton Hechtman dated May 24, 2007, responding to the letter from Paul Carroll.

PAUL V. CARROLL

*Attorney at Law*

5 Manor Place

Menlo Park, California 94025

telephone (650) 322-5652

facsimile (same)

April 25, 2007

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

Re: Morgan Hill's Mitigated Negative Declaration for the Urban Limit  
Line/Greenbelt Study General Plan Amendment and Related Actions

Dear Ms. Palacherla

I represent the Committee for Green Foothills and write regarding the above-referenced project.

On April 4, 2007, the Local Agency Formation Commission of Santa Clara County (LAFCO) approved the project despite its conclusion that the mitigated negative declaration was flawed under the California Environmental Quality Act (CEQA). A negative declaration is improper if there is a fair argument that the project may have a significant adverse impact on the environment. LAFCO's April 4, 2007, staff memo provides the requisite fair argument, namely that the project will destroy prime agricultural land.

The Committee contends that LAFCO was required to do one of three things when presented with the inadequate negative declaration. It could have assumed the role of lead agency and prepared an EIR based on the City's failure to consult; it could have assumed the role of lead agency and prepared a supplemental EIR based on new information; or it could have denied the project because it is contrary to LAFCO policy.

In this letter, I will show how the negative declaration violated CEQA, and why LAFCO must prepare an EIR or deny approval of the project.

## **LAFCO's Approval of the Negative Declaration Was Improper under CEQA**

The threshold for an EIR is well established. An EIR must be prepared whenever "there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment." (Guidelines, § 15063, subd. (b)(1); accord Pub. Res. Code, § 21100, subd. (a); § 15002, subd. (f)(1), (2); *County Sanitation District No. 2 v. County of Kern* (2005) 127 Cal.App.4<sup>th</sup> 1544.) "May" means a reasonable possibility. (§§ 21082.2, subd. (d); 21100, subd. (a); 21151, subd. (a); *League for Protection of Oakland's Architectural Resources v. City of Oakland* (1997) 52 Cal.App.4<sup>th</sup> 896, 904-905.)

If substantial evidence supports the existence of a fair argument, an EIR must be prepared, even if the record contains substantial evidence to the contrary. (Guidelines, § 15064, subd. (f)(1); *Pocket Protectors v. City of Sacramento* (2005) 124 Cal.App.4<sup>th</sup> 903, 930-931; *League for Protection of Oakland's Architectural Resources, supra*, 52 Cal.App.4<sup>th</sup> at pp. 904-905.) In short, if a fair argument is made, "it cannot be overcome by substantial evidence to the contrary." (*Architectural Heritage Assn. v. County of Monterey* (2004) 122 Cal.App.4<sup>th</sup> 1095, 1110.) "Substantial evidence" means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines, § 15384, subd. (a).)

The fair argument standard is thus deemed a "low threshold" for the preparation of an EIR. (E.g., *Pocket Protectors, supra*, 124 Cal.App.4<sup>th</sup> at p. 928; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.) The "low threshold...reflects a preference for resolving doubts in favor of environmental review" and EIR preparation. (*Architectural Heritage Assn., supra*, 122 Cal.App.4<sup>th</sup> at p. 1110.)

Under these principles, LAFCO's approval of the negative declaration was improper under CEQA. There is substantial evidence in the record that the project may have a significant adverse or cumulative impact on the environment. Notably, this evidence was provided by LAFCO itself. LAFCO staff concluded:

The project site consists of Class 1 soils and is considered prime agricultural land based on the definition of prime agricultural lands in the Cotese Knox Hertzberg Act. However, the City, using the LESA model, determined that the conversion of the agricultural land at the project site is less than significant. LAFCO staff and other stakeholders have expressed many concerns, over the last few months, about the use of the Land Evaluation Site Assessment Model (LESA) in determining impacts to agricultural resources in Santa Clara County. (April 4, 2007, LAFCO memorandum from Dunia Noel to Neelima Palacherla.)

This information satisfies the fair argument standard. The project site comprises prime agricultural land according to criteria set forth in the Cotese Knox Hertzberg Act. The fact that the City used a different definition that excluded the land as prime is irrelevant—especially given LAFCO staff's criticism of the City's criteria.<sup>1</sup>

Moreover, LAFCO is not free to ignore evidence that its staff generated. In *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, the County approved a negative declaration for a proposed golf course and related facilities. Petitioner sued claiming that the record contained substantial evidence that the project might spur development and have a growth-inducing effect. (*Id.* at p. 153.) Much of that evidence was found in the planning department's initial study. (*Id.* at p. 153.) The County revised the initial study and approved the negative declaration, deferring consideration of growth-inducing impacts until development was actually proposed. (*Id.* at p. 153.) On appeal, the County and real party argued that the first initial study was without effect, having been superseded by the second, and that planning staff were not qualified to opine on the project's potential impacts. (*Id.* at pp. 154-155.) The court of appeal rejected both arguments. It held that the planning staff were obviously qualified to render an opinion on impacts, and that the County's approval of the negative declaration based on the revised initial study could not eliminate the substantial evidence contained in the first initial study. (*Ibid.*)

So it is here. LAFCO cannot ignore its staff's conclusion that the project will destroy prime agricultural land. Since the mitigated negative declaration contains substantial evidence that the project may have an adverse impact, LAFCO's approval of the project was contrary to CEQA.

### **LAFCO Must Prepare an EIR**

The City approved the project and adopted the negative declaration on April 19, 2006. Accordingly, the statute of limitations for a challenge to the City's decision has expired. When this occurs, a responsible agency confronted with a flawed negative declaration has several, limited options, two of which apply here. (CEQA Guidelines, § 15052, subd. (a)(1)-(3).)

First, a responsible agency "shall assume the role of lead agency" and prepare an EIR when the lead agency prepared an inadequate negative declaration without consulting with the responsible agency, and the statute of limitations has expired

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<sup>1</sup> Even under the City's criteria, the site missed being characterized as prime agricultural land by a half a point. (See PMC's November 15, 2006, Agricultural Land Evaluation for Black Rock Property.)



for a challenge to the lead agency's approval. (CEQA Guidelines, § 15052, subd. (a)(3).) That occurred here.

According to the LAFCO staff report, the City failed to consult with LAFCO regarding the City's conclusion that the project would not adversely impact prime agricultural land until well after the City's April 19, 2007, approval of the project and adoption of the negative declaration:

Based on the above mitigation measures adopted by the City on April 19, 2006, the City appears to have deferred final analysis of agricultural resource impacts and consideration of potential mitigation measures to sometime after the adoption of the Mitigated Negative Declaration. Specifically, the City deferred their analysis until November 2006 and LAFCO did not receive a copy of that analysis until receiving the City's recent application for an urban service area amendment. [¶]...[¶] Furthermore, this deferral process did not allow LAFCO, other responsible agencies, or the public the opportunity to comment on whether the City's analysis of agricultural impacts and mitigation measures was adequate or consistent with their respective agency's policies. LAFCO staff believes that all analysis of impacts to agricultural resources and mitigation measures should have been included within the Mitigated Negative Declaration adopted by the City in April 2006. (April 4, 2007, LAFCO memorandum from Dunia Noel to Neelima Palacherla.)

In short, the City failed to apprise LAFCO of its conclusion that the land was not prime until long after the statute of limitations had run. Under these circumstances, LAFCO is obligated to act as the lead agency and prepare an EIR for the project. (CEQA Guidelines, § 15052, subd. (a)(3).)

The Guidelines dictate a second course of action that LAFCO can take. A responsible agency "shall assume the role of lead agency" and prepare an EIR when new information that the project will have a significant impact, which was not known and could not have been known when the negative declaration was adopted by the lead agency, becomes known after the statute of limitations has run. (CEQA Guidelines, §§ 15052, subd. (a)(2), 15162, subd. (a)(3).) That too occurred here.

According to the LAFCO staff report, LAFCO did not learn that the City had concluded that the land was not prime until well after the statute of limitations had run. The City's conclusion is new information: It was not known when the City approved the project, since the City had deferred its analysis. And the new information shows that the project will have a significant impact on the

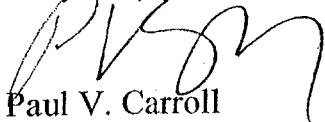
environment, the elimination of prime agricultural land.<sup>2</sup> (CEQA Guidelines, § 15162, subd. (a)(3)(A).)

In sum, LAFCO's approval of the project was improper under CEQA. Given the flaws in the negative declaration, LAFCO should prepare an EIR as required by subdivisions (a)(2) or (a)(3) of Guideline 15052.

LAFCO's third option, of course, is to reconsider and deny approval of the project, which would not require additional CEQA review.

Thank you for your consideration of this letter. Please let me know as soon as possible how LAFCO intends to proceed.

Very truly yours,



Paul V. Carroll

cc: City of Morgan Hill  
Mr. Rocky Garcia, Black Rock LLC

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<sup>2</sup> It is well to note that the City's failure to consult LAFCO had been an ongoing problem that LAFCO raised in its letters to the City of March 15, 2006, and March 28, 2006. Indeed, the City did not even notify LAFCO of the availability of the Draft Mitigated Negative Declaration. LAFCO happened to learn of its existence when it received a copy of a comment letter from the Santa Clara County Planning Office. (March 15, 2006, LAFCO letter to City.)

Norman E. Matteoni  
Peggy M. O'Laughlin  
Bradley M. Matteoni  
Barton G. Hechtman  
Gerry Houlihan

May 24, 2007

*Advance Copy Via Fax*

Neelima Palacherla, Executive Officer  
Local Agency Formation Commission  
Santa Clara County  
70 W. Hedding St.  
11th Floor, East Wing  
San Jose, CA 95110

Re: *Morgan Hill's Mitigated Negative Declaration for the Urban Limit  
Line/Green Belt Study, General Plan Amendment and Related  
Actions.*

Dear Ms. Palacherla:

I represent Blackrock, LLC, whose property was the recipient of LAFCO's April 4, 2007 approval for an expansion of the City of Morgan Hill's Urban Service Area. I write today to respond to the April 25, 2007 letter of Paul V. Carroll on behalf of the Committee for Green Foothills ("CGF"). CGF asserts that further environmental review of the issue of Prime Farmland should have occurred before LAFCO's approval. Having reviewed the facts and applicable law, we find that CEQA was properly served in the processing of this application by both Morgan Hill and LAFCO.

