



**Local Agency
Formation Commission
of Santa Clara County**
777 North First Street
Suite 410
San Jose, CA 95112
SantaClaraLAFCO.org

Commissioners
Susan Ellenberg
Sequoia Hall
Sergio Jimenez
Linda J. LeZotte
Rob Rennie
Mike Wasserman
Susan Vicklund Wilson

Alternate Commissioners
Cindy Chavez
Maya Esparza
Yoriko Kishimoto
Russ Melton
Terry Trumbull
Executive Officer
Neelima Palacherla

LAFCO MEETING MINUTES WEDNESDAY, DECEMBER 4, 2019

CALL TO ORDER

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

1. ROLL CALL

The following commissioners were present:

- Chairperson Susan Vicklund Wilson
- Commissioner Rob Rennie
- Commissioner Mike Wasserman
- Alternate Commissioner Yoriko Kishimoto (voting in place of Commissioner Linda J. LeZotte)
- Alternate Commissioner Russ Melton

The following commissioners were absent:

- Vice Chairperson Sergio Jimenez
- Commissioner Susan Ellenberg
- Commissioner Sequoia Hall
- Commissioner Linda J. LeZotte
- Alternate Commissioner Cindy Chavez
- Alternate Commissioner Maya Esparza
- Alternate Commissioner Terry Trumbull

The following staff members were present:

- LAFCO Executive Officer Neelima Palacherla
- LAFCO Assistant Executive Officer Dunia Noel
- LAFCO Analyst Lakshmi Rajagopalan
- LAFCO Clerk Emmanuel Abello
- LAFCO Counsel Mala Subramanian

2. PUBLIC COMMENTS

There were none.

3. APPROVE MINUTES OF OCTOBER 2, 2019 LAFCO MEETING

The Commission approved the minutes of October 2, 2019 meeting.

Motion: Wasserman

Second: Kishimoto

AYES: Kishimoto, Rennie, Wasserman, Vicklund Wilson

NOES: None

ABSTAIN: None

ABSENT: Ellenberg, Hall

MOTION PASSED

4. ANNUAL FINANCIAL AUDIT REPORT (JUNE 30, 2019)

The Commission received and filed the Annual Financial Audit Report (June 30, 2019) prepared for Santa Clara LAFCO by Chavan & Associates LLP.

Motion: Wasserman

Second: Kishimoto

AYES: Kishimoto, Rennie, Wasserman, Vicklund Wilson

NOES: None

ABSTAIN: None

ABSENT: Ellenberg, Hall

MOTION PASSED

5. APPOINTMENT OF 2020 LAFCO CHAIRPERSON AND VICE-CHAIRPERSON

Ms. Noel presented the staff report.

Commissioner Wasserman moved for the appointment of Commissioner Jimenez as Chairperson for 2020 and Commissioner Rennie as Vice-Chairperson. He indicated that these appointments would return the chairperson rotation to its normal schedule.

Motion: Wasserman

Second: Kishimoto

AYES: Kishimoto, Rennie, Wasserman, Vicklund Wilson

NOES: None

ABSTAIN: None

ABSENT: Ellenberg, Hall

MOTION PASSED

6. 2020 SCHEDULE OF LAFCO MEETINGS

The Commission adopted the 2020 schedule of LAFCO meetings and application filing deadlines.

Motion: Wasserman

Second: Rennie

AYES: Kishimoto, Rennie, Wasserman, Vicklund Wilson

NOES: None

ABSTAIN: None

ABSENT: Ellenberg, Hall

MOTION PASSED

7. RECENT LEGISLATION RELATED TO NEW PUBLIC WATER SYSTEMS AND POTENTIAL IMPACTS ON ORDERLY GROWTH AND DEVELOPMENT

Ms. Palacherla presented the staff report. She indicated that the report does not relate to a specific proposal as there was none received to date.

In response to **Alternate Commissioner Kishimoto**, Ms. Palacherla informed that the new law would apply if an existing system failed and a new public water system must be created. In response to another inquiry, Ms. Palacherla stated that due to the new legislation the state is requiring connection to a nearby public water system rather than approval of a new well if the proposed development serves certain number of people or requires certain number of connections. Ms. Palacherla added that the County General Plan does not allow urban services in unincorporated areas and the Planning Department conducts development review of projects based on the feasibility of onsite services. She informed that there were no issues with that process until the new legislation directed connection to nearby public water systems.

