



**LAFCO MEETING MINUTES  
WEDNESDAY, MARCH 11, 2016**

**CALL TO ORDER**

The meeting was called to order at 10:00 a.m.

**1. ROLL CALL**

The following commissioners were present:

- **Chairperson Cat Tucker**
- **Vice Chairperson Mike Wasserman**
- **Commissioner Sequoia Hall**
- **Commissioner Johnny Khamis**
- **Commissioner Linda J. LeZotte**
- **Commissioner Susan Vicklund Wilson**
- **Commissioner Ken Yeager**
- **Alternate Commissioner Yoriko Kishimoto** (left at 12:00 noon)
- **Alternate Commissioner Tara Martin-Milius**
- **Alternate Commissioner Terry Trumbull** (left at 1:00 p.m.)

The following staff members were present:

- **LAFCO Executive Officer Neelima Palacherla**
- **LAFCO Assistant Executive Officer Dunia Noel**
- **LAFCO Counsel Malathy Subramanian**

**2. PUBLIC COMMENTS**

There were no public comments.

**3. MORGAN HILL URBAN SERVICE AREA (USA) AMENDMENT 2015  
3.1 AREA 1: TENNANT-MURPHY (SOUTHEAST QUADRANT)**

The Commissioners disclosed the names of individuals and organizations that they have been in contact with relating to the proposal. A brief discussion ensued regarding a suggestion by Commissioner Khamis to hear Area 2 prior to Area 1 and the Commission determined that the agenda be taken as is. Following a discussion, **Chairperson Tucker** explained the rules for public testimony.

Neelima Palacherla, Executive Officer, informed that the proposal is the largest request for urban development that LAFCO has received in decades. She indicated that the proposal is of great local and regional significance and it is being closely tracked by many agencies, including the Governor's Office of Planning and Research, and the California Strategic Growth Council as it may impact State investment in agricultural preservation planning in Santa Clara County. She indicated that staff has spent a

significant amount of time to analyze and provide independent recommendations as well as identify potential options for the Commission's consideration.

She informed that a detailed staff report was released on February 15, 2016, nearly a month in advance of the public hearing, to allow the Commission, the City and others sufficient time to review the staff report and to also allow various parties time to submit comments to LAFCO. She stated that the staff report has separate analysis and recommendations for the two areas.

She presented the staff report for Area 1 with a PowerPoint presentation and recommended denial.

This being the time and place for the public hearing, Chairperson Tucker declared the public hearing open.

Steve Rymer, Morgan Hill City Manager, provided a PowerPoint presentation and reiterated the City's interest in preserving agricultural lands. He explained the City's agricultural mitigation program and the City's Sports Recreational and Leisure goals and how the City proposes to preserve agriculture in the Southeast Quadrant (SEQ).

Joe Mueller, a resident of Morgan Hill, stated that he was a member of the Morgan Hill Planning Commission. He requested that the Commission support the City's proposal. He stated that the proposal would address the shift of farmland ownership to a generation that does not want to farm, and that the proposal will stop development in the unincorporated areas and will help find new farmers.

Erin Gil informed that he is a farmer in Morgan Hill, a member of the City's General Plan Advisory Committee (GPAC) and the President of the Santa Clara County Farm Bureau. He stated that urban-edge farming is difficult, that Mac Mansions" are gobbling-up unincorporated areas, and that the Chiala family's plan is reasonable and feasible. He suggested that similar to the Farm Bureau where discussions are open to all stakeholders, LAFCO policies should incorporate such input.

Joe Lovecchio stated that he is a resident of Morgan Hill and a board member of the Morgan Hill Pony Baseball. He indicated that while he supports development in the downtown, he is opposed to the development of agricultural and open space lands. He indicated his opposition to the location of the proposed ball fields and the need to raise \$15 to \$20 million in donations and fundraisers to build the facility.

Sandy Silva indicated that she is a fourth-generation South County farmer and an organizer for a ballot measure, Gilroy Growing Smarter. She expressed her opposition to the development of farmlands and open space. She indicated that small farms are viable in South County, that there is a growing interest in farming and farmlands are getting scarcer. She informed that farmlands would be permanently lost once developed and that would make the United States more dependent on other countries for food.

Davin Aoyagi, South Bay Representative, Greenbelt Alliance, informed that his organization's joint letter with the Committee for Green Foothills to LAFCO enumerates the reasons why the Commission should deny the application. His PowerPoint presentation illustrated the loss of farmland since 1984, and the projected loss through 2035. He informed that the SEQ plan is a step towards sprawl and indicative of the City's poor long-term planning. He then urged the Commission to deny the application.

Angelo Grestoni stated that he is a landowner in Morgan Hill and that he represents Top Flight Sports Academy. He expressed support for the approval of APN 817-13-008, intended for the development of a sports complex, as it is adjacent to the aquatic center. He informed that this parcel is not prime agricultural land, it is located next to public utilities, and is a blighted pocket near a hotel. He requested that this parcel be included if the Commission's decision is to approve only a portion of the proposal.

Ann Forestieri Minton informed that she is a property owner in the SEQ, and that farming is always a financial struggle. She stated that farming requires large capital input, for example, her water well costs over \$200,000 to repair. She stated that the SEQ proposal is planned growth so kids would not need to travel for sports competitions and agricultural lands are preserved.