Relevant Facts

Blackrock's 18 acre parcel was the subject of an application for a General Plan amendment and, relevant to the LAFCO proceedings, inclusion in Morgan Hill's Urban Service Area ("USA"). A draft Initial Study and Mitigated Negative Declaration ("IS/MND") related to Blackrock's project and two other projects was made available for public review on February 21,



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2006. The document was stated to be a program-level environmental review (p. 11).

The IS/MND acknowledges that up to 7.75 acres of the Blackrock property was Prime Farmland (Class I Soils). (See pages 40-44, including Figure 6, depicting location of the Prime Farmland.) The discussion of this Prime Farmland states that it does not appear to meet the CDC land use criteria for Prime Farmland, but nonetheless recognizes the possibility that placing a residential designation on the Blackrock property could ultimately result "in the conversion of Prime Farmland to non-agricultural uses, which could be an indirect *potentially significant impact* depending on whether the land is economically viable to retain in agricultural use." (Page 44.) In recognition of this potential impact, the IS/MND sets forth the following mitigation measure:

**"Mitigation Measure B.1. Establish A Conservation Easement For Prime Farmlands On Black Rock if they are deemed economically viable.** The impacts to the agricultural lands within the Black Rock subarea shall be assessed according to the California Agricultural Land Evaluation and Site Assessment Model (1997) to confirm the extent of Prime Farmland. The City of Morgan Hill will then make a determination whether the portion mapped as Prime Farmland has long-term economic viability for agriculture, and if it meets these criteria, shall require establishment of a conservation easement or agricultural preserve for that portion of the property consistent with its Open Space and Conservation Element policies..." (p. 44).

The Blackrock property farmland discussion concludes with recognition that the property is bounded on three sides by residential development and that long-term agricultural economic viability (a policy goal in the City of Morgan Hill's General Plan) is therefore doubtful (p.44).

It appears that LAFCO did not receive the Notice of Availability of the IS/MND directly, but received notice indirectly through Santa Clara County and was granted an extension of time to comment on the IS/MND by the City of Morgan Hill. LAFCO submitted its written comments to the City by letter

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dated March 28, 2006. The Greenbelt Alliance and CGF also submitted comments on the IS/MND.

Neither LAFCO nor either of the other two commentators objected to the sufficiency of the mitigation measure based on Morgan Hill's use of the LESA Model as the performance standard. Nor was there objection to the fact that the mitigation measure contemplated that the LESA analysis would occur at some future date.

The City of Morgan Hill prepared responses to all three of these comment letters. The final Mitigated Negative Declaration ("Final MND") was approved on April 27, 2006 and included the mitigation measure quoted above. The Notice of Determination was prepared on that same date and was recorded on May 1, 2006.

In the fall of 2006 the City of Morgan Hill performed the LESA analysis contemplated by the mitigation measure and found that the loss of the Prime Farmland on the Blackrock property would constitute a less than significant impact. Notably, the analysis found that of 366 acres within a quarter mile of the property, less than 17 acres were actually in agricultural production (p.6). The City informed LAFCO of this determination and provided a copy of the analysis in a December 20, 2006 letter to LAFCO.

The Urban Service Area expansion came before LAFCO on April 4, 2007. Your staff report prepared by Dunia Noel contended that the above-quoted mitigation measure constituted a deferred analysis which should have been included in the final MND. Ms. Noel's staff report also recognized that the site included class one soils (as stated in the IS/MND which LAFCO reviewed and commented on) and expressed concerns about the possible subjectivity of the LESA analysis. After a public hearing, LAFCO approved the application, adding Blackrock's property to Morgan Hill's USA. Mr. Carroll's letter followed three weeks later.

#### LEGAL ANALYSIS

As Mr. Carroll correctly notes in his letter, there are two situations in which LAFCO might have an obligation to perform further environmental review. However, as discussed below, neither is applicable here.

1. Failure to Consult.

CEQA Guideline Section 15052(a)(3) provides that the responsible agency shall assume the role of lead agency when:

"The lead agency prepared inadequate environmental documents without consulting with the responsible agency as required by Section 15072 or 15082, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency."

Mr. Carroll asserts that the Final MND was inadequate, and acknowledged that the statute of limitations for challenging the City's approval of the Final MND expired (on approximately June 1, 2006). However, the third required component, lack of consultation, is missing here.

While it appears that the City neglected to provide LAFCO with the Notice of Availability of the IS/MND, that lack of notice was subsequently cured by LAFCO's receipt of the documentation from Santa Clara County and the City's extension of time granted to LAFCO to comment on the documents. LAFCO did provide substantive comments in its March 28, 2006 letter, and responses to those comments were provided in the Final MND. Consequently, as the City of Morgan Hill did not fail to consult with LAFCO, Guideline Section 15052(a)(3) does not provide LAFCO with any right or obligation to assume the role of lead agency.

2. Subsequent EIR Requirement.

Guideline Section 15052(a)(2) provides that the responsible agency shall assume the role of lead agency when "the lead agency prepared environmental documents for the project, but the following conditions occur: (A) a Subsequent EIR is required pursuant to Section 15162, (B) the lead agency has granted a final approval for the project, and (C) the statute of limitations for challenging the lead agency's action under CEQA has expired."

Here, the City of Morgan Hill has granted a final approval and the statute of limitations has run. Therefore, the focus is on whether a Subsequent EIR or Negative Declaration is required pursuant to Section 15162. While that statute identifies three circumstances where further environmental is required (§15162(a)(1), §15162(a)(2) and §15162(a)(3)), the circumstances described in §15162(a)(1) and §15162(a)(2) are clearly not present here. CGF appears to agree, as Mr. Carroll's letter only addresses Section 15162(a)(3).

Guideline Section 15162(a)(3) provides as follows:

"New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:

(A) the project will have one or more significant effects not discussed in the previous EIR or Negative Declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found to not be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents declined to adopt the mitigation measure or alternative."

Neelima Palacherla

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When the City performed the LESA analysis last fall, the result was a determination that the impact on Prime Farmland would be less than what was contemplated in the IS/MND. Consequently, even if we assume for argument's sake that the results of the LESA analysis constitutes "new information...which could not have been known", none of the situations described in (A) through (D) are present here.

Further, the "new information" prerequisite to even looking at those four categories is not present either. The IS/MND disclosed the fact that a portion of the Blackrock property consisted of Prime Farmland and disclosed that City would be using the LESA assessment methodology to determine whether that Prime Farmland is economically viable.

The LESA model was not invented by Morgan Hill. Its usage is recommended by the California Department of Conservation, the State agency charged with administering the Williamson Act and all other farmland protection regulations of the State. It is a methodology for determining the economic viability of agricultural lands based upon objective factors. As such, it was possible for CGF or any other interested party to have a LESA analysis performed regarding the Blackrock property, and know the result, during the IS/MND review period. That did not occur.

The contentions raised in the LAFCO April 4, 2007 staff report (namely that the property included Prime Farmland under the Cortese-Knox-Hertzberg Act and that the LESA analysis should have been completed before the Final MND was approved) were knowable prior to the Final MND approval in the exercise of reasonable diligence.

It was entirely appropriate for the City to perform the LESA analysis after approval of the Final MND. The mitigation measure set forth in the IS/MND specifically identifies the standard to be applied in determining the economic viability of the Prime Farmland (the LESA analysis) and specifically states the mitigations that will be required if that analysis results in a determination that the Prime Farmland is economically viable such that its loss would constitute a significant impact: In such event, conservation easements or agricultural preserves will be required.

Guideline Section 15126.4(a)(1)(B) explicitly recognizes that mitigation measures may specify performance standards which would mitigate the



significant effect of the project. In *Endangered Habitat League v. County of Orange* (2005) 131 Cal.App.4th 777, 793-94, the court held that deferral of a mitigation measure was permissible where the agency commits itself to mitigation and either (1) adopts a performance standard and makes further approvals contingent on finding a way to meet the standard or (2) lists alternative means of mitigating the impact which must be considered, analyzed and possibly adopted in the future. In this case, the City of Morgan Hill did exactly that with Mitigation Measure B.1.

Further, the use of performance standards (such as the imposition of the LESA assessment) "is particularly appropriate in connection with 'first-tier' approvals or other planning decisions that will necessarily be followed by additional, project-level environmental review." (Remy, Thomas and Moose, Guide to CEQA (11th Ed., 2007, p. 552). In *Endangered Habitats League, supra*, mitigations regarding loss of particular species habitat were deferred to some future date, but the court upheld the deferral because the EIR specifically set forth the alternative mitigation measures that could be imposed depending on the later analysis. (*Id.* at 794.) Here, the IS/MND states at page 11 that it is a program level review, and the "later analysis" has now been completed as planned, resulting in the no impact determination.

The IS/MND stated the specific standard to be used (the LESA assessment) and the specific mitigations to be imposed upon a finding of significant impact. Consequently, under California law, the results of the LESA analysis do not constitute "new information of substantial importance which was not known and could not have been known in the exercise of reasonable diligence at the time" within the meaning of Guideline Section 15162. On that basis, no Subsequent EIR or Subsequent Negative Declaration was required under these circumstances.

Finally, some mention should be made of CGF's lengthy and well annotated discussion of the low threshold for EIRs and the "fair argument" standard.<sup>1</sup> While we do not quibble with Mr. Carroll's recitation of the law, the

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<sup>1</sup> CGF assertion that LAFCO Staff's April 2007 description of Blackrock's property as Prime Farmland presents a "fair argument" of significant environmental impact ignores the fact that the IS/MND already recognized that the property was Prime Farmland in April 2006, and addressed the possible impact through the mitigation measure. Staff's description was thus not "new information", nor did it provide substantial evidence supporting a fair argument of significant environmental impact.

