LAFCO
Local Agency Formation Commission of Santa Clara County

LAFCO MEETING MINUTES
WEDNESDAY, AUGUST 2, 2017

CALL TO ORDER

The meeting was called to order at 1:15 p.m.

1. ROLL CALL

The following commissioners were present:

- **Vice Chairperson Ken Yeager**
- **Commissioner Sergio Jimenez** (arrived at 1:17 p.m.)
- **Commissioner Rob Rennie**
- **Commissioner John L. Varela**
- **Commissioner Mike Wasserman**
- **Commissioner Susan Vicklund Wilson**
- **Alternate Commissioner Yoriko Kishimoto** (voting in place of Sequoia Hall)
- **Alternate Commissioner Russ Melton**
- **Alternate Commissioner Terry Trumbull**

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 was none.

3. MINUTES OF JUNE 7, 2017 LAFCO MEETING

The Commission approved the minutes of the June 7, 2017 LAFCO meeting.

Motion: Wasserman Second: Rennie

AYES: Kishimoto, Rennie, Varela, Wasserman, Yeager

NOES: None ABSTAIN: Wilson ABSENT: Jimenez

MOTION PASSED

4. WEST VALLEY SANITATION DISTRICT 2017-01 (SHANNON ROAD)

The Commission adopted LAFCO Resolution No. 2017-04, approving the annexation to the West Valley Sanitation District of approximately 13.88 acres located at 15215 and 15401 Shannon Road in Los Gatos.

Motion: Varela Second: Kishimoto

AYES: Jimenez, Kishimoto, Rennie, Varela, Wasserman, Wilson, Yeager

NOES: None ABSTAIN: None ABSENT: None

5. RESPONSE TO THE 2016-2017 CIVIL GRAND JURY REPORT ENTITLED, "LAFCO'S DENIALS: A HIGH SCHOOL CAUGHT IN THE MIDDLE"

Ms. Palacherla presented the staff report. **Acting Chairperson Yeager** informed that LAFCO has no obligation to agree with the Civil Grand Jury (CGJ) Report's findings or to carry out its recommendations.

McKenzie Mossing, representative of the Sierra Club Loma Prieta Chapter and the Santa Clara Valley Audubon Society, stated that they are familiar with LAFCO's mission and appreciate how staff and commissioners evaluate proposals and receive input from stakeholders. She stated that they supported LAFCO's decision on the South East Quadrant (SEQ) and believed that it showed integrity in judgement and that it was based on sound evaluation. She expressed concerns with the CGJ Report because of its factual errors, lack of understanding of LAFCO law and its evident bias, and she described the draft LAFCO response as accurate, thoughtful, measured and respectful.

Alice Kaufmann, Legislative Advocacy Director, Committee for Green Foothills, informed that the CGJ Report contains omissions and misstatements, including an unattributed mention that two County employees indicated that the County supported the SEQ expansion despite the County's letter urging the City to deny the proposal due to numerous concerns. She stated that the CGJ Report's finding that Morgan Hill lacks representation on LAFCO demonstrates the CGJ's lack of understanding about LAFCO since the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act) requires commissioners to represent the interests of the public as a whole and not just that of the appointing authority. She informed that the California Association of LAFCOs (CALAFCO) recognized Santa Clara LAFCO and Commissioner Wilson multiple times for their work to preserve agricultural lands and open space, and to curb urban sprawl, but the CGJ Report appears to fault them for carrying out that mission.

Acting Chairperson Yeager determined that there are no members of the public who wished to speak.

Commissioner Wilson stated that she will refrain from discussing Finding #8 which involves her. She proposed that the phrase, "including the private high school," be added to the last sentence of LAFCO's response to Recommendation #5 in order to indicate that LAFCO has approved many Morgan Hill urban service area (USA) amendment proposals, including the high school and that there is no bias. Regarding the CGJ's Recommendation #6, she noted that she is accessible and that complaints against staff could have been voiced to her when she met with the public or the city on numerous occasions. She stated that she found the two emails from Mr. Muirhead regarding the dynamics between Morgan Hill and LAFCO enlightening. She questioned why the CGJ did not interview any of the LAFCO commissioners before issuing the report on LAFCO. She expressed concern that the proposed response to the CGJ Report does not address the issue of Mr. Tanda's potential conflict in his position as foreperson of the CGJ. She suggested that LAFCO's response should factually identify the potential conflict in order to inform Judge Patricia M. Lucas, and attach the joint letter. Lastly, she recognized staff for being professional and ethical and stated that the CGJ's criticism of staff is unwarranted.

