

From: [D. Muirhead](#)
To: [LAFCO](#)
Subject: [EXTERNAL] Comments - LAFCO Policies Update
Date: Tuesday, September 24, 2024 5:08:55 PM

Greetings LAFCO Commissioners and LAFCO Staff,
Some thoughts on your review/update of LAFCO policies
for your October 2 meeting.
Doug Muirhead, Morgan Hill.

1) Island Annexation Policies (Chapter 6)

[Policy excerpts]

Countywide Urban Development Policies (CUDPs) stipulate that urban unincorporated islands within USAs should ultimately be annexed into their surrounding cities

In Santa Clara County, city annexations, including island annexations, are not decided by LAFCO, but by the City Council of the applicable city
LAFCO has adopted the following policies to encourage the timely annexation of islands:

Encourage Island Annexation. LAFCO will encourage island annexations to cities and collaborate with the cities and the County in facilitating annexation of islands

Annex Entire Islands. cities are encouraged to annex entire islands, rather than to conduct single parcel annexations

Island Annexations Before Seeking USA Expansion. cities should annex urban unincorporated islands existing within their current urban service areas, before seeking to add new lands to their USAs.

[see also USA Policies (Chapter 3) Island Annexations]

[end Policy excerpts]

[comment]

The City of Morgan Hill has two unincorporated islands. The Holiday Lakes Subdivision has an issue with aging septic systems.

[LAFCO City Services Review of August 2006 5.3 WASTEWATER SERVICES]

The status of island annexations was reported in LAFCO December 12, 2012

EO REPORT 7.4 UPDATE ON ISLAND ANNEXATIONS

Holiday Lakes is not planned since a funding mechanism for improving and expanding sewer infrastructure in the area would have to be approved by the residents and they have been unwilling to pay for an assessment district to fund the necessary sewer upgrades.

Regarding the other unincorporated island, annexation would result in several properties having a portion of their lots within the City, and a portion of the same lots would also be within the unincorporated County.

2) Agricultural Land Preservation and Mitigation Policies (Chapter 7)

[Policy excerpts]

MITIGATION RECOMMENDATIONS

Urban/non-agricultural uses affect adjacent agricultural practices and introduce development pressures on adjacent agricultural lands

Adoption of protections such as a Right to Farm Ordinance, to ensure

that the new urban residents shall recognize the rights of adjacent property owners conducting agricultural operations and practices
[end Policy excerpts]
[comment]

This is aspirational. In practice, the presence of "sensitive receptors" tends to tip the balance towards urban residents.

3) Urban Service Area (USA) Policies (Chapter 3) Methodology for Preparing a Vacant Lands Inventory [Policy excerpts]

Santa Clara LAFCO shall discourage amendment proposals that seek to expand the USA when a city has a more than 5-years supply of vacant land within its existing USA

Infill and Efficient Development Patterns.

The vacant lands inventory is an informational tool to help evaluate the availability of vacant lands within the city. If a city has special conditions that do not align with LAFCO's methodology, it may also prepare an alternate vacant lands inventory and explain why the alternate analysis is more appropriate, for LAFCO's consideration.

[end Policy excerpts]
[comment]

- a) I have watched LAFCO and Morgan Hill argue multiple times over the amount of vacant land. How will the alternative vacant lands analysis be evaluated? For example, I agree with City that a parcel of bare land where the owner is not interested in either developing or sale of the land is not 100% available.
- b) Had not two MH senior planners moved on, I had hoped to develop a GIS layer as a tool to show where some sites show agreement between City and LAFCO and others show disagreement, perhaps also using probabilities.

4) Out-of-Agency Service by Contract (OASC) Policies (Chapter 5) Agricultural Worker Housing [Policy excerpts]

Annexation as Alternative to OASC. annexation to the city or the special district that would provide the service is generally preferred to service extension outside its jurisdictional boundaries

Service Extensions into Unincorporated Area. LAFCO shall discourage OASC proposals that are intended to support new development in the unincorporated county, with two exceptions.

Service Extensions to Agricultural Worker Housing. LAFCO will give special consideration to OASC proposals that are for agricultural worker housing which supports the preservation of open space and agricultural lands ... and continued viability of County's food system

Multiple conditions specified in Employee Housing Act
Impacts to Agricultural and Open Space Lands. discourage proposals that result in premature conversion of or have adverse impacts on agricultural or open space land.

[see also Agricultural Land Preservation and Mitigation Policies (Chapter 7)]

Given that agricultural workers are an essential component of Santa Clara County's agricultural industry, LAFCO will give special consideration to proposals that are for agricultural worker housing as referenced in Urban Service Area Policy #3.4.15 and Out of Agency Service by Contract Policy #5.3.3(b)]

[see also Urban Service Area (USA) Policies (Chapter 3)

Agricultural Worker Housing Needs. agricultural worker housing to be located within cities or their urban service areas, where necessary infrastructure, services, support resources, and the broader community already exists.]