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time for its presentation is long past. The issue of whether there is a "fair argument of significant impact", as borne out by the many cases cited by CGF, is during the environmental review process, prior to the approval of the CEQA document. Both LAFCO and CGF were presented with the IS/MND before it was approved. Both had an opportunity to recognize that one possible outcome of the LESA analysis was a determination that the loss of this Prime Farmland would not constitute a significant impact because it was not economically viable. In fact, the language in the IS/MND even suggested that probable result.

Thus, should either LAFCO or CGF have had reason to challenge the use of LESA or its possible conclusion of no significant impact, it was well within their means to do so before approval of the Final MND. Neither did. The Prime Farmland identified in the IS/MND as being possibly insignificant is the same Prime Farmland that was in fact determined to be insignificant through the LESA assessment. The time to exhaust administrative remedies by submitting evidence that the loss of this Prime Farmland would be significant regardless of the LESA assessment ended on April 27, 2006. Once a negative declaration or EIR has been approved, CEQA presumes the correctness of the analysis and favors the interests of finality over further public comment and environmental review (PRC §21167.2; *Laurel Heights Improvement Association v. Regents of University of California* (1993) 6 Cal.4th 112, 1130; *Snarled Traffic Obstructs Progress v. City and County of San Francisco* (1999) 74 Cal.App.4th 793, 797.)

While CGF's desire to preserve farmland is understandable, that desire seems misplaced under the circumstances presented here. Though the type of soil found on a portion of the Blackrock property may lend itself to healthy plants, economic forces have, over the years, driven any agricultural uses from Blackrock's property and virtually every other property within a quarter mile. This is land that will not sustain commercial farming. Putting this infill piece to productive use with very low density housing will help define the edge of urbanization. That defined edge will, in the long run, protect legitimate farmlands beyond the urban edge. CGF's efforts would be better spent preserving existing farms than pursuing the fiction that Blackrock's property could sustain legitimate economically viable farming.

The City of Morgan Hill followed CEQA's requirements precisely in its approval of the MND. While LAFCO was well within its rights to express its

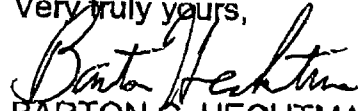
Neelima Palacherla

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concerns over Morgan Hill's administration of the LESA analysis nearly a year after approval of the Final MND, it was equally appropriate for LAFCO to approve Blackrock's USA extension, as CEQA provided LAFCO with neither the obligation nor the right to assume lead agency responsibilities or conduct further environmental review under these circumstances. As to the approval of Blackrock's inclusion in Morgan Hill's USA, there is no further CEQA action available to LAFCO at this time.

Very truly yours,



BARTON G. HECHTMAN

BGH:mr

cc:    Rocke Garcia  
       Doug Blackwell  
       Janet Kern  
       Dave Bischoff  
       Paul Carroll

**LAFCO**  
**Meeting Date:** May 30, 2007  
**TO:** LAFCO  
**FROM:** Neelima Palacherla, Executive Officer  
Dunia Noel, Analyst *DN*  
**SUBJECT:** **Clarification of Agricultural Use**  
**Agenda Item # 10**

**STAFF RECOMMENDATION**

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Discuss and accept clarification of term "agricultural use".

**BACKGROUND**

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At the April 4, 2007 LAFCO meeting, LAFCO unanimously adopted Agricultural Mitigation Policies (see Attachment A), including the word-for-word definition of "prime agricultural land" as found in Government Code section 56064 of the Cortese Knox Hertzberg Act.

LAFCO also directed staff to provide a clarification of the term "agricultural use" at the May 30, 2007 LAFCO meeting.

**AGRICULTURAL USE**

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The term "agricultural use" is not defined within the Cortese Knox Hertzberg Act. LAFCO will interpret the term "agricultural use" very broadly. The term, when used by LAFCO and as part of LAFCO's definition of "prime agricultural land," will mean uses that currently or at any point in time relate to producing crops, growing fruit/nut trees, grazing cattle, supporting an agricultural industry or other uses that would not exclude the use of the land for agriculture and that would be compatible with agriculture, including land left undeveloped or fallow.

**ATTACHMENT**

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Attachment A: LAFCO's Agricultural Mitigation Policies as adopted on April 4, 2007

# AGRICULTURAL MITIGATION POLICIES

## ITEM No. 10 ATTACHMENT A

### Background

LAFCO's mission is to encourage orderly growth and development, 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. LAFCO will consider impacts to agricultural lands along with other factors in its evaluation of proposals. LAFCO's Urban Service Area (USA) Amendment Policies discourage premature conversion of agricultural lands, guide development away from existing agricultural lands and require the development of existing vacant lands within city boundaries prior to conversion of additional agricultural lands. In those cases where LAFCO proposals involve conversion of agricultural lands, LAFCO's USA Amendment Policies require an explanation of why the inclusion of agricultural lands is necessary and how such loss will be mitigated.

### Purpose of Policies

The purpose of these policies is to provide guidance to property owners, potential applicants and cities on how to address agricultural mitigation for LAFCO proposals and to provide a framework for LAFCO to evaluate and process in a consistent manner, LAFCO proposals that involve or impact agricultural lands.

### General Policies

1. LAFCO recommends provision of agricultural mitigation as specified herein for all LAFCO applications that impact or result in a loss of prime agricultural lands as defined in Policy #6. Variation from these policies should be accompanied by information explaining the adequacy of the proposed mitigation.
2. LAFCO encourages cities with potential LAFCO applications involving or impacting agricultural lands to adopt citywide agricultural mitigation policies and programs that are consistent with these policies.
3. When a LAFCO proposal impacts or involves a loss of prime agricultural lands, LAFCO encourages property owners, cities and agricultural conservation agencies to work together as early in the process as possible to initiate and execute agricultural mitigation plans, in a manner that is consistent with these policies.
4. LAFCO will work with agricultural entities, the County, cities and other stakeholders to develop a program and public education materials to improve the community's understanding of the importance of agriculture in creating sustainable communities within Santa Clara County.

5. LAFCO will review and revise these policies as necessary.

### **Definition of Prime Agricultural Lands**

6. "Prime agricultural land" as defined in the Cortese Knox Hertzberg Act means an area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than an agricultural use and that meets any of the following qualifications:
  - a. Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.
  - b. Land that qualifies for rating 80 through 100 Storie Index Rating.
  - c. Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Handbook on Range and Related Grazing Lands, July, 1967, developed pursuant to Public Law 46, December 1935.
  - d. Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre.
  - e. Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred dollars (\$400) per acre for three of the previous five calendar years.

### **Mitigation Recommendations**

7. Proposals involving the conversion of prime agricultural lands should provide one of the following mitigations at a not less than 1:1 ratio (1 acre preserved for every acre converted) along with the payment of funds as determined by the city / agricultural conservation entity (whichever applies) to cover the costs of program administration, land management, monitoring, enforcement and maintenance of agriculture on the mitigation lands:
  - a. The acquisition and transfer of ownership of agricultural land to an agricultural conservation entity for permanent protection of the agricultural land.
  - b. The acquisition and transfer of agricultural conservation easements to an agricultural conservation entity for permanent protection of the agricultural land.

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

\* with provisions for adjustment of in-lieu fees to reflect potential changes in land values at the time of actual payment
8. Agricultural lands or conservation easements acquired and transferred to an agricultural conservation entity should be located in Santa Clara County and be lands deemed acceptable to the city and entity.
9. The agricultural mitigation should result in preservation of land that would be:
  - a. Prime agricultural land of substantially similar quality and character as measured by the Average Storie Index rating and the Land Capability Classification rating, and
  - b. Located within cities' spheres of influence in an area planned/envisioned for agriculture, and
  - c. That would preferably promote the definition and creation of a permanent urban/agricultural edge.
10. Because urban/non-agricultural uses affect adjacent agricultural practices and introduce development pressures on adjacent agricultural lands, LAFCO encourages cities with LAFCO proposals impacting agricultural lands to adopt measures to protect adjoining agricultural lands, to prevent their premature conversion to other uses, and to minimize potential conflicts between the proposed urban development and adjacent agricultural uses. Examples of such measures include, but are not limited to:
  - a. Establishment of an agricultural buffer on the land proposed for development. The buffer's size, location and allowed uses must be sufficient to minimize conflicts between the adjacent urban and agricultural uses.
  - b. Adoption of protections such as a Right to Farm Ordinance, to ensure that the new urban residents shall recognize the rights of adjacent property owners conducting agricultural operations and practices in compliance with established standards.
  - c. Development of programs to promote the continued viability of surrounding agricultural land.

## **Agricultural Conservation Entity Qualifications**

11. The agricultural conservation entity should be a city or a public or non-profit agency. LAFCO encourages consideration of agricultural conservation entities that:
  - a. Are committed to preserving local agriculture and have a clear mission along with strategic goals or programs for promoting agriculture in the areas that would be preserved through mitigation,
  - b. Have the legal and technical ability to hold and administer agricultural lands and agricultural conservation easements and in-lieu fees for the purposes of conserving and maintaining lands in agricultural production and preferably have an established record for doing so, and
  - c. Have adopted written standards, policies and practices (such as the Land Trust Alliance's "Standards and Practices") for holding and administering agricultural lands, agricultural conservation easements and in-lieu fees and are operating in compliance with those standards.

## **Timing and Fulfillment of Mitigation**

12. 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) should be fulfilled no later than at the time of city's approval of the final map, or issuance of a grading permit or building permit, whichever occurs first.
13. Cities should provide LAFCO with information on how the city will ensure that the agricultural mitigation is provided at the appropriate time.
14. Cities should provide LAFCO with a report on the status of agricultural mitigation fulfillment every year following LAFCO approval of the proposal until the agricultural mitigation commitments are fulfilled.
15. The agricultural conservation entity should report annually to LAFCO on the use of the in-lieu fees until the fees have been fully expended.

