

**LOCAL AGENCY FORMATION COMMISSION OF
SANTA CLARA COUNTY
MINUTES**

WEDNESDAY, APRIL 12, 2006

1. ROLL CALL

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 12th day of April 2006 at 1:21 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California, with the following members present: Chairperson Don Gage, Commissioners John Howe and Susan Vicklund-Wilson. Commissioner Alvarado is absent and Alternate Commissioner Pete McHugh is attending in her place. Commissioner LeZotte arrives at 1:24 p.m.

The LAFCO staff in attendance includes Neelima Palacherla, LAFCO Executive Officer; Kathy Kretchmer, LAFCO Counsel; Dunia Noel, LAFCO Analyst; and, Ginny Millar, LAFCO Surveyor.

The meeting is called to order by the Chairperson and the following proceedings are had, to wit:

2. PUBLIC PRESENTATIONS

There are no public presentations.

3. APPROVE MINUTES OF FEBRUARY 8, 2005 MEETING

On Commission consensus, there being no objection, it is unanimously ordered that the minutes of February 8, 2006 be approved, as submitted.

4. CONSENT CALENDAR

***4.1 CUPERTINO SANITARY DISTRICT ANNEXATION - VIA REGINA ROAD
NO. 2**

On Commission consensus, there being no objection, it is unanimously ordered that Resolution No. 2006-01 be adopted, approving annexation to Cupertino Sanitary

District of 28 parcels with a total area of approximately 47.95 acres located along Via Regina Road in the City of Saratoga to the Cupertino Sanitary District, designated as Cupertino Sanitary District - Via Regina Road No. 2, and waiving protest proceedings.

PUBLIC HEARINGS

5. GILROY URBAN SERVICE AREA AMENDMENT 2006 (BARBERI)

This being the time and place set for hearing to consider the request by the City of Gilroy to expand its urban service area, the Chairperson declares the public hearing open.

Commissioner Wilson indicates that she has a conflict of interest on this item. Alternate Commissioner Terry Trumbull assumes the representation.

Ms. Palacherla reports that the City of Gilroy is proposing an urban service area (USA) expansion to include four parcels totaling 27.7 acres, located on the southwest corner of Luchessa Avenue and Monterey Road. It is bound on the north by a residential subdivision, on the east by a commercial area, on the west by Uvas Creek, and on the south by Gilroy Sports Park. More agricultural lands are located south of the Sports Park. She notes that the site is designated as prime farmland by the California Department of Conservation and the EIR indicates a loss of 26.05 acres of prime agricultural lands. LAFCO policies guide urban development away from prime agricultural lands. Ms. Palacherla reports that the applicant states that agriculture is not feasible because of surrounding urban uses and that the applicant is proposing mitigation for the loss of agricultural lands. She reports that the land became surrounded by urban uses only because of the construction of the Sports Park which isolates this land from other agricultural lands. The developer and the City have entered into a deferred Agricultural Mitigation Agreement (Agreement) that requires payment of in-lieu fees equal to the amount of appraised value of development rights in the "preferred areas," located in Santa Clara County Agricultural Preserve. She states that staff has several concerns about the Agreement, including the timing of mitigation, amount of land to be mitigated, and calculation and use of mitigation fees. She observes

that the Agreement requires payment of in-lieu fees only when the tentative map is approved, a process that may take several years. She recommends that mitigation fees be paid at the time of annexation of the site because it is the first step toward agricultural land conversion. She adds that the Agreement only requires mitigation for 25.69 acres and that additional land may be exempted. She recommends that mitigation be provided for all the land lost to urban uses. Finally, she notes that the Agreement does not specify that the in-lieu fees cover the cost of easement program administration and outreach to landowners. She recommends that these expenses be included in the in-lieu fees. The Agreement states that fees will be in an escrow account, however, she observes that the City does not yet have policies and timelines for use of those funds.