Commissioner Varela informed that he met with staff to understand the CGJ Report since he was not on LAFCO at the time of the Morgan Hill application. He informed that he also met with Mayor Tate and City staff; with Mr. Muirhead, a member of the public who is familiar with the issues; and with the Farm Bureau. He indicated that he suggested that the Farm Bureau invite the LAFCO Executive Officer to make a presentation on LAFCO and its mission to preserve farmland. He also suggested that LAFCO work to resolve issues with Morgan Hill, Gilroy and San Martin at a workshop and recommended that LAFCO, in addition to submitting a response to the CGJ Report, send a separate letter to the judge informing her about this collaborative approach.

Acting Chairperson Yeager proposed that the Commission act on the draft LAFCO response first, and then consider further action regarding collaboration efforts.

Alternate Commissioner Kishimoto informed that she did not vote on the SEQ proposal but reviewed all the materials. She expressed support for the draft response. She noted that as a former council member she is familiar with land use issues and observed that given the land values in Santa Clara County it is rare to find a large piece of land earmarked for schools. She stated that schools must amass land and compete with other uses and that most cities do not have the luxury of expanding into adjacent lands.

In response to her inquiry, Ms. Palacherla informed that cities are not allowed to change the zoning for two years after annexation unless they make certain findings. **Alternate Commissioner Kishimoto** then stated that since cities are free

to rezone lands after two years it is not good land use planning to make decisions based on the worthiness of a particular institution or applicant.

Commissioner Rennie stated that he is in an unbiased position since he was not involved in LAFCO's action on the Morgan Hill proposal. He stated that he expected the CGJ Report to be well-informed, unbiased and thoroughly researched but was offended that such a poorly prepared report was made available to the public. He indicated that the CGJ as an institution could be hurt by this kind of a report. He expressed his support for a strong response which could send a message that we need a better report.

Commissioner Jimenez expressed his appreciation for staff noting that while he was not on LAFCO when the decisions were made, as a new commissioner, he found staff to be very accessible, honest in their dealings and responsive to commission's requests for information. He expressed agreement with Commissioner Varela regarding a collaborative approach and stated that there is value in building relationships. In response to an inquiry by **Commissioner Jimenez**, Ms. Palacherla advised that LAFCO's work plan calls for a comprehensive review of its policies in order to clarify and strengthen them. She stated that staff will bring back a report to the commission with a proposed timeline and process for the review. In response to a follow-up inquiry, she informed that a comprehensive review of policies was conducted in 2002 and included service review and sphere of influence policies. She stated that LAFCO later adopted island annexation policies and agricultural mitigation policies which involved a year-long stakeholder participation process. In response to further inquiry, she advised that staff does not envision a major change in policies as they are consistent with state law and longstanding countywide policies. She indicated that the revisions will be more explanatory and clarifying in nature to communicate the policies' intent more clearly. **Commissioner Jimenez** suggested that staff bring back a workplan for the review soon.

In response to **Commissioner Jimenez**'s inquiry as to how the CGJ decides on what issues or angencies investigate, **Acting Chairperson Yeager** informed that he served on the CGJ many years ago and that its members are selected by a judge to serve for a year and that generally the members have little knowledge about government. He informed that the panel spends the first few months figuring out their role, deciding on topics to investigate and creating a workplan. He stated that it is his experience that a member will suggest a topic based on his interest or information and a committee of two or three members will write the report which the remaining members of the CGJ see towards the year's end, and at which point they generally accept it to meet the deadline. He explained that because the report is published under the name of the CGJ, and because it may draw media attention agencies under investigation get nervous. **Commissioner Jimenez** thanked Acting Chairperson Yeager and expressed his support for the

draft LAFCO response, including the proposed revisions and a suggestion to work more collaboratively.

Commissioner Wasserman stated that he agrees with some points in the CGJ Report and with some points in the draft response and that he believed that, in general, LAFCO could do better on some things. He expressed respect for his peers even though he disagreed with them and indicated that he cannot vote in favor of the draft response because he cannot support it in its entirety. He noted that he is looking forward to an open discussion and to some potential changes through the upcoming policies review. He expressed appreciation to the CGJ for their work on the CGJ Report, as well as to the staff for the draft LAFCO response, and he stated that each entity has made some valid points.