## **Plan for Mitigation**

16. A plan for agricultural mitigation that is consistent with these policies should be submitted at the time that a proposal impacting agricultural lands is filed with LAFCO. The plan for mitigation should include all of the following:
  - a. 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. Upon LAFCO approval of the proposal, the agreement should be recorded with



the County Recorder's office against the property to be developed. The agreement should specify:

1. 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)
  2. The agricultural conservation entity that will be involved in holding the lands, easements, or in-lieu fees.
  3. The acreage that would be preserved through mitigation and /or the amount of in-lieu fees that would be paid (with provisions to adjust fees to reflect land values at time of payment) along with the methodology adopted by the entity for calculating the in-lieu fees.
  4. The location of the mitigation lands, when possible.
  5. Information on the specific measures adopted by the city as encouraged in Policy #10 (mitigation for impacts to adjacent agricultural lands)
  6. The time-frame within which the mitigation will be fulfilled, which should be no later than at the time of city's approval of the final map, or issuance of the grading permit or building permit, whichever occurs first.
  7. The mitigation agreement is to be contingent on LAFCO approval of the proposal.
- b. Applicant should provide all other supporting documents and information to demonstrate compliance with these policies.



17555 Peak Avenue  
Morgan Hill, CA 95037-4128  
TEL: 408-779-7271  
FAX: 408-779-3117  
www.morganhill.ca.gov

STEVE TATE

Mayor

ITEM NO. 10

May 29, 2007

Santa Clara County Local Agency Formation Commission  
County Government Center, 11<sup>th</sup> Floor, East Wing  
70 West Hedding Street  
San Jose, CA 95110

Re: Clarification of the Agricultural Definitions

Dear LAFCO Commissioners:

In adopting the Cortese-Knox-Hertzberg Act of 2000, the Legislature recognized that determining local agency boundaries is an important factor in promoting orderly development, and in balancing that development with the sometimes competing state interests of discouraging urban sprawl, preserving open-space and prime agricultural lands, efficiently extending government services, and providing housing for persons and families of all incomes.

Section 56010 of the Act provides that "unless the provision or context otherwise requires, the definitions contained in this chapter govern the construction of this division. The definition of a word applies to any of that word's variants." Sections 56011 through 56080 of the Act present definitions adopted under the chapter, including the definition of Agricultural Lands in §56016 and the definition of Prime Agricultural Land in §56064. Section 56375 of the Act does not allow LAFCOs to adopt definitions different from those in state law.

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.

56064. "Prime agricultural land" means an area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than an agricultural use and that meets any of the following qualifications:

- a) Land that qualified, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.
- b) Land that qualifies for rating 80 through 100 Storie Index Rating.
- c) Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Handbook on Range and Related Grazing Lands, July, 1967, developed pursuant to Public Law 46, December 1935.
- d) Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre.

- e) Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred dollars (\$400) per acre for three of the previous five calendar years.

At its April 2007 meeting, the LAFCO Board directed its staff to provide a clarification of the term "agricultural use". The clarification as presented in the staff report for this meeting is as follows:

"The term "agricultural use" is not defined within the Cortese Knox Hertzberg Act. LAFCO will interpret the term "agricultural use" very broadly. The term, when used by LAFCO and as part of LAFCO's definition of "prime agricultural land" will mean uses that currently or at any point in time relate to producing crops, growing fruit/nut trees, grazing cattle, supporting an agricultural industry or other uses that would not exclude the use of land for agriculture and that would be compatible with agriculture, including land left undeveloped or fallow."

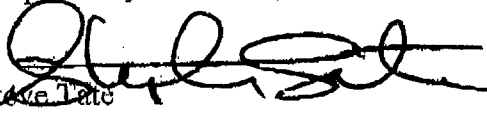
The City of Morgan Hill does not support the above interpretation of "agricultural use", and does not believe that LAFCO has the authority to create a broad new definition. The existing definition of "agricultural lands" in the State law already indicates what agricultural lands the State intended to be considered when balancing factors that would guide orderly development. The Statute is intended to apply to agricultural land as defined by 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. [Emphases added]*

The City of Morgan Hill believes that the appropriate clarifying action for LAFCO to take would be to insert the above Cortese Knox Hertzberg definition of "Agricultural Lands" in Policy #6 of the adopted policies, such that this definition precedes that provided for "Prime Agricultural Lands". This will make it clear that the policies apply to land that first is determined to be Agricultural Lands; and if the lands are agricultural, are then also determined to be Prime Agricultural Lands.

By providing this clarification, LAFCO's policies will be consistent with carrying out the intent of State law, and will use existing definitions provided in the State law. Thank you for considering adding this clarification to your policies rather than accepting your staff suggestion that there is no definition of agricultural use in state law and that it would be interpreted "very broadly", which we believe would be outside of the authority granted to LAFCO by the Legislature.

Respectfully submitted,

  
Steve Tate  
Mayor

C: Morgan Hill City Council Members  
Ed Tewes, City Manager



Cox, Castle & Nicholson LLP  
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Anne E. Mudge  
415.262.5107  
amudge@coxcastle.com

May 30, 2007

VIA FACSIMILE AND U.S. MAIL

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

Re: **Comments on Revised Draft Agricultural Mitigation Policies**

Dear Ms. Palacherla:

We are writing on behalf of Coyote Housing Group and the Home Builder's Association of Northern California. This letter relates to staff's most recent proposal to amend the Agricultural Mitigation Policies, in particular, the proposed definition of "agricultural use" and the proposed limitation on conserved lands being within a city's sphere of influence.

Definition of "Agricultural Use."

Staff says the Cortese Knox Hertzberg (CKH) Act does not define "agricultural use," but fails to explain that Section 56016 of the Act defines "agricultural lands." Section 56016 provides that "agricultural lands" mean "lands 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."

Given this, the term "agricultural use" for purposes of the definition of "prime agricultural land" in Government Code section 56054 should be defined in reference to Section 56016 for purposes of LAFCO's policy as follows:

The term, "agricultural use" when used by LAFCO and as part of LAFCO's definition of 'prime agricultural land,' will mean "uses that currently relate to producing an agricultural commodity for commercial purposes, including uses that leave land temporarily fallow under a crop rotation program or as part of a agricultural subsidy or set aside program. Such uses include, but are not limited to, growing crops, growing fruit/nut trees, and grazing cattle. "

Staff's proposed definition (see below) goes well beyond the statutory definition of "agricultural land by trying to include land that was ever used for agricultural purposes "at any point in time." Staff's definition is:

"The term 'agricultural use' is not defined within the Cortese Knox Hertzberg Act. LAFCO will interpret the term 'agricultural use' very broadly, The term, when used by LAFCO and as part of LAFCO's definition of 'prime agricultural land,' will mean uses that currently or at any point in time relate to producing crops, growing fruit/nut trees, grazing cattle, supporting an agricultural industry to other uses that would not exclude the use of the land for agricultural and that would be compatible with agriculture, including land left undeveloped or fallow."

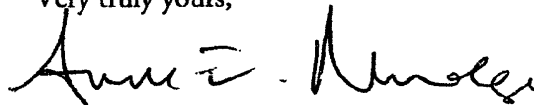
Since the Legislature has limited "agricultural land" under the Act to land "currently used" for agricultural purposes, "agricultural use" cannot include use of land that no longer qualifies as "agricultural land."

Location of Land to be Conserved

Staff proposes to limit land to be conserved to land within a City's sphere of influence. This is overly limiting and will not likely square with policy decisions already made by the cities within the County. For example, land is usually placed within a city's sphere of influence because it is ultimately slated for development not for preservation as agricultural. Preservation of land on the edge of a city's sphere of influence would be more logical.

Thank you for consideration of this letter.

Very truly yours,



Anne E. Mudge

AEM/rc

54188\102058v1

cc: Kerry Williams, Coyote Housing Group  
Beverley Bryant, Home Builders Association, Northern California  
Vera Toderov, City Attorney's Office  
Joseph Horwedel, Director of Planning, Bldg and Code Enforcement  
Laurel Prevetti, Director of Planning, Bldg and Code Enforcement

LAFCO Meeting Date: May 30, 2007

**TO:** LAFCO

**FROM:** Neelima Palacherla, Executive Officer  
Kathy Kretchmer, LAFCO Counsel

**SUBJECT:** **Agreement between LAFCO and County of Santa Clara for Legal Services in Fiscal year 2008.**

**Agenda item# 11**

**STAFF RECOMMENDATION**

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Approve Agreement between the County of Santa Clara and the Local Agency Formation Commission of Santa Clara County for Legal Services for the period July 1, 2007 to June 30, 2008. See Attachment A for the Agreement.

**DISCUSSION**

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The Office of the County Counsel has been providing legal services to LAFCO pursuant to the Memorandum of Understanding (MOU) between LAFCO and the County dated June 5, 2001 which details all of the services provided by the County. The MOU does not provide detail regarding the Office of County Counsel's present and potential interests which may conflict with the performance of services. This new agreement advises LAFCO of its present conflict by virtue of the Office's representation of the County in the matter of the incorporation of San Martin. The County agrees to take appropriate steps to create ethical walls within the Office and to ensure the confidentiality of LAFCO information and attorney-client communications. By signing the Agreement, LAFCO acknowledges and specifically waives the conflict based on the County taking the appropriate steps. By signing the Agreement LAFCO also acknowledges that it is aware of potential conflicts of interest by virtue of the County's representation of certain special districts and some cities on particular issues, and that LAFCO waives these potential conflicts. In the event an actual conflict of interest does arise, LAFCO will be notified of the conflict and be requested to specifically waive the actual conflict. If LAFCO declines to waive the actual conflict, the Office of the County Counsel will be unable to represent LAFCO with respect to that matter.

Additionally, the Agreement confirms that LAFCO will be billed at the Office of the County Counsel's intra-county hourly rate. The rate for Fiscal Year ending June 2008, is \$198/hour.

