



**Local Agency
Formation Commission
of Santa Clara County**

777 North First Street
Suite 410
San Jose, CA 95112

SantaClaraLAFCO.org

Commissioners

Rich Constantine
Susan Ellenberg
Sergio Jimenez
Yoriko Kishimoto
Gary Kremen
Mike Wasserman
Susan Vicklund Wilson

Alternate Commissioners

Helen Chapman
Cindy Chavez
Maya Esparza
Russ Melton
Terry Trumbull

Executive Officer
Neelima Palacherla

LAFCO MEETING MINUTES WEDNESDAY, FEBRUARY 3, 2021

CALL TO ORDER

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

Pursuant to the provisions of California Governor's Executive Order N-29-20 issued on March 17, 2020, this meeting was held by teleconference only.

1. ROLL CALL

The following commissioners were present:

- Chairperson Susan Ellenberg
- Commissioner Rich Constantine
- Commissioner Sergio Jimenez
- Commissioner Yoriko Kishimoto
- Commissioner Gary Kremen
- Commissioner Mike Wasserman
- Commissioner Susan Vicklund Wilson
- Alternate Commissioner Helen Chapman
- Alternate Commissioner Russ Melton

The following commissioners were absent:

- Alternate Commissioner Cindy Chavez
- Alternate Commissioner Maya Esparza
- Alternate Commissioner Terry Trumbull

The following staff members were present:

- Neelima Palacherla, LAFCO Executive Officer
- Dunia Noel, LAFCO Assistant Executive Officer
- Emmanuel Abello, LAFCO Clerk
- Mala Subramanian, LAFCO Counsel

2. WELCOME NEW COMMISSIONERS

Chairperson Ellenberg welcomed the three new commissioners to LAFCO.

Commissioner Kishimoto expressed appreciation to the independent special districts for appointing her to LAFCO and she indicated that she would endeavor to work on LAFCO's mission and goals.

Commissioner Gary Kremen expressed appreciation to staff for the thorough orientation on LAFCO and indicated it is helpful to understand LAFCO's mission and is happy to participate.

Alternate Commissioner Chapman indicated that she is a newly elected board member to the Santa Clara Valley Open Space Authority and stated that she recognizes the importance of LAFCO's work.

Brian Schmidt, Committee for Green Foothills, congratulated the new LAFCO commissioners on joining an important and least known public agency in the county and noted that LAFCO commissioner responsibilities are different from that of others as LAFCO commissioners must exercise their independent judgement and are not here to represent their appointing agencies.

3. PUBLIC COMMENTS

Ken Colson, President of the Burbank Community Association, informed that his organization has sent two letters to LAFCO expressing objection to the proposed annexation of the Burbank area by San Jose. He indicated that the letters were not recognized or added to the agenda. He requested that the two letters of opposition be reflected in the minutes. At the request of **Chairperson Ellenberg**, Ms. Palacherla noted that a letter from the Burbank Community Association was included in the previous agenda packet along with a second letter and another letter from the president of the Burbank Sanitary District is included in the current EO report.

4. APPROVE MINUTES OF DECEMBER 3, 2020 LAFCO MEETING

Ms. Palacherla proposed corrections to the draft minutes to indicate that on page one of the minutes under the Roll Call item, the minutes should reflect that Commissioner Susan Vicklund Wilson was present at the meeting, and on page two of the minutes under Item #3, the minutes should reflect that Commissioner Vicklund Wilson abstained from voting.

The Commission approved the minutes of December 3, 2020 meeting, as corrected.

Motion: Wasserman

Second: Jimenez

AYES: Constantine, Ellenberg, Jimenez, Kishimoto, Wasserman, Vicklund Wilson

NOES: None

ABSTAIN: Kremen

ABSENT: None

MOTION PASSED

Chairperson Ellenberg stated that she would like to move items that are routine informational reports or that are unlikely to generate questions onto a consent calendar in order to reserve the commission's conversation to issues of substance, controversy, or significant concern. She noted that she has discussed the addition of a consent calendar in future agendas with staff. She proposed inclusion of Agenda Items 6, 7, 8, 11.5, 11.6, 11.7, 11.8, 11.9, 14 and 15 on a consent calendar for approval in one motion without discussion if there is no objection.