Shelle Thomas stated that she is a resident of Morgan Hill and a member of GPAC. She informed that the SEQ project was done independent of the General Plan update process despite repeated requests from GPAC members to consider the SEQ project. She expressed concern that the advisory body has not considered all of the plans about the city's future.

John McKay, Chairperson, Morgan Hill Tourism Alliance, informed that he is a member of the City Planning Commission, and the interim president of the Morgan Hill Downtown Alliance. He expressed support for the SEQ project and stated that he is opposed to the building of new homes in the unincorporated areas. He stated that the proposed sports facility will bring visitors to the City, and that the proposal will benefit farming. He informed that the City has taken a leadership role.

Greg House, House Agricultural Consultants, informed that he teaches agricultural economics at UC Davis, and that he worked on the City's agricultural mitigation program and expressed support for the agricultural aspects of the proposal. He emphasized the importance of urban farming and providing opportunities to make farmlands available to young farmers. He indicated that the City's program would provide that opportunity.

Armando Benavides, a resident of Morgan Hill, requested that the Commission approve the staff recommendations and preserve agricultural lands. He suggested that the City should know that many of its residents want to preserve agricultural lands and that the City should work with LAFCO and other agencies to come up with a balanced plan that protects agriculture.

Matt Kowta, BAE Urban Economics, stated that the firm prepared the fiscal impact analyses for the City for Area 1 and Area 2. He cautioned that the potential for lack of revenue from Area 1 may be tricky without also considering the reduced service impacts if development did not occur. He stated that the City may have opportunities to mitigate some of the negative fiscal impacts for Area 2.

Gordon Jacoby stated that he is the former owner of land proposed for the ball fields and has extensive planning experience in the Bay Area. He indicated that since the farms in the area have been broken down into small parcels, this proposal is based on the support of at least 30 landowners who are willing to invest money. He asked the Commission to approve the City's request or this opportunity would be lost entirely.

David Puliafico stated that his family owns lands on Tennant Avenue and no one in his family wants to farm since the older generations have passed away. He stated that the sports, recreation and leisure project benefits children in the community and the 1:1 mitigation would preserve farmlands. He stated that the current plan and local residents want to take action to stop the “mcmansions” and commercial nurseries from destroying the farmlands in the area.

Akoni Danielson, David J. Powers and Associates, informed that he has been retained by the City to write a memo to address various CEQA issues. He addressed the statement of overriding considerations and noted that the loss of agricultural land would be significant and unavoidable impact, and stated that the City found that the impact would be reduced to less than significant – not zero, with a feasible mitigation program.

Andrea Mackenzie, General Manager, Santa Clara Valley Open Space Authority (OSA), informed that the SEQ is one of South County’s last aggregated prime farmlands and that OSA has designated it as one of the five priority landscapes for conservation. She expressed objection to the proposal because the use of prime lands for the proposed types of development has not been clearly explained or supported; the City’s proposed in-lieu fee is too low; and the City’s agriculture preservation program is infeasible for a third-party to implement and administer. She urged the Commission to deny the USA expansion request.

Joe Machado stated that he is a Santa Clara County resident and requested the Commission to deny the City’s request in order to prevent urban sprawl. He informed that the City staff lacks the creativity in repurposing the vacant lands within the city for the proposed facilities. He expressed concern about the logic of the City’s plan to destroy SEQ agricultural lands in order to preserve them elsewhere.

Eli Zigas, Food and Agriculture Policy Director, SPUR, informed that his organization supports growth within existing urban areas. He stated that by the same logic of Mr. Rymer’s statement that the City wants to preserve vacant industrial lands in the city limits for their intended use, it is important that the agricultural lands be preserved for their intended use. While he commended the City for developing its mitigation program, Mr. Zigas noted that it is inadequate. He recommended that the Commission maintain the current boundaries and allow the Framework to be completed as it would provide a strategy to plan growth and preserve agriculture.

Dhruv Khanna of Kirigin Cellars informed that his vineyard has a cricket field and is an example for agriculture, sports and tourism enterprise in one location. He stated that the City’s proposal is a larger scale application of his successful agriculture and sports enterprise. He observed that this is what the public needs, and the City understands that and can get it done.

John Horner stated that he is a member of the Morgan Hill Chamber of Commerce and explained that the proposed city expansion is necessary. He explained that there is an inventory of vacant residential lands only because of the growth control system, and that vacant industrial lands cannot be used as that would limit job creation opportunities. He noted that the proposal is practical and requested Commission approval.

Jeff Dixon stated that he is a representative of the Morgan Hill Youth Sports Alliance, Inc., and indicated that the application would benefit the local sports leagues. He informed that a regional sports facility would bring visitors to the city who may also visit the wineries, farmers market and other local amenities.

David Dworkin informed that he is a member of both the Morgan Hill Hotel Association and the Morgan Hill Tourism Association, and manages his family's farms. He expressed support for the proposal, which if implemented, would associate the city with sports, recreation and agriculture and, at the same time, maintain the current inventory of industrial lands. He also hoped that visitors would stay in the local hotels and visit wineries and restaurants.

Rocke Garcia, Glenrock Builders, expressed support for the proposal as it is important to the future of City and to his family.