Acting Chairperson Yeager expressed satisfaction with the draft LAFCO response and noted that the CGJ Report contained factual errors and omissions, and missed the point that LAFCO's work is mandated by state law. He applauded staff for stating that items 1A, 1B and 2 require further analysis which will take place during the comprehensive review of its policies that are already part of LAFCO's work plan prior to the CGJ Report. He expressed his surprise that the CGJ Report focused on and criticized staff for LAFCO's decisions rather than focusing on the Commission, and noted that it is the Commission that makes the decisions and provides direction which staff carries out. He informed that his actions reflect his own beliefs and are based on LAFCO's guiding principles.

The Commission:

- Approved the draft LAFCO response with the following revisions: (1) a minor change on page 11, as state previously; (2) a paragraph with factual information on the potential conflict for the CGJ foreperson; and (3) include as an attachment, the joint letter from the American Farmland Trust and various other organizations.
- Authorized Acting-Chairperson Yeager to sign response letter and directed staff to forward LAFCO's response to the Presiding Judge of the Santa Clara County Superior Court.

Motion: Wilson Second: Jimenez

AYES: Jimenez, Kishimoto, Rennie, Wilson, Yeager

NOES: Varela, Wasserman ABSTAIN: None ABSENT: None

MOTION PASSED

Commissioner Varela restated his suggestion for a workshop that would be attended by staff, two or three LAFCO commissioners and representatives from South County cities. Citing Google's plans for downtown San Jose as an example,

he explained that as a result of the jobs growth and the increased demand for housing there will be increased pressure for south county communities to expand. He suggested that LAFCO form a committee to discuss with the cities and work through issues and find solutions before any future applications are presented to LAFCO. He stated that he would not want to serve on the committee because he lives in Morgan Hill and wants to avoid any conflicts of interest. He proposed that LAFCO send a letter to the presiding judge about the workshop to demonstrate LAFCO's intent to collaborate with the south county cities.

In response to the inquiry by Acting Chairperson Yeager, Ms. Palacherla indicated that even though for five years prior to the city submitting its application, staff provided multiple comment letters to the city explaining LAFCO's concerns, those concerns were not adequately addressed by the city. She described how LAFCO, along with the County and Open Space Authority, formed a working group with the city staff to work on an alternative plan that is more consistent with mutual goals, and noted that after a few months of meetings, the city decided to move forward and submit an application to LAFCO based on its original plans despite the time and resources that the three agencies put into the effort. She explained that once staff received an application, staff processed and analyzed it as it was proposed. Acting Chairperson Yeager observed that while he sees the value in understanding the community's needs and constraints, he questioned if the landowners and elected officials in the South County understand LAFCO's role and whether there is any benefit to dialogue if it does not have any impact when the proposals are brought to LAFCO.

Commissioner Varela clarified that his proposal is for a single event rather than an ongoing series of meetings. He explained that such an event could help expand the community's understanding of LAFCO and what LAFCO does. In response to an inquiry by **Acting Chairperson Yeager**, **Commissioner Varela** indicated that his original proposal was for an ongoing committee but based on the experience that Ms. Palacherla shared, which indicated that a series of meetings among LAFCO, the County, OSA and Morgan Hill were not helpful, he revised it to a one-time, open dialogue with the community. **Commissioner Wilson** expressed support for the idea of collaboration and recalled LAFCO's process for adopting agricultural mitigation policies which involved several workshops in South County. She also recalled the success of the Agricultural Summit that LAFCO co-hosted, and which was attended by farmers, ranchers, County supervisors and city representatives; and suggested that LAFCO host another similar event geared towards LAFCO and what it does.

Alternate Commissioner Kishimoto stated that even though LAFCO is not a land use authority, it can convene the various players for discussion purposes. She expressed support for a LAFCO initiated workshop and suggested that LAFCO include Plan Bay Area in the discussion regarding land use patterns within cities

in the county. **Commissioner Varela** informed that Morgan Hill is one of the few cities in the state to have adopted an ordinance in the 1970s limiting the number of residential units each year. He observed that LAFCO and the cities should discuss future pressures for boundary expansion and the applications that LAFCO will receive. **Acting Chairperson Yeager** noted that there appears to be a consensus for a community meeting and requested ideas ahead of the next meeting.

6. EXECUTIVE OFFICER'S REPORT

6.1 SANTA CLARA COUNTY SPECIAL DISTRICTS ASSOCIATION MEETING

The Commission noted the report.

6.2 UPDATE ON RECRUITMENT FOR NEW LAFCO ANALYST POSITION

The Commission noted the report.

6.3 BAY AREA GREENPRINT LAUNCH AND WORKSHOP

The Commission noted the report.