Ms. Palacherla indicated that staff received a letter from the Guadalupe Coyote Resource Conservation District just before the meeting (Agenda Item #15). She stated that the letter will be distributed as supplemental information, and **Chairperson Ellenberg** determined that Item #15 can remain on consent.

Chairperson Ellenberg determined that there are no members of the public who want to speak on the item.

The Commission approved Agenda Items 6, 7, 8, 11.5, 11.6, 11.7, 11.8, 11.9, 14 and 15 on consent.

Motion: Kremen

Second: Wasserman

AYES: Constantine, Ellenberg, Jimenez, Kremen, Kishimoto, Wasserman, Vicklund
Wilson

NOES: None

ABSTAIN: None

ABSENT: None

MOTION PASSED

5. COUNTYWIDE FIRE SERVICE REVIEW REQUEST FOR PROPOSALS

Ms. Noel provided the staff report.

Commissioner Kishimoto expressed appreciation to staff for responding to all the comments and amending the RFP and noted that she agreed with the changes. She proposed that the Midpeninsula Regional Open Space District and the Santa Clara Valley Open Space Authority be added to the list of service providers and to include the Santa Clara County Community Wildfire Protection Plan as a reference. In response to **Chairperson Ellenberg**, Ms. Noel advised that the Plan can be added to the list of references; and the study could consider how the open space agencies partner with fire service providers. **Commissioner Kishimoto** indicated that like the Fire Safe Council, open space agencies have an important supporting role.

Commissioner Wasserman indicated that open space agencies do not fit into the definition of agencies that provide fire and emergency medical services and including them could set a precedent for other organizations that do not directly provide such services, and that could shift the focus and resources for the service review away from the fire agencies. **Commissioner Kishimoto** stated that wildland fire prevention, preparation and response are part of MROSD’s land stewardship responsibilities since the agency manages vegetation and maintains fire roads and evacuation routes which are important to neighboring communities like Los Altos Hills. She also described how MROSD fielded its staff to prevent a fire event from spreading into a populated area. In response, **Commissioner Wasserman** stated that like the open space agencies, the County also owns many lands in the park system, and it has fire prevention responsibilities such as fuel management. He urged LAFCO to keep the service review focused on reviewing the fire agencies.

Commissioner Ellenberg expressed agreement, indicating that many agencies do fire management so the service review must focus on organizations that are formally and professionally charged with fire management.

Commissioner Constantine expressed appreciation for expanding South County's representation on the Technical Advisory Committee (TAC). Ms. Noel reported that in addition to the Morgan Hill City Manager Christina Turner, Gilroy Fire Chief Jim Wyatt and Commissioner Wilson are also on the TAC.

Alternate Commissioner Melton indicated that the scope of services refers to agencies that provide fire and emergency medical services, which are understood to be cities and fire districts that traditionally provide those types of services and indicated that the open space agencies should not be included in that category.

Commissioner Vicklund Wilson agreed and indicated that the open space agencies can participate through their comments even if they are not included among those agencies being reviewed.

In response to **Commissioner Wasserman**, it was confirmed that both Commissioners Kishimoto and Vicklund Wilson are on the TAC.

Commissioner Kishimoto agreed with Commission's consensus not to include open space agencies on the list of fire service providers to be reviewed and called attention to MROSD's Wildland Fire Resiliency Program. **Chairperson Ellenberg** agreed and stated that open space agencies will be part of the conversation and could fill even larger roles as the review identifies any gaps in services.

At the request of **Chairperson Ellenberg**, Ms. Noel summarized that the RFP could be revised to reference Santa Clara County Community Wildfire Protection Plan and not include the open space agencies in the list of fire agencies. **Commissioners Jimenez and Kishimoto** agreed.

In response to **Commissioner Constantine**, Ms. Noel indicated that there is currently no plan or process for public engagement as that would be decided in the public meetings of TAC and LAFCO will be periodically informed. Ms. Palacherla summarized the various opportunities for public input throughout the process.