Shani Kleinhaus, Santa Clara Valley Audubon Society, informed that her organization has sent a letter to LAFCO and requested the Commission to deny the annexation. She expressed concern that even if the loss of agricultural lands is mitigated there is still a net loss.

James Eggers, Sierra Club, informed that he is a resident of Santa Clara County and Executive Director of Audubon Society Loma Prieta Chapter and he requested that the Commission approve the staff recommendation and deny the application.

Andy Pashby stated that he is representing the South County Catholic High School. He stated that the Mercury News article relating to the high school site that LAFCO approved 14 years ago was inaccurate. He informed that the school was planned to be built on that 30-acre site; but because a railroad flyover was necessary and dividing the campus into two would create concerns, the Diocese of San Jose did not build on that site. He informed that the Mercury News issued a correction. He stated that page 14 of the staff report indicated that the sewer and water services are unavailable in the area even though the City's EIR states that there is enough service capacity.

Chuck Berghoff informed that he is a resident of Morgan Hill, the Youth Service Director of the Morgan Hill Rotary Club, and a donor to the South Santa Clara Catholic High School project. He stated that Catholic high schools in Santa Clara County have higher graduation rates and have long waiting lists for admission. He informed that South County students spend long travel hours to attend Catholic schools. He urged the Commission to approve the City's request.

Reverend Father Steve Kim informed that he is the representative of Bishop Patrick McGrath of the Diocese of San Jose and he assured the Commission that the sole intention of the Diocese is to build the high school for the benefit of the community. He informed that a Catholic high school would provide many hours of community service; serve a diverse group of kids through an endowment fund for those who cannot afford the tuition; promote spiritual growth through retreats, ministries and prayers; and, educate students about social justice, philosophy, theology and environmental concerns.

Daniel J. Kenney, Rio Serra Homeowners Association, provided a map illustrating at least 16 vacant sites within the city to depict where such facilities may be built. He also informed that while working with Shea Homes, he recalled that there were concerns

with disclosures regarding the type of development that would occur on the previous school site. He expressed support for the Catholic high school to be built within the city and indicated that the proposal as a whole is a bad plan.

The Commission took a recess at 12:00 p.m.

The Chairperson called the meeting to order at 12:30 p.m., and resumed the public testimonies.

Michelle Lieberman stated that she is a farmer on a one-acre farm outside Morgan Hill growing about 70 kinds of produce that are sold through a vegetable subscription service. She indicated that contrary to the assertion that farming is not viable, there is a resurgent interest in farming among young people, and the South County is an ideal location for farms because of its soil, climate and proximity to the market. She informed that families in Morgan Hill and San Martin are on the waiting list for delivery subscription of her farm produce. She expressed hope that future agricultural lands preservation policy would support new farming models through micro lending and other tools. She requested that the Commission follow its mandate and deny the request.

Mark Moore stated that he is the representative of the South County Democratic Club, a former GPAC member and was involved in establishing the city's urban growth boundary (UGB). He iterated the Club's January 16, 2016 resolution opposed to the proposal. He noted that GPAC had confirmed that there are enough vacant land inventory to allow growth for many years but the City has taken unusual steps to approve the SEQ outside of the General Plan update process. He expressed agreement with LAFCO Counsel's September 2014 letter and asked the Commission to oppose the USA boundary expansion.

David Poeschel informed that he is a member of Sierra Club Loma - Prieta Chapter, and requested the Commission to follow the staff recommendations and deny the USA amendment. He informed that the City is unable to support its arguments that new lands are needed and that the sports complex is economically viable. He indicated that studies show that small parcels are viable for farming and that the mitigation fee is insufficient to purchase the easements. He asked the Commission to maintain the boundary until after the Framework is completed. He recalled how San Jose, Santa Clara and Sunnyvale lost orchards to development. He asked that the Commission deny the USA amendment to protect the region's economy and lifestyle.

Megan Medeiros, Executive Director, Committee for Green Foothills, introduced a video testimony by Serena Unger, Senior Policy Associate with the American Farmland Trust. Ms. Unger stated that the City's proposal conflicts with LAFCO's mandate and its agricultural preservation program is insufficient as it lacks collaboration and relies solely on mitigation. She suggested that the City avoid the need to convert farmlands by using infill and efficient development, coordinate preservation plan with the General Plan update, integrate preservation and General Plan policies to make it difficult to develop outside of UGB, incentivize infill, and adjust the in-lieu fee to be a practical funding stream for conservation. She proposed that efforts to preserve farmlands should be tied to the Santa Clara Valley Greenprint, Sustainable Agricultural Policy Framework and Plan Bay Area.

Tim Chiala, Chiala Farms, informed that there is no guarantee that farming would flourish if farmlands remain unincorporated. He indicated that he farms the majority of SEQ lands and he is always defending his farm operations from neighbors who complain against noise, dust and pollution. He stated that the best way to protect SEQ farmlands is to purchase easements. He noted that this proposal provides his family the best avenue for keeping their farmlands.

Eric Acedo stated that he is a member of Thrive! Morgan Hill and expressed concern that large-scale projects such as the SEQ did not solicit community input. He informed that 335 households adjacent to SEQ were unaware of this proposal and are concerned about its negative impact. He expressed hope for the City to take this application back and preserve agricultural lands.