[end Policy excerpts]

[comment]

Agricultural worker housing appears in multiple policies as an exception to discouraging proposals that are intended to support new development in the unincorporated County. So what are these "special considerations" and how are they to be evaluated?

5) Out-of-Agency Service by Contract (OASC) Policies (Chapter 5)

Public Health and Safety Threat

[Policy excerpts]

Annexation as Alternative to OASC. annexation to the city or the special district that would provide the service is generally preferred to service extension outside its jurisdictional boundaries

Service Extensions into Unincorporated Area. LAFCO shall discourage OASC proposals that are intended to support new development in the unincorporated county, with two exceptions.

Extensions to Address Existing Public Health and Safety Threat.

Whether the proposal would result in a premature intrusion of urbanization into a predominantly agricultural or rural area

Growth Inducing Impacts. discourage proposals that contribute to premature development of fringe areas or intrusion of urbanization into areas designated for non-urban uses.

LAFCO shall consider whether public facilities or infrastructure related to the proposal would be sized to exceed the capacity needed for the proposed development

[end Policy excerpts]

[comment]

This item addresses provision of water service.

a) How to address State Water Board desire to consolidate/eliminate small water system providers?

b) I advocated without success in South County to create small local distribution systems in unincorporated County where one well would provide water to multiple nearby properties whose wells would be retired to create areas to be used for groundwater recharge.

6) Annexation, Detachment, and Reorganization Policies (Chapter 4)

[Policy excerpts]

Annexation of Roads.

A city annexation proposal shall be designed to include:

Full-width sections of the street right-of-way to provide single-agency

oversight, except that when a street is the boundary line between two cities, the centerline of the street may be used as the boundary
A continuous section of roadway sufficient in length to allow road maintenance, and provision of other services

[end Policy excerpts]

[comment]

a) "centerline okay if boundary line between two cities"

Suggest "two jurisdictions" so as to include City/County (Morgan Hill)

b) Perhaps address maintenance swaps of segments in alternating jurisdictions (Morgan Hill and County Roads)

7) Annexation, Detachment, and Reorganization Policies (Chapter 4)

Williamson Act

[Policy excerpts]

Annexation of Lands Under Williamson Act. facilities or services related to sewers, nonagricultural water, or streets or roads shall be prohibited unless these facilities and services benefit land uses that are allowed under the Williamson Act Contract

[end Policy excerpts]

[comment]

Are "land uses that are allowed" defined in the Act or specific to a particular Contract?

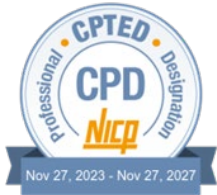
From: [Adam Paszkowski](#)
To: [LAFCO](#)
Cc: edith.ramirez@morganhill.ca.gov; [Jennifer Carman](#)
Subject: [EXTERNAL] Morgan Hill comment letter regarding Comprehensive Review and Update of LAFCO Policies
Date: Wednesday, September 25, 2024 11:34:12 AM
Attachments: [image001.png](#)
[MH Comment Letter on Update of LAFCO Policies.pdf](#)

Attached please find the City of Morgan Hill's comment letter regarding the proposed Phase 1 LAFCO policy revisions for the Comprehensive Review and Update of LAFCO Policies scheduled for a Public Hearing on Wednesday, October 2, 2024.

Please confirm receipt of the attached letter.

Thank you,

Adam Paszkowski, CPD
Principal Planner



City of Morgan Hill
Development Services Department
17575 Peak Avenue, Morgan Hill, CA 95037

TEL: 408.778.6480
DIR: 408.310.4635
adam.paszkowski@morganhill.ca.gov
choosemorganhill.com | [Facebook](#) | [Twitter](#) | [Instagram](#)

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17575 Peak Avenue
Morgan Hill, CA 95037-4128
TEL: (408) 779-7271
FAX: (408) 779-3117
www.morganhill.ca.gov

September 19, 2024

Neelima Palacheria, Executive Officer
Santa Clara LAFCO
777 North First Street, Suite 410
San Jose, CA 95112

VIA EMAIL

Re: Comprehensive Review and Update of LAFCO Policies

Ms. Palacheria,

The City of Morgan Hill acknowledges receipt of the Notice of Availability and Notice of Public Hearing regarding the Comprehensive Review and Update of LAFCO Policies, dated August 30, 2024.