6.4 MEETING WITH COUNTY OF SANTA CLARA PARKS DEPARTMENT STAFF

The Commission noted the report.

6.5 MIDPENINSULA REGIONAL OPEN SPACE DISTRICT LEGISLATIVE PICNIC

The Commission noted the report.

6.6 INTER-JURISDICTIONAL GIS WORKING GROUP MEETING

The Commission noted the report.

7. CALAFCO RELATED ACTIVITIES

7.1 2017 CALAFCO ANNUAL CONFERENCE ON OCTOBER 25-27

The Commission authorized commissioners and staff to attend the Annual Conference and directed that associated travel expenses be funded by the LAFCO Budget for Fiscal Year 2018.

Motion: Jimenez Second: Varela

AYES: Jimenez, Kishimoto, Rennie, Varela, Wasserman, Wilson, Yeager

NOES: None ABSTAIN: None ABSENT: None

MOTION PASSED

7.2 NOMINATIONS TO THE 2017/2018 CALAFCO BOARD OF DIRECTORS

The Commission nominated Commissioner Wilson as the Public Member representative of the Coastal Region to the 2016/2018 CALAFCO Board of Directors.

Motion: Yeager Second: Kishimoto

AYES: Jimenez, Kishimoto, Rennie, Varela, Wasserman, Wilson, Yeager

NOES: None ABSTAIN: None ABSENT: None

MOTION PASSED

7.3 DESIGNATE THE VOTING DELEGATE AND ALTERNATE

The Commission designated Commissioner Rennie as the voting delegate and Alternate Commissioner Melton as the alternate.

Motion: Wilson Second: Rennie

AYES: Jimenez, Kishimoto, Rennie, Varela, Wasserman, Wilson, Yeager

NOES: None ABSTAIN: None ABSENT: None

MOTION PASSED

In response to an inquiry by **Alternate Commissioner Kishimoto,** Ms. Palacherla advised that there is no information about the report except that the Little Hoover Commission would meet later in August.

8. PENDING APPLICATIONS / UPCOMING PROJECTS

There was none.

9. COMMISSIONER REPORTS

Commissioner Varela proposed that LAFCO reconsider its action of June 7, 2017 to deny the Monte Sereno USA and SOI Amendment 2016 (Lucky Road).

In response to an inquiry by **Commissioner Wilson**, Ms. Subramanian advised that there are legal constraints to reconsideration of the application and proposed that she can briefly discuss or agendize for the next meeting. At the request of **Acting Chairperson Yeager**, she explained that while the commissioners may be familiar with Rosenberg's Rules of Order, LAFCO law has provisions for reconsideration of the Monte Sereno application which require that such a request be made within 30 days of LAFCO adopting its resolution. She stated that the 30-day period for the reconsideration has passed. In response to inquiries by **Commissioner Wasserman**, Ms. Subramanian noted that the resolution was adopted on June 7th and that LAFCO does not have the authority to change the

reconsideration rules since it is state law. Upon further enquiry by **Commissioner Wasserman**, Ms. Subramanian indicated that even if the item was placed on a future agenda she would note that LAFCO would not have the authority to reconsider it. She confirmed that if the commission wishes to hear the item again, the applicant must resubmit the application. Ms. Palacherla and Ms. Subramanian explained that the City of Monte Sereno may resubmit the USA amendment application and pay the LAFCO fees. In response to **Commissioner Jimenez**, EO Palacherla stated that USA applications are charged on a time and material basis and that the application fee is approximately $11,000. Ms. Palacherla expressed agreement with Commissioner Jimenez that the processing cost would likely be lower than the deposit if the information remains the same in the resubmittal.

Acting Chairperson Yeager concluded that the Commission has taken no action.

10. NEWSPAPER ARTICLES / NEWSLETTERS

There was none.

11. WRITTEN CORRESPONDENCE

There was none.

12. CLOSED SESSION
PUBLIC EMPLOYEE PERFORMANCE EVALUATION

The Commission adjourned to Closed Session at 2:25 p.m., and reconvened to an open meeting at 3:05 p.m.

Acting Chairperson Yeager announced that there is no report from the Closed Session.

13. ADJOURN

The Commission adjourned at 3:06 p.m., to the regular LAFCO meeting on October 4, 2017 at 1:15 p.m., in the Board Meeting Chambers, 70 West Hedding Street, San Jose.

Approved on _____.

_____
Ken Yeager, Acting Chairperson
Local Agency Formation Commission of Santa Clara County

By: _____
Emmanuel Abello, LAFCO Clerk