Jynelle LaPointe informed that she grew up in Morgan Hill and noted that many of those present have taken time off from work to ensure that the city that they love and enjoy would remain as it is. She indicated that her input to this project at the various City meetings has been disregarded, such as with regard to sustainable development and the need to locate recreation facilities and the Catholic high school within the City so kids can walk and bike to them. She informed that there should be a plan for farmland protection because financial situations change but the need for farmland does not. She expressed support for the staff recommendation.

Aleks Vranicic, SaveMorganHill.org, informed that the City does not represent its citizens as over 2,500 residents following his website are opposed to the proposal. He informed that he is supportive of growth according to the General Plan and Measure C, and supports the annexation of the Morgan Hill Bible Church; however, he stated that he is opposed to bad backroom deals. He informed that City's phone survey was designed to ensure that all the responses support the annexation of agricultural lands no matter how the questions were answered. He requested the Commission to deny the City's request.

Trina Hineser informed that she represents the San Martin Neighborhood Alliance and its 400 members, and that she is a member of the San Martin Planning Advisory Committee and lives on the SEQ border. She informed that the City did not reach out to San Martin residents or the Committee about this proposal. She informed that San Martin residents are concerned about the negative impacts of the recreation and leisure facilities and she requested that the Commission deny the City's request.

Julie Hutcheson, Legislative Advocate, Committee for Green Foothills, stated that the application is inconsistent with LAFCO's mission and policies as the city has enough vacant land inventory, the proposed boundary is illogical, the proposed mitigation is ineffective, the EIR is flawed, the City is unable to provide for the increased urban service needs, the proposal conflicts with regional planning efforts, and the City had failed to engage residents and failed to capitalize on interagency efforts to find alternatives. She reminded members that they represent the entire County and it is their responsibility to deny the City's request in its entirety.

The Chairperson briefly placed the public testimonies on hold to allow Alternate Commissioner Trumbull to address the Commission before he leaves.

**Alternate Commissioner Trumbull** expressed support for the staff recommendation to deny the request for expansion in both areas 1 and 2. He indicated that the expansion request is inconsistent since the USA is a five-year boundary and that Morgan Hill has many years supply of vacant lands. He observed that the City has indicated that vacant lands are required in order for the city to achieve commercial and industrial development; however, he stated that the other cities in the County have added thousands of jobs without adding new lands. He urged the Commission to vote against the expansion request.

The Chairperson ordered the continuation of the public testimonies.

John Telfer stated that he is a resident of Morgan Hill, member of GPAC, and a real estate broker. He informed that he grew up among farming families and that younger generations no longer want to farm, and if the proposal is not approved more "mcmansions" would be built in the area. He stated that the proposal will benefit farming families through the agricultural easements and urged the Commission to approve the City's proposal.

Mr. Tom stated that he is a resident of Morgan Hill and informed that he found out about the project recently. He expressed concern that most prime agricultural land has already been developed and that there will be no more lands available for mitigation. He stated that the City would not be able to go forward if the residents become aware of this proposal as they would oppose it. He opined that the City should not be allowed to expand as it is unable to maintain its current roads. He requested the Commission to follow the staff recommendation and deny the City's request.

Ron Erskine stated that he is a resident of Morgan Hill, built 50 homes on infill properties in Morgan Hill and is Vice President of the Committee for Green Foothills Board of Directors. He informed that the arguments by the proponents distract from the essential fact that the proposal is insensible growth as it failed all the eight key criteria indicated in the staff report. He requested the Commission to deny the application.

Connie Ludewig stated that she is a resident of Morgan Hill and is against the City's request for expansion. She indicated that compared to this proposal, she would support the "mcmansions" as they have less traffic impact, would operate boutique farms and supply grapes to local wineries. She questioned how mitigation would succeed when prime farmlands nearby are destroyed without guarantee that a replacement could be found.

Bill Chiala informed that he farms in the proposal area and that residents believe that the program is feasible as indicated by the Morgan Hill Times poll on the proposal. He stated that the City's proposal would work because farmers know how to operate urban-edge agriculture. He requested the Commission to approve the City's request.

Fernando Huerto stated that he is a resident of Morgan Hill and supports the USA expansion request.

Julie Borina Driscoll stated that her family owns property in Morgan Hill and explained that more government regulations and higher capitalization have made farming difficult.



Carol Neal stated that Chiala lands surround her property and she is opposed to the expansion request. She indicated that the City has not notified her about the proposal and she found out about it from the news. She indicated that all residents should be notified and be heard. She informed that she and her neighbors oppose annexation to the city because it is unable provide services like road maintenance.

Richard Vanella stated that he is a South County resident and noted that urban sprawl is a problem in the area. He proposed that the City must engage the public and make agriculture feasible by providing incentives to property owners for keeping their lands in agriculture. He suggested that development that caused conversion of agricultural lands should pay for the incentives, such as the luxury homes on Diana Avenue that took down a 5-acre walnut farm and the 179 new homes on Cochrane Avenue that replaced the vineyards. He stated that development away from the city core would impact roads and traffic, and he questioned the logic of agricultural mitigation.

Larry Carr, Councilmember, City of Morgan Hill, stated that there is shared interest to preserve agricultural lands and open space, and that the City's proposal provides an innovative way to preserve these resources while respecting how landowners and farmers want to deal with the changing world. He noted that the City's consultants are available to answer questions and he expressed appreciation to commissioners for meeting with the stakeholders and reading emails about the proposal. He stated that the proposal would address the issue of ongoing development in the unincorporated area and that the Commission's decision would make a difference in that regard.