With a population of 46,000 residents, Morgan Hill is committed to sustainable growth. The City is currently processing approximately 4,000 residential units within its city limits and is dedicated to addressing the housing shortfall and will continue to work collaboratively to build housing across all income levels. However, as the City grows, a key goal for the City is to grow in a sustainable way and to build a balance of uses that support the community, like jobs and amenities, and attract transportation services.

As Santa Clara LAFCO completes the Comprehensive Review and Update of LAFCO Policies, the City of Morgan Hill seeks to understand LAFCO's approach to handling Builder's Remedy applications and the annexations related to these applications. The City respectfully requests that LAFCO provide guidance through updated proposed LAFCO Policies to address these annexations. Consequently, the City is keen to collaborate with the County and LAFCO in developing a comprehensive policy and is eager to engage in planning along the City's boundary.

In addition to the above, the City respectfully submits the following comments and requests for modifications to the proposed LAFCO Policies prior to their adoption.

- On page 1 of 2 of Exhibit A (Santa Clara LAFCO's Methodology for Preparing a Vacant Lands Inventory) within Chapter 3: Urban Service Area Policies states, *underutilized lands* are defined as *lands developed to less than their maximum development potential*.
 - Comment: Underutilized lands should be defined as "lands developed to less than their minimum development density". Jurisdictions within Santa Clara County have established density minimums or density ranges; therefore, classifying a project as underutilized based on its maximum development potential is not an objective standard that cities can utilize or require under State laws (i.e. SB330).

- On page 1 of 4 of Chapter 6: Island Annexation Policies, Section 6.1: Introduction states, *unincorporated land that is located within a city's Urban Service Area (USA) is considered an island. Unincorporated islands... are surrounded by the city limits of a city or a combination of city limits and USA boundaries.*
 - Comment: The description of "Islands" in the proposed text is confusing and appears to not be consistent with Government Code Section 56375.3 which states unincorporated islands are surrounded, or substantially surrounded, by the city. Therefore, the City recommends that the proposed LAFCO policies text for Islands be updated to include "substantially surrounded". In addition, substantially surrounded should be defined as "being within the sphere of influence of the affected city and two-thirds (66 2/3%) of its boundary is surrounded by the city limits of a city or a combination of city limits and USA boundaries".
- On page 2 of 4 of Chapter 6: Island Annexation Policies, Section 6.3.1: Legislative History states, *pursuant to GC (Section) 56757, city annexations, including island annexations, are not decided by LAFCO, but by the City Council of the applicable city, as explained in LAFCO Policy #4.2.1 (Annexation, Detachment, and Reorganization Policies).*
 - Comment: Clear and separate guidelines need to be provided for Annexations versus Island Annexations. Proposed LAFCO Policy #4.2.1 states that an annexation proposal must be within an existing USA boundary; however, Chapter 6 references Island Annexations, which has different rules and exemptions in which an unincorporated island may be surrounded, or substantially surrounded, by the city. Therefore, this section needs further clarification.

Recently, the City of Morgan Hill has received public inquiries regarding USA boundary expansions. According to both current and proposed LAFCO policies, USA amendments require approval from Santa Clara LAFCO (e.g., proposed Policy #3.3.1), with no exemptions listed in the proposed policies. The City of Morgan Hill, similar to other cities within Santa Clara County, has a USA boundary that is smaller than its city limits. Historically, it has been understood that LAFCO must approve USA boundary expansions within city limits. However, recent email communications from LAFCO staff, forwarded by members of the public, suggest that if a property lies within city limits but outside the USA boundary, LAFCO approval for the USA expansion is not necessary. Therefore, the City submits the following additional comment and request for modification to the proposed LAFCO policies.

- Comment: Within Chapter 3: Urban Service Area Policies, a policy should be added (similar to Policy #4.2.1) for City-Conducted USA expansions, stating, "USA boundary expansions within existing city limits are not reviewed by LAFCO if the USA expansion proposal is initiated by city council resolution".

The City of Morgan Hill appreciates the opportunity to contribute to the Comprehensive Review and Update of LAFCO Policies. As your staff knows, the City is interested in advancing the annexation of some of the City-owned properties to advance the City's

recreational master plan and we look forward to collaborating with your office on this effort in the near future.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read 'Adam Paszkowski', with a small dot at the end.

Adam Paszkowski, CPD
Principal Planner

From: [Cindy McCormick](#)
To: [Palacherla, Neelima](#)
Cc: LAFCO@ceo.sccgov.org; [Sharon Goei](#)
Subject: [EXTERNAL] comment on the draft Comprehensive Review and Update of LAFCO Policies
Date: Wednesday, September 25, 2024 3:52:20 PM
Attachments: [image001.png](#)
[Gilroy comment letter on LAFCO policy, 9-25-24.pdf](#)

Good afternoon Neelima –

Thank you for the opportunity to comment on the draft Comprehensive Review and Update of LAFCO Policies, dated August 30, 2024. We have attached a letter for the Commission’s consideration and appreciate you including it in the meeting packet.