Commissioner Kremen noted the need for transparency and public outreach, and he noted that a large number of County residents may be interested in the service review and that there is a need for direct public outreach. **Chairperson Ellenberg** expressed agreement and requested the motion be amended to include direction to staff to provide information at the next meeting regarding public outreach which includes engaging with the environmental groups. **Commissioner Jimenez and Commissioner Kishimoto** agreed with the amendment to the motion.

Commissioner Constantine directed attention to the comment letter from Morgan Hill regarding the public review period and he inquired whether those requests could be made part of the motion. At the request of **Chairperson Ellenberg**, Ms. Palacherla advised that, with reference to the motion directing staff to prepare a public engagement plan, she suggested that such a plan should be added as a component of the consultant's scope of work. With regard to Morgan Hill's letter, Ms. Palacherla indicated that the staff report includes responses to the comment letter and that there will be multiple opportunities, including community workshops, and two 21-day public review and comment periods. **Chairperson Ellenberg** stated that the public outreach plan should include ways to communicate to the public about the

public hearings and community workshops and how they can participate in them or comment in advance, and that the consultant must be present to listen to the feedback and noted that the public are much more engaged in town hall meetings than they are at public hearings. **Commissioner Constantine** agreed and noted that consultation with the stakeholders, including the environmental groups, must be done before the draft report is prepared. He further indicated that Morgan Hill has proposed a 45-day review period and requested that LAFCO ensure that there is no overlap with the County's fire study.

Commissioner Wasserman stated that there is a lot of public concern and emotion about potential changes, and he expressed support for public outreach to be done before a draft report is prepared so the consultants can listen to the public's concerns because the review is being done for the people. **Chairperson Ellenberg** cautioned against saying that LAFCO is doing what the people want because the review must look at efficiency and effectiveness of the fire services and it may reveal issues that need to be addressed. **Commissioner Wasserman** agreed and indicated that town hall meetings are more effective in soliciting public opinion, and he stated that the service review cannot be completed without public input.

Commissioner Vicklund Wilson stated that she has been through all the fire service reviews since the first one and expressed support for public outreach. She also indicated that the public outreach would come at a cost and she suggested an increase in RFP amount to reflect that. In response to **Chairperson Ellenberg**, Ms. Subramanian stated that if the project amount is not increased at the meeting, the Executive Officer will not have the authority to award the project above \$125,000. She advised that LAFCO has the option to direct the revision of the scope of services and increase the project amount at this meeting so it will not be necessary to bring back the RFP.

Chairperson Ellenberg proposed to amend the motion to increase the contract amount to \$150,000, plus an additional \$10,000 in contingency, and to come back to LAFCO if that is still insufficient. **Commissioner Jimenez** agreed to the amended motion. **Commissioner Kishimoto** agreed to the amended motion but indicated that there is a confusion on the difference between the studies by LAFCO and the County. **Chairperson Ellenberg** indicated that the communications plan could address that. **Commissioner Kishimoto** suggested a clear FAQ.

In response to **Commissioner Wasserman**, Ms. Palacherla advised that there is \$100,000 for consultant costs in the current budget and since the service review will begin midway through the fiscal year, the rest of the cost will be taken from next fiscal year's budget. **Commissioner Wasserman** indicated that there is still five months remaining in the current fiscal year, and he expressed concern about encumbering expenses and relying on next year's budget. In response to his inquiry, Ms. Noel advised that the proposed contract amount is a ballpark number based on fire studies of other LAFCOs in the state, some of which were not as extensive, hence the \$10,000 in contingency was proposed. **Commissioner Wasserman** expressed support given that the amount is comparable to other LAFCOs. **Chairperson**

Ellenberg stated that there could be opportunities for collaboration and shared expenses with the County's study.

The Commission:

1. Authorized staff to issue a Request for Proposals (RFP) for a professional service firm to prepare a Countywide Fire Service Review.
2. Amended the Scope of Work to include public outreach.
3. Delegated authority to the LAFCO Executive Officer to enter into an agreement with the most qualified consultant in an amount not to exceed \$150,000, which may be amended with a contingency amount of up to \$10,000; and to execute any necessary amendments subject to LAFCO Counsel's review and approval.