Ms. Palacherla continues by saying that Gilroy has between 9 to 11 years supply of vacant land zoned for residential uses and over 15 years supply of vacant commercial land. She reports on other issues such as the City's ability to provide services, fiscal impact to the City and County, and island annexations. Given the availability of vacant land and impacts to prime agricultural lands, she recommends denial. However, if the Commission chooses to approve the project, she recommends that approval be conditioned on (a) payment of mitigation fees at the time of annexation to the City and within one year of USA expansion; (b) mitigation to be provided for 25.69 acres without further exemptions; and, (c) inclusion of the cost of easement program administration, landowner outreach, and monitoring into the in-lieu fees. She also recommends that the City provide to LAFCO a copy of the amended Agreement. Finally, she recommends that prior to bringing any future USA expansion proposals, the City, along with relevant agencies, should establish policies, timelines and procedures for timely use of in-lieu fees.

In response to an inquiry by Commissioner Howe, Ms. Palacherla advises that the City would decide whether or not to allow development without a tentative map. However, she notes that since the inclusion of the site into the USA is the first step in land conversion, that is the appropriate time to pay the mitigation fee, and if not, the

next appropriate time is when the site is annexed to the City. She explains that if fees will not be required until the recordation of the tentative map, mitigation is delayed because the process may take several years. Commissioner McHugh observes that conditions 2a and 2b seem to be punitive and shows a lack confidence in the City to follow through. Chairperson Gage adds that in-lieu fee is a product of the CEQA action and cannot be waived.

Chairperson Gage declares the public hearing open.

Al Pinheiro, Mayor, City of Gilroy, welcomes the good working relationship between LAFCO and Gilroy and cites the Commission's visit to Gilroy in December, and the City's adoption of Agricultural Mitigation Policy. He states that the policy is a product of consultation with various sectors and has been unanimously adopted by Gilroy's City Council. He requests the Commission to approve the project without conditions and states that the City will implement the required agricultural mitigation.

Bill Faus, Planning Division Manager, City of Gilroy, requests the Commission to approve the project, indicating that the site is in Gilroy's General Plan, adjacent to the city limits, and bounded by urban development. He notes that this is the first project to require mitigation under the Agricultural Mitigation Policy. He also states that Gilroy's vacant land inventory is severely restricted by the recently adopted specific plans.

In response to an inquiry by Commissioner Howe, Mr. Faus states that only one residence can be built without a tentative map, and approval of tentative map would take over two years. He adds that as part of the 27.7 acres will go toward widening of Luchessa Avenue, only 25.69 acres will need to be mitigated. Ms. Palacherla, however, advises against any further reduction from 25.69 acres which may still be possible as per Gilroy's mitigation policy. In response to Commissioners Howe and McHugh, Mayor Pinheiro states that 25.69 acres will be the final acreage to be mitigated. In response to an inquiry by Commissioner Howe, Mr. Faus states that the in-lieu fee includes administrative and other costs in accordance with the EIR, however, he adds that Condition 2c, a condition requiring inclusion of administrative and monitoring cost, is

redundant. In response to this, Ms. Palacherla advises that the language of Condition 2c is directly derived from Gilroy's Agricultural Mitigation Policy.

Connie Rogers, Save Open Space - Gilroy, states that the proposed conditions for approval are critical because both Hecker Pass and Glen Loma Ranch specific plans did not require mitigation under the Land Evaluation and Site Assessment (LESA) model. She urges the Commission that rather than wait for the tentative map, mitigation should be required when land is added into the City's USA because it is the time when land is earmarked for development. She notes that the timeline is important because of a loophole that waives mitigation if land is allowed to remain fallow for four years.

Brian Schmidt, Committee for Green Foothills, expresses support of staff recommendations to either deny the application or approve with all the conditions. He notes that this application is an example of leapfrog development and that the Sports Park closed off contiguous farmlands. He continues by stating that monies accrued in the bank is not mitigation for agricultural land until monies are used to purchase easements or land for preservation.

Richard Barberi, property owner, requests approval of the application stating that agriculture is no longer compatible with surrounding urban development and adds that the site has been fallow for three years now. In response to an inquiry by Commissioner Trumbull, Mr. Barberi states that he will not seek relief from mitigation even if his property is exempted because it is fallow.

