

**LAFCO MEETING  
AGENDA**

**Wednesday, October 14, 2009  
1:15 PM**

**Board Meeting Chambers  
70 West Hedding Street, First Floor  
San Jose, CA 95110**

**CHAIRPERSON: John Howe • VICE-CHAIRPERSON: Susan Vicklund-Wilson**

**COMMISSIONERS: Pete Constant, Don Gage, Liz Kniss**

**ALTERNATES: Al Pinheiro, Sam Liccardo, George Shirakawa, Terry Trumbull**

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. Disclosure of Campaign Contributions**

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, 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. For disclosure forms and additional information see: <http://www.santaclara.lafco.ca.gov/annexations&Reorg/PartyDisclForm.pdf>

**2. Lobbying Disclosure**

Any person or group lobbying the Commission or the Executive Officer in regard to an application before LAFCO must file a declaration prior to the hearing on the LAFCO application or at the time of the hearing if that is the initial contact. Any lobbyist speaking at the LAFCO hearing must so identify themselves as lobbyists and identify on the record the name of the person or entity making payment to them. For disclosure forms and additional information see:

<http://www.santaclara.lafco.ca.gov/annexations&Reorg/LobbyDisclForm.pdf>

**3. Disclosure of Political Expenditures and Contributions Regarding LAFCO Proceedings**

If the proponents or opponents of a LAFCO proposal spend \$1,000 with respect to that proposal, they must report their contributions of \$100 or more and all of their expenditures under the rules of the Political Reform Act for local initiative measures to the LAFCO office. For additional information and for disclosure forms see: [http://www.santaclara.lafco.ca.gov/sclafcopolicies\\_annex&reorg\\_home.html](http://www.santaclara.lafco.ca.gov/sclafcopolicies_annex&reorg_home.html)

**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 JUNE 3, 2009 LAFCO MEETING**

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**APPROVE CONSENT CALENDAR**

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**\*4. WEST VALLEY SANITATION DISTRICT 2009-1 (CERRO VISTA DRIVE)**

A petition by landowners for annexation to West Valley Sanitation District of one parcel (APN 537-26-027) with an area of approximately 1 acre, located at 15936 Cerro Vista Drive in Los Gatos.

**Possible Action:** Approve annexation to West Valley Sanitation District and waive protest proceedings.

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**PUBLIC HEARING**

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**5. POLICY RELATED TO ROLE OF COMMISSIONERS**

**Possible Action:** Consider and adopt new policies related to Role of Commissioners and delete current policy on Role of Alternate Commissioners.

**6. POLICY FOR LAFCO RECORDS RETENTION**

**Possible Action:** Consider and adopt policies for LAFCO Records Retention and Schedule.

**7. REVISION OF CURRENT ISLAND ANNEXATION POLICIES TO REFLECT CHANGES IN STATE LAW**

**Possible Action:** Consider and adopt revisions to LAFCO's Island Annexation Policies.

**8. REVISION OF CURRENT SERVICE REVIEW POLICIES TO REFLECT CHANGES IN STATE LAW**

**Possible Action:** Consider and adopt revisions to LAFCO's Service Review Policies.

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**ITEMS FOR ACTION / DISCUSSION**

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**9. WORK PLAN FOR SECOND ROUND OF SERVICE REVIEWS**

**Possible Action:** Consider and adopt a work plan for conducting the second round of service reviews.



**10. LAFCO ANNUAL REPORT**

Possible Action: Accept LAFCO Annual Report (July 1, 2008-June 30, 2009).

**11. EXECUTIVE OFFICER'S REPORT**

**11.1 Update on Selection of Consultant for Design and Implementation of LAFCO's Electronic Document Management System**

Possible Action: Accept report.

**11.2 LAFCO letters to the City of Gilroy commenting on the City's CEQA documents and other reports related to its 2009 Urban Service Area Amendments.**

For Information Only.

**11.3 Update on Presentation to the 2009-2010 Santa Clara County Civil Grand Jury**

For Information Only.

**12. COMMISSIONERS' REPORTS**

**13. NEWSPAPER ARTICLES / NEWSLETTERS**

**14. WRITTEN CORRESPONDENCE**

**15. PENDING APPLICATIONS / UPCOMING PROJECTS**

15.1 Potential Gilroy USA Amendment application

**16. ADJOURN**

Adjourn to regular LAFCO meeting on Wednesday, December 9, 2009, at 1:15 PM in the Board Meeting Chambers, 70 West Hedding Street, First Floor, San Jose.

Any disclosable public records related to an open session item on the agenda and distributed to all or a majority of the Commission less than 72 hours prior to that meeting are available for public inspection at the LAFCO Office at the address listed at the bottom of the first page of the agenda during normal business hours. 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 the message is for the LAFCO Clerk.

LOCAL AGENCY FORMATION COMMISSION OF  
SANTA CLARA COUNTY  
MINUTES  
WEDNESDAY, JUNE 3, 2009

**CALL TO ORDER**

**Chairperson John Howe** calls the meeting to order at 1:15 p.m., and welcomes Alternate Commissioner George Shirakawa.

**1. ROLL CALL**

The following Commissioners and Alternates are present:

- **Chair John Howe**
- **Vice-Chair Susan Vicklund-Wilson**
- **Commissioner Donald F. Gage**
- **Alternate Commissioner George Shirakawa**, representing Commissioner Liz Kniss
- **Alternate Commissioner Al Pinheiro**

The following Commissioners are absent:

- **Commissioner Pete Constant**
- **Commissioner Liz Kniss**

The following staff members are present:

- **LAFCO Executive Officer Neelima Palacherla**
- **LAFCO Analyst Dunia Noel**
- **LAFCO Counsel Mala Subramanian**

**2. PUBLIC PRESENTATION**

There were none.

**3. APPROVE THE MINUTES OF APRIL 8, 2009 MEETING**

**MOTION:** Approve the minutes of April 8, 2009 meeting, as submitted. (Susan Vicklund-Wilson)

**SECOND:** Don Gage

**MOTION PASSED**

**AYES:** John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa

**NOES:** None

**ABSTAIN:** None

**ABSENT:** Pete Constant

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**PUBLIC HEARING**

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**4. CAMPBELL/LOS GATOS MINOR URBAN SERVICE AREA (USA) AND SPHERE OF INFLUENCE (SOI) AMENDMENT AND DETACHMENT OF A PORTION OF WEST PARR AVENUE FROM THE CITY OF CAMPBELL**

Ms. Palacherla provides background information and analysis, and recommends approval of the joint request by the City of Campbell and Town of Los Gatos for USA/SOI amendment and detachment of a portion of West Parr Avenue from Campbell to enable Los Gatos to annex West Parr Avenue up to its centerline. She also reports that the cities have requested a fee waiver.

Bob Kass, Public Works Director, City of Campbell, requests that fees be waived because the application promotes island annexations.

**Commissioner Gage** inquires if similar requests for fee waivers are anticipated, and Ms. Palacherla informs that Campbell and San Jose have a potential application of similar nature. **Commissioner Wilson** states that since the application is not a pocket annexation and the fee waiver may set a precedent, only a portion of the fees should be waived. She continues by stating that this application is straightforward; however, other cities may seek fee waivers for more complex applications that will require more staff time. Ms. Subramanian advises that the Commission could indicate a dollar-amount cap on the waiver and make a finding that the payment of full fee is detrimental to public interest.

**MOTION** Approve request for USA/SOI amendment, and detachment from Campbell of a portion of West Parr Avenue; and, waive up to \$5,000.00 in LAFCO fees, with a finding that the payment of full fee is detrimental to public interest. (Susan Vicklund-Wilson)

**SECOND:** Don Gage

**Commissioner Shirakawa** expresses support for the motion. **Chairperson Howe** suggests increasing the fee waiver to \$11,000. **Commissioner Wilson** comments that the \$11,000 deposit towards the actual processing cost has already been received and that she is proposing to waive only up to \$5,000 because the application is not actually an island annexation.

**MOTION PASSED**

**AYES:** John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa

**NOES:** None

**ABSTAIN:** None

**ABSENT:** Pete Constant

**5. FINAL LAFCO BUDGET FOR FISCAL YEAR (FY) 2009-10**

Ms. Palacherla presents the Final LAFCO Budget and recommends approval.

In response to an inquiry by **Commissioner Shirakawa**, Ms. Palacherla advises that LAFCO does not accrue reserves over the years and savings from a prior year are used to reduce the succeeding year's cost. In response to a follow-up inquiry by **Commissioner Shirakawa**, **Commissioner Gage** informs that the reserve has never been used in the past. **Chairperson Howe** comments that the reserve is also necessary for LAFCO to be fiscally secure and adds that LAFCO's actual expenses have been less than its budget during the last four years.

**Commissioner Wilson** expresses appreciation to Commissioner Gage and Chairperson Howe for another year of service on budget subcommittee.

**MOTION** Approve the Final LAFCO Budget for FY 2009-10. (Don Gage)

**SECOND:** John Howe

**MOTION PASSED**

**AYES:** John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa

**NOES:** None

**ABSTAIN:** None

**ABSENT:** Pete Constant

**6. ADOPTION OF LAFCO INDEMNIFICATION POLICY**

Ms. Palacherla presents a brief staff report and recommends adoption of the proposed indemnification policy that requires all applicants to indemnify LAFCO against legal actions relating to their application.

**MOTION** Adopt the LAFCO Indemnification Policy. (Don Gage)

**SECOND** Susan Vicklund-Wilson

**MOTION PASSED**

**AYES:** John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa

**NOES:** None

**ABSTAIN:** None

**ABSENT:** Pete Constant

**7. LAFCO RECORDS RETENTION POLICY**

Ms. Palacherla requests that the item be continued to the next LAFCO meeting.

**MOTION** Continue discussion of the LAFCO Records Retention Policy to the next meeting. (Susan Vicklund-Wilson)

**SECOND** Don Gage

**MOTION PASSED**

**AYES:** John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa

**NOES:** None

**ABSTAIN:** None

**ABSENT:** Pete Constant

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**ITEMS FOR ACTION / DISCUSSION**

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**8. SETTLEMENT AGREEMENT BETWEEN SAN MARTIN NEIGHBORHOOD ALLIANCE (SMNA) AND LAFCO OF SANTA CLARA COUNTY**

Ms. Subramanian briefly discusses the major provisions in the Settlement Agreement between LAFCO and SMNA. **Commissioner Wilson** states that the settlement agreement is being discussed in the open session in order to make the full cost of the incorporation proposal known to the cities and the County that fund LAFCO.

**MOTION** Approve the Settlement Agreement. (Don Gage)

**SECOND** Susan Vicklund-Wilson



**Commissioner Shirakawa** expresses support for the motion and informs, for the record, that he is unsure if he has received any donation from members of the SMNA and that he has been aware of the incorporation issue prior to being elected to the County Board of Supervisors. In response to **Alternate Commissioner Pinheiro**, Ms. Subramanian informs that future proponents of San Martin incorporation, other than SMNA, will not be required to pay SMNA's unpaid fees.

**MOTION PASSED**

AYES: John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa  
NOES: None  
ABSTAIN: None  
ABSENT: Pete Constant

**9. PROPOSED WORK PLAN FOR COMPREHENSIVE REVIEW AND UPDATE OF LAFCO POLICIES**

Ms. Noel reports on LAFCO policies that need to be updated.

**MOTION** Approve the proposed work plan and authorize staff to proceed with updates to the policies, as necessary. (Don Gage)

**SECOND** Susan Vicklund-Wilson

**MOTION PASSED**

AYES: John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa  
NOES: None  
ABSTAIN: None  
ABSENT: Pete Constant

**10. ATTENDANCE OF ALTERNATE COMMISSIONER AT CLOSED SESSION**

Ms. Palacherla provides a summary of an informal survey among LAFCOs relating to attendance of alternate commissioners at closed session. Ms. Subramanian then reports on the Attorney General's opinion and proposes that the Commission could allow alternates to participate in closed session if the issue is prolonged. **Commissioner Wilson** comments that there is no way to know if the issue will be prolonged and inquires if there is any legal exposure in allowing alternates to attend. Ms. Subramanian advises that there is no legal exposure and that there are no lawsuits relating to this issue. In response to an inquiry by **Commissioner Gage**, Ms. Subramanian informs that there is no written policy to require those attending closed sessions to keep the proceedings confidential, and such a provision could be added as part of the policy. **Commissioner Shirakawa** proposes that LAFCO counsel may prepare briefs for alternates who will be taking the place of regular members, much like those given to regular members who are unable to attend. **Commissioner Gage** notes that it will be difficult to brief alternates when a regular member excuses himself at the last minute. **Alternate Commissioner Pinheiro** states that alternates attending both open and closed sessions could stay continuously informed and ready when the time comes for them to take the place of a regular member. **Commissioner Shirakawa** proposes that alternates may attend but not vote in closed sessions and those who are absent be briefed by LAFCO counsel. Discussion ensues on **Chairperson Howe's** inquiry regarding a possible Brown Act issue when a third member of the County Board of Supervisors attends a closed session. **Commissioner Gage** proposes that the policy

state that no more than two County representatives shall be present in any closed session. Ms. Palacherla states that the issue would be just as applicable to open session because LAFCO policy encourages all members to attend.

**MOTION** Continue the item to the next meeting and direct staff to revise the proposed policy in view of the discussion. (Susan Vicklund-Wilson)

**SECOND** Don Gage

**MOTION PASSED**

**AYES:** John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa

**NOES:** None

**ABSTAIN:** None

**ABSENT:** Pete Constant

**11. REQUEST FOR PROPOSALS FOR DESIGN AND IMPLEMENTATION OF AN ELECTRONIC DOCUMENT MANAGEMENT SYSTEM (EDMS) FOR LAFCO**

Ms. Noel briefly reports on the proposed RFP for a LAFCO EDMS.

Brian Schmidt, Committee for Green Foothills, proposes that LAFCO coordinate with the County to make LAFCO records internet-accessible. Ms. Noel informs that web access to LAFCO records is not part of the current RFP but is planned in the future. Ms. Palacherla states that LAFCO website and records are independent of the County, and that the LAFCO website currently contains full agenda packets and all published LAFCO reports such as the completed service reviews.

**Alternate Commissioner Pinheiro** proposes that staff study the cost of including web access because this improves the public's perception of transparency, stating that the City of Gilroy recently installed this feature. **Chairperson Howe** volunteers to serve on the selection committee, if needed.

**MOTION** Authorize staff to issue an RFP for qualified firms to design and implement an EDMS, delegate authority to the Executive Officer to enter into an agreement with the most qualified firm in an amount not to exceed \$40,000, and execute any necessary amendments, subject to LAFCO counsel's review and approval. (Don Gage)

**SECOND** John Howe

**MOTION PASSED**

**AYES:** John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa

**NOES:** None

**ABSTAIN:** None

**ABSENT:** Pete Constant

**12. PRESENTATION REGARDING RECRUITMENT OF COMMISSIONERS TO THE CALAFCO EXECUTIVE BOARD**

**Chairperson Howe** expresses appreciation to **Commissioner Wilson** for her work on the CALAFCO Board.

**MOTION** Accept staff report. (Don Gage)

**SECOND** Susan Vicklund-Wilson

**MOTION PASSED**

AYES: John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa  
NOES: None  
ABSTAIN: None  
ABSENT: Pete Constant

**13. EXECUTIVE OFFICER'S REPORT**

**13.1 NOMINATION TO THE CALAFCO BOARD OF DIRECTORS**

Ms. Palacherla recommends that Commissioner Wilson be nominated to the CALAFCO Board of Directors.

**MOTION** Nominate Commissioner Wilson to the CALAFCO Board of Directors.  
(Don Gage)

**SECOND** John Howe

**MOTION PASSED**

AYES: John Howe, Don Gage, George Shirakawa  
NOES: None  
ABSTAIN: Susan Vicklund-Wilson  
ABSENT: Pete Constant

**13.2 CALAFCO ANNUAL CONFERENCE ON OCTOBER 28-30 (TENAYA LODGE, YOSEMITE)**

**Commissioner Wilson** volunteers to serve as the voting delegate, and **Chairperson Howe** volunteers to serve as the alternate voting delegate.

**MOTION** Designate Commissioner Wilson as the voting delegate and Chairperson Howe as alternate voting delegate, authorize commissioners and staff to attend the 2009 CALAFCO Annual Conference, and authorize travel expenses funded by LAFCO budget. (Don Gage)

**SECOND** Susan Vicklund-Wilson

**MOTION PASSED**

AYES: John Howe, Don Gage, Susan Vicklund-Wilson, George Shirakawa  
NOES: None  
ABSTAIN: None  
ABSENT: Pete Constant

**13.3 REPORT ON THE CALAFCO WORKSHOP HELD IN APRIL-MAY 2009**

Ms. Palacherla provides a brief report.

**14. COMMISSIONERS' REPORTS**

None

**15. NEWSPAPER ARTICLES / NEWSLETTERS**

None

16. **WRITTEN CORRESPONDENCE**  
None
17. **PENDING APPLICATIONS / UPCOMING PROJECTS**  
Ms. Palacherla provides a brief report.
18. **ADJOURN**  
The meeting is adjourned at 2:16 p.m.

Approved:

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John Howe, Chairperson  
Local Agency Formation Commission of Santa Clara County

By: \_\_\_\_\_  
Emmanuel Abello, LAFCO Clerk





## REPORT OF THE EXECUTIVE OFFICER

**Type of Application:** Annexation to the West Valley Sanitation District  
**Designation:** WEST VALLEY SANITATION DISTRICT 2009-01 (Cerro Vista Court)  
**Filed By:** Landowner Petition (100% Consent)  
**Support By:** West Valley Sanitation District, per Resolution No. 09.08.17 Dated 09/26/2009  
**LAFCO Meeting Date:** October 14, 2009 (Agenda Item #4)

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### 1. REVIEW OF PROPOSAL:

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

The proposal consists of approximately 1.006 acres on Cerro Vista Court in the Town of Los Gatos. The affected Assessor Parcel Number is: 537-26-027.

#### 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

(However, this does not adversely impact service provision by the District.)

#### 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 (a) and (b), and Class 3, and Section 15303(d).

### 3. SUGGESTED CONDITIONS OR OTHER COMMENTS:

None.

### 4. PROTESTS:

None.

### 5. RECOMMENDATIONS:

1. Take CEQA action as recommended in the LAFCO Analyst Report (Attachment A )
2. Approve annexation to the West Valley Sanitation District of area depicted in Exhibits A & B.
3. Waive protest proceedings.

By:   
 Neelima Palacherla, Executive Officer

Date: 10/9/09

**Hearing Date:** October 14, 2009  
**To:** Local Agency Formation Commission of Santa Clara County  
**From:** Dunia Noel, Analyst  
**Subject:** West Valley Sanitation District 2009-01 (Cerro Vista Court)

**Recommended Environmental Action:**

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

**Reasons for Recommendation:**

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

*Section 15319: Class 19 consists of only the following annexations:*

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

*(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:*

*(d) Water main, sewage, electrical, gas, and other utility extensions, including street improvements of reasonable length to serve such construction.*

**Background**

The West Valley Sanitation District proposes to annex one parcel that totals approximately 1.006 acres. The property is located at 15936 Cerro Vista Court in the Town of Los Gatos. The annexation area consists of Assessor Parcel Number 537-26-027. The annexation 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. The parcel is also located within West Valley Sanitation District's Sphere of Influence Boundary and abuts the District's service boundary on at least two sides.

According to the District, sewer service will be provided by installation of a new private sanitary sewer lateral per West Valley Sanitation District standards. Specifically, the property owner will install a new 4-inch sewer lateral which will connect the subject parcel to the existing sanitary sewer main that is located on Shannon Road.

Regarding this annexation into the West Valley Sanitation District, the parcel is currently zoned by the Town of Los Gatos as HR- 1 (Hillside Residential Zone) with a minimum lot size of 1 to 5 acres per each dwelling unit depending on the slope of the property. The General Plan Designation for the parcel is Hillside Residential (0 to 1 dwellings per net acre). The affected parcel is not eligible for further subdivision due to its size (approximately 1.006 acres). Further development of the parcel would be subject to the Town of Los Gatos' land use and development regulations. The parcel is located inside of the Town of Los Gatos' Urban Service Area Boundary and the Sphere of Influence Boundary. The proposed annexation to the West Valley Sanitation District is thus exempt from CEQA because this special district annexation meets the requirements of the Class 19 and Class 3 categorical exemptions.