I am not available to attend the meeting, but I am available in the meantime if you or any Commissioners have questions.

Respectfully,

CINDY MCCORMICK
PLANNING MANAGER
Direct 408.846.0253 | Cindy.McCormick@cityofgilroy.org
Main 408.846.0440 | www.cityofgilroy.org/planning
7351 Rosanna Street | Gilroy | CA 95020





Community Development Department

Sharon Goei
DIRECTOR

7351 Rosanna Street, Gilroy, California 95020-6197
Telephone: (408) 846-0451 Fax: (408) 846-0429
<http://www.cityofgilroy.org>

September 25, 2024

Neelima Palacheria, Executive Officer
Santa Clara LAFCO
777 North First Street, Suite 410
San Jose, CA 95112

VIA LAFCO@ceo.sccgov.org

RE: Comprehensive Review and Update of LAFCO Policies

Dear Commissioners,

Thank you for the opportunity to comment on the draft Comprehensive Review and Update of LAFCO Policies, dated August 30, 2024. The City of Gilroy and LAFCO share many of the same goals and policies with respect to preserving agricultural lands, orderly growth and development, efficient delivery of services, and fiscal sustainability.

With this in mind, the City respectfully submits the following comments and requests for modifications to the proposed LAFCO Policies prior to their adoption:

3.4 Urban Service Area Amendment Policies and Evaluation Criteria

2. Impacts to Agricultural and Open Space Lands:

LAFCO should **consider a City's Urban Growth Boundary** when reviewing an USA expansion request. For example, Gilroy's Urban Growth Boundary protects open space and agricultural uses where it is most viable, and significantly limits Gilroy's expansion potential. In 1996, a joint effort between the City, County, and LAFCO was created to "identify ways to ensure the long-term maintenance of agriculture as a viable land use in the area south and east of Gilroy". This joint effort resulted in the *Strategies to Balance Planned Growth and Agricultural Viability in the areas south and east of Gilroy*. These *Strategies* recognized that the City's 20-year growth boundary "is one tool that the City of Gilroy uses to plan the timing and location of new development in a responsible and sustainable way" and recommended that "*if the City of Gilroy strengthens its 20-year boundary*" ..., "*LAFCO should re-examine its policies regarding requests for expansions to Gilroy's USA*".¹ In 2016, a more restrictive Urban Growth Boundary ("UGB") was approved in Gilroy to protect agriculture and open space, drawing a line between planned urban development and land preservation. Gilroy's UGB reflects a commitment to prevent development into the agriculturally and environmentally important areas surrounding the City, while allowing development where it makes most sense.

¹ *Strategies to Balance Planned Growth and Agricultural Viability in the areas south and east of Gilroy, Page 5 of 12*

We ask that LAFCO define the following terms using an objective standard that involves no personal or subjective judgment and is uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the applicant and LAFCO prior to submittal.

- agricultural land (noting that “prime” farmland is the threshold for consideration)
- “premature” conversion of agricultural lands
- “adequacy” of urban services
- “infill” development
- “substantially” surrounded (e.g., two-thirds)

In defining vacant land, we also ask that LAFCO consider the California Department of Housing and Community Development’s [*Housing Element Site Inventory Guidebook Government Code Section 65583.2*](#) (page 24) definition of vacant land as “a site without any houses, offices, buildings, or other significant improvements on it. Improvements are generally defined as development of the land (such as a paved parking lot, or income production improvements such as crops, high voltage power lines, oil-wells, etc.) or structures on a property that are permanent and add significantly to the value of the property.” It is noteworthy that the [*HCD Guidebook*](#) (page 24) also states that “underutilized sites are not vacant sites”.

Santa Clara LAFCO’s Methodology for Preparing a Vacant Lands Inventory

In developing the Methodology for Preparing a Vacant Land Inventory, we ask that LAFCO consider the minimum density permitted in a City’s General Plan, given that minimum density is within City control, while maximum density is not. Alternatively, we ask that LAFCO consider the average density of land developed in a City over the past five years (consistent with LAFCO’s 5-year inventory threshold). The average density is a realistic benchmark because the actual (or net) density of development may be less than the allowed density due to the need to provide roads, public facilities, utility easements, site amenities, open space, and/or right-of-way dedication and improvements.

In determining a City’s five year supply of vacant land, we also ask that LAFCO exclude (or decrease the density of) land that is located in a City’s designated WUI area, or has been identified in an environmental technical study as having constraints that limit the number of dwelling units that can be accommodated on the site (e.g., due to habitat preservation or steep slopes).

