

**LAFCO MEETING MINUTES
WEDNESDAY, OCTOBER 4, 2017**

CALL TO ORDER

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

1. ROLL CALL

The following commissioners were present:

- **Chairperson Sequoia Hall**
- **Commissioner Sergio Jimenez** (arrived at 1:18 p.m.)
- **Commissioner Rob Rennie**
- **Commissioner John L. Varela**
- **Commissioner Mike Wasserman**
- **Commissioner Susan Vicklund Wilson**
- **Commissioner Ken Yeager** (left at 2:32 PM)
- **Alternate Commissioner Yoriko Kishimoto** (arrived at 1: 19 p.m.)
- **Alternate Commissioner Terry Trumbull** (left at 2:33 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 was none.

On Commission consensus, there being no objection, **Chairperson Hall** ordered that Agenda Item #12.1 and Item #12A be merged into one item and taken out of order.

3. MINUTES OF JUNE 7, 2017 LAFCO MEETING

The Commission approved the minutes of the August 2, 2017 LAFCO meeting.

Motion: Wilson

Second: Yeager

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

NOES: None

ABSTAIN: None

ABSENT: Jimenez

MOTION PASSED

4. PRESENTATION ON THE SANTA CLARA VALLEY CLIMATE & AGRICULTURE PROTECTION PROGRAM (CAPP)

Rob Eastwood, Planning Manager, County of Santa Clara Department of Planning and Development, made a PowerPoint presentation.

In response to an inquiry by **Commissioner Jimenez**, Mr. Eastwood indicated that for CAPP, Santa Clara Valley includes lands from the Coyote Valley all the way to the County border. **Commissioner Jimenez** informed that he represents Coyote Valley area on San Jose City Council and expressed his appreciation for the commonalities in the diversity of situations in the County. In response to an inquiry by **Commissioner Rennie** relating to the viability of small parcels, Mr. Eastwood indicated that according to their research, farming on less than 10 acres is difficult for a commercial farming enterprise. He confirmed that the County is working on ways to make farming more viable for small farmers, and noted that one idea that they were exploring is to help cut overhead cost and facilitate direct sales. In response to a suggestion by **Commissioner Varela**, Mr. Eastwood stated that while CAPP recognizes the legacy of the Valley of Hearts Delight, it also wants to reenergize farming and its value going forward. In response to an inquiry by **Commissioner Kishimoto**, Mr. Eastwood indicated that the County Board of Supervisors has banned commercial cannabis production. He noted that an advantage for farmers here is the opportunity for direct sales to nearby institutions, high technology campuses and the local market. In response to an inquiry by **Commissioner Trumbull**, Mr. Eastwood informed that the County is not party to many conservation easements and that enforcement issues are typically complaint driven at the County. He noted that the County is planning to partner with the Santa Clara Valley Open Space Authority (OSA) and the Land Trust due to their experience in the area. **Chairperson Hall** reported that OSA, which is the first public agency accredited by the Land Trust Alliance, monitors its easements and has taken actions against violators. He also informed that land conservation initiatives attract State funding and noted as an example the recent acquisition of a 70-acre easement in Morgan Hill. He expressed appreciation to Mr. Eastwood for his work on the CAPP.

12.1 & 12A. TAKEN OUT OF ORDER: RECONSIDERATION OF LAFCO'S ACTION ON MONTE SERENO USA/SOI AMENDMENT (LUCKY ROAD)

Ms. Palacherla informed that items 12.1 and 12A relate to Monte Sereno's USA expansion request. She informed that Item # 12.1 was an informational item that included Mr. Woodward's correspondence dated August 21, 2017 and Ms.

Subramanian's response dated September 13, 2017. She continued that at the request of Commissioner Jimenez, the agenda was revised to include a new Item #12A – for the commission's potential action to reconsider the Monte Sereno application under the Rosenberg's Rules of Order. Ms. Subramanian presented the information contained in her response letter, explaining that the CKH Act governs the reconsideration procedure for LAFCOs and supersedes the Rosenberg's Rules of Order. She cautioned that allowing reconsideration through the parliamentary process will ignore State law and set a precedent.

Commissioner Jimenez moved to suspend the Rosenberg's Rules in order to reconsider Monte Sereno's application, and **Commissioner Wasserman** seconded.