EXHIBIT "A"  
 CERRO VISTA DRIVE  
 TOWN OF LOS GATOS  
 ANNEXATION NO. WVSD 2009-1  
 TO  
 WEST VALLEY SANITATION DISTRICT

All that real property situated in the Town of Los Gatos, County of Santa Clara, State of California, a portion of Section 23, Township 8 south, Range 1 West, M.D.B. & M. more particularly described as follows:

Beginning at the Northwesterly corner of the West Valley Sanitation District boundary established by the annexation 1995-1, said point being the Northeasterly corner of Parcel 1 as shown on the Record of Survey Map recorded in Book 111 of Maps at Page 28, Santa Clara County Records; thence along the Westerly limit of said district boundary

- (1) South 0 Degrees 0 Minutes 40 Seconds East a length of 115.01 feet; thence continuing along the limit of district boundary established by the annexation 1966-1
- (2) North 59 Degrees 48 Minutes West a length of 146.55 feet; and
- (3) North 77 Degrees 34 Minutes West a length of 55.89 feet; thence leaving said district boundary;
- (4) North 6 Degrees 59 Minutes West a length of 196.53 feet; thence
- (5) North 21 Degrees 35 Minutes East a length of 98.99 feet to the Southerly right of way line of Shannon Road, 60 feet wide and district boundary established by the annexation 1966-1; thence along said rights of way and district boundary
- (6) South 64 Degrees 58 Minutes 30 Seconds East a length of 116.91 feet and
- (7) South 48 Degrees 31 Minutes 50 Seconds East a length of 34.84 feet; thence leaving said district boundary and right of way line
- (8) South 21 Degrees 35 Minutes West a length of 143.29 feet; thence
- (9) South 59 Degrees 45 Minutes East a length of 103.44 feet to the point of beginning.

Containing 0.106 acres more or less.

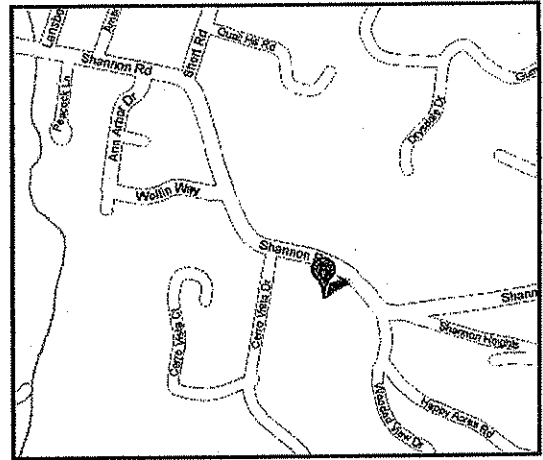
Revised 10-1-2009



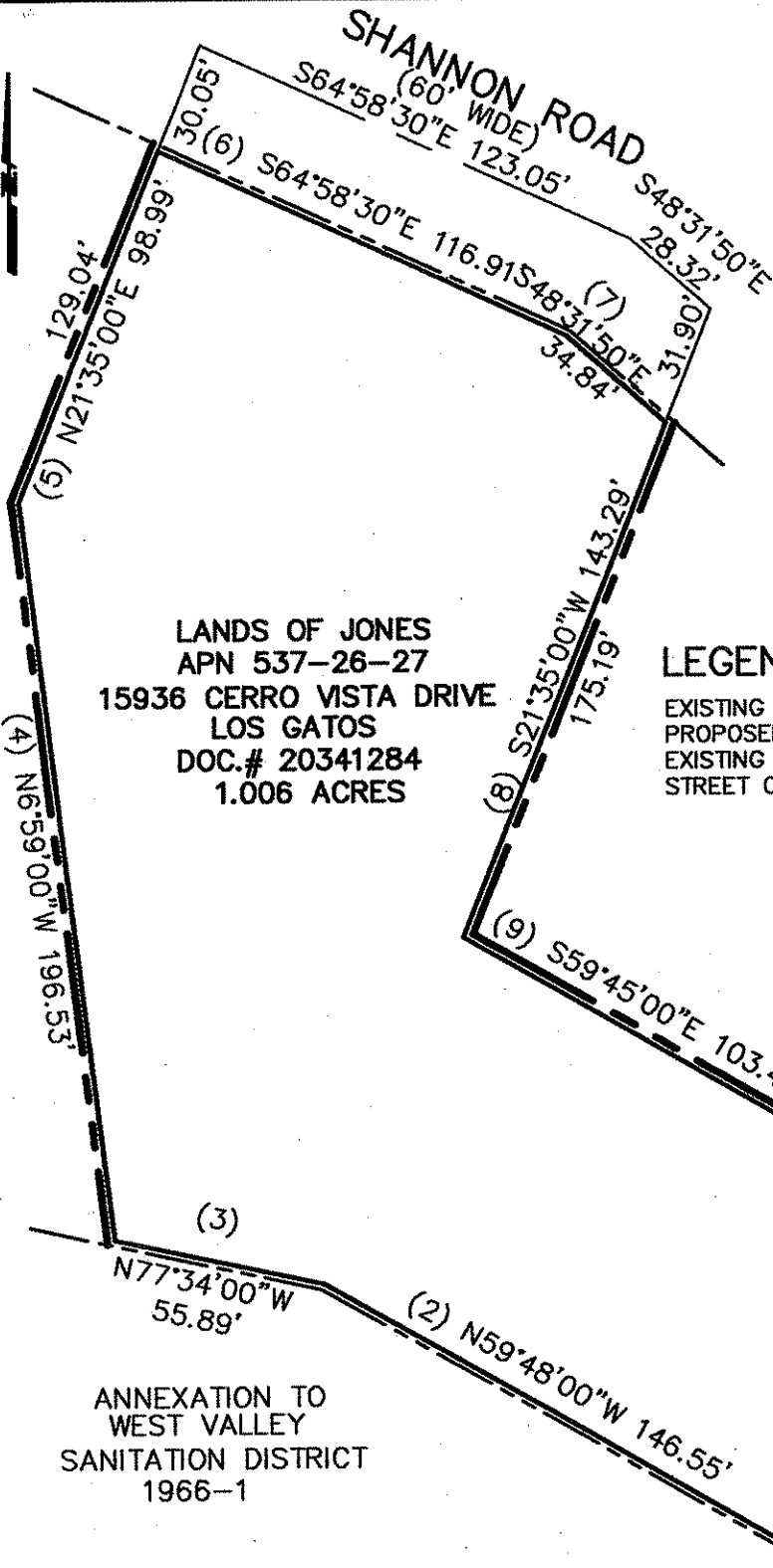
*Harry Babicka*



# EXHIBIT "B"



LOCATION MAP

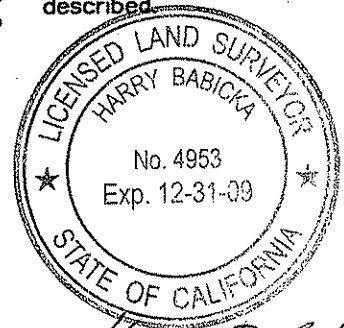


LANDS OF JONES  
 APN 537-26-27  
 15936 CERRO VISTA DRIVE  
 LOS GATOS  
 DOC.# 20341284  
 1.006 ACRES

## LEGEND

- EXISTING WVSD LIMIT
- PROPOSED WVSD LIMIT
- EXISTING BOUNDARY LINE
- STREET CENTERLINE

DISCLAIMER:  
 "For assessment purposes only. This description of land is not a legal property description as defined in the Subdivision map Act and may not be used as the basis for an offer for sale of the land described."



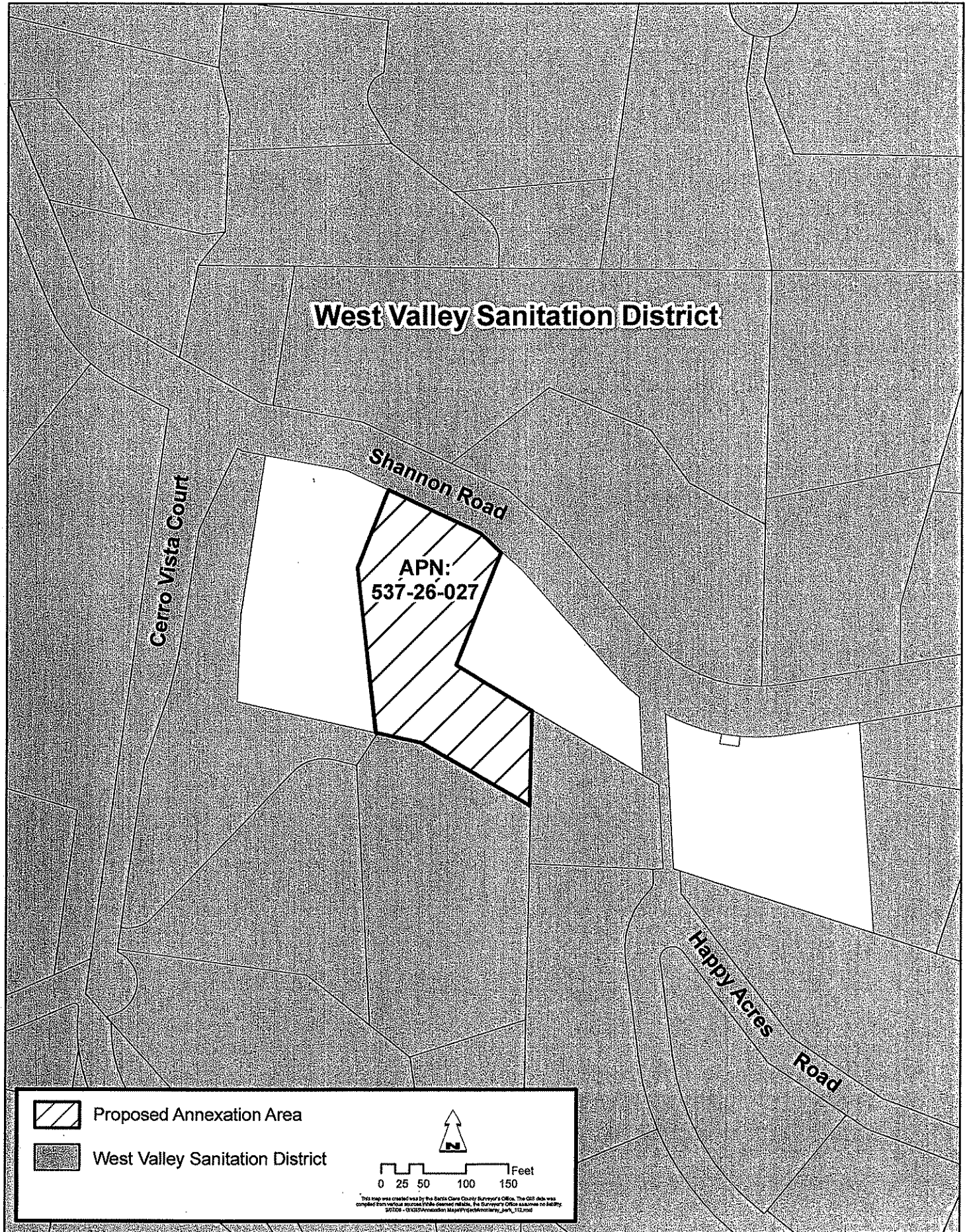
ANNEXATION TO WEST VALLEY  
 SANITATION DISTRICT  
 1995-1

ANNEXATION TO  
 WEST VALLEY  
 SANITATION DISTRICT  
 1966-1

ASSESSOR'S PARCEL NUMBERS: 537-26-027	ACREAGE: 1.006	LAFCO RESOLUTION NO.
WESTFALL ENGINEERS, INC. 14583 BIG BASIN WAY SARATOGA, CA. TEL 408-867-0244, FAX 408-867-6261	DATE: JULY 2009	CERRO VISTA DRIVE ANNEXATION NO. WVSD 2009-1 15936 CERRO VISTA DRIVE LOS GATOS, CA
	SCALE: 1"=50'	
DRAWN BY: JC	REVISIONS:  10-1-09	PORTION OF SEC.23, TOWNSHIP 8 SOUTH RANGE 1 WEST M.D.B.& M.
CHECKED BY: HB		
JOB NO. 2009-068		

# West Valley Sanitation District 2009-01

## Cerro Vista Drive



**LAFCO Meeting:** October 14, 2009  
**TO:** LAFCO  
**FROM:** Neelima Palacherla, Executive Officer  
Mala Subramanian, LAFCO Counsel  
**SUBJECT:** LAFCO Policy Related to Role of Commissioners

### **RECOMMENDATION**

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1. Adopt the proposed policy titled Role of Commissioners.
2. Delete the existing LAFCO Policy related to Role of Alternate Commissioners.

### **BACKGROUND**

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At the April 8, 2009 LAFCO meeting, the Commission directed staff to prepare a report on whether alternate members should be allowed to attend closed sessions even if the regular member is present. The current practice at Santa Clara LAFCO allows alternate commissioners to attend closed sessions only when the regular member is unable to attend and the alternate member is needed to take the place of the regular commissioner.

LAFCO Counsel prepared a memo for the June 3, 2009 LAFCO meeting which concluded that the Commission has the ability, because there is no other controlling authority, to choose between the following two options: to follow the Attorney General opinion and prohibit alternate LAFCO commissioners from attending closed sessions when not serving in place of regular commissioners or to allow alternates to participate in closed session, especially when the matter is prolonged.

Based on this and the information provided by staff regarding practice amongst LAFCOs statewide, the Commission directed staff to draft a policy for commission consideration that would allow alternate commissioners to participate in closed session but not vote when the regular member is present. The Commission also called for an explicit policy to state that information or discussion from closed session must be held confidential by the attendees and must not be disclosed unless and until authorized by the Commission. In addition, the Commission directed staff to look into any Brown Act violation issues in the instance when three members of the Board of Supervisors attend LAFCO meetings. Government Code section 54952.2 (c) (4) allows an exception from the Brown Act requirements when a majority members of a legislative body attend a noticed meeting of another legislative body provided the members do not discuss amongst themselves, other than as part of the scheduled meeting, business of a nature that is within the subject matter of the legislative body.

Attached is the proposed policy on Role of Commissioners (Attachment A), for the commission's consideration, which includes or addresses all three of the above issues. If adopted, these policies will become effective immediately and supersede the existing

LAFCO policy on Role of Alternate Members. LAFCO staff will notify all affected agencies concerning that approval and will update the LAFCO website to include the new policies.

A notice of the October 14, 2009 LAFCO public hearing regarding LAFCO's consideration and potential adoption of these policies regarding Role of Commissioners was provided to all affected agencies by email / mail and was posted in a newspaper of general circulation and on the LAFCO website. LAFCO staff has also posted this staff report and the proposed draft Policies on the LAFCO website under "What's New" for public review and comment.



## **ROLE OF COMMISSIONERS**

While serving on the Commission, all Commissioners shall exercise their independent judgment on behalf of the interests of the public as a whole in furthering the purposes of the CKH Act and not solely the interests of the appointing authority.

In each member category, the alternate member shall serve and vote in place of a regular member who is absent or who disqualifies herself or himself from participating on a specific matter before the Commission at a regular/special commission meeting or in closed session.

All alternate members are expected and encouraged to attend and participate in all Commission meetings, even if the regular member(s) is (are) present. Alternate members may attend and participate in closed session meetings of the Commission. However, alternate members may not vote or make a motion when the regular member is present.

The Brown Act allows an exception from its requirements for the attendance of a majority of the members of the Board of Supervisors at noticed meetings of the Commission, provided that a majority of the members of the Board of Supervisors do not discuss among themselves, other than as part of the Commission's scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the Board of Supervisors.

No person may disclose confidential information that has been acquired by being present in a closed session meeting authorized pursuant to the Brown Act to a person not entitled to receive it, unless the Commission authorizes disclosure of that confidential information.

Date Adopted:

**LAFCO Meeting:** October 14, 2009  
**TO:** LAFCO  
**FROM:** Neelima Palacherla, Executive Officer  
Mala Subramanian, LAFCO Counsel  
**SUBJECT:** Policy Related to LAFCO Records Retention

### **RECOMMENDATION**

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1. Adopt the proposed policy titled Records Retention Policy and Records Retention Schedule. (Attachment A)

### **BACKGROUND**

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At the June 2009 LAFCO meeting, the Commission approved a work plan for LAFCO policy revision/development and directed that staff develop policies pertaining to retention of LAFCO records.

The CKH Act, specifically Government Code section 56382, allows the destruction of LAFCO records provided photographic or electronic copies of the record are made and preserved as the official record in a manner specified in that section. The CKH Act however does not define the term "record." The proposed draft Records Retention Policies define "records" to include LAFCO meeting minutes, LAFCO resolutions and those documents related to LAFCO proposals. Other documents that are not listed as LAFCO records will be retained and disposed of in accordance with the accompanying proposed Records Retention Schedule. This policy and schedule will provide staff with guidance on how to manage LAFCO records and will be especially helpful as staff is embarking on implementing an electronic digital management system for LAFCO files.

A notice for the October 14, 2009 LAFCO public hearing regarding LAFCO's consideration and potential adoption of these Records Retention Policies was provided to all affected agencies by email or mail and was posted in a newspaper of general circulation and on the LAFCO website. LAFCO staff has also posted this staff report and the proposed draft Policies on the LAFCO website under "What's New" for public review and comment.

If the Commission approves the proposed policies, the policies will become effective immediately. LAFCO staff will notify all affected agencies concerning that approval and staff will update the LAFCO website to include the new policies.

## RECORDS RETENTION POLICY

Records must be kept indefinitely in original, photographic, or electronic form pursuant to Government Code section 56382.

The Commission authorizes the destruction of original records more than two years old, if a photographic or electronic copy of the original record is made and preserved in compliance with Government Code section 56382, which shall be considered permanently retained pursuant to the Records Retention Schedule. Documents that are not herein defined as "records" are not "records" pursuant to Government Code section 56382 and will be retained and disposed of according to the Records Retention Schedule in Exhibit A.

For purposes of compliance with Government Code §56382 and implementation of the Commission's Records Retention Schedule as set forth in Exhibit A, "records" include the following:

- LAFCO Meeting Minutes
- LAFCO Resolutions
- Documents related to LAFCO proposals such as the:
  - Application, petition or other initiating documents
  - Assessor's Statement of Property Valuation
  - Agreement to Pay / Indemnification
  - Certificate of Completion
  - Certificate of Filing
  - Environmental Review/CEQA documents such as Initial Study, Exemptions, Notices of Completion and Determination, Comments and Response to Comments, Negative Declaration, mitigation monitoring, Statements of Overriding Consideration
  - Map and Legal Description
  - Notices
  - Order for Change of Organization
  - Staff Reports
  - Statement of Boundary Change
  - Statement of Tax Rate Area

Date Adopted:

**EXHIBIT A**

**RECORDS RETENTION SCHEDULE**

Type of Record/ Document	Description or Example of Record/Document	Legal Authority	Minimum Legal Retention Period
<b>Administrative Documents</b>			
Accounts Payable	Invoices and back-up documents, purchase orders, travel expense reimbursements, petty cash, postage, check requests, receipt books, etc.	CCP 337 26 CFR 31.6001-1(e)(2); Sec. of State Guidelines recommendation	Until audited + 4 years
Accounts Receivable	Invoices, checks, reports, investments, receipt books	26 CFR31.6001-1(e)(2)	4 years
Agreements/ Contract	Original contracts and agreements and back-up materials, including leases, rentals and any amendments	CCP 337 CCP 337.2	4 years after termination/ completion
Annual Reports			2 years
Audit Reports	Financial services; internal and/or external reports; independent auditor analyses		2 years
Brochures/ Publications			2 years or longer for historical value
Budget, Annual	Adjustments, journal entries, account transfers, budget preparation documents including adopted budgets,		Until audited + 2 years
Claims Against the Commission	Paid/denied		Until settled + 2 years
Correspondence (General)	General correspondence, including letters, and; various files not otherwise specifically covered by the retention schedule; compliments, complaints and inquiries; transmittal letters; requests for comments and responses		90 days, recommended longer if useful. (complaints and inquiries should be kept until matter resolves)
Economic Interest Statements - Form 700 (copies)	Copies of statements forwarded to Fair Political Practices Commission	GC 81009(f), (g)	4 years (can image after 2 years)

\* After 2 years, records may be imaged for permanent preservation and original destroyed.