The Chairperson determined that there are no more members of the public who would like to speak on the item and declared the public hearing closed.

**Commissioner Wasserman** expressed appreciation to the members of the public for their participation in the process and for their letters, emails and phone calls. He noted that both sides have made valid arguments; however, the expansion of Morgan Hill's USA boundary would protect agricultural lands forever, and stop further construction of new homes in the unincorporated area. He informed that the City has \$6 million allocated for conservation and that future development in the area would generate \$9.5 million in mitigation fees that would fund the acquisition of easements to protect more agricultural lands. He informed that the City Council directed staff to draft an ordinance to restrict future land uses in perpetuity and that approval of future developments in the area would include a covenant prohibiting residential and industrial uses. He expressed optimism that a win-win conclusion is possible through consensus to preserve agricultural lands while allowing ball fields. He noted that there must be a new way to preserve agricultural lands as the present system is not working. He called on the Commission to allow the City to implement its innovative program and to save more agricultural lands. He offered to make a motion when appropriate.

**Commissioner Yeager** inquired whether the \$6 million allotted by the City for conservation would be available if LAFCO denies the expansion request. Mr. Rymer informed that the City is serious about agricultural preservation and intends to work with a third party and use the funds in the SEQ. At the request of **Commissioner Yeager**, Kirk Girard, Santa Clara County Planning Department and Development Director, provided an overview of the proposed Sustainable Agricultural Lands Policy Framework and he indicated that a draft would be available by the end of 2016.

**Commissioner Yeager** noted that LAFCO staff has raised many unanswered questions on how the City's proposed agricultural preservation program would work. He stated that the Framework could provide guidance. He informed that development of agricultural or open space lands increases development pressures on the adjacent lands and he stated that he is opposed to the City's proposal and requested the parties to work together on a proposal that meets the community's objectives and guarantees agricultural preservation.

**Commissioner LeZotte** thanked all members of the public who testified for or against the proposal. She expressed appreciation to those who sent emails and letters, and those who met with her. She noted that she is the longest serving member after Commissioner Wilson as she had previously served for eight years when she was on the city council. She noted that despite her appointment by the special districts as a LAFCO commissioner, she is bound by LAFCO policies. She noted that unlike some other proposals that are more gray, this proposal is inconsistent with too many LAFCO policies as noted in the staff report and conflicts with regional plans for agricultural preservation and growth management. She noted that even though the City has been working on this for 10 years, they have not heeded the concerns that this expansion is premature. She indicated that she is not convinced of the City's need for a minimum of 20 acres for ball fields and agreed with prior speakers that such fields should not be located in the hinterland but must be within walking distance for the youth. She questioned the feasibility of the City's proposed mitigation and whether the City Council has the ability to establish zoning in perpetuity.

**Commissioner Wilson** stated that she is encouraged that so many people are interested in the preservation of agricultural lands. She noted that in the last 10 years, the Commission has made a difference through its efforts to preserve agricultural lands. She explained that the City's process has not been transparent as indicated by many Morgan Hill residents. She reported that Morgan Hill Mayor Steve Tate and Mr. Rymer were unable to explain why the City's GPAC was not given an opportunity to consider the SEQ project. She stated that while the City made a good effort, its agricultural mitigation policy is flawed as noted by the OSA, American Farmland Trust (AFT) and others. As a Morgan Hill resident, she expressed concern about the City's ability to fund mitigation and how that would impact the cost of providing City services, such as road maintenance. She also stated that while she acknowledged the need for a Catholic High School in South County, the previous site LAFCO approved for the high school was developed into single-family homes. She agreed with Commissioner LeZotte about the concerns regarding legality of establishing zoning in perpetuity.

**Commissioner Hall** noted the many committed community members who have attended the meeting are hoping to influence the decision and stated that as a LAFCO commissioner he would uphold the mission of LAFCO and represent the entire County and not the City or the OSA. He stated that while he recognizes the City's attempt to create an agriculture-based community, more work has to be done to have a successful program. He enjoined the City to participate in regional efforts for agricultural preservation, such as the process for the Framework. He referenced the criteria listed in the staff report and stated that he cannot support the application. He stated that schools and ball fields should be planned within the community. He encouraged the City to

develop a program to better preserve agricultural lands and accommodate the community's needs.

In response to an inquiry by **Commissioner Wasserman**, Ms. Palacherla advised that the Commission could approve Option 2: the Catholic High School.

**Commissioner Khamis** thanked members of the public and stated that he met with many people with opposing opinions. He stated that he is concerned that the County is allowing construction of houses on small parcels and that the City will be responsible for providing services to them similar to what is happening in San Jose's District 10. Upon **Commissioner Khamis** request, Andy Pashby explained that the Diocese of San Jose had the opportunity to purchase the school site but opted out due to the infeasibility of developing a school on a property that required a flyover for a railroad crossover. **Commissioner Khamis** indicated that he does not think that it was the intent of the Diocese to build single-family homes on that site and he expressed support for the approval of the just the high school site as it is difficult to find a site for a school.