In response to inquiries by **Commissioner Jimenez**, Ms. Subramanian clarified that the motion is for the suspension of Rosenberg's Rules which is a parliamentary procedure, but LAFCO's reconsideration process is governed by the Cortese-Knox-Hertzberg Act. She reiterated that the CKH Act requires that a request for reconsideration be received within 30 days of the LAFCO action along with new information that could not have previously been considered or brought forward. She advised that the reason for this is to provide finality to LAFCO decisions. She advised that the motion will set a precedent for utilizing the parliamentary procedure and ignoring State law in the future. **Commissioner Jimenez** affirmed his motion to suspend Rosenberg's Rules and Ms. Subramanian noted that the motion requires a two-thirds vote majority to pass.

In response to inquiries by **Chairperson Hall**, Ms. Subramanian advised that in her interpretation, reconsideration of the application at this time is not possible under State law and reconsideration under Rosenberg's Rules is not a legal option as stated in her response letter.

In response to an inquiry by **Commissioner Rennie**, Ms. Subramanian informed that a reconsideration request can be filed with staff within 30 days of LAFCO decision and does not have to be filed at a LAFCO meeting.

In response to a request for clarification by **Commissioner Wasserman**, Ms. Subramanian informed that because State law trumps Rosenberg's Rules, the Commission cannot reconsider the item even after suspending the parliamentary procedure as state law still applies.

Perry Woodward, counsel to the property owners, stated that LAFCO Counsel is mistaken since the reconsideration procedure provided by the CKH Act is for the public and does not apply to LAFCO commissioners. He argued that if commissioners change their minds, they have the parliamentary right to reconsider their votes. He then read text from the Rosenberg's Rules of Order indicating that a motion for reconsideration must be made at the same meeting when the action was taken but that the parliamentary rule could be suspended by two-thirds majority vote to allow for reconsideration at a later time. He informed

that commissioners attempted this action at the August meeting but staff advised against it, and so he wrote the letter to the Commission.

Chairperson Hall announced that there are no other members of the public who wished to speak on the item.

In response to an inquiry by **Chairperson Hall**, Ms. Subramanian confirmed that LAFCO followed state law in processing previous requests for reconsideration, including the Morgan Hill reconsideration application.

In response to an inquiry by **Commissioner Jimenez**, Ms. Subramanian advised that the legal ramifications are that LAFCO's action could be challenged if it pursues the motion. In response to further inquiry by **Commissioner Jimenez**, Ms. Subramanian read aloud the Government Code Section 56895a and stated that in her opinion the issue is very clear but that attorneys can interpret things differently. **Commissioner Jimenez** acknowledged that no person or agency had filed for reconsideration within the 30-day period but he opined that "person" refers to persons who are not on the Commission.

In response to inquiries by **Commissioner Rennie**, Ms. Palacherla advised that Monte Sereno could file the same application with a new City Council resolution, along with the LAFCO fee. **Commissioner Rennie** observed that the more appropriate way to approach the issue is to have a new application submitted.

In response to an inquiry by **Commissioner Wilson**, Ms. Subramanian confirmed that LAFCO would violate the CKH Act if it goes forward with the motion and that under Rosenberg's Rules there is no requirement for why a reconsideration is being requested. **Commissioner Wilson** noted a need for LAFCO policy on review of previous LAFCO decisions. She expressed concern with how this issue was raised without public notice and that it appears to circumvent the legal process. She indicated that the suspension of rules is a dangerous precedent and noted that people rely on the finality of decisions and that, for example, even a judge who changes a decision must state a very good reason for doing so.

Commissioner Wilson questioned the lack of transparency, and in the public's interest she requested all members to disclose who contacted them and with whom they discussed the application. She announced that she had spoken to staff and to Alternate Commissioner Trumbull. **Commissioner Hall** indicated that he spoke only to staff. **Commissioners Wasserman** and **Varela** indicated that they spoke to the property owner's attorney, Mr. Woodward. **Commissioners Jimenez** and **Rennie** informed that they spoke to staff and the property owner's attorney. **Alternate Commissioner Trumbull** indicated that Rich Robinson, who is a political consultant and an attorney, had called him on behalf of the property owners. **Alternate Commissioner Kishimoto** indicated that she has not spoken to the applicant.