- CCP Code of Civil Procedure (CA)
- GC Government Code (CA)
- CFR Code of Federal Regulations

**EXHIBIT A**

<b>Type of Record/ Document</b>	<b>Description or Example of Record/Document</b>	<b>Legal Authority</b>	<b>Minimum Legal Retention Period</b>
Economic Interest Statements - Form 700 (originals)	Originals of statements of designated employees	GC 81009(c), (g)	7 years (can image after 2 years)
Email	General correspondence		90 days, recommended longer if useful. (complaints and inquiries should be kept until matter resolves)
Ethics Training Compliance	Note: records should contain date of training and name of training provider	GC 53235.2	5 years after receipt of training
Forms	Administrative - blank		Until superseded
General Ledgers	All annual financial summaries	CCP 337 Sec. of State Local Gov't. Records Retention Guidelines	Permanent
Gifts/Bequests	Receipts or other documentation		Until completed + 2 years
Grants Federal, State, or other grants	Grants documents and all supporting documents: applications, reports, contracts, project files, proposals, statements, sub-recipient dockets, environmental review, grant documents, inventory, consolidated plan, etc.	24 CFR 570.502 24 CFR 85.42	Until completed + 4 years
Grants – Unsuccessful	Applications not entitled		2 years
Newsletters	May wish to retain permanently for historic reference		2 years
Political Support or Opposition	Related to legislation		2 years
Press Releases	Related to Commission actions/activities		2 years
Procedure Manuals	Administrative		Current + 2 years
Public Records Request	Requests from the public to inspect or copy public documents		2 years

**\* After 2 years, records may be imaged for permanent preservation and original destroyed.**

CCP Code of Civil Procedure (CA)

GC Government Code (CA)

CFR Code of Federal Regulations

**EXHIBIT A**

<b>Type of Record/ Document</b>	<b>Description or Example of Record/Document</b>	<b>Legal Authority</b>	<b>Minimum Legal Retention Period</b>
Purchasing, Requisitions, Purchase Orders	Original documents	CCP 337	Until audited + 4 years
Recruitments and Selection	Records relating to hiring, promotion, selection for training	29 CFR 1627.3	3 years
Requests for Qualifications (RFQs) and Requests for Proposals (RFPs)	Requests for Qualifications, Requests for Proposals, and related responses		Current + 2 years
<b>Records relating to LAFCO Meetings or Applications</b>			
Affidavits of Publication/Post ing	Proof of publication of legal notices for public hearings		2 years
Agenda / Agenda Packets	Agendas, agenda packets, staff reports and related attachments, supplemental items and documentation submitted by staff/public in relation to agenda items.		2 years
Audio Recording of LAFCO Meetings			30 days after the LAFCO meeting minutes are approved
Elections	Impartial analysis		2 years
Environmental Review (for projects without a LAFCO application)	Correspondence, consultants, issues, comments and responses.		Completion + 2 years
Mailing Lists for Public Hearing Notices	Owners/voter		1 year after filing Notice of Completion or Commission action, whichever is later
Minutes	Meeting minutes		*Permanent
Notices /Agenda	Regular and Special meetings		2 years
Policies & Procedures	All policies and procedures adopted by the Commission		Current + 2 years

\* After 2 years, records may be imaged for permanent preservation and original destroyed.

- CCP Code of Civil Procedure (CA)
- GC Government Code (CA)
- CFR Code of Federal Regulations

**EXHIBIT A**

Type of Record/ Document	Description or Example of Record/Document	Legal Authority	Minimum Legal Retention Period
LAFCO Proposals- Annexations, Reorganizations, or other proposals	Application, petition or other initiating documents, Assessor's Statement of Property Valuation, Agreement to Pay / indemnification, Certificate of Completion, Environmental Review / CEQA documents (such as Initial Study, Exemptions, Notices of Completion and Determination, Comments and Response to Comments, Negative Declaration, mitigation monitoring, Statements of Overriding Consideration), Map and Legal Description, Notices, Order for Change of Organization, Staff Reports, Statement of Boundary Change, Statement of Tax Rate Area		*Permanent
Resolutions			*Permanent
<b>Other Misc. Records / Documents</b>			
Demographic/ Statistical Data			Current + 2 years
Legal Opinions	Confidential - not for public disclosure (attorney-client privilege)		Until superseded + 2 years
Litigation	Case files, including matters in mediation and/or arbitration		Until settled or adjudicated + 2 years and the time for appeal has expired
Reference Files	reports, procedures, research, pre-application research and correspondence		2 years minimum, recommended longer if useful

\* After 2 years, records may be imaged for permanent preservation and original destroyed.

- CCP Code of Civil Procedure (CA)
- GC Government Code (CA)
- CFR Code of Federal Regulations



**LAFCO Meeting:** October 14, 2009

**TO:** LAFCO

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

**SUBJECT:** Revision of LAFCO Service Review Policies and Island Annexation Policies

### **STAFF RECOMMENDATIONS**

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1. Approve the revised LAFCO Service Review Policies (Attachment A)
2. Approve the revised LAFCO Island Annexation Policies (Attachment B)

### **BACKGROUND**

---

In June 2009, LAFCO staff completed a preliminary review of LAFCO's current policies and identified policy areas that need clarification. LAFCO staff determined that the Service Review Policies and Island Annexation Policies require minor revisions in order to reflect the current provisions of the Cortese Knox Hertzberg Reorganization Act (CKH Act) and LAFCO's current practices. At the June LAFCO meeting, the Commission directed staff to revise both of the policies accordingly and to bring the revisions back to the Commission for their consideration and potential approval.

#### **Current LAFCO Service Review Policies Adopted in 2003**

In 2003, LAFCO adopted Service Review Policies stating that the first set of service reviews should be completed on or before January 1, 2006. Subsequently, legislation was passed which extended the deadline to January 1, 2008. In addition, as part of the service review process, the CKH Act requires LAFCO to make written determinations in specific identified categories for all cities and special districts within the county. Prior to 2008, the Act required LAFCO to make determinations for the following nine categories:

1. Infrastructure needs or deficiencies,
2. Growth and population projections for the affected area,
3. Financing constraints and opportunities,
4. Cost avoidance opportunities,



5. Opportunities for rate restructuring,
6. Opportunities for shared facilities,
7. Government structure options, including advantages and disadvantages of consolidation or reorganization of service providers,
8. Evaluation of management efficiencies, and
9. Local accountability and governance.

### **State Law Requires New Service Review Determinations as of 2008**

In 2008, Section 56430 of the Government Code was revised based on input from LAFCOs around the State and the number of required determination categories was reduced from nine categories to six. However, the substance of the required determinations has not changed significantly. The revised required determinations are as follows:

**1. Growth and population projections for the affected area,**

No change.

**2. Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies**

Replaces former infrastructure needs and deficiencies determination category.

**3. Financial ability of agencies to provide services**

Replaces former determinations on financing constraints and opportunities and opportunities for rate restructuring.

**4. Status of and opportunities for shared facilities**

Replaces former determinations of shared facilities and opportunities for rate restructuring.

**5. Accountability for community service needs, including governmental structure and operation efficiencies.**

Replaces former determinations on management efficiencies, local accountability and governance and government structure options, including advantages and disadvantages of consolidation or reorganization of service providers.

**6. Any other matter related to effective or efficient service deliver, as required by commission policy.**

This is a new determination that permits the Commission to adopt other determinations on a case-by-case basis based on unique local conditions. These may vary based on changes in enabling legislation, operation or regulatory requirements since agency formation, unusual events impacting the agency or other unforeseen factors.

### **Proposed Revisions to LAFCO's Service Review Policies to Reflect Current Law**

The Service Review Policies (Attachment A) have been revised to reflect the new set of statutorily required determinations and to note that the deadline for completing the first set of service reviews was 2008. If adopted, LAFCO will use the revised Policies when conducting the upcoming service reviews.

### **Proposed Revisions to LAFCO's Island Annexation Policies to Reflect Current LAFCO Fee Waiver**

LAFCO adopted Island Annexation Policies in 2005 in order to encourage cities to annex unincorporated islands. Since that time, section 56375.3 within the CKH Act pertaining to island annexations has been revised to reflect a new sunset date of January 1, 2014 for certain provisions that streamline the annexation process. Additionally, LAFCO has provided, on an ongoing basis, a fee waiver for annexations that result in the elimination of islands. The amount of fee waiver is based on the current effective fee schedule and therefore the exact amount is subject to change. The Island Annexation Policies (Attachment B) have been revised in order to reflect LAFCO's ongoing discretionary fee waiver which will remain in effect until rescinded by the Commission.

### **PUBLIC NOTICE AND REVIEW OF PROPOSED REVISED LAFCO POLICIES**

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A public notice concerning the upcoming October 14, 2009 meeting and LAFCO's consideration and potential adoption of these revised Service Review Policies and Island Annexation Policies was provided to all affected agencies by email and was posted in a newspaper of general circulation and on the LAFCO website. LAFCO staff has also posted this staff report and the proposed draft Service Review Policies and the proposed draft Island Annexation Policies on the LAFCO website under "What's New" for public review and comment.

### **NEXT STEPS**

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If the Commission approves the revised Policies, the policies will become effective immediately. LAFCO staff will notify all affected agencies concerning that approval and the LAFCO website will be updated to reflect the revised Policies.

## SERVICE REVIEW POLICIES

### Background

Section 56430 of the Cortese Knox Hertzberg Local Government Reorganization Act of 2000 (CKH Act) requires LAFCO to conduct municipal service reviews prior to establishing or updating spheres of influence. The service reviews are intended to serve as a tool to help LAFCO, the public and other agencies better understand the public service structure and evaluate options for the provision of efficient and effective public services.

These policies, along with the State Office of Planning and Research's Municipal Service Review Guidelines will provide guidance to LAFCO in preparing and conducting service reviews.

### 1. Service Review

A service review is a comprehensive review of municipal services within a designated geographic area and includes steps to:

- Obtain information about municipal services in the geographic area,
- Evaluate the provision of municipal services from a comprehensive perspective, and
- Recommend actions when necessary, to promote the efficient provision of those services.

LAFCO is not required to initiate boundary changes based on service reviews. However, LAFCO, local agencies or the public may subsequently use the service reviews to pursue changes in jurisdictional boundaries or spheres of influence.

### 2. Services to be Reviewed

Service reviews will cover a range of services that a public agency provides or is authorized to provide (examples include fire, water, sewer, lighting, library, police, storm water and solid waste collection/ disposal, gas and electricity). General government services such as social and health services, courts and criminal justice will be excluded from the reviews. Service reviews are triggered by requirements to create or update the Sphere of Influence (SOI) for public agencies. Therefore, LAFCO will review services that are provided by public agencies that have, or are required to have, SOIs. In doing so, LAFCO will also take into consideration other services (e.g., emergency response along with fire protection services) and the operation of other providers that service the same region (e.g., private water providers or volunteer fire crews).

### **3. Service Providers to be Included:**

Agencies that are required to have SOIs will be the focus of service reviews. The agencies with SOIs in Santa Clara County include cities (15), and special districts (29) such as but not limited to, county service areas, community service districts, fire protection districts, sanitary/sanitation districts, water districts, vector control districts, open space districts and resource conservation districts. Please see attached list of cities and special districts in Santa Clara County.

Agencies that do not have SOIs include school districts, private providers, state or federal agencies and other agencies that provide complementary, joint, support or overlapping services in the region. These agencies will also be reviewed to the extent necessary to establish relationships, quantify services, designate or map service locations / facilities and provide a complete overview of services in the area. These agencies may be requested to participate and provide information necessary to conduct the review.

### **4. Service Review Preparation and Update**

- a. The first set of service reviews should be completed by 2008 to enable timely SOI updates as required by the CKH Act.
- b. Service review reports will be reviewed and updated as necessary every five years in conjunction with or prior to SOI reviews and updates. LAFCO will determine if a new service review is required or not. CKH Act requires SOIs to be updated every five years. Minor amendments of a SOI, as determined by LAFCO, will not require a service review.
- c. Service reviews may need to be updated independent of SOI reviews, to facilitate review of a pending application or other LAFCO action, unless LAFCO determines that prior service reviews are adequate for the purpose.

### **5. Service Review Boundaries**

A service review may be conducted for sub-regional areas within the county or on a countywide basis, it may review a single agency or multiple agencies and it may review a single service or multiple services. LAFCO will determine how service reviews will be organized and conducted in Santa Clara County.

Generally, LAFCO will include in a service review the geographic area and agency(ies) that best facilitate a logical, comprehensive and adequate review of services in the area. LAFCO may need to include a service provider in more than one service review area, only review services of some providers to the extent that they affect the service review area and services under study, or only review a portion of services provided. Service reviews may extend beyond the county boundary in some cases, to provide a more useful and accurate analysis

of service provision, especially where multi-county service providers are involved.

## **6. Service Review Funding**

- a. LAFCO will include the funding for LAFCO initiated service reviews in its annual work plan and budget development process. Sufficient funds necessary to satisfactorily complete the required reviews including consultant costs will be allocated in the LAFCO budget for each fiscal year service reviews are to be conducted.
- b. An application-processing fee for conducting the service reviews will be charged when LAFCO applications (such as, but not limited to sphere of influence amendments, urban service area amendments or out of agency contract for service applications) trigger the service review requirement and an applicable service review does not exist.

## **7. Stakeholder Outreach and Public Participation**

- a. LAFCO will encourage collaboration, cooperation and information sharing among service review stakeholders.
- b. LAFCO will encourage public participation in the service review process.

## **8. Service Review Process**

- a. As an initial step, LAFCO will develop and mail a questionnaire to the agencies included in the service review. The questionnaire will request information pertinent to the six evaluation categories stated in Policy #10 herein. Meetings may be held as necessary, or additional questionnaires may be sent out to gather further input.
- b. LAFCO Executive Officer will prepare and issue a draft service review report which includes draft determinations required by state law. Notice of availability of the draft service review will be provided to all affected agencies and to interested persons who have submitted a written request for notice.
- c. LAFCO will distribute and provide a 21-day public review period for the draft service review.
- d. LAFCO will conduct a noticed public hearing to consider and accept comment on the draft service review and appropriate CEQA review. At the hearing, LAFCO may:
  1. Take the necessary CEQA action and find that the draft service review report is adequate and final and adopt written determinations,

2. Direct staff to address comments and concerns and prepare a final service review report, or
  3. Continue the hearing.
- e. A draft service review may be considered final if no substantive comments are received prior to the end of the hearing and LAFCO determines it satisfactory.
  - f. If a revised final service review is necessary, the LAFCO Executive Officer will prepare it including comments received during the public review period.
  - g. LAFCO will distribute the final service review report 21 days prior to the LAFCO public hearing
  - h. LAFCO will conduct a noticed public hearing to act on the CEQA document and adopt the service review report. Any service review determinations will be adopted by resolution. LAFCO may also adopt other staff recommendations and direct staff to further study issues raised in the service reviews.
  - i. LAFCO may also take action on a SOI update or initiate a reorganization proposal based on the approved service review at the same hearing, if the service review supports the action and if LAFCO has complied with all required processes.
  - j. LAFCO will distribute the Final Service Review Report to all participating and interested local and regional agencies for use as a resource in their work.

## **9. Applicability of CEQA to Service Reviews**

LAFCO will consider service reviews as projects for CEQA purposes. They will be processed consistent with the requirements of CEQA and LAFCO's CEQA procedures.

## **10. Service Review Evaluation Categories**

The CKH act requires LAFCO to conduct service reviews and make written determinations on a set of evaluation categories. It should be noted that how these categories apply to each service review may vary and will depend on mostly the nature of the service being reviewed. The following is a general description of the set of six amended categories effective January 1, 2008:

### ***a. Growth and population projections for the affected area***

A plan for service provision to an area should take into consideration the existing as well as future need for public services in the area. Service

reviews will examine the existing and future need for public services and will evaluate whether projections for future growth and population patterns are integrated into an agency's planning function. This analysis may be used to determine whether the SOI / USA boundaries reflect the expected growth boundaries, if future SOI changes are necessary or feasible and if agencies are aware of, and planning for anticipated changes in service demand.

In order to examine the existing and future levels of demand for a service, the service review will contain and consider existing and projected population and their relationship to agency plans, planning boundaries and existing and proposed land uses.

**b. *Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies***

One of LAFCO's goals is to encourage the efficient provision of public services. Any area needing or planned for services must have the infrastructure necessary to support the provision of those services. Infrastructure needs and deficiencies refers to the adequacy of existing and planned infrastructure and its relationship to the level of service that is being provided or needs to be provided in an area.

Infrastructure can be evaluated in terms of capacity, condition, availability, quality and levels of service and quality of plans and programs.

**c. *Financial ability of agencies to provide services***

A community's public service needs should be viewed in light of the resources available to fund the services. The service review will assess fiscal viability of the agency to provide services and analyze if agencies are capitalizing on financing opportunities and collaborative strategies to deal with financial constraints. The service review will contain information on current and planned financing mechanisms, funding practices and revenue sources and examine their relationship with service boundaries.

**d. *Status of and opportunities for, shared facilities***

The service review will identify opportunities for service providers to share facilities with the intent of lowering current and potential infrastructure / capital improvement costs. When applicable, the service review will inventory facilities within the study area to determine if facilities are currently being utilized to capacity and whether efficiencies can be achieved by accommodating the facility needs of adjacent agencies. Options for planning for future shared facilities and services, for

eliminating duplicative services, replacing outdated or underutilized equipment / facilities and/or implementing economies of scale may also be considered.

**e. *Accountability for community service needs, including governmental structure and operational efficiencies***

Accountable local government is marked by processes and actions that consist of accessible and accountable elected or appointed decision-making body and agency staff; that encourage public participation and solicit public input in the consideration of work plans, budgets, and programs; and that evaluate the agency's plans and programs and publish results to the public.

The service review will study existing and future public service conditions and evaluate governmental structure alternatives for organizational and operational efficiencies in order to accommodate orderly growth, prevent urban sprawl, ensure efficient delivery of services and improve accountability or governing practices.

While there is no requirement that LAFCO initiate any changes of organization as part of the service review, LAFCO, the public or local agencies may pursue subsequent changes to government structure. LAFCO may evaluate the advantages and disadvantages of amending or updating the SOI, annexations to or detachments from cities or special districts, formation of new special districts, incorporation of cities, dissolutions, mergers, consolidations and other reorganization options found in the CKH Act.

**f. *Any other matter related to effective or efficient service delivery***

The Commission may adopt other determinations on a case by case basis based on unique local conditions, or changing circumstances such as changes to enabling legislation, regulatory requirements, or other unforeseen factors.

Adopted December 11, 2002

Amended:



## ISLAND ANNEXATION POLICIES

1. In order to fulfill the intent of the state legislature and implement the joint urban development policies of the cities, County and LAFCO, and in the interests of efficient service provision and orderly growth and development, the cities should annex unincorporated urban islands.
2. LAFCO will collaborate with the cities and the County in facilitating annexation of unincorporated urban islands.
3. LAFCO will provide a LAFCO fee waiver for annexations that result in the elimination of entire unincorporated islands. This fee waiver will remain effective until rescinded by the commission.
4. Where feasible, and in furtherance of goals to support orderly growth and development, cities are encouraged to annex entire islands, rather than conducting single parcel annexations.
5. In the interests of orderly growth and development, cities should annex urban unincorporated islands existing within their current USAs (urban service areas), before seeking to add new lands to their USAs.
6. Prior to seeking any USA amendment, except if the USA amendment is to resolve a significant, demonstrable public health and safety issue or if the USA amendment is a minor corrective action, the city should:
  - a. Initiate and complete annexation proceedings pursuant to Government Code Section 56375.3(a)(1), for all unincorporated islands that meet the provisions of Government Code Section 56375.3, unless the island constitutes publicly owned land, and,
  - b. For any city that has unincorporated islands larger than 150 acres, the city is strongly encouraged to adopt an annexation plan for the islands after holding community meetings, to apply a pre-zoning designation and to adopt resolutions to initiate annexation.
7. LAFCO encourages the County to remove incentives for property owners in the unincorporated islands to remain in the County, by making development standards in the unincorporated islands comparable to development standards in the surrounding city.
8. LAFCO will provide information on the island annexation procedures to each of the cities. LAFCO will develop process flow charts and public hearing notice / resolution templates for cities to use. LAFCO staff will conduct workshops on island annexation process for city staff.
9. LAFCO will work with the County, the cities and other interested parties/agencies to find ways to reduce or share the cost of processing unincorporated island annexations.
10. LAFCO staff will report to the Commission at each LAFCO meeting on the status of each city's island annexation efforts.

Adopted February 9, 2005

Amended:

**LAFCO Meeting:** October 14, 2009

**TO:** LAFCO

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

**SUBJECT:** Revision of LAFCO Service Review Policies and Island Annexation Policies

### **STAFF RECOMMENDATIONS**

---

1. Approve the revised LAFCO Service Review Policies (Attachment A)
2. Approve the revised LAFCO Island Annexation Policies (Attachment B)

### **BACKGROUND**

---

In June 2009, LAFCO staff completed a preliminary review of LAFCO's current policies and identified policy areas that need clarification. LAFCO staff determined that the Service Review Policies and Island Annexation Policies require minor revisions in order to reflect the current provisions of the Cortese Knox Hertzberg Reorganization Act (CKH Act) and LAFCO's current practices. At the June LAFCO meeting, the Commission directed staff to revise both of the policies accordingly and to bring the revisions back to the Commission for their consideration and potential approval.

#### **Current LAFCO Service Review Policies Adopted in 2003**

In 2003, LAFCO adopted Service Review Policies stating that the first set of service reviews should be completed on or before January 1, 2006. Subsequently, legislation was passed which extended the deadline to January 1, 2008. In addition, as part of the service review process, the CKH Act requires LAFCO to make written determinations in specific identified categories for all cities and special districts within the county. Prior to 2008, the Act required LAFCO to make determinations for the following nine categories:

1. Infrastructure needs or deficiencies,
2. Growth and population projections for the affected area,
3. Financing constraints and opportunities,
4. Cost avoidance opportunities,

5. Opportunities for rate restructuring,
6. Opportunities for shared facilities,
7. Government structure options, including advantages and disadvantages of consolidation or reorganization of service providers,
8. Evaluation of management efficiencies, and
9. Local accountability and governance.