**Chairperson Tucker** expressed appreciation to all who came to attend the hearing and commended those who took time off from work. She indicated that she had met with many persons both for and against the proposal. She agreed that she would wear her LAFCO hat; however, she indicated that orderly growth is interpreted variably and while everyone wants to support local agriculture it is also important to consider if farming is profitable to the farmers. She observed that there are not enough votes to approve the proposal and she encouraged members to be open to other positions on the proposal. She noted that waiting for the completion of the Framework would allow the building of more "mcmansions." She hoped for a compromise that will preserve agricultural and open space lands and, at the same time, allow farmers to meet their needs. She expressed her support for the Catholic high school and noted Mr. Pashby's explanation on why a school was not built on the site that LAFCO had approved previously.

**Commissioner Wasserman** moved for the inclusion of the South County Catholic High School only, and **Commissioner Khamis** seconded.

**Chairperson Tucker** opened a discussion on the motion. In response to an inquiry by **Commissioner Yeager**, Ms. Palacherla advised that the Commission would have to make findings on the entire EIR even if it desires to only approve a portion of Area 1. In response to a follow-up inquiry by **Commissioner Yeager**, Ms. Palacherla advised that the reasons for denying the high school option are very similar to the rest of proposal and as such, all those reasons for the denial apply to this particular option. In response to a follow-up inquiry by **Commissioner Yeager**, Ms. Palacherla advised that since LAFCO is the responsible agency, it has limited options on CEQA actions. She informed that LAFCO's concerns with the City's EIR are documented in several letters to the City but now the only option for LAFCO as a responsible agency is to accept the City's documents if the Commission approves the project. She advised that alternately, LAFCO may deny the project if it has concerns about the CEQA documents but LAFCO does not have the option to modify the EIR. Ms. Subramanian reiterated the distinction between CEQA and LAFCO findings and stated that if the Commission desires to approve a portion of the project, they may do so by adopting the EIR. **Commissioner LeZotte** expressed concern that LAFCO approval of the Catholic high school and findings on the

CEQA documents would create a precedent for proponents of similar projects to come to LAFCO and argue that LAFCO had already made the findings. After a brief discussion with Ms. Subramanian, **Commissioner LeZotte** indicated that she would not support approval of any portion of Area 1 since the findings for the high school may be seen as applicable to the rest of the SEQ project. **Commissioner Wilson** noted the distinction between the EIR and LAFCO policies and stated that while she recognizes the good intentions of the high school she cannot ignore LAFCO policies.

**Commissioner Hall** recognized the need for a Catholic high school and pointed out that school sites and regional recreational facilities should not be located in the County. He expressed concern that approval of the Catholic high school will create a precedent for building of schools and houses of worship in the unincorporated areas on the edge of the city. He encouraged the proponents to build the Catholic high school in an acceptable location.

In response to an inquiry by **Commissioner Khamis**, Grant Gruber, First Carbon Solutions, the City's consultant for the EIR, informed that the EIR took four years to be completed and cost approximately \$200,000.00. Gary Baum, Morgan Hill's Interim City Attorney, informed that the EIR includes an alternative just for the Catholic high school. In response to an inquiry by **Commissioner Khamis**, Ms. Subramanian advised that if the Commission chooses to approve the Catholic high school it must approve the whole EIR. **Commissioner Khamis** requested clarification whether there are two separate EIRs, one exclusively for the Catholic high school. Ms. Palacherla informed that there is only one EIR for this proposal and it covers not only the USA amendment but the many and varied aspects of the whole SEQ project, including the creation of the agricultural lands preservation program, the General Plan amendments, and the zoning amendments among others. She informed that even if the Commission wants to approve only a portion of Area 1, the Commission has no other option but to use the City's document as a whole. In response to a follow-up inquiry by **Commissioner Khamis**, Ms. Subramanian reiterated that LAFCO has no option of carving out a section of the EIR even if the Commission's decision applies to only a portion. **Commissioner Wilson** called the question since there has been adequate discussion on the item.

A motion to approve an USA amendment to include only those properties proposed for the development of the South County Catholic High School.

Motion: Wasserman

Second: Khamis

AYES: Khamis, Tucker, Wasserman

NOES: Hall, LeZotte, Wilson, Yeager

ABSTAIN: None

ABSENT: None

**MOTION FAILED**

The Commission denied the USA amendment request for Area 1: Tennant–Murphy.

Motion: Wilson

Second: Yeager

AYES: Hall, Khamis, LeZotte, Wilson, Yeager

NOES: Tucker, Wasserman

ABSTAIN: None

ABSENT: None

**MOTION PASSED**

**Commissioner Wasserman** announced his disappointment in not being able to approve the Catholic high school because the Commission has to approve the entire EIR. Ms. Subramanian reiterated that since LAFCO was presented with only one EIR, as a responsible agency the only option is to approve it as presented if the Commission wanted to approve any of the options other than the denial. **Commissioner Wasserman** requested more clarity in the future. In reference to an earlier comment by Commissioner Hall, he stated that the sites proposed for public facilities in the unincorporated areas do not include agricultural lands and would not need LAFCO approval. **Commissioner Wilson** informed that the reason for her motion not to support the project was based on LAFCO policies and not on the EIR.

The Commission took a recess at 2:30 p.m.

### 3.2 **Area 2: MONTEREY-WATSONVILLE**

The meeting was called to order at 2:44 p.m.