In the Agreement, the County designates Kathy Kretchmer, Deputy County Counsel as the Project Manager for the services. The Executive Officer has been informed that the Office of the County Counsel will be assigning an additional attorney to work with the Commission. The language of the Agreement, which is the same language as in the 2001 MOU, states that the County Counsel shall consider the input from LAFCO and the Executive Officer in assigning the attorney to represent LAFCO.

**AGREEMENT BETWEEN  
THE COUNTY OF SANTA CLARA AND  
LOCAL AGENCY FORMATION COMMISSION OF SANTA CLARA COUNTY  
FOR LEGAL SERVICES**

This Agreement ("Agreement") is made effective July 1, 2007, by and between the County of Santa Clara ("COUNTY") and the Local Agency Formation Commission of Santa Clara County ("LAFCO") so that the COUNTY may provide legal services to LAFCO.

LAFCO desires to engage COUNTY through the Office of the County Counsel to provide legal services; and

COUNTY has experience and expertise necessary to provide such services;

THEREFORE, the parties agree as follows:

**1. Nature of Services.**

COUNTY, through the Office of the County Counsel, will provide legal services for LAFCO including, but not limited to, research and general advice as requested by LAFCO.

**2. Term of Agreement.**

This Agreement is effective from July 1, 2007, to and including June 30, 2008, unless terminated earlier in accordance with Section 4.

**3. Compensation.**

A. Pursuant to the Memorandum of Understanding Between the Local Agency Formation Commission of Santa Clara County and the County of Santa Clara dated June 5, 2001, COUNTY will be compensated for services provided under this Agreement at the County Counsel's intra-county hourly rate established annually and for reimbursable expenses and costs incurred. COUNTY's intra-county hourly rates are revised annually. No less than thirty days prior to the beginning of the fiscal year to which any new fee schedule will apply, COUNTY will provide LAFCO with a new rate schedule. The intra-county rate for Fiscal Year ending June, 2008 is \$198/hour for attorneys and \$78/hour for paralegals.

B. COUNTY will invoice and bill LAFCO directly via intra-county payment vouchers on a quarterly basis. The invoice shall be accompanied by a detailed summary of activities undertaken over the course of the preceding quarter.

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C. LAFCO will provide the Office of the County Counsel with an estimate of the number of hours of general advice service required annually. Any necessary defense of litigation would be in addition to these hours.

**4. Termination.**

A. LAFCO may terminate this Agreement at any time, either in whole or in part, by giving 7 days written notice specifying the effective date and scope of the termination. COUNTY may terminate this Agreement at any time, either in whole or in part, by giving 30 days written notice specifying the effective date and scope of the termination. However, if COUNTY elects to terminate this Agreement, LAFCO's rights under any pending matter arising from COUNTY's services hereunder will not be prejudiced due to such termination as required by the Rules of Professional Conduct of the State Bar of California

B. In the event of termination, COUNTY will deliver to LAFCO copies of all documents and other work performed by COUNTY under this Agreement and upon receipt thereof, COUNTY will be paid for services performed and reimbursable expenses incurred to the date of termination.

**5. Project Managers.**

COUNTY designates Kathy L. Kretchmer, Deputy County Counsel, as COUNTY's Project Manager for the purpose of performing the services under this Agreement. As provided in the Memorandum of Understanding Between the Local Agency Formation Commission of Santa Clara County and the County of Santa Clara dated June 5, 2001, the County Counsel shall consider the input from LAFCO and the Executive Officer in assigning the attorney to represent LAFCO.

LAFCO designates Neelima Palacherla, LAFCO Executive Officer, as its Project Manager for the purpose of managing the services performed under this Agreement.

**6. Conflicts of Interest.**

COUNTY acknowledges that it has both present and potential interests which do or may conflict with the performance of services. The present conflict is by virtue of the petition to LAFCO for the incorporation of San Martin. The incorporation proposal has direct financial consequences for the COUNTY and the Office of the County Counsel is representing the COUNTY in this matter. COUNTY agrees to take appropriate steps to create ethical walls within the office and to ensure the confidentiality of LAFCO information and attorney-client communications. In accepting this Agreement, LAFCO acknowledges and specifically waives this conflict based on COUNTY's taking appropriate steps as indicated above.

LAFCO also acknowledges that it is aware of potential conflicts of interest by virtue of the County's representation of certain fire and school districts, certain sanitation and sanitary districts,

certain other special districts, some cities on litigation matters and when their in-house counsel has a conflict of interest, and that LAFCO waives these potential conflicts. In the event an actual conflict of interest does arise, LAFCO will be notified of the conflict and requested to specifically waive the actual conflict. COUNTY will take appropriate steps to create ethical walls and ensure the confidentiality of LAFCO information and attorney-client communications. If LAFCO declines to waive such actual conflict, the COUNTY will be unable to represent LAFCO with respect to that matter.

**7. Insurance.**

Each party is self-insured and, during the term of this Agreement shall maintain in force (i) a commercial general liability insurance or program of self-insurance which provides limits of no less than one million dollars (\$1,000,000.00) per occurrence or two million (\$2,000,000.00) per annual aggregate; (ii) a policy of workers' compensation providing statutory coverage; (iii) such other insurance or self-insurance as shall be necessary to insure it against any claim or claims for damages arising under the Agreement. The policy shall require the insurer to provide to the other party a thirty (30) day written notice of any cancellation or reduction of such insurance or the insured party shall provide such written notice under its self-insurance plan. Each party agrees to provide the other with a certificate of insurance upon request.

**8. Indemnification.**

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the Parties pursuant to Government Code section 895.6, or any other statute, regulation or rule that may otherwise affect the terms of this Agreement, the Parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the COUNTY and LAFCO agree to the following:

**A. Claims Arising From Sole Acts or Omissions of COUNTY.**

The COUNTY agrees to defend and indemnify LAFCO, its agents, officers and employees (hereinafter collectively referred to as "LAFCO") from any claim, action or proceeding against LAFCO, arising solely out of the acts or omissions of the COUNTY in the performance of this Agreement. At its sole discretion, LAFCO may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve the COUNTY of any obligation imposed by this Agreement. LAFCO shall notify COUNTY promptly of any claim, action or proceeding and cooperate fully in the defense.

**B. Claims Arising from the Sole Acts or Omissions of LAFCO.**

LAFCO agrees to defend and indemnify the COUNTY, its agents, officer and employees (hereinafter collectively referred to as "COUNTY") from any claim, action or proceeding against COUNTY, arising solely out of the acts or omissions of LAFCO in the performance of this

Agreement. At its sole discretion, COUNTY may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve LAFCO of any obligation imposed by this Agreement. COUNTY shall notify LAFCO promptly of any claim, action or proceeding and cooperate fully in the defense.

C. Claims Arising From Concurrent Acts or Omissions.

COUNTY agrees to defend itself and the LAFCO agrees to defend itself, from any claim, action or proceeding arising out of the concurrent action or omissions of COUNTY and LAFCO. In such cases, COUNTY and LAFCO agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs except as provided in section E below.

D. Joint Defense.

Notwithstanding paragraph C above, in any case where COUNTY and LAFCO agree in writing to a joint defense, COUNTY and LAFCO may appoint joint defense counsel to defend the claim, action or proceeding arising out the concurrent acts or omissions of LAFCO and COUNTY. Joint defense counsel shall be selected by mutual agreement of the COUNTY and LAFCO. COUNTY and LAFCO agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in section E below. COUNTY and LAFCO further agree that neither party may bind the other to a settlement agreement without the written consent of both COUNTY and LAFCO.

E. Reimbursement and/or Reallocation.

Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, COUNTY and LAFCO may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

9. Notices.

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing in accordance with this section:

To LAFCO:

Local Agency Formation Commission of Santa Clara County  
70 West Hedding Street, 11<sup>th</sup> Floor, East Wing  
San Jose, CA 95110  
Attn: Neelima Palacherla, LAFCO Executive Director

To the COUNTY:

Office of the County Counsel  
County of Santa Clara  
70 West Hedding Street, Ninth Floor, East Wing  
San Jose, CA 95110  
Attn: Kristen Wong Baker, Deputy County Counsel

**10. Governing Law.**

This Agreement has been executed and delivered in, and will be construed and enforced in accordance with, the laws of the State of California.

**11. Relationship of Parties; Independent Contractor.**

COUNTY will perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of LAFCO. None of the provisions of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between the parties other than that of independent parties contracting with each other for purpose of effecting the provisions of this Agreement. The parties are not, and will not be construed to be in a relationship of joint venture, partnership or employer-employee. Neither party has the authority to make any statements, representations or commitments of any kind on behalf of the other party, or to use the name of the other party in any publications or advertisements, except with the written consent of the other party or as is explicitly provided herein.

**12. Amendments.**

This Agreement may be amended only by an instrument signed by the parties.

**13. Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**14. Severability.**

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

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15. Waiver.

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing, and shall apply to the specific instance expressly stated.

IN WITNESS WHEREOF, COUNTY and LAFCO have executed this Agreement as follows:

LOCAL AGENCY FORMATION  
COMMISSION OF SANTA CLARA  
COUNTY

COUNTY OF SANTA CLARA

\_\_\_\_\_  
Name:  
Title:  
Date:

\_\_\_\_\_  
ANN MILLER RAVEL  
County Counsel  
Date:

ATTEST:


OFFICE OF THE COUNTY EXECUTIVE


\_\_\_\_\_  
LAFCO CLERK

\_\_\_\_\_  
Name:  
Title:  
Date:

APPROVED AS TO FORM  
AND LEGALITY

APPROVED AS TO FORM  
AND LEGALITY

  
\_\_\_\_\_  
KATHY KRETCHMER  
Deputy County Counsel  
Date: 5/17/07

 5/17/07  
\_\_\_\_\_  
KRISTIN BAKER  
Deputy County Counsel  
Date:

**LAFCO Meeting:** May 30, 2007

**TO:** LAFCO

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

**SUBJECT:** Update on Coyote Valley Specific Plan  
Agenda Item # 12

***For Information Only***

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On March 30, 2007, LAFCO received a Notice of Availability for the Draft Environmental Impact Report for the Coyote Valley Specific Plan. The public review period runs from March 30, 2007 to June 29, 2007. LAFCO staff is in the process of reviewing the Draft EIR and will be submitting comments to the City of San Jose prior to the close of the comment period. The Commission will be copied on that letter.