### **State Law Requires New Service Review Determinations as of 2008**

In 2008, Section 56430 of the Government Code was revised based on input from LAFCOs around the State and the number of required determination categories was reduced from nine categories to six. However, the substance of the required determinations has not changed significantly. The revised required determinations are as follows:

- 1. Growth and population projections for the affected area,**

No change.

- 2. Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies**

Replaces former infrastructure needs and deficiencies determination category.

- 3. Financial ability of agencies to provide services**

Replaces former determinations on financing constraints and opportunities and opportunities for rate restructuring.

- 4. Status of and opportunities for shared facilities**

Replaces former determinations of shared facilities and opportunities for rate restructuring.

- 5. Accountability for community service needs, including governmental structure and operation efficiencies.**

Replaces former determinations on management efficiencies, local accountability and governance and government structure options, including advantages and disadvantages of consolidation or reorganization of service providers.

- 6. Any other matter related to effective or efficient service deliver, as required by commission policy.**

This is a new determination that permits the Commission to adopt other determinations on a case-by-case basis based on unique local conditions. These may vary based on changes in enabling legislation, operation or regulatory requirements since agency formation, unusual events impacting the agency or other unforeseen factors.

### **Proposed Revisions to LAFCO's Service Review Policies to Reflect Current Law**

The Service Review Policies (Attachment A) have been revised to reflect the new set of statutorily required determinations and to note that the deadline for completing the first set of service reviews was 2008. If adopted, LAFCO will use the revised Policies when conducting the upcoming service reviews.

### **Proposed Revisions to LAFCO's Island Annexation Policies to Reflect Current LAFCO Fee Waiver**

LAFCO adopted Island Annexation Policies in 2005 in order to encourage cities to annex unincorporated islands. Since that time, section 56375.3 within the CKH Act pertaining to island annexations has been revised to reflect a new sunset date of January 1, 2014 for certain provisions that streamline the annexation process. Additionally, LAFCO has provided, on an ongoing basis, a fee waiver for annexations that result in the elimination of islands. The amount of fee waiver is based on the current effective fee schedule and therefore the exact amount is subject to change. The Island Annexation Policies (Attachment B) have been revised in order to reflect LAFCO's ongoing discretionary fee waiver which will remain in effect until rescinded by the Commission.

### **PUBLIC NOTICE AND REVIEW OF PROPOSED REVISED LAFCO POLICIES**

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A public notice concerning the upcoming October 14, 2009 meeting and LAFCO's consideration and potential adoption of these revised Service Review Policies and Island Annexation Policies was provided to all affected agencies by email and was posted in a newspaper of general circulation and on the LAFCO website. LAFCO staff has also posted this staff report and the proposed draft Service Review Policies and the proposed draft Island Annexation Policies on the LAFCO website under "What's New" for public review and comment.

### **NEXT STEPS**

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If the Commission approves the revised Policies, the policies will become effective immediately. LAFCO staff will notify all affected agencies concerning that approval and the LAFCO website will be updated to reflect the revised Policies.

## SERVICE REVIEW POLICIES

### Background

Section 56430 of the Cortese Knox Hertzberg Local Government Reorganization Act of 2000 (CKH Act) requires LAFCO to conduct municipal service reviews prior to establishing or updating spheres of influence. The service reviews are intended to serve as a tool to help LAFCO, the public and other agencies better understand the public service structure and evaluate options for the provision of efficient and effective public services.

These policies, along with the State Office of Planning and Research's Municipal Service Review Guidelines will provide guidance to LAFCO in preparing and conducting service reviews.

### 1. Service Review

A service review is a comprehensive review of municipal services within a designated geographic area and includes steps to:

- Obtain information about municipal services in the geographic area,
- Evaluate the provision of municipal services from a comprehensive perspective, and
- Recommend actions when necessary, to promote the efficient provision of those services.

LAFCO is not required to initiate boundary changes based on service reviews. However, LAFCO, local agencies or the public may subsequently use the service reviews to pursue changes in jurisdictional boundaries or spheres of influence.

### 2. Services to be Reviewed

Service reviews will cover a range of services that a public agency provides or is authorized to provide (examples include fire, water, sewer, lighting, library, police, storm water and solid waste collection/ disposal, gas and electricity). General government services such as social and health services, courts and criminal justice will be excluded from the reviews. Service reviews are triggered by requirements to create or update the Sphere of Influence (SOI) for public agencies. Therefore, LAFCO will review services that are provided by public agencies that have, or are required to have, SOIs. In doing so, LAFCO will also take into consideration other services (e.g., emergency response along with fire protection services) and the operation of other providers that service the same region (e.g., private water providers or volunteer fire crews).

### **3. Service Providers to be Included:**

Agencies that are required to have SOIs will be the focus of service reviews. The agencies with SOIs in Santa Clara County include cities (15), and special districts (29) such as but not limited to, county service areas, community service districts, fire protection districts, sanitary/sanitation districts, water districts, vector control districts, open space districts and resource conservation districts. Please see attached list of cities and special districts in Santa Clara County.

Agencies that do not have SOIs include school districts, private providers, state or federal agencies and other agencies that provide complementary, joint, support or overlapping services in the region. These agencies will also be reviewed to the extent necessary to establish relationships, quantify services, designate or map service locations / facilities and provide a complete overview of services in the area. These agencies may be requested to participate and provide information necessary to conduct the review.

### **4. Service Review Preparation and Update**

- a. The first set of service reviews should be completed by 2008 to enable timely SOI updates as required by the CKH Act.
- b. Service review reports will be reviewed and updated as necessary every five years in conjunction with or prior to SOI reviews and updates. LAFCO will determine if a new service review is required or not. CKH Act requires SOIs to be updated every five years. Minor amendments of a SOI, as determined by LAFCO, will not require a service review.
- c. Service reviews may need to be updated independent of SOI reviews, to facilitate review of a pending application or other LAFCO action, unless LAFCO determines that prior service reviews are adequate for the purpose.

### **5. Service Review Boundaries**

A service review may be conducted for sub-regional areas within the county or on a countywide basis, it may review a single agency or multiple agencies and it may review a single service or multiple services. LAFCO will determine how service reviews will be organized and conducted in Santa Clara County.

Generally, LAFCO will include in a service review the geographic area and agency(ies) that best facilitate a logical, comprehensive and adequate review of services in the area. LAFCO may need to include a service provider in more than one service review area, only review services of some providers to the extent that they affect the service review area and services under study, or only review a portion of services provided. Service reviews may extend beyond the county boundary in some cases, to provide a more useful and accurate analysis

of service provision, especially where multi-county service providers are involved.

## **6. Service Review Funding**

- a. LAFCO will include the funding for LAFCO initiated service reviews in its annual work plan and budget development process. Sufficient funds necessary to satisfactorily complete the required reviews including consultant costs will be allocated in the LAFCO budget for each fiscal year service reviews are to be conducted.
- b. An application-processing fee for conducting the service reviews will be charged when LAFCO applications (such as, but not limited to sphere of influence amendments, urban service area amendments or out of agency contract for service applications) trigger the service review requirement and an applicable service review does not exist.

## **7. Stakeholder Outreach and Public Participation**

- a. LAFCO will encourage collaboration, cooperation and information sharing among service review stakeholders.
- b. LAFCO will encourage public participation in the service review process.

## **8. Service Review Process**

- a. As an initial step, LAFCO will develop and mail a questionnaire to the agencies included in the service review. The questionnaire will request information pertinent to the six evaluation categories stated in Policy #10 herein. Meetings may be held as necessary, or additional questionnaires may be sent out to gather further input.
- b. LAFCO Executive Officer will prepare and issue a draft service review report which includes draft determinations required by state law. Notice of availability of the draft service review will be provided to all affected agencies and to interested persons who have submitted a written request for notice.
- c. LAFCO will distribute and provide a 21-day public review period for the draft service review.
- d. LAFCO will conduct a noticed public hearing to consider and accept comment on the draft service review and appropriate CEQA review. At the hearing, LAFCO may:
  1. Take the necessary CEQA action and find that the draft service review report is adequate and final and adopt written determinations,



2. Direct staff to address comments and concerns and prepare a final service review report, or
  3. Continue the hearing.
- e. A draft service review may be considered final if no substantive comments are received prior to the end of the hearing and LAFCO determines it satisfactory.
  - f. If a revised final service review is necessary, the LAFCO Executive Officer will prepare it including comments received during the public review period.
  - g. LAFCO will distribute the final service review report 21 days prior to the LAFCO public hearing
  - h. LAFCO will conduct a noticed public hearing to act on the CEQA document and adopt the service review report. Any service review determinations will be adopted by resolution. LAFCO may also adopt other staff recommendations and direct staff to further study issues raised in the service reviews.
  - i. LAFCO may also take action on a SOI update or initiate a reorganization proposal based on the approved service review at the same hearing, if the service review supports the action and if LAFCO has complied with all required processes.
  - j. LAFCO will distribute the Final Service Review Report to all participating and interested local and regional agencies for use as a resource in their work.

## **9. Applicability of CEQA to Service Reviews**

LAFCO will consider service reviews as projects for CEQA purposes. They will be processed consistent with the requirements of CEQA and LAFCO's CEQA procedures.

## **10. Service Review Evaluation Categories**

The CKH act requires LAFCO to conduct service reviews and make written determinations on a set of evaluation categories. It should be noted that how these categories apply to each service review may vary and will depend on mostly the nature of the service being reviewed. The following is a general description of the set of six amended categories effective January 1, 2008:

### ***a. Growth and population projections for the affected area***

A plan for service provision to an area should take into consideration the existing as well as future need for public services in the area. Service



reviews will examine the existing and future need for public services and will evaluate whether projections for future growth and population patterns are integrated into an agency's planning function. This analysis may be used to determine whether the SOI / USA boundaries reflect the expected growth boundaries, if future SOI changes are necessary or feasible and if agencies are aware of, and planning for anticipated changes in service demand.

In order to examine the existing and future levels of demand for a service, the service review will contain and consider existing and projected population and their relationship to agency plans, planning boundaries and existing and proposed land uses.

**b. *Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies***

One of LAFCO's goals is to encourage the efficient provision of public services. Any area needing or planned for services must have the infrastructure necessary to support the provision of those services. Infrastructure needs and deficiencies refers to the adequacy of existing and planned infrastructure and its relationship to the level of service that is being provided or needs to be provided in an area.

Infrastructure can be evaluated in terms of capacity, condition, availability, quality and levels of service and quality of plans and programs.

**c. *Financial ability of agencies to provide services***

A community's public service needs should be viewed in light of the resources available to fund the services. The service review will assess fiscal viability of the agency to provide services and analyze if agencies are capitalizing on financing opportunities and collaborative strategies to deal with financial constraints. The service review will contain information on current and planned financing mechanisms, funding practices and revenue sources and examine their relationship with service boundaries.

**d. *Status of and opportunities for, shared facilities***

The service review will identify opportunities for service providers to share facilities with the intent of lowering current and potential infrastructure / capital improvement costs. When applicable, the service review will inventory facilities within the study area to determine if facilities are currently being utilized to capacity and whether efficiencies can be achieved by accommodating the facility needs of adjacent agencies. Options for planning for future shared facilities and services, for

eliminating duplicative services, replacing outdated or underutilized equipment / facilities and/or implementing economies of scale may also be considered.

**e. *Accountability for community service needs, including governmental structure and operational efficiencies***

Accountable local government is marked by processes and actions that consist of accessible and accountable elected or appointed decision-making body and agency staff; that encourage public participation and solicit public input in the consideration of work plans, budgets, and programs; and that evaluate the agency's plans and programs and publish results to the public.

The service review will study existing and future public service conditions and evaluate governmental structure alternatives for organizational and operational efficiencies in order to accommodate orderly growth, prevent urban sprawl, ensure efficient delivery of services and improve accountability or governing practices.

While there is no requirement that LAFCO initiate any changes of organization as part of the service review, LAFCO, the public or local agencies may pursue subsequent changes to government structure. LAFCO may evaluate the advantages and disadvantages of amending or updating the SOI, annexations to or detachments from cities or special districts, formation of new special districts, incorporation of cities, dissolutions, mergers, consolidations and other reorganization options found in the CKH Act.

**f. *Any other matter related to effective or efficient service delivery***

The Commission may adopt other determinations on a case by case basis based on unique local conditions, or changing circumstances such as changes to enabling legislation, regulatory requirements, or other unforeseen factors.

Adopted December 11, 2002

Amended:

## ISLAND ANNEXATION POLICIES

1. In order to fulfill the intent of the state legislature and implement the joint urban development policies of the cities, County and LAFCO, and in the interests of efficient service provision and orderly growth and development, the cities should annex unincorporated urban islands.
2. LAFCO will collaborate with the cities and the County in facilitating annexation of unincorporated urban islands.
3. LAFCO will provide a LAFCO fee waiver for annexations that result in the elimination of entire unincorporated islands. This fee waiver will remain effective until rescinded by the commission.
4. Where feasible, and in furtherance of goals to support orderly growth and development, cities are encouraged to annex entire islands, rather than conducting single parcel annexations.
5. In the interests of orderly growth and development, cities should annex urban unincorporated islands existing within their current USAs (urban service areas), before seeking to add new lands to their USAs.
6. Prior to seeking any USA amendment, except if the USA amendment is to resolve a significant, demonstrable public health and safety issue or if the USA amendment is a minor corrective action, the city should:
  - a. Initiate and complete annexation proceedings pursuant to Government Code Section 56375.3(a)(1), for all unincorporated islands that meet the provisions of Government Code Section 56375.3, unless the island constitutes publicly owned land, and,
  - b. For any city that has unincorporated islands larger than 150 acres, the city is strongly encouraged to adopt an annexation plan for the islands after holding community meetings, to apply a pre-zoning designation and to adopt resolutions to initiate annexation.
7. LAFCO encourages the County to remove incentives for property owners in the unincorporated islands to remain in the County, by making development standards in the unincorporated islands comparable to development standards in the surrounding city.
8. LAFCO will provide information on the island annexation procedures to each of the cities. LAFCO will develop process flow charts and public hearing notice / resolution templates for cities to use. LAFCO staff will conduct workshops on island annexation process for city staff.
9. LAFCO will work with the County, the cities and other interested parties/agencies to find ways to reduce or share the cost of processing unincorporated island annexations.
10. LAFCO staff will report to the Commission at each LAFCO meeting on the status of each city's island annexation efforts.

Adopted February 9, 2005

Amended:

**LAFCO Meeting: October 14, 2009**

**TO: LAFCO**

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

**SUBJECT: Proposed Work Plan for Service Reviews and Sphere of  
Influence Updates**

*Agenda Item # 9*

### **STAFF RECOMMENDATIONS**

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**1. Proposed Organization and Boundaries for Upcoming Service Reviews and Sphere of Influence Updates**

a. Authorize staff to conduct Service Reviews and Sphere of Influence Updates:

- i. At a countywide level for fire protection services
- ii. At a countywide level for water services
- iii. At a sub-regional level for other services provided by cities and special districts in central and southern Santa Clara County (see Attachment A)
- iv. At a sub-regional level for other services provided by cities and special districts in northern and western Santa Clara County (see Attachment A)

**2. Proposed Priorities for Upcoming Service Reviews and Sphere of Influence Updates**

a. Authorize staff to conduct Service Reviews and Sphere of Influence updates using the following priorities (listed from highest priority to lowest priority):

**Priority #1 - Countywide Fire Protection Service Review**

**Priority #2 - Countywide Water Service Review**

**Priority #3 - Central and Southern Santa Clara County Service Review (see Attachment A)**

**Priority #4 - Northern and Western Santa Clara County Service Review (see Attachment A)**

**3. Appoint a LAFCO Commissioner to serve on the Countywide Fire Service Review Technical Advisory Committee.**

## BACKGROUND

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (California Government Code §56000 et seq.) requires that each LAFCO conduct service reviews prior to or in conjunction with the 5-year mandated sphere of influence updates (SOI Updates). LAFCO's inaugural set of service reviews and sphere of influence updates were completed and adopted prior to January 1, 2008, as was required by State law. LAFCO must complete its second round of required service reviews and SOI Updates prior to January 1, 2013.

## PROPOSED SCHEDULE FOR COMPLETING THE SERVICE REVIEWS AND SOI UPDATES

LAFCO staff proposes that SOI Updates be conducted at the same time as Service Reviews, rather than separately as was done in the Commission's first round. This change will result in a more streamlined process for both LAFCO staff and agency staff and will ensure that the most recent available service review information will be used to complete the sphere of influence updates. LAFCO has approximately 36 months to complete the four identified joint Service Reviews and SOI Updates. A proposed service reviews and sphere of influence updates schedule, which allows LAFCO to meet the January 1, 2013 statutory deadline, is provided below for the Commission's consideration. The proposed order of service reviews is identical to LAFCO's previous round of service reviews.

<b>PROPOSED SERVICE REVIEWS AND SPHERE OF INFLUENCE UPDATES SCHEDULE</b>				
<b>Type of Review and SOI Update</b>	<b>Start Date</b>	<b>Completion Date</b>	<b>First Hearing</b>	<b>Final Hearing</b>
<b>Countywide Fire Protection Service Review</b>	January 2010	September 2010	October 2010	December 2010
<b>Countywide Water Service Review</b>	July 2010	March 2011	April 2011	June 2011
<b>Central and Southern Santa Clara County Service Review</b>	May 2011	January 2012	February 2012	April 2012
<b>Northern and Western Santa Clara County Service Review</b>	November 2011	September 2012	October 2012	December 2012

## **PROPOSING LAFCO CONTRACT WITH TECHNICAL CONSULTANTS TO PREPARE SERVICE REVIEWS AND SOI UPDATES**

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LAFCO staff proposes to conduct the Commission's second round of service reviews and SOI updates in a manner similar to how the Commission conducted its first round of service reviews and SOI updates. The previous service reviews were conducted by consultants, under the direction of LAFCO staff, because of the reviews' technical nature and because of the time commitments involved. Staff is proposing that LAFCO contract with technical consultants (i.e. consultants with experience evaluating fire protection services, water services, and municipal services) to prepare the required Service Reviews and SOI Updates. LAFCO staff would manage the consultants and be responsible for the final product.

Specifically, the consultant would prepare a Draft Service Review and Draft SOI Update Report for each agency which includes service review determinations and SOI determinations. The consultant would also prepare the requisite CEQA documentation. The existing Service Review Reports and SOI Updates will serve as a starting point and an information resource.

## **MAJOR TASKS FOR COMPLETING SERVICE REVIEWS AND SPHERE OF INFLUENCE (SOI) UPDATES**

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Below is a brief listing of the major tasks involved in these projects (many of the tasks may occur in tandem). Throughout the proposed process, LAFCO staff and the consultant will be working closely with the affected agencies' staff in order to collect and verify the necessary information. LAFCO staff will also provide the Commission with periodic updates on the status of each service review.

### **Preparation Work**

1. Review and update LAFCO's Service Review Policies (see Agenda Item No. 8).
2. Establish boundaries, priorities, and proposed schedule for completing Service Reviews and SOI updates (see Table 1 on previous page).
3. Inform affected agencies and interested groups as to LAFCO's proposed schedule and process for completing the Service Reviews and SOI Updates. In the past, staff has attended the Santa Clara County/Cities Manager's Association and discussed LAFCO's work plan with the various city managers and has also attended other relevant association's meetings (see below for a list of relevant associations) to discuss the work plan.
4. Form a technical advisory committee (TAC) for each Service Review and SOI Update. In the past, the TAC has included a LAFCO Commissioner and staff from affected agencies and departments. Depending on the particular service

review, past TACs have included representatives from some or all of the following associations:

- Santa Clara County/Cities Managers' Association,
- Santa Clara County Municipal Public Work's Association,
- Santa Clara County Special Districts Association,
- Santa Clara County Water Retailers Association,
- Santa Clara County Fire Chiefs Association, and
- Santa Clara County Planning Officials Association.

The TAC will meet periodically and will serve as a liaison between LAFCO and the affected agencies, help in the consultant selection process, and provide technical expertise and advice throughout the process.

5. Issue RFP, interview and hire technical consultant to conduct the specific service review and to draft the SOI Update.

#### **Data Collection and Information Analysis**

1. Review existing documentation in order to understand the context of the study area and to learn about the previously identified issues.
2. Update existing agency profiles or develop new agency profiles for each service provider.
3. Analyze collected data and information and develop a Draft Report.