Thank you again for the opportunity to comment on the draft Comprehensive Review and Update of LAFCO Policies, dated August 30, 2024.

Respectfully,



Cindy McCormick
City of Gilroy

From: Alice Kaufman <alice@greenfoothills.org>
Sent: Tuesday, October 1, 2024 11:26 AM
To: LAFCO
Cc: Palacherla, Neelima; Russ Melton; Arenas, Sylvia; Jim Beall;
rosemary.kamei@sanjoseca.gov; Yoriko Kishimoto; Supervisor.Lee; Terry Trumbull;
District8; district3; Chavez, Cindy; Teresa O'Neill; mark.turner@morganhill.ca.gov
Subject: [EXTERNAL] LAFCO Policy Review: comments from environmental organizations
(10/2/24 LAFCO Agenda Item #5)
Attachments: LAFCO Policy Revisions - joint enviro letter.pdf

Dear LAFCO Commissioners:

Attached please find the comments of Green Foothills, Greenbelt Alliance, Keep Coyote Creek Beautiful, Santa Clara Valley Bird Alliance, and Sierra Club Loma Prieta Chapter on the draft LAFCO policy revisions.

Thank you for your attention to these comments.



Alice Kaufman (She/Her)
Policy and Advocacy Director
Green Foothills | (650) 968-7243 x313 | greenfoothills.org
Join the movement for local nature. [Sign up for alerts.](#)





October 1, 2024

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

RE: 10/2/24 Agenda Item #5: Comprehensive Review and Update of LAFCO Policies

Dear LAFCO Commissioners,

Please accept these comments on behalf of the undersigned environmental organizations with regard to the proposed LAFCO Policy Review.

It is clear that this policy review is extremely limited in scope and is primarily intended to document and clarify existing LAFCO policy (with the exception of the proposed new policies regarding agricultural worker housing). We support the proposed revisions, with some minor recommendations as detailed below.

A. Agricultural worker housing policies should be strengthened to protect farmworkers from being evicted

Farmworkers provide an essential service to Santa Clara County's economy, and too often they lack affordable, safe, secure housing options. For this reason, we believe that the proposed new policies regarding farmworker housing need to be strengthened to ensure that housing built for farmworkers remains affordable to and occupied by farmworkers into the future.

Section 3.4.15 (under Chapter 3: Urban Service Area Policies) and Section 5.3.3(b) (under Chapter 5: Out-of-Agency Contract for Services Policies) both contain a list of factors to be considered for USA amendment proposals or out-of-agency services contracts (OASC) for agricultural worker housing. Those factors include the following:

Whether the city has methods currently in place (e.g., deed restrictions and/or affordability covenants) to ensure that the proposed agricultural worker housing remains

affordable and occupied by eligible agricultural workers at affordable rents and sales prices over the long term

Whether the proposed agricultural worker housing will be maintained and operated by a qualified and certified affordable housing organization pursuant to Health & Safety Code §17030.10, including a public agency, or an employee housing provider

This language is promising. However, under the proposed new policies, these factors would be merely among those that the Commission “shall consider.” We recommend that these criteria (Section 3.4.15(d) and 3.4.15(e), and Section 5.3.3(b)(iv) and 5.3.3(b)(v)) be made **mandatory requirements** for any USA amendment proposal or OASC proposal for farmworker housing, rather than merely being two among a list of factors to be considered. Only by ensuring that farmworker housing will remain **affordable to and occupied by farmworkers into the future** can we avoid negatively impacting the most vulnerable among us.

Landowners would have an inherent financial interest to convert affordable farmworker housing into market-rate units. Without legal restrictions to prevent this from happening, LAFCO’s efforts to facilitate affordable farmworker housing could backfire and result in farmworkers being evicted from their affordable units to make way for wealthy tenants who can pay market-rate prices. Thus, farmworkers would be doubly impacted, by losing their housing and by the loss of farm jobs as a result of the conversion of farmland into market-rate housing. This is the opposite of what this revision to LAFCO policies is intended to facilitate.

We note that [AB 3035 \(Pellerin\)](#), recently signed into law by Governor Newsom and sponsored by Santa Clara County, contains stronger requirements for farmworker housing to qualify for the bill’s provisions.

(3) (A) Except as otherwise provided in subparagraph (B), the agricultural employee housing will be maintained and operated by a qualified affordable housing organization that has been certified pursuant to Section 17030.10. The development proponent shall submit proof of issuance of the qualified affordable housing organization’s certification by the enforcement agency. The qualified affordable housing organization shall provide for onsite management of the development.

(B) In the case of agricultural employee housing that is maintained and operated by a local public housing agency or a multicounty, state, or multistate agency that has been certified as a qualified affordable housing organization as required by this paragraph, that agency either directly maintains and operates the agricultural employee housing or contracts with another qualified affordable housing organization that has been certified pursuant to Section 17030.10.