Motion: Jimenez

Second: Kishimoto

AYES: Constantine, Ellenberg, Jimenez, Kishimoto, Kremen, Wasserman, Vicklund
Wilson

NOES: None

ABSTAIN: None

ABSENT: None

MOTION PASSED

***6. CONSENT ITEM: INITIATE DISSOLUTION OF INACTIVE SPECIAL DISTRICT – RECLAMATION DISTRICT NO. 16633**

The Commission:

1. Determined that the proposed dissolution of Reclamation District No. 1663 is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3).
2. Adopted Resolution No. 2021-01 initiating dissolution of Reclamation District No. 1663.

***7. CONSENT ITEM: MOU BETWEEN LAFCO AND THE COUNTY OF SANTA CLARA REGARDING WEBCASTING SERVICES FOR LAFCO MEETINGS**

The Commission approved Memorandum of Understanding (MOU) between LAFCO and the County of Santa Clara regarding the County's provision of webcasting services for LAFCO meetings held in the County Board Chambers.

***8. CONSENT ITEM: ADOPTION OF AMENDED CONFLICT OF INTEREST CODE**

The Commission adopted Resolution No. 2021-02 approving LAFCO's amended Conflict of Interest Code.

9. SAN DIEGO LAFCO'S LEGISLATIVE EFFORT TO AMEND GOVERNMENT CODE §56133(e)

Ms. Palacherla presented the staff report.

Chairperson Ellenberg determined that there are no members of the public who would like to speak in the item.

At this point, **Commissioner Constantine** requested Alternate Commissioner Melton to vote in his place due to his network connection.

The Commission provided conceptual support for San Diego LAFCO's legislative effort to clarify that LAFCOs determine an "out of agency service by contract" is exempt from LAFCO approval under Government Code §56133(e).

Motion: Vicklund Wilson

Second: Kishimoto

AYES: Ellenberg, Jimenez, Kishimoto, Melton, Kremen, Wasserman, Vicklund Wilson

NOES: None

ABSTAIN: None

ABSENT: None

MOTION PASSED

10. FINANCE COMMITTEE FOR FISCAL YEAR 2021-2022

Ms. Noel presented the staff report.

The Commission established a committee composed of Commissioner Jimenez, Commissioner Kremen and Alternate Commissioner Melton to work with staff to develop and recommend the proposed FY 2021-2022 LAFCO work plan and budget for consideration by the full commission.

Motion: Vicklund Wilson

Second: Wasserman

AYES: Ellenberg, Jimenez, Kishimoto, Melton, Kremen, Wasserman, Vicklund Wilson

NOES: None

ABSTAIN: None

ABSENT: None

MOTION PASSED

11. EXECUTIVE OFFICER'S REPORT

11.1 Changes in LAFCO Staffing

Ms. Palacherla advised that the recruitment and hiring for the vacant LAFCO analyst position will be made when the County has completed its classification study based on the Commission's recommendations from LAFCO's Comprehensive Organizational Assessment Study.

In response to **Commissioner Wasserman**, Ms. Subramanian advised that the letter to the Chairperson that was blind copied to other LAFCO members from a former staff member is considered public information.

Commissioner Wasserman stated that having read the letter and then the staff report which indicated that LAFCO operations will be significantly impacted due to the vacancy, he is concerned, and he inquired if the workload has increased during COVID. **Chairperson Ellenberg** stated that it was her understanding that the letter was addressed to the Chairperson, but it will be provided to everyone as other members have received copies. She noted that she had a discussion with staff and that LAFCO lacks a Human Resources Committee for staff concerns. In response to

Chairperson Ellenberg, Ms. Palacherla indicated that the workload has not decreased despite the pandemic, and that staff has received even more public inquiries, and staff have been working on various projects and more detailed information can be provided. **Chairperson Ellenberg** directed staff to provide a workplan from the last two years so there will be some basis to determine the workload status. **Commissioner Wasserman** expressed agreement.

11.2 Update on Regional Housing Needs Allocation (RHNA) for Unincorporated Santa Clara County

Ms. Palacherla provided the report. The Commission accepted the report.

11.3 Meeting with City of Morgan Hill on Urban Service Area Amendments

Ms. Palacherla provided the report. The Commission accepted the report.