#### **LAFCO Public Hearings**

1. LAFCO will notify all affected agencies and interested parties as to LAFCO's intent to hold a public hearing to take comments on the Draft Service Review and SOI Update Report. LAFCO will then hold the requisite hearing, take comments on the Report and revise the document as necessary.
2. LAFCO will hold a noticed final public hearing on the Final Report, at which time the LAFCO may take a CEQA action, adopt the Service Review and SOI Update Report, and adopt a resolution making a SOI recommendation and SOI determinations.
3. Once adopted the Service Review and SOI Update Report will be placed on the LAFCO website and affected agencies and interested parties will be notified as to the Commission's final action and where they can download a copy of the Report.



The information provided above is a very general outline of the proposed process. A more specific outline will be developed for each Service Review and SOI Update in consultation with each Technical Advisory Committee.

## **REQUIRED SERVICE REVIEW DETERMINATIONS AND SPHERE OF INFLUENCE DETERMINATIONS**

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### **Newly Required Service Review Determinations**

As part of the service review, LAFCOs must prepare an analysis and written statement of determinations regarding each of the following six categories:

- Growth and population projections for the affected area
- Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies
- Financial ability of agencies to provide services
- Status of an opportunities for shared facilities
- Accountability for community service needs, including governmental structure and operation efficiencies
- Any other matter rated to effective or efficient service delivery, as required by commission policy.

### **Required Sphere of Influence Determinations**

As part of the sphere of influence update, LAFCO must prepare an analysis and written statement of determinations for each city and special district regarding each of the following categories:

- The Present and planned land uses in the area, including agricultural and open-space lands
- The Present and probable need for public facilities and services in the area
- The Present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide
- The existence of any social or economic communities of interest in the area if the commission determines that they are relevant to the agency
- The nature, location, and extent of any functions or classes of services provided by existing district (applies to special districts only).

## **PROPOSED BUDGET**

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LAFCO's first set of Service Reviews were prepared by consultants and were funded by the LAFCO Budget on a yearly basis. LAFCO staff proposes that LAFCO's second round of Service Reviews and SOI Updates follow this same funding process. LAFCO's FY 2009-2010 Budget includes funds for consultant services. Staff

anticipates that the cost for preparing each Service Review and SOI Update will be approximately \$70,000, based on LAFCO's previous experience.

## **NEXT STEPS**

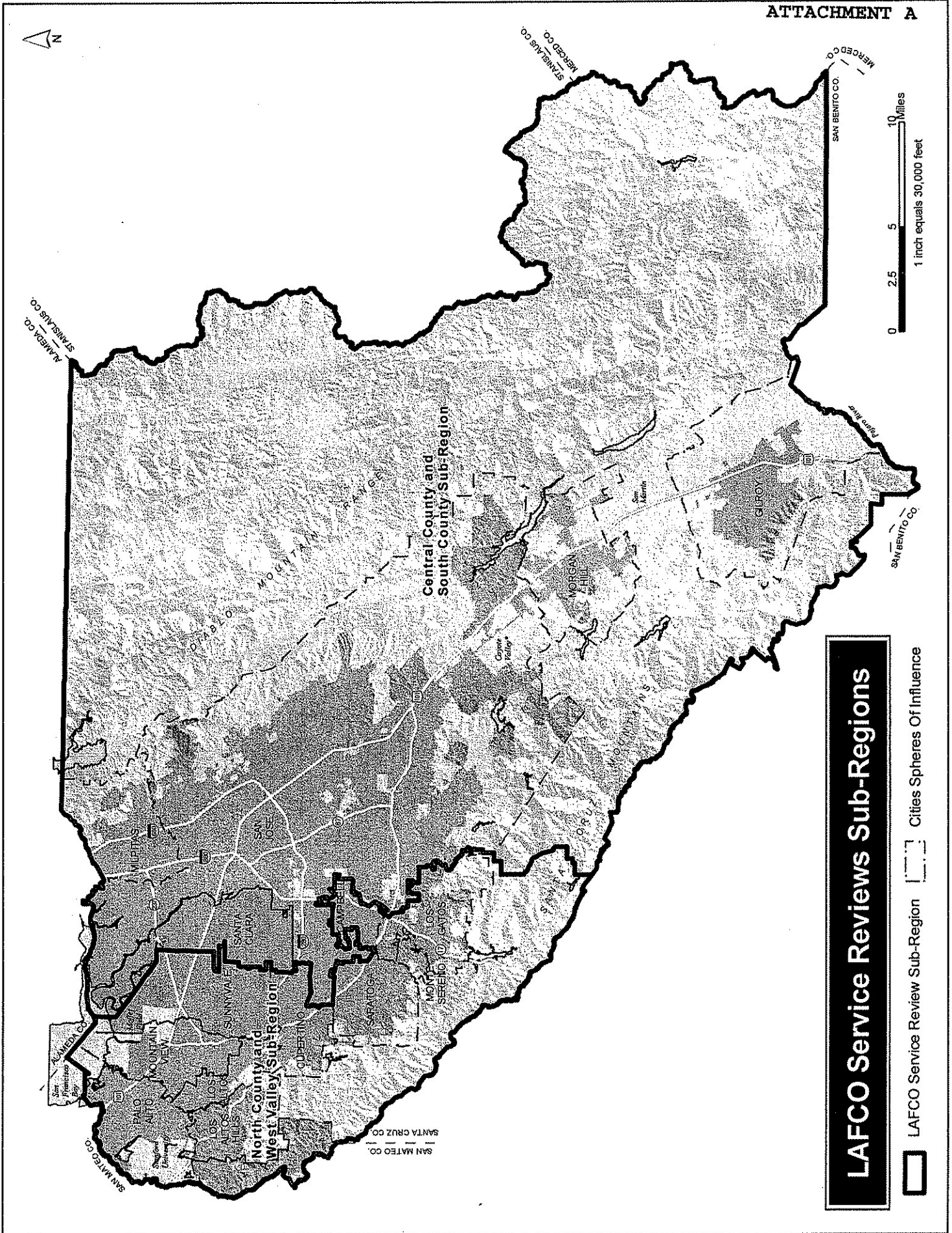
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### **Discuss Work Plan with Affected Agencies and Form Technical Advisory Committee for Upcoming Countywide Fire Service Review and SOI Update**

If LAFCO approves the proposed work plan for completing Service Reviews and SOI Updates, LAFCO staff will initially meet with the Santa Clara County/Cities Managers' Association and the Santa Clara County Fire Chiefs Association in order to discuss the proposed work plan and to seek their participation on the Technical Advisory Committee (TAC) for the Countywide Fire Service Review and SOI Update. Traditionally, the TAC has also included a LAFCO Commissioner. LAFCO should appoint a Commissioner to serve on the Countywide Fire Service Review TAC.

### **RFP for Consultant to Prepare Countywide Fire Protection Service Review**

LAFCO staff, with the assistance of the TAC, will also prepare a Draft Request for Proposal (RFP), complete with a recommended budget, for a consultant to prepare a countywide fire protection service review and SOI update. The Commission will consider the Draft RFP at LAFCO's December meeting.



**LAFCO Service Review Sub-Regions**

- LAFCO Service Review Sub-Region
- Cities Spheres Of Influence

LAFCO Meeting: October 14, 2009  
**TO:** LAFCO  
**FROM:** Neelima Palacherla, Executive Officer  
Dunia Noel, Analyst  
Emmanuel Abello, Clerk  
**SUBJECT:** 2008-2009 LAFCO Annual Report  
Agenda Item # 10

### **RECOMMENDATION**

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Accept the 2008-2009 Annual Report. (July 1, 2008 to June 30, 2009)

### **ANNEXATION & REORGANIZATION ACTIVITY**

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During Fiscal Year 2008-2009, LAFCO approved 3 reorganization proposals involving cities, two of them being annexations to two different cities and one involving detachment from a city. Additionally, LAFCO approved 4 reorganization proposals involving special districts, three of which required protest proceedings. Last year, LAFCO approved a total of 3 reorganization proposals, two being annexations to sanitary districts and one involving annexation to a city.

The number of city-conducted annexations that LAFCO staff processed this year totaled 5 proposals in three jurisdictions, as compared to 13 proposals in 6 cities the year before. The acreage annexed was 0.44 acre in Cupertino, 84 acres in Los Gatos and 7.28 acres in San Jose.

### **ISLAND ANNEXATIONS**

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As in the previous year, the City of San Jose was the only city to complete island annexations during Fiscal Year 2008-2009. The City annexed 6 unincorporated islands totaling 422.4 acres. These islands are larger than the islands that the City annexed in the previous phases and contain a significant number of parcels and residents.

Working with the City of San Jose and the County, LAFCO staff continued to help coordinate the overall island annexation program. LAFCO staff assisted and advised San Jose on their public outreach process, coordinated the preparation of maps and reports by the County Surveyor and Assessors' Offices, was available to attend island annexation community meetings and hearings, provided technical assistance on the island annexation process and law, and worked with and completed all necessary paperwork as required by the State Board of Equalization.

## **URBAN SERVICE AREA AMENDMENTS AND SPHERE OF INFLUENCE AMENDMENTS**

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LAFCO heard and approved an urban service area and sphere of influence amendment for the City of Campbell and the Town of Los Gatos that involved 1.4 acres of road right of way between the two cities' boundaries.

## **COMMISSION AND STAFF CHANGES**

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In January 2009, the County Board of Supervisors appointed Liz Kniss as the County's representative to LAFCO replacing Blanca Alvarado whose term on the County Board ended in December 2008. Commissioner Kniss's term on LAFCO will expire in May 2010 (as she is completing Commissioner Alvarado's unfinished term). The County also appointed George Shirakawa as the County's alternate representative to LAFCO replacing Pete McHugh whose term on the County Board also ended in December 2008. As Commissioner Shirakawa was completing Commissioner McHugh's unfinished term which ended in May 2009, the Board in 2009, reappointed Commissioner Shirakawa to another 4 year term ending in May 2013.

There is no change in the level of LAFCO staffing. All three positions (Executive Officer, Analyst and Clerk) are staffed at a full time level.

In February 2009, following a formal RFP process, the Commission retained Best Best & Keiger to provide general legal counsel services to LAFCO and appointed Mala Subramanian of Best Best & Keiger as the LAFCO Counsel.

Other staff who regularly assist with LAFCO work include Jack Schepens, the LAFCO Surveyor who is staffed through the County Surveyor's Office.

## **OTHER PROJECTS / STUDIES**

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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 2007. Since that time, LAFCO has been heavily involved in processing this complex application. Prior to July 2008, LAFCO retained Economic & Planning Systems (EPS) to prepare the Comprehensive Fiscal Analysis, Michael Brandman Associates (MBA) to conduct the environmental analysis and Best Best and Krieger as special counsel to LAFCO on the proposed incorporation.

#### **Revenue Neutrality Activities**

At the July LAFCO meeting, LAFCO Special Counsel provided their independent analysis of revenue neutrality issues and described LAFCO's discretionary authority in imposing terms and conditions for achieving revenue neutrality. In addition, staff and consultants provided responses to comments and questions regarding the Comprehensive Fiscal Analysis (CFA), and made further revisions to the report based on comments and new information available. Following review of the analysis, LAFCO requested the County to renegotiate with the proponents to reach agreement on revenue neutrality using a professional facilitator. The two parties



could not reach agreement during this second round of negotiations, and as a result LAFCO was required to impose terms and conditions for revenue neutrality. At the September 10, LAFCO meeting, staff presented various revenue neutrality mitigation options for the Commission's consideration and the Commission selected two potential options and directed staff to provide more information and a recommendation at the next meeting. At the October 1, 2008 LAFCO meeting, the Commission directed staff to revise the Public hearing Draft CFA to reflect its preferred revenue neutrality option and to prepare the EO Report for LAFCO public hearing on November 7<sup>th</sup>.

#### **LAFCO Public Hearing**

Staff released the EO Report and held an informational workshop in the community on November 3, 2008. At the November 7, 2008 LAFCO public hearing on the incorporation proposal, the Commission directed staff to draft a resolution for the next LAFCO meeting denying the incorporation for the proponent's failure to pay LAFCO fees pursuant to the fee agreement (between LAFCO and the proponents) and without considering the merits of the incorporation proposal. At the December 2008 LAFCO meeting, the Commission denied the incorporation proposal.

#### **Settlement Agreement between LAFCO and San Martin Neighborhood Alliance (SMNA), the proponents**

On February 2, 2009, SMNA filed a lawsuit against LAFCO in which it challenged LAFCO's review and processing of the San Martin Incorporation Proposal and SMNA's request for State Controller's review of the CFA. On February 17<sup>th</sup>, SMNA made a settlement offer to LAFCO, to which LAFCO made a counter offer. LAFCO approved the resultant settlement agreement at the June 3, 2009 LAFCO meeting.

#### **LAFCO Workshop on Annexations and Boundary Changes for Cities and Special Districts**

In March 2009, LAFCO staff conducted a practical workshop for staff from cities and special districts involved in processing annexations and dealing with associated service transfers. Over 35 staff from various County departments, five cities, five special districts, and two Board of Supervisors' Offices attended the 2½ hours workshop. In addition to providing an overview of LAFCO policies and the annexation process, LAFCO staff discussed when service transitions occur and when taxes transfer to the annexing agency. The meeting also provided an opportunity for attendees to network with staff from various agencies who are involved in the annexation process.

#### **Follow-up Meeting to Coordinate Service Transfers for San Jose Island Annexations**

As an outgrowth of the above mentioned workshop, LAFCO organized a follow-up meeting specific to coordinating annexations to San Jose. Over 25 staff from the City of San Jose, the County, and various special districts met in April 2009 to discuss the

annexation process and how coordination for the transfer of services between service providers, such as fire, law enforcement, sanitation, and waste collection, can be improved and how information can be shared. The meeting helped identify the key staff for the various agencies and allowed them to begin to network with each other. The meeting was particularly timely since San Jose is in the process of annexing several large populated unincorporated islands through the Island Annexation Program.

### **Work Plan for Comprehensive Update of LAFCO Policies**

In June 2009, LAFCO approved a work plan for reviewing and updating LAFCO's policies. The work plan included updating LAFCO's Service Review Policies, Island Annexation Policies, Incorporation Policies, Policies Pertaining to the Role of Commissioners, and Policies on Annexation/Reorganization for Cities and Special Districts. The work plan also included developing new policies on the retention of LAFCO records and indemnification of LAFCO for any litigation associated with LAFCO's review and approval of applications.

### **Adoption of LAFCO Indemnification Policy**

In June 2009, LAFCO adopted a policy that requires all applicants to indemnify LAFCO against any legal actions challenging the review or approval of the applicant's proposal by LAFCO. The policy shifts the burden to fund litigation defense from LAFCO and its funding agencies to the applicant. This policy is important because LAFCO often reviews and decides upon proposals such as annexations, urban service area amendments and incorporations that are of a complex and controversial nature.

### **Participation in CALAFCO Activities**

#### **CALAFCO Executive Board Member**

Commissioner Susan Vicklund Wilson, public member, is serving her third term on the CALAFCO Executive Board and is currently its Vice Chair. Commissioner Wilson participates on the CALAFCO Legislative Committee and currently chairs CALAFCO's Structural Change Subcommittee.

#### **2009 CALAFCO Annual Conference**

LAFCO staff and Commissioners Howe, and Wilson attended the 2008 CALAFCO Conference held in Los Angeles. LAFCO Clerk, Emmanuel Abello, prepared a video-montage and soundtrack for the conference.

#### **2009 CALAFCO Staff Workshop**

LAFCO staff attended the 2009 CALAFCO Staff Workshop in late April which was hosted by the San Luis Obispo LAFCO.

#### **CALAFCO University's SB 375 Workshop**

In March 2009, LAFCO staff and Alternate Commissioner Trumbull attended CALAFCO's workshop in San Jose on SB 375. The Workshop included a panel



discussion on how the implementation of SB 375 is envisioned under the law and how it will impact LAFCOs.

**CALAFCO University Workshop on Fire District Consolidation**

In June 2009, the LAFCO Executive Officer attended CALAFCO's workshop for LAFCO Commissioners, staff, and local agencies on fire district consolidation. This workshop was very timely as several fire protection districts and cities in the south county are exploring consolidation options and also because LAFCO is beginning to plan for the next countywide fire protection service review.

**Other Miscellaneous Projects and Activities**

**Participation in the Meetings of Santa Clara County Special Districts Association**

LAFCO staff continues to attend the quarterly meetings of the Santa Clara County Special Districts Association and provides an update to the association on LAFCO activities that are of interest to special districts.

**ATTACHMENT A: LAFCO APPLICATION PROCESSING ACTIVITY SUMMARY**

# LAFCO APPLICATIONS

JULY 1, 2008 THROUGH JUNE 30, 2009

## CITY ANNEXATIONS/DETACHMENT

### CITY CONDUCTED ANNEXATION

City	Proposal Name	Date Recorded	Document Number	Acreage Approved
Cupertino	Baxter Avenue 08-01	11/19/2008	20049688	0.44
			<i>City Total</i>	<b>0.44</b>
Los Gatos	Englewood Avenue No. 7	5/26/2009	20265262	0.67
	Englewood Avenue No. 8	6/17/2009	20298609	0.17
			<i>City Total</i>	<b>0.84</b>
San Jose	Burbank No. 40	9/8/2008	1998344	2.78
	Monterey Park No. 112	7/10/2008	19914393	4.50
			<i>City Total</i>	<b>7.28</b>
<i>Total City Conducted Annexations</i>				<b>8.56 Acres</b>

### LAFCO-HEARD CHANGE OF ORGANIZATION

Palo Alto	Palo Alto Reorganization 2008 (Former Los Altos Sewage Treatment Plant Site)	2/11/2009	20129923	13.60
			<i>City Total</i>	<b>13.60</b>
Morgan Hill	Munro Annexation 7	5/26/2009	20265262	20.00
			<i>City Total</i>	<b>20.00</b>
<i>Total LAFCO-Heard Change of Organization</i>				<b>33.60 Acres</b>

### ISLAND ANNEXATIONS

San Jose	San Jose Pocket #25: Riverside No. 51	12/9/2008	20062308	3.40
	San Jose Pocket #36: Meridian No. 73	10/8/2008	20009509	147.00
	San Jose Pocket #37: Hamilton No. 59	10/8/2008	20009507	131.00
	San Jose Pocket #38: Burbank No. 41	10/8/2008	20009508	16.00

**LAFCO APPLICATIONS**  
 JULY 1, 2008 THROUGH JUNE 30, 2009

**ISLAND ANNEXATIONS** *(Continued)*

<b>City</b>	<b>Proposal Name</b>	<b>Date Recorded</b>	<b>Document Number</b>	<b>Acreage Approved</b>
	San Jose Pocket #39: Winchester No. 42	11/18/2008	20048500	85.00
	San Jose Pocket #40: Buena Vista No. 2	11/19/2008	20049689	40.00
<b>Total Island Annexations</b>				<b>422.40 Acres</b>

**CITY DETACHMENT**

<b>Campbell</b>	West Parr Avenue Detachment	6/3/2009	20331956 7/9/2009	0.28
<b>Total Detachment</b>				<b>0.28 Acre</b>

**SPECIAL DISTRICT ANNEXATIONS**

<b>Special District</b>	<b>Proposal Name</b>	<b>LAFCO Action</b>	<b>Document # Date Recorded</b>	<b>Acreage</b>
<b>Central Fire Protection District</b>	Central Fire Protection District: Arnerich-Wagner Road No. 1	12/3/2009 Protest Proceedings 02/10/2009	20173652 3/18/2009	42.5
<b>Total for CFPD</b>				<b>42.5</b>
<b>West Valley Sanitation District</b>	West Valley Sanitation District 2008-1 (Canon Drive)	4/16/2008 Protest Proceedings 06/19/2008	19916048 7/11/2008	32.4
	WVSD SOI Amendment & Annexation 2008-02 (Overlook Road)	12/3/2008 Protest Proceedings 02/10/2009	20173653 3/18/2009	50.13
	West Valley Sanitation District 2008-03 (Forrester Road)	2/4/2009	20129922 2/11/2009	1.82
<b>Total for WVSD</b>				<b>84.35</b>
<b>Total Special District Annexations</b>				<b>126.85 Acres</b>

**LAFCO APPLICATIONS**  
 JULY 1, 2008 THROUGH JUNE 30, 2009

**URBAN SERVICE AREA AMENDMENT**

	<b>Proposal Name</b>	<b>LAFCO Action / Date</b>	<b>Document # Date Recorded</b>	<b>Acreage</b>
<b>Campbell/ Los Gatos</b>	Campbell USA/SOI Amendment 2009	Approved 6/3/2009	20331956 7/9/2009	1.40
<i>Total USA Amendment</i>				<b>1.40 Acres</b>

**SPHERE OF INFLUENCE AMENDMENT**

<b>West Valley Sanitation District</b>	WVSD SOI Amendment & Annexation 2008-02 (Overlook Road)	Approved 12/3/2008	20173653 3/18/2009	50.13
<i>Total SOI Amendment</i>				<b>50.13 Acres</b>

LAFCO Meeting: October 14, 2009  
TO: LAFCO  
FROM: Neelima Palacherla, Executive Officer  
Dunia Noel, LAFCO Analyst  
SUBJECT: **Executive Officer's Report  
Agenda Item # 11**

### **11.1 Update on Selection of Consultant for Design and Implementation of LAFCO's Electronic Document Management System**

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Staff is in the process of finalizing a contract with Peelle Technologies, a document management solution firm located in Campbell. A copy of the contract will be available at the LAFCO meeting. The proposal includes both the software license / maintenance for the initial system implementation as well as document backfile conversion which consists of digitally scanning all of LAFCO's records and files into the system.