(C) The local government ensures an affordability covenant is recorded on the property to ensure the affordability of the proposed agricultural employee housing for agricultural employees for not less than 55 years. For purposes of this paragraph, “affordability” means the agricultural housing is made available at an

affordable rent, as defined in Section 50053, to lower income households, as defined in Section 50079.5.

(Health & Safety Code Section 17021.8(i)(3))

Please incorporate language similar to [AB 3035](#) into the new LAFCO policies in order to protect farmworkers from potential eviction.

B. Recommendations for other proposed policy revisions

The remainder of the proposed revisions (aside from those relating to agricultural worker housing) serve to merely document or clarify existing LAFCO policies. We recommend the following.

Chapter 3: Urban Service Area Policies

- Section 3.4.2: Impacts to Agricultural and Open Space Lands. We recommend that subsection (a) include consideration of impacts to not just prime farmland, but also farmland of statewide or local importance.
- Section 3.4.4: Avoid Natural Hazard Lands. We recommend that subsection (c) include consideration of not just fire hazard maps, but also maps indicating FEMA flood zones, earthquake fault zones and landslide hazard zones.

Chapter 5: Out-of-Agency Contract for Services Policies

We recommend that policies under this section parallel those under Chapter 3 (Urban Service Area Policies), since the growth-inducing impacts of out-of-agency contracts for services are identical to those of USA expansions. We recommend that the policies proposed for Urban Service Area proposals be specifically replicated in Chapter 5.

Thank you for the opportunity to submit these comments.

Sincerely,

Alice Kaufman
Policy and Advocacy Director
Green Foothills

Jordan Grimes
State & Regional Resilience Manager
Greenbelt Alliance

Deb Kramer
Executive Director

Keep Coyote Creek Beautiful

Shani Kleinhaus
Environmental Advocate
Santa Clara VALley Bird Alliance

Katja Irvin
Guadalupe Group Conservation Chair
Sierra Club Loma Prieta Chapter

From: [Serena Alvarez](#)
To: [LAFCO](#)
Cc: [Sylvia Alvarez](#); [jamcentee](#)
Subject: [EXTERNAL] Public Comment: Item 5 Comprehensive Review & Update of LAFCO Policies
Date: Tuesday, October 1, 2024 4:34:20 PM

Good afternoon,

The Salvador E. Alvarez Institute for Non-Violence greatly appreciates the leadership of Chair Melton, Vice Chair Arenas and LAFCO Commissioners on the timely, if not overdue, comprehensive review and appropriate update of LAFCO policies. Below are our comments, respectfully submitted for your consideration.

Comment re Attachment F ("Agricultural Mitigation Policy")

"Chapter 7. Agricultural Land Preservation and Mitigation Policies" at p. 1 of 5: Insertion of "Land Preservation and" is an improvement we support. This addition promotes clarity and alignment with relevant bodies of law and rules for farmland conservancy.

"7.2 General Policies" at p. 2 of 5: We believe this section's draft language means to effect an inclusionary policy for farmworker housing, which we very strongly support and pray will resolve policy impediments resulting in arguable/actual exclusionary practice historically. We note that current draft language is crafted in a way that risks being interpreted as an "exception" and could be construed to communicate that an inclusionary opportunity must be produced, rather than *clarified*. We appreciate staff efforts, though believe the draft language of 7.2.2 seeming to create an exception ("special consideration") for agricultural worker housing is imprudent and unnecessary. We believe that the meaning of "agricultural land preservation" inherently includes necessary labor for the agricultural enterprise -- the working of the land -- the labor that realizes the very purpose of land being designated "prime" for agriculture. Preserving the prime quality of land for agriculture is inclusive of a labor presence, naturally inclusive of proximal residency. An agricultural farm is not a farm without labor that farms. A "farmer" is part and parcel to the farm and farmworkers are but the farmer expressed with coefficients or exponents.

We believe a *clarifying* framework is an improved path to inclusionary results with the benefit of prudently avoiding potential invitation to a parade of "exception" seekers. The opportunity to include farmworker housing in the preservation of agricultural lands needn't be *produced*. We recommend it be made plain. We find precedent for our recommended approach in existing statutory language governing farmland conservancy, excerpted below and linked here for ease of reference. **See [CA Farmland Conservancy Program](#)**

Using the existing statutory language as a model, a sample proposed revision for an updated LAFCO policy may be constructed in a manner such as:

"The construction, reconstruction, and use of secondary dwelling units and farm worker housing shall be deemed consistent and compatible with agricultural preservation, subject to reasonable limitations on size and location, if the long-term agricultural use of the preserved land is not thereby significantly impaired."