11.4 San Jose Annexations and Concurrent Detachments from Burbank Sanitary District

Ms. Noel indicated that there is no additional information other than what is on the staff report.

Ken Colson, Chairman of the Burbank Community Association, stated that Burbank is an old community with its own identity and whose residents want to remain as a county pocket. He stated that San Jose annexations are chopping up the pocket and expressed concern about feasibility of services to the remaining pocket. He sought confirmation from LAFCO Counsel on whether only the property owners and not residents can oppose the annexation. He informed that residents knew of the annexation from the newspaper. He expressed concern about the lack of transparency in the process and about the cost of sewer.

In response to **Chairperson Ellenberg**, Ms. Subramanian indicated that she did not have the opportunity to review the issue but would look into it.

Chairperson Ellenberg indicated that the correspondence from Burbank Association was received in November and requested staff to provide information on the issue. Ms. Palacherla stated that Burbank is an unincorporated area within San Jose's urban service area. She explained that annexations, which are generally initiated by the property owners, are approved by the San Jose City Council after holding public hearings and not by LAFCO. She explained that after the Council adopts a resolution ordering the annexation it is sent to LAFCO. She stated that staff administratively prepares a certificate of completion and records it with the County Clerk Recorder, and reports completed city conducted annexations as part of the LAFCO annual reports. **Chairperson Ellenberg** confirmed that LAFCO has only an administrative role in this process. In response to **Commissioner Ellenberg** about how staff addressed the constituent letter, Ms. Palacherla informed that she has contacted the Burbank Sanitary District General Manager and explained the annexation process and the options discussed in the service review report. She stated that she has also contacted Mr. Colson and explained the reason for the parcel by parcel annexations and the annexation process. She stated that she has also discussed the concerns raised with the City of San Jose staff and that they have

agreed to discuss with other city departments and that staff is awaiting a response from San Jose.

In response to **Commissioner Wilson, Chairperson Ellenberg** determined that there is no need for LAFCO Counsel to look at this issue as it has now been clarified that LAFCO is not involved in this annexation process.

Alternate Commissioner Chapman indicated that she is familiar with the area and was briefed by LAFCO staff, and she indicated to Mr. Colson that staff is open to working on this to help address the issue.

***11.5 Consent Item: Presentation on LAFCO to Leadership Sunnyvale**

The Commission accepted the report.

***11.6 Consent Item: Quarterly Meeting with County Planning**

The Commission accepted the report.

***11.7 Consent Item: Santa Clara County Special Districts Association Meeting**

The Commission accepted the report.

***11.8 Consent Item: Santa Clara County Association of Planning Officials Meeting**

The Commission accepted the report.

***11.9 Consent Item: Meeting with County Office of Sustainability Regarding its Community Climate Action Plan**

The Commission accepted the report.

12. PENDING APPLICATIONS / UPCOMING PROJECTS

Ms. Palacherla reported that LAFCO has received an application for annexation to West Valley Sanitation District and that it is incomplete but will likely be ready for commission consideration at the April meeting if the map and description are provided by the filing deadline.

13. COMMISSIONER REPORTS

Commissioner Vicklund Wilson expressed gratitude to former Commissioner Linda LeZotte for her work on LAFCO and noted that the lack of her background and expertise on environmental issues will be a loss for LAFCO.

14. NEWSPAPER ARTICLES / NEWSLETTERS

There were none.

***15. CONSENT ITEM: WRITTEN CORRESPONDENCE**

The Commission noted a letter from Santa Clara Valley Water District dated January 5, 2021, regarding Guadalupe River Corridor Management Plan.

In response, the Commission received a letter from Stephanie Moreno, Guadalupe-Coyote Resource Conservation District Executive Director, which was distributed as Supplemental Information #3.

13. ADJOURN

The Commission adjourned at 2:53 p.m., to the next regular LAFCO meeting on April 7, 2021 at 1:15 p.m., by teleconference.

Approved on April 7, 2021.

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Susan Ellenberg
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Susan Ellenberg, Chairperson
Local Agency Formation Commission of Santa Clara County

DocuSigned by:
Emmanuel Abello
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By: Emmanuel Abello, LAFCO Clerk