On June 19, 2009, LAFCO issued an RFP seeking proposals for design and implementation of an electronic document management system. The RFP was posted on Santa Clara LAFCO and the CALAFCO websites and was mailed out to a list of firms and agencies that work in this field. LAFCO received eight proposals in response to the RFP. An interview committee composed of LAFCO staff and Matt Woo, IT Architect at the County Information Services Department, interviewed 7 firms in early September. We wish to thank Ken Yamamoto and Matt Woo of the County Information Services Department for their time and for their assistance in explaining and evaluating the technical aspects of this project.

### **11.2 LAFCO Comment Letters to the City of Gilroy on the City's CEQA Documents and other Reports Related to its 2009 Urban Service Area Amendments**

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The City of Gilroy is currently processing three urban service area (USA) amendment projects around the city (a fourth amendment area for Gavilan College was recently withdrawn). The three areas include the Thomas Neighborhood District and Gilroy Sports Park, Lucky Day and Wren Investors. The three USA amendments collectively include the addition of 626 acres to the City's USA, 2,249 new housing units, a new golf course, 100,000 sq ft of new commercial space and a potential population of 7,782 new residents resulting in a 19% increase to the City' population.

The City has prepared CEQA documentation for these projects in preparation for the City Council's consideration of whether or not to apply to LAFCO for these USA amendments. As LAFCO will be a responsible agency for these projects, LAFCO staff reviewed the City's CEQA analysis and provided comments. In addition, staff also provided clarification of various LAFCO policies, filing requirements and identified issues for the City to consider and address prior to submitting USA applications to LAFCO. Attached, please see comment letters sent by LAFCO staff and counsel to the City.

The Gilroy City Council is scheduled to consider the USA amendment projects at a public hearing on October 19<sup>th</sup>.

### **11.3 Update on Presentation to the 2009-2010 Santa Clara County Civil Grand Jury**

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At the request of the Civil Grand Jury, staff made a presentation on Santa Clara County LAFCO to the Civil Grand Jury on September 2, 2009. Having attended a statewide training for new grand jury members which included a presentation on LAFCO, the Grand Jury members wanted more detailed information about the history of LAFCO and the local LAFCO policies and functions. Staff provided a presentation similar to that for new commissioner orientation with detailed information regarding special districts, service reviews and LAFCO operations.

October 9, 2009

Honorable Mayor Pinheiro and City Council Members  
City of Gilroy  
7351 Rosanna Street  
Gilroy, CA 95020

**RE: Final Addendum EIR for the Thomas Neighborhood District and Gilroy Sports Park USA Amendment**

Dear Honorable Mayor Pinheiro and City Council Members,

Thank you for providing the Santa Clara County Local Agency Formation Commission with an opportunity to review and comment on the City of Gilroy's various environmental documents associated with its 2009 urban service area (USA) amendments. The following are our comments on the Final Addendum to the 2002 General Plan EIR for the Thomas Neighborhood District and Gilroy Sports Park Urban Service Area and on various other reports issued by the City of Gilroy and referenced in the above document and in the Final Supplemental EIRs for Gilroy 2009 Urban Service Area Amendments:

We understand that at this point, the City is considering whether to support, and in turn, apply to LAFCO for an USA amendment that involves the following three areas:

- Thomas Neighborhood District and Gilroy Sports Park (294 acres area)
- Wren Investors (48 acres area)
- Lucky Day Partnership (284 acres area)

**CEQA DOCUMENTATION MUST INCLUDE JOINT ANALYSIS OF ALL THREE USA AMENDMENT PROPOSALS**

Each of the three proposed USA expansions is a major proposal and together would increase the city's population by over 19%. LAFCO policies allow each city to submit a request for USA amendment once a year to LAFCO. The purpose of setting such a limitation on USA amendment requests from each city is to enable LAFCO to comprehensively consider the citywide impacts of a request that may involve multiple areas. The City's CEQA approach of analyzing its three proposed projects separately and independently is not conducive to enabling a comprehensive review of these amendments by LAFCO or the City and is a violation of California Environmental Quality Act (CEQA) as detailed in the attached letter from LAFCO Counsel (**Please see Attachment A for letter from LAFCO Counsel**)



With an understanding of the full scope of the City's proposed USA amendment requests, we can only conclude that such an application will require the joint analysis of the three proposed developments. The current document does not include analysis of the cumulative and growth inducing impacts and the consideration of reasonable alternatives to the proposed projects which could feasibly attain the objective of the proposed amendments. Such analysis can best be provided through the preparation of an up-to-date comprehensive EIR whose scope includes all three proposed amendments and associated development projects.

### **USA AMENDMENTS MUST BE ANALYZED IN CONJUNCTION WITH PROPOSED DEVELOPMENT AND ITS IMPACTS**

According to long standing growth and development policies adopted by the 15 cities, the County and LAFCO, the County does not provide urban services and does not allow development that would require urban level of services in the unincorporated areas outside urban service areas. The urban service areas of cities delineate lands intended for development, which lands the cities should annex and provide with services within a five-year time frame. In recognition of this unique way of managing growth in Santa Clara County, the CKH Act which governs LAFCOs, gives cities in Santa Clara County, the authority to annex lands within the LAFCO-adopted USA.

Furthermore, state law prohibits LAFCO from disapproving an annexation to a city, of contiguous territory that is located within the city's urban service area, which is designated for urban growth in the general plan of the annexing city. It is therefore understood that LAFCO's approval of an urban service area amendment means subsequent annexation and service extension and development consistent with a city's general plan.

Unlike lands included simply in a city's sphere of influence or general plan boundary but outside the city's USA, inclusion of lands within a city's USA results in those lands being committed in perpetuity for urban development. Because an USA amendment is the immediate precursor to and the first and potentially the only discretionary action directly related to annexation which in turn would allow specific development within the city, and because the reason for inclusion of lands within an USA is to enable future development of those lands, a request for an USA amendment must include specific information about proposed development and the CEQA document must analyze and evaluate impacts of not just moving the USA boundary but also the impacts of the development proposed for the site.

Additionally, in reviewing our records, we noticed that in the recent past, the City has prepared EIRs and Subsequent EIRs for USA amendments and the development of each of the three subject project sites, specifically:

- Gilroy Municipal Golf Course Project Certified EIR: issued August 1997. (Lucky Day site)
- Gilroy Sports Park and USA Amendment (USA 98-01) Certified EIR: issued in April 1999; (Sports Park)
- Gilroy Urban Service Area Amendment (USA 98-03) Subsequent Final EIR: issued February 2002; (Sports Park)
- City of Gilroy Draft EIR for USA Amendments issued September 2002. (Wren site)

It is unclear why the currently proposed USA amendments involving the same project sites would not require a similar project level environmental analysis as was conducted just a few years ago for USA amendment requests involving these same project sites.

Our review of the CEQA and associated documents (i.e. Vacant Land Inventory Report, Plan for Services, Fiscal Impact Analysis, and Water Supply Assessment) raises these two fundamental questions regarding the proposed USA amendments:

**QUESTION #1: Given that the City has enough land for at least the next 11 to 16 years within its current boundaries, why is it necessary to include additional lands at this time?**

**Urban Service Area Boundary is a 5 Year Boundary and Not a 10 or 15 Year Boundary**

The Urban Service Area Boundary is a 5 year boundary and includes only those lands that the City plans to and has the ability to annex and provide with urban services/infrastructure within the next 5 years. LAFCO, the County of Santa Clara, the City of Gilroy as well as the other 14 cities in this county have policies that affirm this definition and the intent of the USA.

It is only those lands that are ready to be developed in the next 5 years that should be included in a city's USA. That is, the USA's 5 year period is measured from when the land is included in the USA and not from a projected future date of receiving entitlements from the City for proposed development.

**City currently has considerably more than 5 years worth of vacant residential land within its boundaries**

The Revised Vacant Land Inventory (dated September 10, 2009) projects the number of units to be constructed in the next five years estimating that 50 units will be constructed in 2009, 100 in 2010, 200 in 2011, 300 in 2012 and 400 in 2013. This projection of new construction appears overly optimistic given the tough economic times and the slump in the housing market. Even if such estimates were acceptable, the average annual number of units that will be built during the five year period (which is the time frame for the USA) is only 210. Based on the City's vacant land estimate of a supply of 3,481 units, and assuming that 210 units will be built annually in the next five years, **there is enough vacant residential land supply within the city for 16.5 years.**

This 16.5 years worth of vacant land does not include the 2,249 units that are included in the three proposed USA amendments. **Including the three areas would provide an additional 10.7 years of residential land supply for a total of 27 years of residential land supply.**

Regardless of which estimate is used, the City currently has at least double the 5 years supply of vacant residential land within its boundary. Given this potential for development within its current boundary, it appears premature for the City to apply to have additional land included in its USA.

It has been stated that the reason for proposing the three USA amendments at this time is so that the developers have assurance that these lands will be included in the USA before they spend time and money on preparing specific plans for these lands.

While we understand and encourage good timely planning, LAFCO cannot consider or support USA amendment requests before the City has:

- exhausted its current supply of land to less than 5 years or demonstrated a need for additional lands
- demonstrated an ability to physically and financially provide the requisite public services to the new areas, while continuing to adequately provide public services to lands within the city limits
- fully analyzed the resulting environmental impacts through CEQA
- determined how the resultant direct and indirect impacts will be mitigated through the CEQA process

Although this process of putting the lands in the USA prior to having any specific development plans may be preferred by the developers, it is contrary to the definition of an urban service area, LAFCO policies, the County General Plan, the City General Plan and the growth & development policies jointly adopted by LAFCO, the County and the 15 cities in Santa Clara County which in turn are the basis for the special provisions in state law regarding annexations to cities in Santa Clara County.

Please understand that the City, without any LAFCO approval, has the ability to prepare specific plans, or master plans for lands located within its planning/ General Plan boundary. **Therefore, not including the lands within the USA at this time should not hinder the City from planning for its communities in a comprehensive manner.** In fact, planning for the area now will provide the City with important information regarding the infrastructure, services, and investments needed to develop the area and will enable the City, the community and the public in general to meaningfully and timely consider how to achieve the City's policies and objectives for the area.

**QUESTION #2: Given the difficulty that the city is having in providing adequate services (such as fire protection and police ) to its current residents, how can the City commit to providing public services to an additional population of 7,782 new residents within the next five years?**

Per City's Plan for Services, the City, due to budget issues, recently eliminated six firefighter positions and the City's Sunrise Fire Station no longer houses a fire engine due to staffing reductions. This has reduced fire service levels within the city. Furthermore, the City's fourth fire station which is planned for the southwest quadrant is on hold and the date of construction of this station is currently unknown. This new station was to be constructed as part of the development of the Glen Loma Ranch, but this development is itself on hold. The City's Plan for Services concludes that the City will need to replace the eliminated six staff positions, add an additional 4 new positions, complete and operate the Glen Loma station, and reestablish a fire engine at the Sunrise Station in order to be able to begin to meet the City's response time standards for the proposed project sites.

The City of Gilroy had to recently reduce the number of sworn police officer positions from 65 to 57 due to budget reductions. The Plan for Services concludes that the City will need to replace these 8 officer positions as well as add an additional 11 sworn officers in order to be able to begin to meet the City's adopted response time and level of service standards for the proposed projects.

LAFCO is required to consider the "ability of the city to provide urban services to growth areas without detracting from current service level" (USA Policy (B)(3)(c)). Given the City's ongoing budget deficit, it seems unlikely that the City will be able to provide the requisite urban services, at the City's adopted standard, to this and the other two project sites within the next 5 years.

### **Report Finds Overall Negative Fiscal Impact on City**

The most recent Fiscal Impact Analysis Report concludes that for the City, the net fiscal impact of the USA amendments would be about \$387,000 more in services than the City would generate in tax and fee revenue for Year 1. This negative fiscal impact is projected to continue through Year 10 although it may reduce to a \$50,887 deficit by that time.

The City currently has a significant General Fund deficit and is relying on its reserves to balance its budget. The City has also reduced its level of staffing for critical services such as police and fire in order to try to address budget deficits. The addition of new lands to the city will further compound the City's financial problems and in turn the City's service deficiencies.

The Fiscal Impact Report has identified some potential options for mitigating the negative fiscal impact on the city, including establishment of Community Facilities Districts or other assessment districts to supplement the cost of providing certain

services to the new areas. If such programs and general tax revenues are insufficient to fund the services the report acknowledges that the city must face reductions in service levels.

### **Negative Fiscal Impacts to County and School District**

In addition, the County and the Gilroy Unified School District will experience severe negative fiscal impacts as a result of these USA amendments. Any mitigation offered by the city to reduce these impacts to the affected agencies could very likely further worsen the City's own financial situation. Also, mitigation offered by developers for this and other impacts will likely affect the affordability of the housing supply as the housing construction costs increase.

LAFCO, as part of the USA Amendment application will require that the city submit a plan for providing and financing services to the USA amendment areas. **(Please see Attachment B for what information must be provided in the Plan for Services)**. An USA amendment that relies on future voter approval of assessments to mitigate negative fiscal impacts or one that results in reduced services to other areas in the city in order to serve the new areas is inconsistent with LAFCO Policies. Additionally, if there is a reduction in services as a result of the City's inability to finance services, the information must be disclosed and impacts must be analyzed in the CEQA document.

### **CONCLUSION**

For the reasons listed above, we respectfully request the City Council to find the CEQA documentation inadequate and to not forward the USA amendment requests to LAFCO until adequate CEQA is completed and the City has had an opportunity to carefully consider and address the issues raised in this and other letters submitted by LAFCO, the County and other affected agencies. Thank you.

Sincerely,



Neelima Palacherla  
LAFCO Executive Officer

Attachment A: LAFCO Counsel's comment letter dated October 9, 2009 on the Final Addendum EIR for the Thomas Neighborhood District and Gilroy Sports Park USA Amendment

Attachment B: Plan for Services

CC: LAFCO members



**BEST BEST & KRIEGER**  
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October 9, 2009

Honorable Mayor Pinheiro and City Council Members  
City of Gilroy  
7351 Rosanna Street  
Gilroy, CA 95020

Re: Final Addendum EIR for the Thomas Neighborhood District and Gilroy Sports  
Park Urban Service Area Amendment

Dear Honorable Mayor Pinheiro and City Council Members,

Thank you for providing the Santa Clara Local Agency Formation Commission (LAFCO) with an opportunity to comment on the City of Gilroy's (City) Final Addendum to its 2002 General Plan Environmental Impact Report (EIR) for the Thomas Neighborhood District and Gilroy Sports Park Urban Service Area Amendment (USA # 08-03 [dated September 11, 2009]) proposed by Shapell Homes (the Project). The Project seeks to expand the City's urban service area boundaries north of Santa Teresa Boulevard, south of Luchessa Avenue, and east of Thomas Road. The expansion would encompass a 294.2-acre Project site. On behalf of LAFCO, we respectfully submit the following comments to the City pursuant to the California Environmental Quality Act (CEQA):

**1. The City Has Undertaken a Forbidden Piecemeal CEQA Analysis**

The law is clear that a lead agency may not break a project into smaller pieces for purposes of CEQA analysis. (See, e.g., *Tuolumne County Citizens for Responsible Growth v. City of Sonora* (2007) 155 Cal.App.4th 1214.) The reason behind this requirement is to ensure that the lead agency's environmental analysis takes the full impacts of a proposed project into account and discloses those impacts to the public. (See State CEQA Guidelines, § 15002(a).) It is for that reason that, "[a] lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect." (Cal. Code Regs., tit. 14 ["State CEQA Guidelines"], § 15003(h) [citing *Citizens Assoc. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151; see also Pub. Res. Code, § 21159.27.] Here, the City of Gilroy failed to analyze the full impacts of its proposed approvals in several ways.

**a. The City's Addendum Piecemeals this Urban Service Area Amendment from Other Connected Urban Service Area Amendments**

The City is concurrently processing a series of urban service area amendments around the City. In addition to the proposed amendment for the present Project, the City is also processing urban service area amendments for Lucky Day and Wren Investors. Until it was recently withdrawn, the City was even



processing a fourth urban service area amendment for the Gavilan Joint Community College District. Collectively, the three urban service area amendments still pending encompass 626 acres, 2,249 new housing units, and would accommodate a potential population increase of 7,782 residents. This is a 19% increase in the City's population. Yet, the City chose to process each urban service area amendment as an individual, stand-alone project, thereby severely limiting its environmental analysis. The three urban service area amendments before the City clearly involve a unified effort to expand the City's urban service area and proactively plan for future growth. The City's decision to treat these three amendments as unrelated projects violates CEQA's prohibition against segmenting or piecemealing because it conceals the true impacts of the City's actions by breaking them into three smaller pieces. (See, e.g., *Tuolumne County Citizens for Responsible Growth v. City of Sonora* (2007) 155 Cal.App.4th 1214.) The requirements of CEQA "cannot be avoided by chopping up proposed projects into bite-sized pieces" which, when taken individually, may have not significant adverse effect on the environment. (*Lake County Energy Council v. County of Lake* (1977) 70 Cal.App.3d 851, 854.)

Moreover, CEQA requires that a lead agency analyze both the growth-inducing and cumulative impacts of a proposed project when the lead agency prepares a Supplemental EIR or an EIR Addendum. (See State CEQA Guidelines, § 15126.2(d).) A lead agency's growth-inducing impact analysis must consider direct growth inducement (such as the provision of housing) and indirect growth inducement caused by removing an obstacle to growth (such as infrastructure or urban service area expansions). (*Ibid.*) Similarly, a lead agency must analyze whether a proposed project, in connection with other "past, present, and probable future projects," will collectively result in any significant impacts. (E.g., State CEQA Guidelines, § 15130.) The City's Addendum for the Thomas Neighborhood District and Gilroy Sports Park Urban Service Area Amendment has not undertaken an adequate analysis of growth inducing or cumulative impacts. There is no mention, much less analysis, of the combined cumulative impacts of the Project with the two other urban service area expansions under the City's consideration. In fact, the entire analysis of these two issues, combined, is a total of five sentences. (Addendum at p. 2-42.) This is inadequate, and fails to provide good faith and reasoned analysis required by CEQA.

**b. The City's Addendum Piecemeals the Urban Service Area Amendment from Other Project Approvals**

**i. Future Development is Reasonably Foreseeable**

Even if the City's decision to treat these three urban service area amendments as independent projects is appropriate, the City's analysis of this specific Project still results in impermissible piecemealing under CEQA. Under CEQA a "project" includes "the whole of an action, which has the potential for resulting either a direct physical change on the environment, or a reasonable foreseeable indirect physical change in the environment" and is supported through a public agency approval. (State CEQA Guidelines, § 15378 [emphasis added].) Once again, CEQA requires that a public agency consider and analyze the entirety of the project and refrain from breaking the project into smaller pieces which, individually, might have no significant impact. It is because of CEQA's requirement for a full and accurate accounting of environmental impacts, that agencies are forbidden from "tak[ing] any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or



mitigation measures that would ordinarily be part of CEQA review.” (State CEQA Guidelines, § 15004(b)(2)(B).) Here, the City has defined the “Project” too narrowly, and is impermissibly giving impetus to a readily foreseeable action (i.e., the development of the urban service area expansion acreage) without considering the environmental impacts. Failing to analyze project impacts now and deferring that analysis until a later date also violates CEQA.

Contrary to the City’s assertion that no specific projects are being contemplated at this time, a specific proponent – Shapell Homes – seeks the amendment to the City’s urban service area. Surely this applicant would not be requesting an urban service area expansion for an unforeseeable use. To the contrary, the Addendum identifies that the area will be developed for residential uses in the future and that a community committee will help to design the layout. (Addendum at p. 1-5.) The Addendum identifies the uses, densities, and population that is anticipated to live within that urban service area amendment. (Addendum at p. 1-14 through 1-16.) The Addendum further states that:

Future development of the project site would not occur for several years due in part to the length of time necessary to process the USA amendment request and, later, annexation and entitlements for specific development once it is proposed. About 181.4 acres of the 294.2-acre project site could eventually be developed with up to about 1,626 dwelling units under the Neighborhood District land use designation.

(Addendum at p. 1-24.) CEQA requires that the impacts of the urban service area amendment be analyzed together with the approvals for future development. Although the urban service area amendment may not directly approve the future development, CEQA case law holds that annexation plans, for example, involve reasonably foreseeable indirect impacts because such plans ultimately allow for development of lands that previously were undeveloped. (See, e.g., *Bozung v. LAFCO* (1975) 13 Cal.3d 263.) This conclusion is even more accurate here, where the City repeatedly states that the site will be developed in the near future.