We offer the above as a proposed framework and approach to policy construction for your consideration and we pray it will prompt and support fruitful deliberation. We welcome continued consensus building on this matter and hope this writing makes clear that we genuinely appreciate and share the desire for improvements in clarity and do not wish to advance a material compromise of LAFCO purpose. We believe updating policy with greater clarity serves and will benefit LAFCO's mission.

Sincerely,
Serena Alvarez, Esq., Executive Director
The Salvador E. Alvarez Institute for Non-Violence

PUBLIC RESOURCES CODE - PRC DIVISION 10.2. CALIFORNIA FARMLAND CONSERVANCY PROGRAM ACT [10200 - 10264] (*HEADING OF DIVISION 10.2 AMENDED BY STATS. 2022, CH. 502, SEC. 1.*)

CHAPTER 2. California Farmland Conservancy Program [10230 - 10246] (*Heading of Chapter 2 amended by Stats. 2022, Ch. 502, Sec. 9.*)

10238.

(a) The director shall not disburse any grant funds to acquire agricultural conservation easements that restrict husbandry practices. (b) **The following uses and activities shall be deemed consistent and compatible with any agricultural conservation easement funded under this division and shall not be considered to restrict husbandry practices:**

(c) **The construction, reconstruction, and use of secondary dwelling units and farm worker housing, subject to reasonable limitations on size and location, if the long-term agricultural use of the conserved land is not thereby significantly impaired.** The limitations on secondary dwelling units and farm worker housing shall not be more restrictive than Article 2 (commencing with Section 66314) of Chapter 13 of Division 1 of Title 7 of the Government Code or Section 17021.6 of the Health and Safety Code, respectively, or local building permit requirements.

(Amended by Stats. 2024, Ch. 7, Sec. 30. (SB 477) Effective March 25, 2024.)

From: [Lena Eyen](#)
To: [LAFCO](#)
Cc: [Linda Kwong](#)
Subject: [EXTERNAL] SCVOSA comment letter: LAFCO Policy Revisions
Date: Wednesday, October 2, 2024 4:18:49 PM
Attachments: [Outlook-vak10jp3](#)
[2024-10-02 SCVOSA comment letter LAFCO policy revisions.pdf](#)

Good Afternoon,

On behalf of the Santa Clara Valley Open Space Authority, please see the attached comment letter regarding the LAFCO Policy Revisions. Please do not hesitate to reach out with any questions or clarifications.

Thank you,
Lena Eyen

Lena Eyen (she/her)
Community Impact & Policy Specialist
408.759.1935 C
408.224.7476 T
Openspaceauthority.org

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Andrea Mackenzie, General Manager
Alex Kennett, District 1
Mike Flaughner, District 2
Helen Chapman, District 3
Garnetta Annable, District 4
Vicki Alexander, District 5
Mike Potter, District 6
Kalvin Gill, District 7

October 2, 2024

Neelima Palacheria
Executive Officer, Santa Clara LAFCO
777 North First Street, Suite 410
San Jose, CA 95112
LAFCO@ceo.sccgov.org

Subject: SCVOSA Comments on Phase I LAFCO Policy Revisions

Dear Ms. Palacheria

On behalf of the Santa Clara Valley Open Space Authority (Open Space Authority), thank you for the opportunity to comment on the Phase I LAFCO Policy Revisions. The Open Space Authority commends staff's efforts to comprehensively review and update current LAFCO policies to strengthen their alignment with local and state policies, provide better guidance to affected agencies and the public, and increase clarity and transparency of LAFCO's policies and expectations.

The Open Space Authority is a public, independent special district created by the California State Legislature in 1993 to conserve the natural environment, support agriculture, and connect people to nature by protecting open spaces, natural areas, and working farms and ranches for future generations. Fulfillment of the Open Space Authority's mission is dependent upon strong land use policies, including the Countywide Urban Development Policies (CUDPs) that were adopted in 1972 and reaffirmed by the Local Agency Formation Commission (LAFCO) of Santa Clara County on April 6, 2022.

We respectfully share the following comments for consideration:

In order to establish the "long-term system to sustainably manage growth on a countywide basis," as called for by the CUDPs, LAFCO policies must be clear and reflect a strong stance on urban growth and development. Currently, Chapters 3, 4, and 5 refer to LAFCO's *consideration* of certain criteria when evaluating proposals. However, merely considering this criteria is not sufficient to sustainably manage growth. Therefore, we

recommend that these sections be revised to clearly state LAFCO's criteria as requirements.