Eric Carruthers, former Santa Clara County planner and member of San Jose's Coyote Valley Specific Plan (CVSP) Task Force, states that the Bay Conservation and Development Commission invariably required mitigation as soon as properties around the San Francisco Bay are earmarked for development. He notes that this application is critical because it precedes the Coyote Valley project and urges the Commission to support the staff recommendation, particularly Condition 2c.

In response to an inquiry by Commissioner LeZotte, Mr. Faus states that it is incorrect to say that lands allowed to fallow are exempted from mitigation and notes that Condition 2c is redundant because it is already part of the City's mitigation policy.

In this regard, Commissioner LeZotte suggests that Condition 2c could be retained because it is consistent with Gilroy's mitigation policy.

Receiving no further requests from the public to speak, the Chairperson orders the public hearing closed.

Commissioner Howe, seconded by Commissioner McHugh, moves for approval of USA amendment, conditioned upon the following: mitigation fees be made when tentative map is approved, which shall not exceed two years from the time the City's USA is expanded; no further reduction would be made from 25.69 acres to be mitigated; require in-lieu fees to cover all costs, including easement program administration, outreach to landowners, and monitoring of established easements; (d) Gilroy to adhere to the letter of the City's Agriculture Mitigation Policy as they adopted it; and, this current action does not set a precedent for future proposals or LAFCO's development of agricultural mitigation policy.

In response to an inquiry by Commissioner Trumbull, Commissioner Howe amends his motion to include the CEQA action. Commissioner McHugh is amenable to amended motion. In response to inquiry by Commissioner McHugh, Commissioner Howe clarifies that his motion requires payment of fees when the tentative map is approved. In response to an inquiry by Commissioner LeZotte, Ms. Kretchmer indicates that while the Agreement could require the applicant to provide mitigation at the time of tentative map, it would not be enforceable because LAFCO has no jurisdiction over it and also states that the Agreement can be terminated due to bankruptcy and assignment without consent of the City. Ms. Kretchmer advises that the best time to require payment of in-lieu mitigation fees is when LAFCO finalizes the City annexation.

It is unanimously ordered on 5-0 vote that Resolution No. 2006-02 be adopted approving the request of the City of Gilroy for the 2006 expansion of its USA with conditions.

Commissioner McHugh leaves at 2:24 p.m. Commissioner Trumbull leaves at 2:25 p.m.

Commissioner Wilson resumes representation.

6. PROPOSED LAFCO BUDGET FOR FISCAL YEAR 2006-07

This being the time and place set for public hearing to consider the proposed budget for Fiscal Year (FY) 2006-07, the Chairperson declares the public hearing open.

Ms. Palacherla reports that the Commission established a Budget Sub-Committee in February 2006 composed of Chairperson Gage, Commissioner Howe and LAFCO staff to develop a draft FY 2006-07 budget. The Sub-Committee held two meetings to discuss the budget and related issues. Some of these issues included attendance and participation of alternate commissioners, attendance policy for CALAFCO conferences and reimbursement of expenses, per diem fees for commissioners and alternates commissioners, and LAFCO fees revision. She advises that these issues will be addressed under Item 8, except for fees revision which will be brought to a public hearing on May 31, 2006. Ms. Palacherla states that State law requires LAFCO to adopt a draft budget by May 1, 2006, and the final budget by June 15, 2006 at noticed public hearings. She informs that there is a projected savings of about \$200,000 at the end of FY 2005-2006 due to unspent \$60,000 reserves and savings from salary and benefits, consultants and intra-County professional allocations. She continues by discussing each item of the proposed FY 2006-07 budget and reports that the net operating expenses for FY 2007 will be \$437,612, an amount significantly lower compared to FY 2006.

Commissioner Howe notes that LAFCO is able to increase the reserves and staffing resources while reducing the costs to cities and commends staff.

The Chairperson determines that there are no speakers from the public and orders that the hearing be closed.