Ms. Palacherla presented the staff report.

In response to an inquiry by **Commissioner Yeager**, Ms. Palacherla discussed the options for LAFCO action and **Chairperson Tucker** clarified that Area 2 has a mitigated negative declaration (MND) and not an EIR. In response to an inquiry by **Commissioner LeZotte**, Ms. Palacherla informed that if LAFCO approves a portion of Area 2, it also needs to approve the MND. **Commissioner Wilson** inquired on changes to the current application after it was denied by LAFCO in 2013. Ms. Palacherla informed that the changes include the addition of four properties to make the Morgan Hill Bible Church (MHBC) properties contiguous to the City boundaries, the City's adoption of an agricultural mitigation policy, and the inclusion of a draft mitigation agreement for the Royal Oaks Enterprises property. She noted that the draft mitigation agreement does not provide information required by LAFCO's agricultural mitigation policy.

This being the time and place for the public hearing, **Chairperson Tucker** declared the public hearing open.

Mr. Crabtree, Morgan Hill Community Development Director, presented an overview of Area 2 and requested for approval.

**Commissioner Wilson** directed attention to Area 2 map and indicated that by including the Royal Oaks Enterprises parcels and spreading the boundaries further outward, there will be more complaints against farming, increase pressure for development of farmlands and promote urban sprawl.

David Whitaker informed that he is the Lead Pastor of MHBC and the chaplain of the City police department, and he expressed appreciation to the Commission and staff for considering their application. He requested the Commission to approve the City's request because MHBC provides service to the community, land use is not going to change, and it will allow the facility to have access to a fire hydrant.

Mike Rauser informed that he is Director for Operations for MHBC and is member of the County Planning Commission. He announced that the application for a 75-foot cellular tower has been withdrawn as the neighbors are opposed to it, and he indicated that MHBC has no objection to farm operations around its facilities.

Rocke Garcia, Glenrock Builders, informed that since the properties surrounding the area are fully developed, the proposal is not premature conversion of agricultural lands.

**Chairperson Tucker** read a comment by Cynthia Kuerno who indicated that she is a resident of Morgan Hill and is opposed to the USA expansion. She requested the Commission not to annex any more farmlands in order to preserve Morgan Hill's quality of life.

Diane Tripusis requested the Commission to deny the expansion request, particularly the MHBC. She indicated that the MHBC has announced the withdrawal of the proposal for a 75-foot cell tower as is not part of the application to LAFCO but it could be brought back in another forum. She informed that her family owns one of the properties adjacent to MHBC and stated that none of the owners in that area want to be part of the City and all of them are against the cell tower. She provided examples of increased incidence of cancer attributed cell towers.

Rod Braughton stated that he is a property owner within Area 2 and he informed that he and his neighbors are opposed to the cell tower as it would change the character of the neighborhood, it would threaten their health and reduce the value of their properties. He requested the Commission to follow the staff recommendations.

Gloria Ballard, MH Engineering, stated that she is the representative for Royal Oaks Mushrooms. She recalled that the Commission considered this proposal in 2013 and the objections of the neighbors about the smell remains the reason for the request. She indicated that the proposal is consistent with the City's urban growth boundary and qualifies under its "beneficial criteria" ordinance. She explained that "beneficial criteria" allows the consideration of USA expansions despite the availability of vacant lands when utilities and infrastructure exist in the expansion area. She requested the Commission to approve the City's request for expansion.

Don Hordness informed that he is the owner of Royal Oaks Mushrooms. He recalled that the Commission added half of his property to the City's USA in 2013; however, the remaining property was not included as there was no mitigation. He requested the Commission to approve his request as mitigation is now in place and the City has adopted its mitigation program. He stated that his neighbors, including the Oakwood School, find the smell from his farm offensive and that his property is surrounded by the City.

Aleks Vranicic, SaveMorganHill.org, informed that while he would support the approval of MHBC portion because of benefits it provides to the community, he is concerned about the precedent it might set for facilities similarly located and in the same situation.

Tim Chiala, Chiala Farms, stated that approving the request for this area would be a win-win situation since 1:1 mitigation has been offered for a parcel with undesirable soil and location.

The Chairperson determined that there are no more members of the public who would like to speak on the item and declared the public hearing closed.

**Commissioner Wasserman** expressed support for approval of Area 2 as that would address MHBC's public health and safety concerns relating to water, sewer and fire

services, and would allow the annexation of the remaining Royal Oaks Mushrooms lands now that the city has an agricultural land mitigation policy. He recalled that LAFCO left out portions of Royal Oaks Mushrooms property in its previous approval since no mitigation was proposed. He then made a motion to approve the USA amendment request for the entire Area 2, and **Commissioner Khamis** seconded.

In response to an inquiry by **Commissioner Wilson**, Ms. Palacherla informed that the County Department of Environmental Health has not made any determination about the existence of threats to public health and safety. **Commissioner Wilson** questioned the feasibility of the agricultural mitigation program which is the same for Area 1. In response to an inquiry by **Commissioner Wilson**, Ms. Palacherla informed that the draft mitigation agreement does not include specific information on the proposed mitigation.