**ii. The Urban Service Area Amendment and the Future Development Do Not have Independent Utility**

The Addendum further states that no specific development has been proposed and that any development would proceed at a future time. However, this theoretical explanation ignores the fact that the City knows the site will be developed by Shapell Homes with residential uses. Accordingly, the approval of any urban service area amendment should be undertaken only in connection with an EIR that looks at the development itself. Absent this unified analysis, the City’s adoption of the Addendum and approval of the urban service area amendment will segment the ultimate project into smaller pieces. Indeed:

Theoretical independence [between two approvals] is not a good reason for segmenting the environmental analysis of the two matters. Doing so runs the risk that some environmental impacts produced by the way the two matters combine or interact might not be analyzed in the separate environmental reviews. Furthermore, if the two matters

are analyzed in sequence (which was the situation here) and the combined or interactive environmental effects are not fully recognized until the review of the second matter, the opportunity to implement effective mitigation measures as part of the first matter may be lost. This could result in mitigation measures being adopted in the second matter that are less effective than what would have been adopted if the matters had been analyzed as a single project.

(*Tuolomne County Citizens for Responsible Growth v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1230.)

Further, the facts that the approval of the urban service area amendment “is a step that [the developer] must take to achieve its objective” and the ultimate development of the site “will be undertaken by ... the same entity” requesting the urban service area amendment, demonstrate that the urban service area amendment analyzed in the Addendum is really part of the readily foreseeable future development of the site. (*Id.* at 1227.) Accordingly, the City should not prepare a General Plan EIR Addendum for the urban service area amendment alone, but instead should prepare an EIR for the development of the site and all required approvals in the future. (See *Tuolomne County Citizens, supra*, 155 Cal.App.4th at 1227-28.)

## **2. The City’s Approval of the Project Described in the Addendum Pre-Commits the City to Later Development**

In its cover summary, the Addendum states that “[t]he Project does not include development at this time nor does it propose to change the existing land use designations on the site.” The Addendum, however, then goes on to disclose that the 294.2-acre site will be the subject of a future specific plan or master plan (Addendum p. 1-5), that the anticipated residential density for the Project site would be 8.96 dwelling units/acre (Addendum p. 1-15), and that 181.4 acres of the 294.2-acre Project site could be developed with up to 1,626 dwelling units (Addendum p. 1-24). As discussed above, the City should prepare an EIR for the entirety of the future development project, and include in that EIR any necessary approvals for that project – including the urban service area amendment expansion. If the City adopts the Addendum and approves the urban service area amendment as proposed, the City will have impermissibly pre-approved the development project without first conducting full CEQA review.

Before a public agency can “approve” a project, the agency must undertake appropriate environmental review and consider a final CEQA document. (State CEQA Guidelines, § 15004(a); see also *Citizens for Responsible Government v. City of Albany* (1997) 56 Cal.App.4th 1199.) “Approval” means the decision by a public agency which commits the agency to a definite course of action in regard to a project .... [and] occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract ... or other entitlement for use of the project.” (State CEQA Guidelines, § 15352 [emphasis added].)

Recently, the California Supreme Court decided a case which underscores the importance of completing CEQA’s environmental review process before taking any action to “approve” a project. In

*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, a city entered into two agreements to develop property for low-income housing for the elderly prior to completion of the EIR for the project. Despite the fact that the agreements were contingent upon several factors, including future compliance with CEQA, the Court held that the agreements should not have been entered into prior to preparation of an EIR. Central to the Court's holding was that the totality of the circumstances showed the city had effectively cut off its ability to meaningfully consider alternatives to the project – including the “no project” alternative. (*Save Tara, supra*, 45 Cal.4th at 137-38.) Although the city subsequently did prepare an EIR for the development of the land, the Court found that it was little more than a *post hoc* rationalization to support a decision that the city had essentially already made. (*Id.* at 136-37.) The Court struck down the city's approvals.

Here, the facts are very similar. The approval of the urban service area amendment includes an inherent understanding that Shapell Homes will subsequently prepare and submit a Master Plan or Specific Plan detailing residential development layout on the 294-acre site. This gives impermissible impetus to the future development of the site and would effectively divest the City of its ability to meaningfully consider alternatives to that development (e.g. the “no project” alternative, putting the project on a different site, etc.). Accordingly, the City's action to approve the requested urban service area amendment at this time would constitute impermissible pre-commitment to the future residential development project.

### **3. Adoption of the Addendum Would be a Prejudicial Abuse of Discretion**

In the event that the City's Addendum is legally challenged, the applicable standard of review is abuse of discretion. “Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.” (Pub. Res. Code, § 21168.5; see also Pub. Res. Code, § 21168, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 392, FN 5 [“the standard of review is essentially the same under either section [21168 or 21168.5], i.e., whether substantial evidence supports the agency's determination”].) Although some deference is granted to the City's factual conclusions pursuant to the “substantial evidence test” applicable to addendums (see *Bowman v. City of Petaluma*, 185 Cal.App.3d 1065), the City's CEQA process does not comply with the law. Further, and even considering any deference due to the City's factual analysis, the City's environmental conclusions regarding the Project's environmental impacts are not supported by substantial evidence.

#### **a. The City has Failed to Proceed as Required by Law**

As discussed above, the City has failed to proceed as required by law in several respects. In addition to those concerns, the City has also failed to proceed by required by law as to this specific Addendum, as discussed below. This constitutes a prejudicial abuse of discretion.

**i. The City's Process Involves Procedural Inconsistencies**

First, the City determined that Supplemental EIRs were required to analyze the Lucky Day, Gavilan Joint Community College District, and Wren Investors urban service area amendments. Although the Gavilan urban service area amendment was subsequently withdrawn, the CEQA document chosen to review it shows that the City believes that urban service area amendments involve environmental impacts that merit an EIR. These three urban service area amendments purported to exclude any specific development, and all of them claimed to be within the envelope of what was analyzed in the City's General Plan Program EIR. Similarly, the instant Project is described in the same way. Yet, inexplicably, the City chose to prepare an Addendum for this urban service area amendment. This is inconsistent with the City's CEQA determinations as to the other three amendments. Moreover, neither the Supplemental EIRs nor the Addendum provide a clear explanation regarding why one of the urban service area amendments is appropriate for an Addendum, but the rest are not. Given that an Addendum has no public circulation or review requirements (see generally State CEQA Guidelines, § 15164), it is very important that the City explain this procedural discrepancy.

**ii. The Use of an Addendum is Improper**

The City's decision to seek coverage for the urban service area amendment under the existing General Plan EIR, but to process the remaining approvals for the future development pursuant to a stand-alone CEQA document, is improper. Choosing to prepare a CEQA addendum is only appropriate "where none of the conditions described in [State CEQA Guidelines] Section 15162 calling for preparation of a subsequent EIR have occurred." (State CEQA Guidelines, § 15164.) In turn, Section 15162 applies where "an EIR has been certified ... for a project." (State CEQA Guidelines, § 15162; see also Pub. Res. Code, § 21166.) If changes are proposed to the description or conditions under which the project is undertaken, then the lead agency must undertake additional review under certain circumstances. (*Ibid.*) In contrast, here the City is not proposing to change "the project" analyzed in the General Plan Program EIR. To the contrary, the City is extending its urban service area boundaries in order to accommodate a specific future development within that area. (E.g., Addendum at pp. 1-5 [describing the development process for future development of the project site].) Where a public agency undertook a similar approach – by seeking coverage for a portion of a project under a program EIR – and proposing to prepare a CEQA analysis for the remainder of the project, the court struck down the agency's approvals.

[W]e cannot conclude that section 21166 applies. The China Shipping project arose more than three years after the 1997 EIR and was not specifically addressed in the 2000 SEIS/SEIR. It cannot be considered part of the overall "project" addressed in those documents. We conclude that the most appropriate way to address the China Shipping project is by preparation of a "tiered" EIR addressing all three phases of the Project.

(*Natural Resources Defense Council, Inc. v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 285-86; see also *Tuolumne County Citizens, supra*, 155 Cal.App.4th at 1227-28 [striking down a City's CEQA document which segmented a road improvement from a development, despite the road improvement

being generally analyzed in the City's general plan].) Accordingly, here the City must consider the urban service area amendment to be part of the development of the project site, and the most appropriate way to address that project is by preparation of an independent CEQA document that addresses all phases of the project.

Moreover, that independent CEQA document must be an EIR. The Addendum states that well over 70% of the Project site is prime farmland and farmland of local importance. (Addendum at p. 2-2.) The General Plan Program EIR acknowledged and overrode the significant and unavoidable impact to agriculture that will result from implementing the land uses identified in the EIR. Even given that the General Plan EIR overrode a significant agricultural impact, CEQA precedent is clear that "the responsible public officials must still go on record and explain specifically why they are approving a later project despite its significant impacts." (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 124-25 [emphasis added].) Here, the General Plan Program EIR confirms that the removal of prime agricultural lands is an unavoidable significant impact, and so at a minimum the City must prepare an EIR that analyzes the agricultural impacts of developing the lands included in the urban service area amendment.

**iii. The City's Means of "Analyzing" Future Development is Ambiguous and Improper**

The Addendum includes conflicting statements regarding the way that on-the-ground development will proceed and violates the law with regard to how environmental review should proceed. The Addendum states that an EIR will be prepared in the future for any development within the urban service area amendment. (Addendum at p. 1-5.) Then the Addendum contradicts this conclusion and states, as to many impact areas, that the impacts of any future development would not exceed those analyzed in the General Plan Program EIR – suggesting that additional future CEQA review would not be necessary. (See, e.g., Addendum at pp. 2-2 [land use], 2-5 [agriculture], 2-21 [biology].) This is improper under CEQA.

Regarding the Addendum's analysis, the Addendum either analyzes the future buildout of the site or it does not. The Addendum states that it does not cover the future buildout of the site, but then the analysis discusses the ways in which using the site for future residential development has already been analyzed. The Addendum needs to make it very clear whether any environmental coverage for the site's future development is provided by the Addendum.

Regarding the City's reliance on its General Plan EIR, the Addendum's statements that impacts of building on the site were already analyzed in the General Plan EIR are improper. The EIR was Programmatic in nature, and so it assumed that further environmental review would be completed for projects involving impacts different from those considered in the General Plan EIR. Indeed, recent case law has clarified that, "The [State CEQA] Guidelines unambiguously state that a program EIR may be used with 'subsequent activities'" under certain circumstances. (*Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 614 [discussing State CEQA Guidelines section 15168].) In turn, State CEQA Guidelines section



15168(c) states that a lead agency may rely upon a program EIR for project-level approvals only as long as it finds, pursuant to Public Resources Code section 21166 and State CEQA Guidelines section 15162, that “no new effects could occur [and] no new mitigation measures would be required.” Indeed, “a program EIR may serve as the EIR for a subsequently proposed project to the extent it contemplates and adequately analyzes the potential environmental impacts of the project.” (*Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 615 [internal quotations and citations omitted].) Accordingly, “As required under [State] CEQA Guidelines Section 15168(c), the City must examine future actions in light of its General Plan Program EIR, to determine the requirement for, and extent of, any necessary subsequent development-level environmental analysis.

**iv. The Project Description is Inadequate**

Even assuming for argument’s sake that the Project can be limited to the urban service area amendment, the Project description is nonetheless inadequate. An accurate, stable, and finite project description is the sine qua non of CEQA. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) Yet, the project description and need for the urban service area expansion is unclear. The title of the Addendum and page 1-5 of the Addendum mention the continued development of the Sports Park, but the Project Description has no real discussion of how the Sports Park relates to the urban service area expansion, how it relates to the future development of the residential development, or – more importantly – why the expansion of the urban service area was not considered and analyzed as part of the CEQA review undertaken for the Sports Park. If the Sports Park required an urban service area expansion, that approval should have been included within the CEQA document for the Sports Park, not added to the back-end of a separate CEQA process. Without clarification of exactly why the urban service area amendment is needed, what is being approved, and how the two portions of the project are (the Sports Park and the future residential development) related, the Project description cannot provide the informational disclosure and reasoned analysis that is required by CEQA.

**v. The City’s Timing for Future Environmental Review Is Inadequate**

Page 1-5 of the Addendum states that the development process for the future residential development of the site is anticipated to take 5-years, that the CEQA review for that development is anticipated to take two years, and that a community task force would be assembled to help formulate the residential layout and design following the submittal of the development application. These timelines appear to conflict with CEQA’s required timelines. For example, CEQA provides that an EIR shall be completed and certified within one year of accepting the application as complete. (State CEQA Guidelines, § 15108.) Although a short time extension may be appropriate in certain circumstances, the time extension does not provide for the five-year process anticipated by the City. The City should explain how its anticipated timelines can be rectified with CEQA’s timing requirements. Additionally, the City should explain why it would accept an application, but then convene a public committee to discuss specific layout and design elements. Wouldn’t the committee’s recommendations require that the applicant edit and re-submit a revised application in order to assure accuracy? This is confusing and seems counter-intuitive from a practical perspective.

**b. The City's Environmental Conclusions are Not Supported by Substantial Evidence**

As explained above, the City's environmental conclusions must be supported by substantial evidence. Substantial evidence means "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (State CEQA Guidelines, § 15384(b).) In contrast, substantial evidence does not include "argument, speculation, unsubstantiated opinion or narrative, [or] evidence which is clearly erroneous or inaccurate...." (State CEQA Guidelines, § 15384(a).)

The Addendum repeatedly asserts that "future development of the site would not create additional impacts or intensify the magnitude of impacts identified and studied in the General Plan EIR." (Addendum at p. 2-7 [air quality] [emphasis added]; see also Addendum at pp. 2-5 [agricultural impacts], 2-9 [noise], 2-14 [solid waste].) Even more troubling is that the City seems to conclude that no further environmental review will be required for future development of the site. (E.g., Addendum p. 2-5 ["Future development of the site would contribute to the impacts identified in the General Plan EIR; however, because there is no significant new information or change in circumstances of the project ... additional analysis is not needed.].)

Contrary, then, to the Addendum's initial statement that it analyzes only the urban service area amendment, the Addendum actually states that it provides environmental coverage for the impacts of a future residential development – the details of which are still unknown. Without a specific development proposal, the City's conclusions that the development of the site will not have impacts exceeding those in the General Plan EIR and that no additional environmental review is required, are not supported by substantial evidence. Indeed, the City cannot be supported by substantial evidence, because the City does not and cannot cite to any facts, reasonable assumptions predicated upon facts, or expert opinion supported by facts that explain the reasons why a future development proposal would not require additional environmental review. It appears that the City is trying to have things both ways: It asserts that the future development of the site is unknown and therefore should not and cannot be analyzed now, but the City's Addendum concludes that future development of the site would not require additional environmental review. Either the future development is too speculative to analyze or it is not. LAFCO requests that the City clarify the Addendum and analysis. As limited examples of why it is not possible at this juncture to state with certainty that no further environmental review is required, please consider:

- **Agricultural:** In addition to the apparently significant impacts identified above and the City's requirement under CEQA to address those impacts, the Addendum contains a contradictory and confusing discussion of Agricultural impacts. The Addendum first states that it will address impacts to agricultural resources via one of LAFCO's agricultural policies. (Addendum at p.1-38.) However, the Addendum also states that the City does not know which of these policies will actually be utilized to mitigate for impacts. (*Ibid*). Then, despite the Addendum stating that all impacts can be addressed and reduced through compliance with LAFCO policy, the Addendum goes on to say that mitigation for agricultural impacts will be provided through payments under the City's mitigation fee policy. (Addendum at pp. 2-2, 2-5.) Through these statements, the Addendum fails to make clear what specific mitigation is required, how that mitigation will be provided, and which agency will be responsible for reviewing that mitigation. Deferring the



analysis of agricultural impacts and the mitigation needed to address those impacts is impermissible under CEQA.

- **Air Quality:** The General Plan Program EIR provides a programmatic analysis of operational impacts associated with future build-out. However, and even if the site is developed entirely consistent with the General Plan, the General Plan EIR did not provide project-level analysis of construction impacts. If the site were mass-graded or if construction (and the architectural coatings and other emissions associated with construction) overlap with grading, there may be a significant construction air quality impact. This impact may be temporary in nature, but CEQA requires the consideration of even temporary impacts. (See, e.g., State CEQA Guidelines, § 15126.2 [requiring that lead agencies “giv[e] due consideration to both the short-term and long-term effects”].)
- **Noise:** Again, and even assuming that future development did not involve noise-intense uses, the construction noise impacts caused by that development were not analyzed in the General Plan Program EIR.
- **Biology:** The Addendum states that “Uvas Creek, which supports riparian trees and other native species [and] which may include special status species” crosses the site. (Addendum at p. 2-21.) Without a site design, the City cannot know now that future development of the site will proceed without significant impacts. The future development of the site could result in significant impacts to Uvas Creek, riparian habitat, trees, and/or special status species. Similarly, the Addendum states that the future development of the site is “not anticipated” to conflict with the soon-to-be-adopted Multi Species Habitat Conservation Plan. (Addendum at p. 2-21.) Again, until that Plan is finalized, the City cannot know the site’s future development can go forward without significant impacts.
- **Water Supply:** The City’s Water Supply Assessments prepared in connection with other projects suggest that there is a negative regional storage change and drawdowns of the groundwater basins continue to increase. Yet, the City’s Addendum states that “development of the site would not result in impacts greater than those identified and mitigated by the General Plan EIR, and addressed by WSMP and UWMP.” (Addendum at p. 2-19.) Given that the City’s water supplies come from groundwater wells and those groundwater level are dropping, the City cannot say now that the impacts of a future development are already fully analyzed.

### Conclusion

Based on the above comments, LAFCO must object to the City’s adoption of the Addendum and approval of the Project. LAFCO urges the City to prepare a comprehensive environmental document at the appropriate time that fully analyzes the Project’s impacts. As stated in the Addendum, LAFCO is a responsible agency for this Project. (Addendum at p. 1-2.) Accordingly, and consistent with State CEQA Guidelines section 15096, LAFCO will require that adequate environmental review be completed prior to issuing any approvals. For all the reasons identified above and in LAFCO’s prior comment letters to the

Honorable Mayor Pinheiro and City Council Members  
City of Gilroy  
October 9, 2009  
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City, LAFCO will be unable to treat any applications for urban service area amendments as complete until and unless adequate CEQA review is completed. This is consistent with LAFCO's long-standing Local CEQA Guidelines<sup>1</sup> as well as its filing requirements for urban service area and sphere of influence amendments.<sup>2</sup>

Finally, LAFCO requests, pursuant to the Ralph M. Brown Act and Public Resources Code section 21092.1, that it be added to all mailing lists for the City of Gilroy's CEQA notices and/or public notices regarding the above-described Project. Thank you for the opportunity to submit these comments, and LAFCO looks forward to discussing with the City the CEQA review process for this urban service area expansion.

Very truly yours,



Malathy Subramanian  
LAFCO Counsel

cc: LAFCO Members

<sup>1</sup> Where LAFCO is a responsible agency, the LAFCO application must be accompanied by a complete copy of the environmental documentation ...” (Local Agency Formation Commission of Santa Clara County, Procedures for Preparation and Processing of Environmental Documents Pursuant to the California Environmental Quality Act (CEQA) (dated March 2003), § 2.3.1.) Before the LAFCO Commission acts to approve any application for which a CEQA document was prepared, the Commission must review the environmental documentation and find “that the environmental documentation was completed in compliance with CEQA, and is an adequate discussion of the environmental impacts of the project.” (*Id.* at §§ 2.3.3, 2.3.4, 2.3.5.)

<sup>2</sup> For an application to be deemed complete, it must include ten copies of the certified environmental document, and that document, at a minimum, “must discuss regional and cumulative impacts, the impacts on agricultural and open space resources along with other environmental issues.” (Local Agency Formation Commission of Santa Clara County, Filing Requirements Urban Service Area (USA) and Sphere of Influence (SOI) Amendments, at ¶ 6.)