Commissioner Wilson cautioned against the dangerous precedent set by the review of past LAFCO decisions simply by suspending parliamentary rules. She questioned the need for reconsideration as the property owners have had sufficient time and opportunity to contact commissioners due to multiple continuances. She also stated that the commission has an obligation to LAFCO's funding agencies and expressed concern that a fee waiver is not a responsible use of those funds particularly since additional costs are already being incurred for dealing with improper reconsideration attempts. She expressed her opposition to the motion.

Commissioner Wasserman stated that any member can agendaize an item and if the motion fails, then a different motion may be made to resubmit the application. He proposed that the commission vote on the motion.

Commissioner Yeager indicated that staff was not clear as it was his impression at the August meeting that the property owners only need to send a letter in order for the application to be reconsidered at this meeting; however, he noted that staff has now advised that reconsideration violates State law and could be challenged. He indicated that based on this information, he is opposed to the motion although he came prepared to support it.

Chairperson Hall stated that LAFCO cannot choose to not follow State law and he recalled that in response to the Commission's request, staff had reported that such reconsideration violates the CKH Act. He expressed his opposition to the motion.

In response to an inquiry by **Commissioner Wasserman**, Ms. Subramanian advised that five votes are required to suspend Rosenberg's Rules.

Commissioner Wasserman requested Commissioner Jimenez to withdraw the motion since there are not enough votes. **Commissioner Jimenez** withdrew the motion and **Commissioner Wasserman** agreed.

Commissioner Jimenez informed that he requested the addition of the item on the agenda as it was his impression at the August meeting that the majority wants to reconsider it. He stated that he voted against the application in June based on LAFCO policies but he has since changed his mind based on information he received that LAFCO has made exceptions in the past.

Commissioner Wilson stated that the initial deposit for LAFCO processing fee would remain the same when the applicant resubmits but the actual cost could be less than the deposit of \$11,000.

In response to an inquiry by **Commissioner Wasserman**, Ms. Subramanian advised that state law does not allow the applicant to bring back the request before June 2018 unless the commission waives that requirement after making a finding that it is detrimental to the public interest. She clarified that a simple

majority vote is sufficient, and in response to Commissioner Wasserman, she stated that the waiver cannot be considered at this meeting since it is not on the agenda but could be placed on the agenda for December. **Commissioner Wasserman** requested that the Chairperson agendaize the waiver. Ms. Palacherla clarified that Monte Sereno would have to submit a new application, and not a request for reconsideration. In response to an inquiry by **Chairperson Hall**, Ms. Palacherla indicated that it is unlikely for LAFCO to hear the new application in December as the filing deadline for December is tomorrow. **Commissioner Wilson** stated that LAFCO could hear the application in February 2018 after the time requirement is waived in December. Upon Ms. Subramanian's response that the Commission may hold a special meeting to consider the item before February, **Commissioner Wasserman** indicated that there is no majority to do that.

Commissioner Hall requested that Monte Sereno provide information in its application resubmittal on why it withdrew from the agreement with the County on the protection of West Valley hillsides. **Commissioner Wasserman** expressed concerns with linking the application to things that Monte Sereno does not want to do.

The Commission directed that staff agendaize for the December meeting, consideration of application fees and the waiver of time requirement for resubmitting the Monte Sereno USA application.

Motion: Wasserman

Second: Jimenez

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

NOES: None

ABSTAIN: None

ABSENT: None

MOTION PASSED

Commissioner Rennie expressed his frustration that not being able to act on the item at the meeting and not being able to act one way or the other on this issue, it appears LAFCO is more concerned about the bureaucratic process than the issues.

Chairperson Hall stated that violating LAFCO's enabling act, the CKH Act, to allow such a reconsideration request would set a precedent that would lead to chaos. He explained that the reconsideration process is in place for a reason and that the request before LAFCO is to deviate from the set process. Stressing the importance of process, he noted that had the attorney of the property owners made a more timely request, the outcome might have been different.

5. PREPARATION & IMPLEMENTATION OF A COMMUNICATIONS AND OUTREACH PLAN

Ms. Noel presented the report.