Doug Muirhead, resident of Morgan Hill, inquired who will fund the cost of service extension and if the financial issues are part of the ongoing discussions.

In response, Ms. Palacherla informed that the issue is not addressed and that the State Water Resource Control Board (SWRCB) decides feasibility on a case-by-case basis since the law does not define feasible connection. She noted that there are efforts to provide State financing for service extensions in some cases but there is not much information at this time, and she indicated that local agencies are concerned about having to extend services up to three miles away.

Commissioner Rennie noted that the new legislation puts pressure on LAFCO to extend services into unincorporated lands leading to sprawl, contrary to LAFCO's mission. He inquired on the steps being taken and whether CALAFCO is working to amend those laws. In response, Ms. Palacherla informed that LAFCO, SWRCB and the County are discussing this issue. She noted that the agencies are exploring how the County can come up with criteria for ensuring long-term viability of a public water system. In response to his follow-up inquiry, Ms. Palacherla indicated that the agencies agree that these are unintended consequences of recent legislation and they recognize that while SWRCB's mandate is to ensure safe drinking water by preventing the creation of unsustainable small water systems, LAFCO's mandate is to prevent sprawl by discouraging service extensions outside jurisdictional boundaries.

Commissioner Wasserman agreed that recent legislation has unintended consequences. He indicated that property owners have the right to develop their land and that the state must provide an alternative water source if it prohibits new wells. He welcomed the interagency efforts to find a solution, noted that the recent legislation was not well-thought out, and he expressed hope that the state would amend the laws or agencies relax their regulations to allow either a well or connection to a public water system.

Alternate Commissioner Kishimoto observed that the situation could worsen due to climate change. She indicated that everyone wants to have water, but it is not a right, and it is not the responsibility of the state to provide free water to a property. **Commissioner Wasserman** clarified that proponents are willing to pay for water, the County has approved the well and the owner has spent substantial amount of money and has complied with all the requirements, but the state made a new law without grandfather provision.

Chairperson Vicklund Wilson stated that her comments on this issue are the same as at the last meeting, and she expressed the need for a legislative fix as this issue is a slippery slope and places LAFCO in a difficult situation.

The Commission accepted the report and directed staff to continue working with SWRCB and the County.

Motion: Rennie

Second: Wasserman

AYES: Kishimoto, Rennie, Wasserman, Vicklund Wilson

NOES: None

ABSTAIN: None

ABSENT: Ellenberg, Hall

MOTION PASSED

8. UPDATE ON ORGANIZATIONAL ASSESSMENT STUDY

Ms. Noel presented the staff report.

Commissioner Wasserman inquired if he had previously opposed the study and it was determined that he had not.

The Commission accepted the report.

Motion: Rennie

Second: Kishimoto

AYES: Kishimoto, Rennie, Wasserman, Vicklund Wilson

NOES: None

ABSTAIN: None

ABSENT: Ellenberg, Hall

MOTION PASSED

9. EXECUTIVE OFFICER'S REPORT

9.1 Update on Rancho Rinconada Recreation and Park District Special Study

The Commission noted the report.

9.2 Update on Water Service Extension to Proposed Metta Tam Tu Buddhist Temple Development

Commissioner Wasserman stated that Morgan Hill staff informed him that the City is working on an out-of-agency contract for services (OACS) application to LAFCO which requires 16 items. He noted that since the request is only for a pipe connection and not for a development project, it may not require all of the 16-part application and a two-month filing lead time. He also stated that placing the construction on hold

is costly and requested that the application be discussed and voted on at the April meeting. In response to his inquiry about an alternate OACS process, Ms. Palacherla informed that OACS administrative approval is available only when there is an imminent threat to public health and safety, and **Commissioner Wasserman** indicated there is no such threat but noted that the project's delay is costly. Ms. Palacherla informed that the filing schedule adopted by LAFCO is based on statutory requirements like the public hearing notice period and various processes that have to be done before staff could recommend action to LAFCO. **Commissioner Wasserman** agreed that rules must be followed but noted that connecting a pipe should not have the same requirements as a development project.