Portions of the Coyote Valley Specific Plan Area consist of unincorporated agricultural lands that are also currently located outside of the City of San Jose's Urban Service Area Boundary. Only after LAFCO has expanded the City's USA Boundary to include these lands can the City of San Jose annex the area and proceed with implementation of the Specific Plan.

Since 2004, LAFCO staff has submitted three comment letters to the City of San Jose regarding issues that LAFCO will consider during the urban service area amendment and annexation process for the Coyote Valley Specific Plan. Of primary concern to LAFCO is that the City's Environmental Impact Report is adequate for LAFCO's consideration of any future Urban Service Area amendment and annexation requests.

# 2007 CALAFCO CONFERENCE

**CONFERENCE REGISTRATION**

**August 28–31, 2007**

**Sacramento**

**SUSTAINABILITY**  
LAFCO's Role in  
Meeting the Challenge



CALAFCO 2007 Conference



Photo courtesy of U.S. Army Corps of Engineers



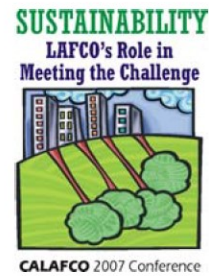
CALIFORNIA ASSOCIATION OF LOCAL AGENCY FORMATION COMMISSIONS



# CONFERENCE SCHEDULE

\*Conference Schedule subject to change

**Keynote Speaker: William Fulton**, author of *Guide to California Planning*, *The Reluctant Metropolis*, and *The Regional City*. He is also the co-author of *Sprawl Hits the Wall* and *Who Sprawls Most?*



## Tuesday, August 28th

- 2:00 **Early Registration**
- 5:00 **Reception and Wine Tasting** at CALAFCo Offices. Each LAFCo is asked to bring a case of wine or micro-brew from their county to the competition. May the best one win!
- 6:30 Dinner on your own

## Wednesday, August 29th

- 8:00 **Registration**
- 8:15 **Mobile Workshop:** Tour of Yolo County sites demonstrating sustainability through water availability, green infrastructure, flood control projects, agricultural land and open space conservation. Morning refreshments and lunch will be provided. (Advance registration required.)
- 12:00 **LAFCo 101:** Target audience—Commissioners new to LAFCo. Experienced Commissioners and staff will provide answers to the question, “What is LAFCo?” (Advance registration required.)
- 2:00 **General Session 1:**  
**Welcoming Remarks**  
Sacramento Mayor Heather Fargo  
Senator Gloria Negrete McLeod, Chair, Senate Local Government Committee (Invited, not yet confirmed)  
**Part 1: Lessons on Sustainability from Butte County’s Experience**  
**Part 2: Discussion of LAFCo’s Role in Land Use Planning**
- 6:00 **Reception and Awards Banquet** at the *California Museum for History, Women and the Arts*. No host bar. Dinner menu will feature the finest California local meats and produce.

## Thursday August 30th

- 7:30 **Breakfast Round Tables**
- 9:00 **CALAFCo Business Meeting**
- 10:30 **Concurrent Sessions**
1. *Rural LAFCo Issues*
  2. *Special Districts Governance Options*
  3. *Incorporation Primer*
  4. *Spheres of Influence*
  5. *Flood Control*
- 12:00 Lunch with **Keynote Speaker: William Fulton**
- 1:45 **Concurrent Sessions**
6. *Water Availability*
  7. *Growth in Unincorporated Areas*
  8. *Regional Blueprint and Transportation Planning*
  9. *CEQA Basics*
  10. *Sources of Funding and Staffing*
  11. *Tax Sharing/Revenue Neutrality*
- 3:15 **Concurrent Sessions**
12. *Rural LAFCo Issues*
  13. *CEQA Basics*
  14. *Spheres of Influence*
  15. *Flood Control*
  16. *Public Member Round Table*
  17. *Attorney Round Table*
- 5:00 **Reception** -- Hyatt Regency Hotel Hospitality Suite
- 6:30 Dinner on your own
- ## Friday, August 31st
- 8:00 **Networking Breakfast**
- 9:00 **General Session 2: Agricultural Resources and Open Space Preservation**
- 10:45 Legislative Update
- 12:00 Conference ends. Optional Wine Country Tour.



# GENERAL INFORMATION



## GETTING TO AND AROUND SACRAMENTO

### SACRAMENTO INTERNATIONAL AIRPORT

The Hyatt Regency Hotel does not have an airport shuttle, but arrangements can be made at the hotel to return to the airport by taxi or private shuttle. The counter for the private “Supershuttle” is located at the far end of the Baggage Claim and trips cost approximately \$14 one-way. [www.supershuttle.com](http://www.supershuttle.com). Taxis cost approximately \$30 to downtown. Yolo Bus departs the airport hourly to downtown from the public transit stops outside terminals A & B. Fare is \$1.50. [www.yolobus.com](http://www.yolobus.com).

### AMTRAK

Amtrak provides convenient and affordable passenger rail service to Sacramento. For information contact Amtrak at [www.amtrak.com](http://www.amtrak.com) or 800-872-7245.

### AUTOMOBILE

From the airport:

Follow I-5 to Sacramento and exit at J Street. Follow J Street to 15<sup>th</sup> Street. Right on 15<sup>th</sup> Street, then Right on L Street. The Hyatt Regency Hotel is located at 1209 L Street, between 13<sup>th</sup> and 12<sup>th</sup>.

Travelers from other locations should check the Hyatt Regency website <http://sacramento.hyatt.com/hyatt/hotels/index.jsp> or Mapquest <http://www.mapquest.com> for further details.



### CITY TRANSPORTATION

Public transportation, known as DASH, is available. The DASH bus runs every 15-20 minutes and costs \$.50-\$1.50 each way, exact fare needed. The City also runs a free DASH Trolley which covers the downtown area including Old Sacramento. Sacramento Regional Transit light rail trains and buses run regular routes throughout the city and to suburban areas. Guest Services at the hotel can provide specific information regarding accessing public transportation services.

A taxi within the downtown area costs approximately \$5.00 per trip.

## **CONFERENCE HOTEL**

The conference will be held at the Hyatt Regency Hotel at Capitol Park (1209 L Street). The Hyatt Regency is located in downtown Sacramento, adjacent to Capitol Park, with easy access to restaurants, shops, museums, and the Sacramento riverfront. Guest amenities include concierge, high speed internet in all meeting rooms, a fitness center, whirlpool and outdoor swimming pool, as well as a variety of dining venues to suit every taste.

## **CONFERENCE PARKING**

Guest parking is available at the Hyatt Regency Hotel for \$17 per day or overnight.



## SPECIAL ACTIVITIES

**SUSTAINABILITY**  
LAFCO's Role in  
Meeting the Challenge



CALAFCO 2007 Conference

**PLEASE NOTE: CALAFCO SPONSORED ACTIVITIES REQUIRE ADVANCE RESERVATIONS.**

**ADVANCE RESERVATIONS MUST BE RECEIVED BY JULY 31<sup>ST</sup> IN ORDER TO BE INCLUDED.**

**(SPONSORED ACTIVITIES MAY BE CANCELLED IF INADEQUATE INTEREST IS EXPRESSED.)**

**Tuesday, August 28<sup>th</sup>**

### **Some "Dinner-on-your-own" options**

1. Dinner Cruise on "Spirit of Sacramento" (Sacramento Yacht Charters <http://www.spiritofsacramento.com> Cost is \$65 per person.)
2. Take the Trolley to Old Sacramento (National Historic Park, offering riverfront dining). <http://www.oldsacramento.com/>
3. Ride the Sacramento Regional Transit Raley Field Shuttle to watch Oakland A's Triple A Affiliate Sacramento River Cats take on Colorado Springs Sky Sox. Game starts at 7:05. (Ticket prices vary depending on seat location. Shuttle costs \$.50) <http://www.rivercats.com/>
4. Carpool or ride Sacramento Regional Transit to the California State Fair. Magnificent midway open until 11:00 pm, ending with a spectacular fireworks display. Check the website for information regarding Concerts and Entertainment <http://www.bigfun.org> (General admission is \$10, parking \$7 or \$6 for carpools of 4 or more per car.)

**Wednesday, August 29<sup>th</sup>**

### **CALAFCO Sponsored Activities**

Mobile Workshop -- Tour of Yolo County sites demonstrating sustainability through water availability, green infrastructure, flood control projects, agricultural land and open space conservation. Morning refreshments and box lunch will be provided. (Cost \$40. Advance registration required.)

LAFCO 101 -- Target audience—Commissioners new to LAFCo. Experienced Commissioners and staff will provide answers to the question, “What is LAFCo?”. Box lunch provided. (No additional fee. Advance registration required.)

Spouse/Guest Welcome Lunch -- Customized orientation to the history and visitor attractions of California’s Capitol City. (Cost \$15 per person. Advance registration required.)

### **Thursday, August 30<sup>th</sup>**

#### **CALAFCo Sponsored Activities for Spouses/Guests**

1. Guided Walking Tour of State Capitol and Capitol Park, 9:00-11:30. <http://capitolmuseum.ca.gov> (\$5 per person. Advance registration required.)
2. Shopping Tour to Arden Fair Mall, 10:00-3:00. (We suggest lunch at the California Café-upscale dining in a comfortable club-like setting.) (\$9 per person for van and driver, does not include tip for driver or cost of lunch. Advance registration required.)