Doug Muirhead, resident of Morgan Hill, expressed his support for the proposal and suggested that the Plan develop messages to large groups with the goal of increasing public support for LAFCO. He informed that an example of an impactful message was a presentation by former County Planner Don Weden at the 2012 Strategic Planning Workshop illustrating the expansion of cities since the 1950s. He then discussed various opportunities for LAFCO's communications and outreach efforts.

The Commission:

1. Authorized staff to issue a Request for Proposals for professional service firm to prepare and implement a communications and outreach plan for LAFCO.
2. Delegated authority to the LAFCO Executive Officer to enter into an agreement with the most qualified consultant in an amount not to exceed \$75,000 and to execute any necessary amendments, subject to LAFCO Counsel's review and approval.
3. Appointed Alternate Commissioner Kishimoto to serve on the consultant interview panel.

Motion: Jimenez

Second: Wasserman

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

NOES: None

ABSTAIN: None

ABSENT: None

MOTION PASSED

6. ANNUAL REPORT

Ms. Palacherla presented the report.

The Commission accepted the 2016-2017 Annual Report.

Motion: Jimenez

Second: Wilson

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

NOES: None

ABSTAIN: None

ABSENT: None

MOTION PASSED

7. LITTLE HOOVER COMMISSION REPORT: SPECIAL DISTRICTS – IMPROVING OVERSIGHT AND TRANSPARENCY

Ms. Palacherla provided an update informing that the Governor has signed into law SB 448, streamlining the dissolution of inactive districts.

In response to an inquiry by **Commissioner Jimenez**, Ms. Palacherla informed that the Little Hoover Commission's (LHC) report includes recommendations

which eventually could be implemented through state legislation or executive action, and that Santa Clara LAFCO will implement them as applicable. In response to his follow-up inquiry, Ms. Palacherla noted that CALAFCO participated in the LHC's process for developing these recommendations and expressed agreement with LHC recommendations regarding increasing public visibility of special districts and streamlining the dissolution process for inactive districts. She indicated that Santa Clara LAFCO, through its service reviews worked with special districts on these issues including requesting major reforms which were implemented by the El Camino Healthcare District.

8. EXECUTIVE OFFICER'S REPORT

8.1 UPDATE ON RECRUITMENT FOR NEW LAFCO ANALYST POSITION

The Commission noted the report.

8.2 MEETINGS WITH APPLICANTS ON POTENTIAL LAFCO APPLICATIONS

The Commission noted the report.

8.3 MIDPENINSULA REGIONAL OPEN SPACE DISTRICT'S MT. UMUNHUM SUMMIT OPENING EVENT

Alternate Commissioner Kishimoto informed that the opening event was a success, encouraged the public to visit the summit, and expressed appreciation to MROSD's partner agencies.

The Commission noted the report.

8.4 SANTA CLARA COUNTY SPECIAL DISTRICTS ASSOCIATION MEETING

The Commission noted the report.

8.5 BAY AREA LAFCO STAFF MEETINGS

The Commission noted the report.

8.6 INTER-JURISDICTIONAL GIS WORKING GROUP MEETING

The Commission noted the report.

9. PENDING APPLICATIONS / UPCOMING PROJECTS

Ms. Palacherla informed that the waiver of the time requirement for bringing back a new application for the Monte Sereno USA expansion would be placed on the agenda in December.

10. COMMISSIONER REPORTS

Commissioner Varela expressed appreciation to Ms. Palacherla for an excellent presentation to the Santa Clara County Farm Bureau on October 3rd. He noted that his suggestion for the presentation was a way to increase visibility of LAFCO in the community. Ms. Palacherla indicated that the dialogue was an opportunity to clarify information on USA boundaries and LAFCO.

11. NEWSPAPER ARTICLES / NEWSLETTERS

There was none.

12.2 LETTERS FROM SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY REGARDING PRESIDENT’S SPECIAL ACKNOWLEDGEMENT AWARDS

The Commission noted the report.

13. ADJOURN

The Commission adjourned at 2:47 p.m., to the regular LAFCO meeting on December 6, 2017 at 1:15 p.m., in the Board Meeting Chambers, 70 West Hedding Street, San Jose.

Approved on _____.

Sequoia Hall, Chairperson
Local Agency Formation Commission of Santa Clara County

By: _____
Emmanuel Abello, LAFCO Clerk