**Commissioner Wilson** stated that she is opposed to the motion based on LAFCO policies and lack of mitigation although it is a step in the right direction. In response to a request by **Commissioner Wasserman** for additional information on the status of agricultural mitigation, Ms. Palacherla indicated that the draft application does not specify the amount of in-lieu fees and noted that LAFCO has not received a fully executed agreement. Gary Baum, Morgan Hill Interim City Attorney, informed that there is a fully executed agreement and that a mitigation fee is not due until the issuance of grading or building permit. In response to an inquiry by **Commissioner Wilson**, Mr. Crabtree informed that the mitigation agreement was based on the City's ordinance. **Commissioner Wilson** observed that such a mitigation fee would be insufficient as stated previously. Mr. Crabtree indicated that the \$15,000 in-lieu fee is legally sufficient based on a study done by an economist who was hired by the City to determine a legally defensible mitigation within Santa Clara County that the CEQA courts would uphold and noted that the City will contribute its own funds based on property values. Mr. Rymer reiterated Mr. Crabtree's statement and informed that the City would cover whatever the cost of mitigation is if the mitigation fee is insufficient. In response to an inquiry by **Commissioner Hall**, Mr. Crabtree informed that the City only mitigates impact on those lands that the State Department of Conservation Important Farmlands Map identifies as agricultural. At the request of **Commissioner Hall**, Ms. Palacherla confirmed that only one parcel requires mitigation. In response to an inquiry by **Commissioner LeZotte**, Ms. Palacherla informed that the additional rural residential and commercial properties between the MHBC and the incorporated area have been included to establish contiguity for the MHBC with existing city boundaries. In response to an inquiry by **Commissioner Wilson**, Ms. Palacherla indicated that the application does not include documentation regarding public health and safety threat. Leslie Little, Morgan Hill Assistant City Manager for Community Development, informed that the area is within the flood zone and it is unhealthy when the leach field is full of water. **Commissioner Wilson** observed that there is no new information since this application was heard by LAFCO previously. Jamie Norton, Assistant Fire Chief, Morgan Hill Fire Department, informed that the only water source for the MHBC is a 10,000-gallon storage tank. He stated that there are active fire hydrants with substantial water supply in the city limits. In response to an inquiry by **Commissioner Wilson**, he informed that other development in the unincorporated area also rely on storage tanks. **Commissioner Hall** stated that this is a tough decision for him given the good work of the MHBC. He announced his opposition to the approval of the expansion request as it would create a

precedent for houses of worship in unincorporated areas. With regard to the Royal Oaks Mushrooms lands, he observed that the City's mitigation policy needs more work and the mitigation agreement needs more details and clarity. He expressed concern that Mr. Hordness had committed his personal funds to facilitate this agreement and suggested that the City develop a robust mitigation policy to advise property owners.

**Commissioner Yeager** expressed agreement and requested the City to work with the County Planning Office and OSA to come up with an acceptable mitigation policy.

**Commissioner Khamis** observed that the concern about creating a precedent is unfounded since the LAFCO process is difficult to get through. He recognized the need to mitigate for Royal Oaks Mushrooms lands; however, he stated that it is unreasonable not to allow sewer connection to MHBC as it does not include farmlands. **Commissioner LeZotte** announced her opposition and indicated that there is no new information to change her position. She indicated her agreement with commissioners Wilson, Hall and Yeager. She stated that the City failed Mr. Hordness by not having specific mitigation to present to LAFCO. In response to an inquiry by **Commissioner Khamis**, **Chairperson Tucker** clarified that the current motion is for approval of the entire Area 2.

A motion to approve the USA amendment request for the entire Area 2.

Motion: Wasserman

Second: Khamis

AYES: Khamis, Tucker, Wasserman

NOES: Hall, LeZotte, Wilson, Yeager

ABSTAIN: None

ABSENT: None

#### **MOTION FAILED**

**Commissioner Wasserman** made a motion and **Commissioner Khamis** seconded.

A motion to approve an USA amendment to include only Area 2B: MHBC.

Motion: Wasserman

Second: Khamis

AYES: Khamis, Tucker, Wasserman

NOES: Hall, LeZotte, Wilson, Yeager

ABSTAIN: None

ABSENT: None

#### **MOTION FAILED**

**Commissioner LeZotte** made a motion and **Commissioner Wilson** seconded.

The Commission denied the USA amendment request for Area 2: Monterey - Watsonville.

Motion: LeZotte

Second: Wilson

AYES: Hall, LeZotte, Wilson, Yeager

NOES: Khamis, Tucker, Wasserman

ABSTAIN: None

ABSENT: None

#### **MOTION PASSED**

#### **4. CONFERENCE WITH LEGAL COUNSEL**

**Chairperson Tucker** announced that she has recused herself from participating in the Closed Session and informed that Alternate Commissioner Martin-Milius will act in her place.



The Commission adjourned to Closed Session at 3:30 p.m.

**5. REPORT FROM THE CLOSED SESSION**

The Commission reconvened to an open meeting at 4:06 p.m. Ms. Subramanian, LAFCO Counsel, announced that there is no report from the Closed Session.

**6. ADJOURNMENT**

The Commission adjourned at 4:07 p.m., to the regular LAFCO meeting on Wednesday, April 6, 2016, at 1:00 PM in the Board Meeting Chambers, 70 West Hedding Street, San Jose.

Approved:

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Mike Wasserman, Acting Chairperson  
Local Agency Formation Commission of Santa Clara County

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