#### **On-your-own options**

1. Carpool or ride Sacramento Regional Transit to the California State Fair. Magnificent midway open until 11:00 pm. Check the website for information regarding Concerts and Entertainment <http://www.bigfun.org> (General admission is \$10, parking \$7 or \$6 for carpools of 4 or more per car)
2. The California Music Circus, Sacramento-based musical theater, will feature the “revolutionary classic”, **1776**. Show starts at 8:00. <http://www.californiamusicaltheater.com> (The theater is located within walking distance of the Hyatt Regency Hotel.)
3. Ride the Sacramento Regional Transit Raley Field Shuttle to watch Oakland A’s Triple A Affiliate Sacramento River Cats take on Colorado Springs Sky Sox. Game starts at 7:05. (Ticket prices vary depending on seat location. Shuttle costs \$.50) <http://www.rivercats.com>

### **Friday, August 31<sup>st</sup>**

#### **CALAFCo Sponsored Activity for those extending their stay**

Wine Tasting Tour of Sierra Foothill Wineries on Friday afternoon, specific destinations to be determined (\$20 per person, includes motor coach, guide. Advance registration required.)



# REGISTRATION FORM 2007 CALAFCO CONFERENCE

## August 28-31, 2007

COUNTY: \_\_\_\_\_



**Please complete applicable sections.  
PLEASE PRINT. COPY FORM FOR EACH PERSON REGISTERING.**

FIRST NAME	LAST NAME
LAFCo POSITION	
MAILING ADDRESS	
CITY	ZIP
PHONE	
EMAIL ADDRESS	

**MAIL TO:** Terri Tuck  
 Yolo County LAFCo  
 625 Court Street, Suite 107  
 Woodland, CA 95695

### CALAFCO CONFERENCE REGISTRATION FEES

	Received by July 31 <sup>st</sup>	Received after July 31 <sup>st</sup>	Amt. Encl.
Member	\$390	\$440	
Non-member	\$450	\$500	
Wednesday/Thursday Only (circle one)	\$225	\$225	
Guest/Spouse (All Meals)	\$165	\$165	
Guest/Spouse (Banquet/Receptions)	\$90	\$90	
Member Attorney MCLE Credit	\$50	\$50	
Mobile Workshop	\$40	\$40	
Spouse/Guest Welcome Lunch	\$15	\$15	
Guided Walking Tour	\$5	XXXX	
Shopping Tour	\$9	XXXX	
Yolo County Wine Tour	\$20	XXXX	
<b>TOTAL REGISTRATION FEES</b>	XXXX	XXXX	

#### CANCELLATION & REGISTRATION REFUND POLICY

1. Cancellation requests made in writing AND received by Yolo County LAFCo by August 7<sup>th</sup> shall receive a 100% refund.
2. Registrations are considered complete upon receipt of registration fees.
3. Registration fees are transferable to another person not already registered, provided that the request is received in writing by the registration deadline.
4. A LAFCo may carryover, for a period of one year, one cancelled or unused registration that is equal to the amount paid for use at a future conference or workshop provided that the request is received in writing.

I will attend the pre-conference "LAFCO 101" On Wednesday.

**PAYMENT MUST ACCOMPANY REGISTRATION FORMS.**

Checks payable to CALAFCO. Check # \_\_\_\_\_

# Gold Rush

## GRILLE

Wednesday, August 29<sup>th</sup>, 2007  
The California State Museum for Women, History, and the Arts  
7:45 pm Dinner in the Courtyard  
4 Bottles of Napa Valley Wine on Each Table

~Pre-Plated 1<sup>st</sup> Course~

*Vegetarian* (*Tally* \_\_\_\_\_)

or

-Cane Caramelized Salmon (*Tally* \_\_\_\_\_)

with Cilantro Coconut Rice, Pineapple Salsa and Drizzled with a Mango Cream Sauce.  
Garnished with fresh Cilantro

~Entrée Course~

*Vegetarian* (eggplant parmesan on bed of fresh spinach) (*Tally* \_\_\_\_\_)

or

House Cured Grilled *Chicken* Breast (*Tally* \_\_\_\_\_)

with Tomato, Cucumber, and Mozzarella Compote, Wild Mushroom Risotto, Herbed  
Baby Carrots and Garnished with Bull's Blood Beets

or

Rosemary Marinated Flat Iron *Steak* (*Tally* \_\_\_\_\_), Grilled Asparagus,  
Confetti Orzo Pasta with Feta Cheese, and Garnished with Local Micro Greens

~Dessert Course~

-Lemon Charolette Royale

with Sweet Merlot Raspberry Sauce, Crème Anglaise, and garnished with Fresh Cut Mint

May 17, 2007

Debbie Pedro AICP, Planning Director  
Town of Los Altos Hills  
26379 Fremont Road  
Los Altos Hills, CA 94022

**Re: Sewer Extension Requests**

Dear Ms. Pedro,

This letter is in response to several inquiries that the Local Agency Formation Commission of Santa Clara County (LAFCO) has received from various property owners in unincorporated Los Altos Hills. The inquiries concern the Town's ability to provide sewer services to properties that are outside of the Town's jurisdictional boundaries. We would like to clarify LAFCO Policies (see Attached), as well as State law, as it relates to all "Out-of-Agency-Contract for Services" proposals.

**STATE LAW AND LAFCO POLICIES**

**Service Extension Outside of a City's Boundaries Require LAFCO Approval**

Under Government Code section 56133(a), "a city or special district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the LAFCO in the affected county."

**Agreements for Extension of Services Solely Between Public Agencies Are Not Exempt from LAFCO Approval**

Prior to January 1, 2001, agreements for extension of services solely between public agencies were exempt from LAFCO approval. In 2001 the Cortese-Knox Hertzberg Act was revised, resulting in a narrowing of this exemption. The revised exemption only applies to cases where the service to be provided is an alternative to, or substitute for, services already being provided by an existing public service provider and where the level of service is consistent with the level

of service contemplated by the existing service provider. There is also an exception for agreements for the transfer of non-potable or non-treated water or for the provision of surplus water to agricultural lands for projects which service conservation purposes or directly support agricultural industries. Except for the exemption described above, contracts or agreements for extension of services between two public agencies require LAFCO approval. Local agencies may not enter into service contracts or agreements without first seeking and receiving an approval from LAFCO.

### **LAFCO May Authorize Service Extension Outside of a City's Boundaries in Anticipation of City's Annexation of the Area**

Under Government Code section 56133(b) and LAFCO's Out of Agency Contract for Services Policies, LAFCO when reviewing an Out of Agency request will consider whether annexation is a logical alternative to extending services beyond the jurisdictional boundaries of a local agency. LAFCO prefers that annexation precede service extension. If immediate annexation is not a feasible alternative, then an extension of services may be approved in anticipation of a future annexation if the agency is able to provide LAFCO with a resolution of intent to annex as well as appropriate assurances.

LAFCO Policies state that the assurances will be evaluated on a case by case basis and will include all appropriate actions such as pre-zoning the area, preparing a plan for annexation of the area, requiring deferred annexation agreements and waiver of protest rights from property owners in the area, and requiring that the property owners submit in advance the legal map, description and fees for the future annexation of the area.

### **LAFCO Will Consider Several Factors When Reviewing a Request to Extend Services Outside of a City's Boundaries**

Under Government Code section 56133(c) and LAFCO's "Out of Agency Contract for Services Policies," LAFCO when reviewing an Out of Agency request will consider several factors, including:

- The public benefit of the proposal (e.g. resolution of an existing health and safety hazard),
- The growth inducing impacts of any proposal,
- The proposal's consistency with the policies and general plans of all affected local agencies,
- The ability of the local agency to provide service to the proposal area without detracting from current service levels,



- Whether the proposal contributes to the premature conversion of agricultural land or other open space land, and
- The applicable service reviews, and discourage service extensions that undermine adopted service review determinations or recommendations.

### Questions and Concerns

I hope this clarifies LAFCO's Policies and State law on this matter. Please feel free to contact me at (408) 299-5127 ([neelima.palacherla@ceo.sccgov.org](mailto:neelima.palacherla@ceo.sccgov.org)) or contact Dunia Noel, LAFCO Analyst at (408) 299-5148 ([dunia.noel@ceo.sccgov.org](mailto:dunia.noel@ceo.sccgov.org)).

Sincerely,



Neelima Palacherla  
Executive Officer

NP:DIN

**Enclosure:**

1. LAFCO of Santa Clara County's Policies for "Out of Agency Contract for Services Proposals"

cc LAFCO Commissioners

## **POLICIES FOR "OUT-OF-AGENCY CONTRACT FOR SERVICES" PROPOSALS**

1. A city or special district may provide new or extended services by contract or agreement outside its jurisdiction only upon LAFCO approval.

Agreements for services solely between public agencies are exempt from LAFCO approval, ONLY where the service to be provided is an alternative to, or substitute for, services already being provided by an existing public service provider and where the level of service is consistent with the level of service contemplated by the existing service provider.

Agreements for the transfer of non-potable or non-treated water, or for the provision of surplus water to agricultural lands for projects which serve conservation purposes or directly support agricultural industries, in accordance with the provisions of Government Code section 56133, do not need LAFCO approval.

2. LAFCO shall not accept for review any proposal, which is outside of the agency's sphere of influence except as provided under § 56133 (c) of the Government Code.
3. LAFCO will consider whether annexation is a logical alternative to extending services beyond the jurisdictional boundaries of a local agency.
4. If immediate annexation is not a feasible alternative, then an extension of services may be approved in anticipation of a future annexation if the agency is able to provide LAFCO with a resolution of intent to annex as well as appropriate assurances. Such assurances will be evaluated on a case by case basis and will include all appropriate actions such as pre-zoning the area, preparing a plan for annexation of the area, requiring deferred annexation agreements and waiver of protest rights from property owners in the area, and requiring that the property owners submit in advance the legal map, description and fees for the future annexation of the area.
5. LAFCO will consider the public benefit of the proposal, including the resolution of an existing health and safety hazard.
6. LAFCO will consider factors such as the following to determine the local and regional impacts of an out-of-agency contract for services:
  - a. The growth inducing impacts of any proposal.
  - b. The proposal's consistency with the policies and general plans of all affected local agencies.
  - c. The ability of the local agency to provide service to the proposal area without detracting from current service levels.
  - d. Whether the proposal contributes to the premature conversion of agricultural land or other open space land.