On motion of Commissioner Howe, seconded by Commissioner Wilson, it is unanimously ordered on 4-0 vote, with Commissioner McHugh absent, that draft LAFCO budget for FY 2006-2007 be adopted as proposed, find that the draft FY 2007 budget is adequate to allow the Commission to fulfill its statutory responsibilities; and, authorize staff to transmit draft budget, including estimated agency costs, as well as a notice of public hearing on adoption of the FY 2007 Final Budget, to each city, the County and the Santa Clara County Cities Association.

Commissioner Wilson expresses appreciation to the Chairperson and Commissioner Howe for serving on the Budget Sub-Committee.

Commissioner LeZotte leaves at 2:30 p.m.

7. MAPS FOR SANTA CLARA COUNTY LIGHTING SERVICE AREA, SANTA CLARA COUNTY OPEN SPACE AUTHORITY, AND MID PENINSULA REGIONAL OPEN SPACE DISTRICT

This being the time and place set for hearing to consider the maps for Santa Clara County Lighting Service Area (SCCLSA), Santa Clara County Open Space Authority (SCCOSA), and Midpeninsula Regional Open Space District (MROSD), the Chairperson declares the public hearing open.

Ms. Noel recommends adoption of SCCOSA district boundary and sphere of influence (SOI) map, and continuance to May 31, 2006 the consideration and potential adoption of boundary and SOI maps of MROSD and SCCLSA.

Ms. Noel advises that the SCCOSA map, which is current as of March 31, 2006, has been developed based on information received from the district and meetings with district staff. She continues by stating that the SCCOSA map was based on various sources, including historical SOIs, LAFCO resolutions, district legal descriptions, and information from County Assessor, County Registrar of Voters, and district staff. She advises that this map is the official LAFCO map for this special district and will be maintained by staff with the assistance of ISD/GIS. Staff is working with SCCLSA and MROSD to resolve mapping issues and to finalize SCCLSA and MROSD boundary and SOI maps for the May 31, 2006 hearing.

The Chairperson determines that there are no speakers from the public and orders that the hearing be closed.

On motion of Commissioner Howe, seconded by Commissioner Wilson, it is unanimously ordered on a 3-0 vote, with Commissioners LeZotte and McHugh absent, that the map depicting the district boundary and SOI of SCCOSA be adopted, and public hearing be continued to May 31, 2006 relating to consideration of SCCLSA and MROSD boundary and SOI maps.

8. REVIEW OF LAFCO POLICIES

8a. IDENTIFICATION OF NEED FOR REVISIONS TO EXISTING POLICIES OR FOR DEVELOPMENT OF NEW POLICIES

Ms. Palacherla reports that at the LAFCO Planning Workshop on February 16, 2006, the Commission directed staff to review LAFCO policies and recommend revisions as necessary. Staff has reviewed existing policies and recommends changes revision of policies to make them consistent with changes in State law. Specifically, she recommends that LAFCO policies should reflect the extended deadline for completion of Service Reviews and SOI updates, expiration of some SOI requirements, clarification and reiteration of the intent and use of SOI boundary in Santa Clara County; possible expiration of the island annexation policies in 2007; and, removal of requirement to written consent for waiver of protest proceedings. She likewise cites the need to revise or expand existing policies related to processing incorporation proposals. Further, she recommends development of new policies on agricultural mitigation, record retention, reimbursement of expenses incurred in attending meeting and performing duties of the office as required by AB 1234, participation of alternate commissioners in LAFCO meetings, and adoption of per diem for LAFCO Commissioners.

On motion of Commissioner Howe, seconded by Commissioner Wilson, it is unanimously ordered on a 3-0 vote, with Commissioners LeZotte and McHugh absent, that staff be directed to bring back to the Commission policies requiring immediate revision.

8b. DEVELOPMENT OF LAFCO POLICIES FOR AGRICULTURAL MITIGATION

Ms. Palacherla reports that at the Planning Workshop on February 16, 2006, the Commission directed staff to develop mitigation policies for conversion of agricultural lands. She recommends that the process for developing these policies include collecting information, meeting with stakeholders, review of existing policies; research on current conditions affecting agriculture in the County; research and case studies on innovative and new forms of agriculture in the County and in other counties; and, looking into

agencies or organizations that implement agricultural protection programs. She concludes by saying that staff will circulate a draft set of policies to stakeholders and will hold a workshop to discuss the draft policies prior to bringing them to the Commission for consideration and adoption at a noticed public hearing in Fall.