Commissioner Rennie expressed concern about the OACS application in this case requiring more information than is necessary. Ms. Palacherla indicated that she will work with the City on this if needed and she informed that an OACS is considered a major application that staff carefully reviews since LAFCO policy and state law generally discourages outside connections due to significant policy implications. **Commissioner Rennie** proposed the need to ensure that if this OACS connection is approved, it would not encourage urban sprawl and it will not be converted to other uses in the future. Ms. Palacherla noted that staff has not been contacted by Morgan Hill on the application and she indicated that the staff report includes a joint letter from LAFCO and the County requesting Morgan Hill to hold off with its decision until the County has analyzed its development review process since there are questions about its approval. Ms. Noel informed that LAFCO and County Planning staff will meet to determine what the next steps are.

Commissioner Wasserman expressed agreement for a less extensive OACS filing requirements since it is only for a pipe connection, and since the well was approved before the legislation took effect and that the proponent has spent substantial sum of money. He expressed understanding of Commissioner Rennie's concern about sprawl, but he indicated that the County cannot deny religious uses under Federal law, and that there will be a separate process if it is subdivided or converted to other uses in the future. He expressed hope that the facility would receive water connection so it could begin to operate and stated that Morgan Hill is willing to provide water service, and the applicant is willing to pay for it. He urged support as the County has approved the project and it is now only a question of where to get the water from.

Chairperson Vicklund Wilson indicated that the issue is more complex than it appears to be as there are questions that the County needs to answer regarding the development permit, and it is one reason why the County requested to place it on hold, but Morgan Hill went ahead anyway. She noted the need to resolve the sprawl-inducing consequences of the new legislation as she indicated that owners could request services for certain purposes, ask connection for urban services, then develop the properties for other uses once services are provided. She expressed appreciation to the County for looking at their policies and its development review process because that it is where the solution starts.

The Commission noted the report.

9.3 Comment Letter on City of Gilroy's Notice of Intent to Adopt a Mitigated Negative Declaration for Wren Investors and Hewell Urban Service Area Amendment

The Commission noted the report.

9.4 Comment Letter on City of Gilroy's Notice of Preparation of a Supplemental Draft Environmental Impact Report for the Gilroy Sports Park Master Plan Update

The Commission noted the report.

9.5 Santa Clara County Association of Planning Officials Meeting

The Commission noted the report.

10. CALAFCO RELATED ACTIVITIES

10.1 Report on the 2019 CALAFCO Annual Conference

Ms. Noel presented the staff report.

Chairperson Vicklund Wilson indicated that she enjoyed the Conference.

The Commission noted the report.

11. LEGISLATIVE REPORT

Ms. Palacherla presented the staff report.

The Commission accepted the report.

Motion: Rennie Second: Kishimoto

AYES: Kishimoto, Rennie, Wasserman, Vicklund Wilson

NOES: None ABSTAIN: None ABSENT: Ellenberg, Hall

MOTION PASSED

12. PENDING APPLICATIONS / UPCOMING PROJECTS

Ms. Palacherla reported an application was received for annexation to West Valley Sanitation District which will be on the February 5, 2020 meeting agenda.

In response to **Commissioner Rennie**, Ms. Palacherla informed that the application will likely be taken on consent and may not come before the Town Council since the property is already within the town limits. In response to **Commissioner Wasserman**, Ms. Subramanian advised that LAFCO members who are concurrently on the bodies approving proposals to LAFCO are not required to recuse themselves when those proposals are considered but may voluntarily do so.

13. COMMISSIONER REPORTS

There was none.

14. NEWSPAPER ARTICLES / NEWSLETTERS

14.1 The Sphere (October 2019)

14.2 San Jose Mercury News: Historic \$93 million deal reached to preserve San Jose's Coyote Valley

Alternate Commissioner Kishimoto directed attention to the news article regarding Coyote Valley preservation. **Chairperson Vicklund Wilson** noted that Commissioner Jimenez had championed this project.

15. WRITTEN CORRESPONDENCE

There was none.

16. CLOSED SESSION: PERFORMANCE EVALUATION

The Commission adjourned to closed session at 1:59 p.m., and reconvened at 2:06 p.m., with no report.

16. ADJOURN

The Commission adjourned at 2:07 p.m., to the next regular LAFCO meeting on February 5, 2020 at 1:15 p.m., in the Board Meeting Chambers, 70 West Hedding Street, San Jose.

Approved on **February 5, 2020**.



Sergio Jimenez, Chairperson
Local Agency Formation Commission of Santa Clara County

By: 

Emmanuel Abello, LAFCO Clerk