7. LAFCO will consider the applicable service reviews and discourage service extensions that undermine adopted service review determinations or recommendations.
8. An administrative approval may be allowed for those projects which pose an urgent health or safety concern, without consideration by LAFCO. The administrative approval shall be made jointly by the LAFCO Chairperson (or Vice Chairperson if the Chair is not available) and the Executive Officer. Both must agree that an administrative approval is appropriate, based upon the criteria outlined below:
  - a. The lack of service being requested constitutes an immediate health and safety concern.
  - b. The property is currently developed.
  - c. There are physical restrictions on the property that prohibit a conventional service delivery method typically suited to the unincorporated area (i.e., septic tank, private well, etc.)

Adopted on December 11, 1996  
Amended on December 11, 2002

May 17, 2007

Peter J Wilkins, Chairman  
Beckwith Linda Vista Sewer District  
19190 Overlook Road  
Los Gatos, CA 95030

**Re: Beckwith Linda Vista Sewer District (BLVSD)**

Dear Mr. Wilkins,

This letter is in response to your April 2, 2007 letter addressed to Supervisor Don F. Gage. Your letter was forwarded to the Local Agency Formation Commission (LAFCO of Santa Clara County) as it pertains to sewer service, special district and city sphere of influence boundaries.

LAFCO's understands that your group, Beckwith Linda Vista Sewer District (BLVSD), is interested in receiving sewer service from the West Valley Sanitation District (WVSD) by way of constructing a sewer line that would connect to West Valley Sanitation District's existing sewer line located at the end of Matilija Drive. Your area is currently located outside of the District's Sphere of Influence Boundary and therefore cannot be annexed into the District's boundaries. WVSD's Sphere of Influence Boundary is currently co-terminus with the City of Monte Sereno's Sphere of Influence Boundary in this area. WVSD's staff indicated that due to District Policies, the District can only consider annexing and providing sewer service to areas located within the City of Monte Sereno's Sphere of Influence Boundary.

LAFCO has authority over changes to Sphere of Influence (SOI) Boundaries. Several factors are taken into consideration during LAFCO's review and analysis of Sphere of Influence Boundary amendment proposals. LAFCO policies and filing requirements for Sphere of Influence Boundary amendments are available on the LAFCO website at [www.santaclara.LAFCO.ca.gov](http://www.santaclara.LAFCO.ca.gov). WVSD and the City of Monte Sereno may also have factors that they consider as part of their own request process. LAFCO recommends that you contact the City of Monte Sereno and WVSD for further direction on each agency's policies and procedures. Once

the area is included within WVSD's SOI Boundary, the area will have to be annexed to WVSD in order to receive sewer service.

Lastly, in your letter you mention that "new environmental conditions have increased the urgency of finding a solution to our problem." It would be helpful to all potentially involved parties, if you could elaborate further about these environmental conditions and any other issues that you think are relevant to supporting your request.

### Questions

If you have any questions concerning this letter, please feel free to contact me at (408) 299-5127 ([neelima.palacherla@ceo.sccgov.org](mailto:neelima.palacherla@ceo.sccgov.org)) or contact Dunia Noel, LAFCO Analyst at (408) 299-5148 ([dunia.noel@ceo.sccgov.org](mailto:dunia.noel@ceo.sccgov.org)).

Sincerely,



Neelima Palacherla  
Executive Officer

NP:DIN

Enclosure:

1. LAFCO of Santa Clara County's "Sphere of Influence Policies"

cc LAFCO Commissioners  
Supervisor Ken Yeager  
Brian Loventhal, City Manager, City of Monte Sereno.

## SPHERE OF INFLUENCE POLICIES

### A. GENERAL GUIDELINES

1. Pursuant to Government Code Section 56425, LAFCO must adopt and maintain a Sphere of Influence (SOI) for each local governmental agency.
2. Santa Clara LAFCO shall use SOIs to:
  - a. Promote orderly urban development
  - b. Promote cooperative planning efforts among cities, the county and special districts to address concerns regarding land use and development standards, premature conversion of agriculture and open space lands and efficient provision of services.
  - c. Serve as a master plan for future local government reorganization by providing long range guidelines for efficient provision of public services; shaping logical government entities able to provide services in the most economical manner, avoiding expensive duplication of services or facilities.
  - d. Guide consideration of proposals and studies for changes of organization or reorganization
3. Inclusion of territory within a SOI should not necessarily be seen as an indication that the city will either annex or develop to urban levels such territory. The Urban Service Area boundary will serve as LAFCO's primary means of indicating a city's intention of development and provision of urban services.
4. Each adopted SOI will be reviewed as necessary, but not less than once every five years.
5. A service review pertaining to the SOI will be prepared prior to, or in conjunction with each SOI adoption, update or amendment unless LAFCO determines that a prior service review is adequate. A minor SOI amendment will not require a service review. A minor SOI amendment is one that does not have any adverse regional, planning, economic or environmental impacts.
6. LAFCO will consider service review determinations and recommendations when rendering SOI findings.
7. While LAFCO encourages the participation and cooperation of the subject agency; the determination of the SOI is a LAFCO responsibility.

## **B. ADOPTION AND AMENDMENT POLICIES FOR SOI**

1. LAFCO will require consistency with city / county general plans and SOIs of affected local agencies when adopting or amending a SOI. Joint City/County Specific Plans and factors such as density policies, development standards, geology, and future use will be considered by the Commission when establishing Spheres of Influence.
2. Pursuant to Government Code Section 56425, LAFCO will consider and make a written finding regarding the following, in adopting or amending a SOI for a local agency:
  - a. The present and planned land uses in the area, including agricultural and open space lands
  - b. The present and probable need for public facilities and services in the area
  - c. The present capacity of public facilities and adequacy of public services, which the agency provides or is authorized to provide;
  - d. The existence of any social or economic communities of interest in the area if the Commission determines that they are relevant to the agency.
3. LAFCO will consider fiscal impacts of proposed SOI amendments upon the County, affected cities, special districts and school districts. Where such amendments may have negative fiscal impacts upon the County or other local agencies, LAFCO may require mitigations thereof from the city / district proposing the amendment.
4. LAFCO will consider city annexation proposals outside the Urban Service Areas, but within the Sphere of Influence, only if such annexations will promote LAFCO's mandate to preserve open space areas, including agricultural open space and greenbelts.
5. Spheres of Influence for cities and special districts may overlap when both agencies expect to provide different service to the area.
6. Spheres of Influence for special districts which provide urban services will generally be tied to city growth plans.
7. LAFCO will discourage duplications in service provision in reviewing new or amended SOI proposals. Where a special district is coterminous with, or lies substantially within, the boundary or SOI of a city which is capable of providing the service, the special district may be given a zero sphere of influence which encompasses no territory.

**C. ADDITIONAL REQUIREMENT FOR A CITY SOI ADOPTION / UPDATE / AMENDMENT\*\***

1. At least thirty days prior to submitting an application for a new city SOI or a city SOI update, city and County representatives must meet to discuss SOI issues, boundaries and methods to reach agreement on such boundaries, and development standards and zoning requirements within the SOI. The purpose is to consider city and county concerns and ensure orderly development within the SOI. Discussions may continue an additional 30 days, but no longer than 60 days.

If an agreement is reached, it must be forwarded to LAFCO. LAFCO will seriously consider the agreement when determining the city's SOI. If LAFCO's final SOI determinations are consistent with a city/County agreement, the city and the County must adopt the agreement at noticed public hearings. After the agreement and related General Plan amendments are adopted, County-approved development within the SOI must be consistent with the agreement terms.

If no agreement is reached, LAFCO will render determinations and enact policies consistent with its policies and the Cortese Knox Hertzberg Act.

- \*\* This requirement pursuant to Government Code section 56425 expires on January 1, 2007.

**D. ADDITIONAL REQUIREMENT FOR A SPECIAL DISTRICT SOI ADOPTION / UPDATE / AMENDMENT**

1. LAFCO shall require the special districts to provide written statements specifying the functions or classes of service provided and establish the nature, location, and extent of any functions or classes of services provided.



April 2, 2007

Donald F. Gage  
Santa Clara County Supervisor

Dear Mr. Gage,

Our neighbors have formed a private group called the Beckwith Linda Vista Sewer District (BLVSD) and have prepared a proposed plan to install a sewer system. Overlook Road, Beckwith and Linda Vista Avenue is an old established neighborhood in unincorporated Santa Clara County with mainly 50 - 90 year old homes.

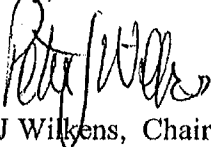
Proposal:

To extend the sewer line from the existing line at the end of Matilija Drive to residents living on Linda Vista Ave and Overlook Road, a distance of 30 to 600 feet. The BLVSD group has hired Mason Sulic Inc. an engineering firm to prepare the formal plan. The participating residents involved in the plan have agreed in principle to the necessary easements, routing and maintenance of the system. They have also agreed to provide the funding for the project.

The BLVSD group would like to meet with you to discuss how we can best proceed with our plan. The BLVSD group started this project six years ago and have generally met resistance from one government group or another and have been told that we cannot proceed unless we are in the sphere-of-influence of some district or municipality. This has been very frustrating for us. The BLVSD group feels that since we are zoned within the County of Santa Clara, we should get representation from the County to help us proceed with our project.

We have, in the past, had several government representatives, Susanne Wilson, Mike Honda, Norm Mineta, John Vasconcellos, and others come up to our neighborhood to help us work out some of our previous problems. This has been effective and we now would like to invite you to come up and meet with the BLVSD group to review our plan and advise us as to what course of action we should take. New environmental conditions have increased the urgency of finding a solution to our problem so we request a timely meeting to help resolve this issue as quickly as possible.

Sincerely,



Peter J Wilkens, Chairman, BLVSD Group

19190 Overlook Road  
Los Gatos, CA 95030  
408-717-6164  
[wilkensp@gmail.com](mailto:wilkensp@gmail.com)

cc: Ken Yeager, County Representative, West Valley Sanitation District Board