## PLAN FOR PROVIDING SERVICES

The Plan for Services must contain the following information:

1. An enumeration and description of how services will be provided and who will provide the services to the affected territory;
2. The level and range of those services including detailed information on the extent, size, location and capacity of existing infrastructure. Capacity analysis should include:
  - The total capacity / service units of the system
  - Number of service units already allocated
  - Number of service units within current boundaries anticipating future service
  - Number of service units within the system available after providing service to areas within current boundaries that anticipate future service
  - Number of service units required to serve the proposed project
  - Number of service units proposed to be added to meet the demand

In the event there are not enough service units available to serve the proposed project, the applicant shall provide a plan for obtaining the capacity necessary to provide service which must include the following information:

- A description of any required facility or infrastructure expansions or other necessary capital improvements;
  - The likely schedule for completion of the expanded capacity project, the viability of the needed project, and the relation of the subject project to the overall project and project time line;
  - A list of required administrative and legislated processes, such as CEQA review or State Water Resources Board allocation permits, including assessment of likelihood of approval of any permits and existence of pending or threatened legal or administrative challenges if known;
  - The planned total additional capacity;
  - The size and location of needed capital improvements;
  - The proposed project cost, financing plan and financing mechanisms including a description of the persons or properties who will be expected to bear project costs; and
  - Any proposed alternative projects if the preferred project cannot be completed.
3. The estimated time frame for service delivery;
  4. A statement indicating any capital improvements, or upgrading of structures, roads, sewer or water facilities or other conditions the agency would impose or require within the affected territory prior to providing service if proposal is approved;
  5. A description of how the services will be financed;
  6. Agency's general statement of intent to provide services to the affected territory, indicating the agency's capability of providing the necessary services in a timely manner to the affected territory while being able to serve all areas within its current boundaries and without lowering the level of service provided to areas currently being served by the agency.



Dated Aug. 13, 09  
Letter to Gilroy

August 13, 2009

Via Facsimile and U.S. Mail

Honorable Mayor Pinheiro and Members of the City Council  
City of Gilroy  
7351 Rosanna Street  
Gilroy, CA 95020

**Re: Draft Supplemental Environmental Impact Reports (Draft SEIRs) for Gilroy  
2009 Urban Service Area Amendments**

Dear Honorable Mayor Pinheiro and Members of the City Council:

Thank you for providing the Santa Clara County Local Agency Formation Commission (LAFCO) with an opportunity to comment on the City of Gilroy's three Draft Supplemental Environmental Impact Reports for the three Urban Service Area (USA) Amendments that were received by LAFCO on the 25th of June 2009:

- Lucky Day Urban Service Area Amendment,
- Gavilan Joint Community College District Urban Service Area Amendment, and
- Wren Investors Urban Service Area Amendment.

We have been informed by City staff that an Addendum to the City's General Plan EIR is being prepared for a fourth USA amendment (i.e. Shapell Industries). We are aware that the California Environmental Quality Act ("CEQA") does not impose any public circulation periods on Addendums and, therefore, we request that the City provide LAFCO with a copy of the Addendum as soon as it is publicly available - but in any event no less than 21 days prior to the proposed adoption of the Addendum so that LAFCO has sufficient time to review and comment upon the Addendum. We also request that the City provide LAFCO with notice as to when the City will consider the Addendum and the three Draft Supplemental Environmental Impact Reports.

The proposed four USA expansion projects encompass nearly 800 acres of land, over 2,200 new housing units in addition to the 470 new housing units for college students, faculty and seniors, resulting in a potential population increase of over 8,800 new residents (see Appendix B: 2008 Urban Service Area Amendments Water Supply Assessment). This represents a nearly 22% increase in the City's population and a significant increase in the demand for City and community services at a time when both City and school district resources are stretched very thin.

<b>Gilroy's Proposed USA Amendments (2009)</b>			
Project Name	USA Expansion Acreage	Number of New Housing Units	Number of New Residents
Wren Investors	48 acres	430 homes	**1,488 residents
Lucky Day	284 acres	193 homes + Golf Course	**668 residents
Shapell Industries*	294 acres	1,626 homes + 100,000 sq. ft. Commercial	**5,626 residents
Gavilan College	148 acres	470 units for students, seniors, and faculty + Lifelong Learning Center	1,033 residents
<b>TOTAL</b>	<b>774 acres</b>	<b>2,249 new homes and 470 new units</b>	<b>8,815 new residents</b>
Source: City of Gilroy 2008 Urban Service Area Amendments Water Supply Assessment			
* According to Gilroy Staff, an Addendum to the City's EIR for 2002 General Plan is being prepared for this proposed USA amendment			
** Based on average 3.46 persons per household (US Census 2000)			

In order to ensure that LAFCO, a responsible agency, has adequate CEQA documentation to complete its upcoming review of these major USA proposals, LAFCO respectfully provides the following comments to the City concerning the three Draft Supplemental EIRs:

According to the Draft SEIRs, the environmental analysis of the proposed projects relies heavily on the City's EIR for its General Plan Update which was prepared and adopted in 2002. However, it appears that the 2002 General Plan EIR does not analyze the impacts of the proposed/maximum development potential of the proposed project sites. Especially in the case of the Gavilan College proposal, the 2002 General Plan EIR did not even anticipate the proposed residential land uses (student/staff/ senior housing) and so could not have analyzed its associated impacts. The City must therefore prepare independent analysis for this project.

The main purpose of an EIR is to "inform the public and responsible officials of the environmental consequences of their decision before they are made." (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 6 Cal. 4<sup>th</sup> 1112, 1123.) Throughout the Draft Supplemental EIRs, the City fails to support its conclusions regarding project impacts with substantial evidence, appropriate analysis, and /or substitutes the City's unsupported conclusion that the impacts can be mitigated for the CEQA-required analysis of each project's individual and cumulative impacts.

**1. Project Descriptions are Misleading and Incorrect and the Draft SEIRs fail to adequately disclose, analyze or mitigate the projects' impacts**

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The State CEQA Guidelines define "project" as "the whole of an action, which has potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...." (CEQA Guidelines, Section 15378(a)). According to the City's three separate Draft Supplemental EIRs, each project is an amendment to the City of Gilroy's Urban Service Area Boundary, but no development is proposed at this time. In general, the only purpose of including areas within a city's USA is to allow the city to annex and provide urban services to these areas in order to allow development that is consistent with the city's General Plan. It is therefore recommended that the statement "that no development is proposed" be removed from all three project descriptions because it is misleading and is not true. The approval of an USA amendment facilitates the development of the project site which will have a physical effect on the environment. Therefore, all potential development impacts must be fully analyzed in the Draft SEIRs and such analysis must not be deferred. (E.g., *Bozung v. LAFCO* (1975) 13 Cal.3d 263 [annexation plan involved reasonably foreseeable indirect impacts because it would ultimately allow development of lands that had been undeveloped].)

**2. Analysis of Environmental Impacts is Inadequate**

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The purpose of each of the Draft Supplemental EIRs is, in part, to determine whether the USA amendments would result in a physical change to the environment. Additionally, their purpose is to assess the level of significance of that potential physical change. All three Draft SEIRs fail to support their conclusions regarding project impacts with adequate analysis. In some instances the Draft SEIRs conclude that an impact can



be mitigated without a full disclosure or analysis of the impacts. Additionally, the Draft SEIRs do not analyze the efficiency and feasibility of mitigation measures that are proposed to address a specific impact. The Draft Supplemental EIRs also lack adequate cross-references to the General Plan EIR to demonstrate which incremental physical impacts identified in the General Plan EIR are attributable to the USA amendments and which might be avoided if the USA amendments do not occur.

The following are some of the issues identified regarding the analysis of public facilities, water supply, and agricultural resources in the Draft SEIRs:

#### **A. Public Facilities**

The Draft Supplemental EIRs' analysis relating to public facilities relies in large part on the collection of mitigation fees. However, the Draft SEIRs do not establish a connection between urbanization of lands within the proposed USA Amendment areas and the construction of necessary facilities. For example, Lucky Day USA Amendment Draft SEIR's discussion of fire facilities indicates that a key facility is "on hold," without discussing whether development in the USA Amendment area and development of the key facility will coincide. The environmental document indicates that a needed fire station is on hold and its construction date is unknown because of the delayed construction of the Glen Loma Ranch development.

The Draft SEIRs also indicate that the three projects will require new infrastructure such as new Monterey Road trunk line to accommodate the increased capacity from the Wren Project or a new diversion line along Uvas Park Drive to mitigate the impacts of increased capacity of existing lines for the Lucky day and Gavilan proposals. Additionally, the Draft SEIRs also note that the projects will increase wastewater generation to an amount that would exceed the existing treatment and disposal capacity of the City's waste water treatment plant which is operated by the South County Regional Wastewater Authority (SCRWA). The Draft SEIRs note that SCRWA is designing an expansion that will increase the treatment and disposal capacity and that the construction of the expansion will begin in 2012 and is expected to be completed by 2015.

The Draft SEIRs must include analysis of the infrastructure that is necessary for the project and must not only establish funding mechanisms for delivery of public facilities, but also demonstrate that these mitigation measures will actually be implemented to serve the new development as it occurs. (*Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal. App. 4th 1252, 1256.) The City must also demonstrate that the mitigation funding mechanisms are sufficient to cover the full costs of any needed future improvements. Absent these showings, the mitigation is inadequate under CEQA. (See *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1187.)

## **B. Analysis of Water Supply Requires Further Clarification and Substantiation**

The Draft Supplemental EIRs' analysis relating to water supply relies in large part on assumptions concerning the development of new water infrastructure and resources. Much of new infrastructure and resources identified in the Supplemental EIRs are unfunded and are only under discussion at this time. To the extent that any approval of project-by-project fees are imposed to pay for the costs of this future infrastructure, and under the case law cited above, the City must demonstrate both that such mitigation is fully enforceable, that the funds are earmarked for infrastructure purposes to ensure that the improvements are built, and that the per project fee is sufficient to cover each project's pro rata share of the infrastructure's cost. Furthermore, the Draft SEIRs do not state whether the City owns or will be able to obtain sufficient water resources to meet project demands. Additionally, the regional water data included in the City's Water Supply Assessment (see Table 4-1 and Page 6) suggest a negative regional storage change and an existing overdraft of the groundwater basin. SB 610 requires the adoption of a plan to eliminate any long-term overdraft. LAFCO has requested information from the Santa Clara Valley Water District, the primary water wholesaler and groundwater management agency for the County, in order to substantiate adequate water supply available for the proposed USA Amendments and that there will be adequate water supply through the years 2030 for a normal year, a single dry water year, and a multi-year drought period.

The Draft SEIRs indicate that the City has a water balance credit. However it is unclear as to whether that credit takes into account projects that already have entitlements, but have not gone forward or are going forward at a much slower pace than anticipated (i.e. Glen Loma Ranch Specific Plan, Hecker Pass Specific Plan, and Downtown Specific Plan). If not, then a credit may not truly exist or may not exist to the degree stated. As indicated in LAFCO's USA Amendment Policy #10a through #10f, "LAFCO must ensure that an adequate water supply is available to the amendment areas and that water proposed to be provided to new areas does not include supplies needed for unserved properties which are already within the city, the city's USA or other properties already charged for city water services." The Draft SEIRs should clearly state whether these projects have been fully accounted for in determining the City's existing water balance credit and what assumptions have been made by the City in determining this water balance credit and the various projections. If there is uncertainty as to the adequacy of the water supply to serve the four proposed projects, then the environmental review documents must identify additional sources of supply and discuss the foreseeable environmental consequences of creating, accessing, and using those additional resources. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 430 [A lead agency "must be



informed if other [water] sources exist, and be informed, in at least general terms, of the environmental consequences of tapping such resources." (internal citations omitted).) Additionally, and as you know, this water supply analysis and any Water Supply Assessment must be included in the EIRs themselves. (Water Code, § 10911; CEQA Guidelines, § 15155(e).)

Additionally, Table 2 of the Water Supply Assessment Report indicates that water demand for the Education Facility part of the Gavilan College USA Amendment is less than what was indicated in the City's 2004 Water Supply Management Plan. However no explanation is provided for this change and conclusion.

### **C. Analysis of Impacts to Agricultural Resources and Mitigation Inadequate**

#### *Conversion of Agricultural Lands*

The specifics of LAFCO's Agricultural Mitigation Policy are incorrectly stated on Page 2-15 of the Draft Supplemental EIR for the Lucky Day USA Amendment. To clarify, LAFCO's Agricultural Mitigation Policy #16 states that "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." It should be noted that no plan for mitigation is included in the Lucky Day Draft SEIR. Instead the document only states what a plan "should" include in the most general sense and does not provide any specifics of the plan for mitigation or any enforceable mitigation for agricultural impacts. The information provided is not adequate for an application to LAFCO or to satisfy CEQA's analysis requirements. The plan must address all of the items that are found in LAFCO's Agricultural Mitigation Policy #16(a) (1 through 7), and must impose enforceable and feasible mitigation for any impacts to agricultural resources. Absent a more specific plan for mitigation, the Draft SEIR should indicate that the project is not consistent with this particular LAFCO policy and may also need to acknowledge significant agricultural impacts under CEQA.

The Draft SEIR for the Wren Investors USA Amendment fails to indicate that portions of the project site meet LAFCO's definition of "prime farmland" and that LAFCO's Agricultural Mitigation Policies apply to the project. Similarly, no plan for mitigation is included in the Wren Investors Draft SEIR. Instead the document only states what such a plan should include in the most general sense and does not provide any specifics of the plan for enforceable mitigation. The information provided is not adequate for an application to LAFCO or to satisfy CEQA's analysis requirements. The plan must address all of the items that are found in LAFCO's Agricultural Mitigation Policy #16(a) (1 through 7). Absent a more specific plan for mitigation, the document should indicate that the project

is not consistent with this particular LAFCO policy and may also need to acknowledge significant impacts under CEQA..

### *Impacts to Adjacent Agricultural Lands*

Furthermore, all three Urban Service Area Amendment project areas are adjacent to agricultural lands and operations. Because urban/ non-agricultural uses affect adjacent agricultural practices and introduce development pressures on adjacent agricultural lands, LAFCO's Agricultural Mitigation Policies also encourage cities to adopt measures to protect adjoining agricultural land, to prevent their premature conversion to other uses, and to minimize potential conflicts (see LAFCO Agricultural Mitigation Policy #10). All three Draft SEIRs should discuss this specific impact and explain how this impact will be mitigated.

### **3. Analysis of Greenhouse Gas Impacts and Climate Change is Inadequate**

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The Draft Supplemental EIRs should address climate change and greenhouse gases per AB 32 and the proposed State CEQA Guidelines for analysis of greenhouse gases which are currently being reviewed and considered by the California Department of Natural Resources. The purpose of the revised Guidelines is to provide guidance to public agencies regarding the analysis and mitigation of the effects of greenhouse gas emissions in draft CEQA documents. The revised guidelines provide advice to public agencies on determining the significance, quantifying emissions, setting thresholds of significance, analyzing cumulative impacts, determining energy needs and impacts, and developing mitigation measures. The information provided in the Draft SEIRs provides background information on the subject, but does not analyze the greenhouse gas impacts that each specific project will have and how those impacts will be mitigated.

### **4. Analysis of Cumulative and Growth Inducing Impacts is Inadequate or Missing**

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CEQA requires that an EIR analyze a project's cumulative impacts (CEQA Guidelines, §15130.) To facilitate this analysis, the State CEQA Guidelines prescribe specific means to analyze and measure cumulative impacts. Section 15130 of the Guidelines requires a lead agency to measure cumulative impacts by either analyzing:

- (1) A list of past, present, and probable future projects producing related or cumulative impacts, including regional projects; or
- (2) A summary of projections contained in an adopted general plan or related planning document "which described or evaluated regional or area wide conditions contributing to the cumulative impact."

(CEQA Guidelines, Section 15130(b))

These two options are often referred to as the "list method" and the "summary of projections" method. The Draft Supplemental EIRs make no reference as to which of

these two methods were utilized for measuring cumulative impacts; for that matter, they make no mention of cumulative impacts at all (excepting the Wren Investors USA Amendment). One could imply that the General Plan EIR's cumulative impact analysis is sufficient to cover the impacts of the USA Amendments. However, this assumption is problematic and raises the following concerns:

- Have applicable lists of plans been updated since the 2002 General Plan EIR was certified?
- Have assumptions relating to background impacts changed since that certification? (e.g. Have they accounted for new issues such as climate change and habitat conservation?)
- How do the additions of housing and population (470 dwelling units/ 1,033 residents) contemplated in the Gavilan USA Amendment relate to the General Plan EIR's cumulative impact analysis done in 2002?

An analysis of cumulative impacts is required by CEQA and is of great importance to LAFCO because of its regional responsibilities for ensuring orderly growth and development, preservation of open space and agricultural lands and for promoting efficient service provision.

The four proposed projects individually are significant in size, scope, and likely impacts. Cumulatively, the four projects have the potential to increase the population of Gilroy by nearly 22%, and will result in a significant increase in demand for City and regional services. The projects will also result in the loss of agricultural and open space lands. This loss of natural resources is significant for the region.

The Draft SEIRs also do not include an analysis of the growth inducing impacts associated with the proposed urban service area amendments and how those impacts will be mitigated as required by CEQA. (CEQA Guidelines, §§ 15126(d), 15126.2(d)) The expansion of the City's USA boundary will result in hundreds of acres of additional lands being susceptible to development and may result in the premature conversion of agricultural and open space lands.

## **5. Analysis of Alternative Available Sites and No Project Alternative**

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The Draft Supplemental EIRs must describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives. (CEQA Guidelines, §§ 15126(f), 15126.6.) The Draft SEIRs also must evaluate and analyze the impacts of the no-project alternative. (CEQA Guidelines, § 15126.6(e))

None of the Draft SEIRs include the required analysis of alternatives to the proposed USA Amendments, and this does not satisfy CEQA. Additionally, the need for an analysis of alternatives remains very important from a factual basis because

circumstances have changed since the adoption of the City's General Plan EIR in 2002. For example:

- New sites may be available because some proposed projects in the existing city limits and urban service area have not gone forward,
- Both LAFCO and City of Gilroy have adopted their own Agricultural Mitigation Policies,
- New issues must now be considered, such as climate change and habitat conservation planning, and
- Both the Gavilan College and Wren Investors USA Amendments anticipate land uses changes.

**6. Vacant Lands Inventory Report is Unavailable and Information in Draft SEIRs Indicates Incorrect Methodology was Used**

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The Draft SEIRs provide summary information from the City's Draft Vacant Lands Inventory Report which was prepared for the City's LAFCO application. LAFCO staff requested a copy of the Draft Vacant Lands Inventory Report (which is referenced in the Draft SEIRs), but was not provided one and was instead told by City staff that the Report was being finalized. Without access to the vacant land inventory report, it is difficult to adequately comment on the conclusions presented in the Draft SEIRs. However, based on the limited information provided in the environmental documents, which appear to incorporate by reference the conclusions of the Draft Vacant Lands Inventory Report, LAFCO has several serious concerns about the methodology that appears to have been used in the preparation of the vacant land inventory and the resulting conclusions. As required by CEQA, the City must provide the Vacant Lands Inventory report to the public and any requesting agencies upon request and with adequate time for their review and comment and prior to the City Council's approval of the environmental documents. (See CEQA Guidelines, § 15150 [materials relied upon in an EIR and incorporated by reference must be "a matter of public record or [be] generally available to the public"].)

**7. Plan for Services Report is not Provided**

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The three Draft SEIRs provide summary information from the City's Plan for Services Report which was prepared for the City's application to LAFCO. The Draft SEIRs refer to the City's Plan for Services Report multiple times. However, the actual Report has not been made public. As required by CEQA, the City must provide the Plan for Services Report to the public with adequate time for their review and comment and prior to the City Council's approval of the environmental documents. (See CEQA Guidelines, § 15150; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442 [Where an agency certified an EIR and relied on

information that was incomplete, unavailable, or improperly incorporated by reference, the county "failed to proceed in the manner provided in CEQA."].)

#### **8. LAFCO Does Not Support City's Current 20-Year Planning Boundary**

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All three Draft Supplemental EIRs incorrectly state that LAFCO supports the City's current 20-Year planning boundary. LAFCO has not endorsed the City's new 20-Year planning boundary. Furthermore, an examination of the official public record will show that LAFCO provided the City of Gilroy with a letter (dated October 23, 2001) indicating that it did not support the City's new 20-Year planning boundary and that LAFCO had several concerns about it. Therefore, this statement should be corrected or removed from each of the Draft Supplemental EIRs.

#### **CONCLUSION**

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For the foregoing reasons, we urge the City Council to not approve the Draft Supplemental EIRs at this time. As you know, LAFCO is a Responsible Agency for the four proposed Urban Service Area Amendments and therefore has an independent obligation to review the EIRs for legal adequacy under CEQA prior to issuing any approvals for the projects. (CEQA Guidelines, § 15096.) To the extent that the deficiencies in the CEQA analysis identified above are not corrected, CEQA dictates that LAFCO require additional environmental analysis or undertake other actions to ensure that adequate environmental analysis is completed for the projects. (CEQA Guidelines, § 15096(e); *RiverWatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal.App.4th 1186 [striking down a responsible agency's approvals where the lead agency's CEQA analysis was incomplete and inadequate].)

Therefore, we respectfully request that the City prepare revised documents that address the identified deficiencies and that the City then circulate new documents or the revised documents to affected agencies and the public for review and comment, as required by CEQA. Thank you.

Sincerely,



Neelima Palacherla  
LAFCO Executive Officer



Malathy Subramanian  
LAFCO Counsel

Cc: LAFCO Members  
Santa Clara Valley Water District  
County of Santa Clara Planning and Development Department