Eric Carruthers requests the Commission to approve the recommended process for development of agricultural mitigation policy.

Commissioner Wilson moves to adopt the staff recommendation with direction to staff to prioritize agriculture mitigation policy in the event that there is a conflict with other urgent policies under Item 8a. Commissioner Howe, however, proposes to amend the motion stating that while agricultural mitigation policy must be prioritized, staff shall also work to comply with AB 1234. Commissioner Wilson accepts the amendment. It is unanimously ordered on vote of 3-0, with Commissioners LeZotte and McHugh absent, that staff recommendation be approved as amended.

9. UPDATE ON CITIES' ISLAND ANNEXATION EFFORTS

Ms. Noel briefly reports on the status of island annexations in Los Altos, Monte Sereno, Morgan Hill, Mountain View, Saratoga, and San Jose. In response to the inquiry by the Chairperson, Ms. Noel advises that majority of islands are developed although there are some that are being developed. She notes that cities decide whether or not a specific area meets the streamlined annexation process, however, the area has to be within the city's USA. Commissioner Wilson informs that the CALAFCO Board is working to extend the streamlined island annexation law beyond January 2007.

On motion of Commissioner Howe, seconded by Commissioner Wilson, it is unanimously ordered on 3-0 vote, with Commissioners LeZotte and McHugh absent, that the report on island annexations be accepted.

10. UPDATE ON SOUTH CENTRAL SERVICE REVIEW / SPHERE OF INFLUENCE STUDY

Ms. Noel reports that the Technical Advisory Committee (TAC) met on March 29, 2006 to discuss service review documents and process, SOI recommendations for special districts and cities, proposed CEQA action, and timelines for completing the

project. She advises that the Draft Service Review report, with SOI Recommendations Report and CEQA documentation will be released electronically for a 30-day public review by mid-April 2006. These documents will also be available at the LAFCO website. The first public hearing will be held on May 31, 2006 and the report will be revised based on comments received.

On motion of the Chairperson, seconded by Commissioner Howe, it is unanimously ordered on 3-0 vote, with Commissioners LeZotte and McHugh absent, that the status report on South Central Service Review and SOI study be accepted.

11. SUMMARY OF AND FOLLOW-UP ON ITEMS FROM THE FEBRUARY 16, 2006 LAFCO PLANNING WORKSHOP

Ms. Palacherla reports that at the Planning Workshop on February 16, 2006, Bill Chiat, CALAFCO Executive Officer, facilitated the discussion on development of Santa Clara LAFCO mission statement. Staff will present options for mission statement at a future meeting. Item 8b on this agenda is a result of the discussions on agricultural preservation. In addition, there was discussion on the best time and frequency of LAFCO meetings for which staff will prepare and present proposals and alternatives at a future meeting.

On motion of Commissioner Howe, seconded by Commissioner Gage, it is unanimously ordered on 3-0 vote, with Commissioners LeZotte and McHugh absent, that the report be accepted.

12. WRITTEN CORRESPONDENCE

Ms. Palacherla cites a CALAFCO letter relating to AB 1602, restoring VLF funding allocations for new incorporations, and a LAFCO comment letter sent to the City of Morgan Hill related to the City's proposed Urban Limit Line.

13. NEWSPAPER ARTICLES

There is no newspaper article.

14. PENDING APPLICATIONS

Ms. Palacherla reports that since the application for formation of Redwood Estates Community Services District has been pending with LAFCO for sometime now, staff will determine whether the application be pursued. Staff may deem the application inactive and close the file.

15. ADJOURN

On order of the Chairperson, there being no objection, the meeting is adjourned at 3:00 p.m.

The next regular LAFCO meeting is scheduled to be held on Wednesday, May 31, 2006 at 1:15 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California.

Donald F. Gage, Chairperson
Local Agency Formation Commission

ATTEST:

Emmanuel Abello, LAFCO Clerk