One such example is in Chapter 3, Section 15, which states that LAFCO shall consider "[w]hether the city has methods currently in place (e.g. deed restrictions and/or affordability covenants) to ensure that the proposed agricultural worker housing remains affordable [...]." In order to prevent unintended consequences, we recommend strengthening this policy by firmly stating that permanent restrictions for affordability are *required* for annexations for agricultural worker housing. Stronger, clearer criteria will help LAFCO implement and enforce these policies, now and in the future.

We look forward to reviewing and providing additional comments on the revised policies in November. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Andrea Mackenzie". The signature is fluid and cursive, with a long horizontal stroke at the end.

Andrea Mackenzie
General Manager

CC: Santa Clara Valley Open Space Authority Board of Directors

From: [Stephanie Moreno](#)
To: [LAFCO](#)
Subject: [EXTERNAL] Public comment letter: Comprehensive Review and Update of LAFCO Policies.
Date: Wednesday, October 2, 2024 3:22:31 PM
Attachments: [NSCRCD LAFCO Policies 100224 Final.pdf](#)

Good afternoon! I have attached NSCRCD's written comments regarding LAFCOs proposed *Comprehensive Review and Update of LAFCO Policies*. The letter expands on the comments we submitted during today's public hearing.

I would appreciate it if you would confirm that this letter has been received prior to today's deadline of 5:00 p.m., as stated on the hearing notice.

Thank you! Stephanie

--

Sincerely,

Stephanie Moreno, Executive Director/District Clerk
Pronouns: she/her/hers
North Santa Clara Resource Conservation District (NSCRCD)
formerly the Guadalupe-Coyote RCD
An independent special district of the State of California
1560 Berger Drive, Room 211, San Jose, CA 95112
www.rcdsantaclara.org
smoreno@gcrsd.org
831-235-1799 Cell



North Santa Clara Resource Conservation District

An independent special district of the State of California

888 N. 1st Street, Suite 204, San Jose, CA 95114

www.rcdsantaclara.org

gcrcd@gcrcd.org

October 2, 2024

Santa Clara Local Agency Formation Commission (LAFCO)
777 North First Street, Suite 410
San Jose, CA 95112

RE: Comprehensive Review and Update of LAFCO Policies

Dear LAFCO Commissioners:

North Santa Clara Resource Conservation District (NSCRCD) appreciates the opportunity to provide comments on the draft Comprehensive Review and Update of LAFCO Policies. We believe California's resource conservation districts – independent special districts that offer technical and financial assistance to agricultural producers and landowners – are valuable but underutilized assets for statewide LAFCOs in their efforts to preserve open-space and prime agricultural lands.

Our comments focus specifically on *Chapter 5. Out-of-Agency Service by Contract Policies*:

1. Section 5.1: The introductory language of this policy does not acknowledge that Government Code §56133 provides exemptions in certain circumstances. This omission is significant for accurately representing LAFCO's authorities. We recommend the following amendment to the first sentence in paragraph 3:

"To prevent such circumvention and strengthen LAFCO's position to better address issues concerning growth and sprawl, the Legislature added Government Code (GC) §56133 which requires cities and special districts to first request and receive written approval from LAFCO before providing new or extended services by contract outside their jurisdictional boundaries, subject to the exemption stated at GC §56133(e).

2. Section 5.2.4: We respectfully disagree with LAFCO's interpretation that it alone holds the authority to determine whether a proposed Out-of-Agency Service by Contract (OASC) qualifies for exemption under Government Code §56133(e). The law explicitly states, "this section does not apply to any of the following", and enumerates specific circumstances where preapproval from LAFCO is not mandated. It does not confer upon LAFCO the authority to make such determinations.

CALAFCO and individual LAFCOs initially framed this issue as one of legal interpretation, acknowledging that it would need to be resolved by legislative amendment.¹ During the 2020-21 legislative session, CALAFCO sought to amend §56133(e) to add "as determined by the commission or executive officer"², but the bill did not progress. In spite of legislative intervention being an

¹ https://www.edlafco.us/files/596b79503/20+Jan_Item+12+Staff+Memo+%28OASA+Policy%29.pdf

² <https://www.fresnolafco.org/files/89f9a2b1e/Mar2021Item+8.pdf>

apparent priority for CALAFCO for a number of years, in July 2024 their Board of Directors voted to discontinue efforts to amend §56133 related to exemption language, citing it as a burden due to opposition from certain stakeholder organizations.³

In light of ongoing resistance to legislative changes supporting CALAFCO's interpretation, various county LAFCOs are now deciding to act unilaterally, adopting local policies such as the one being considered by the Commission today, to assert LAFCO's authority to require cities and special districts to seek pre-approval for exemption status.⁴ We recognize the desire for the Commissioners to be informed about services rendered outside jurisdictional boundaries to ensure compliance with its mission, and we support efforts to promote orderly growth to preserve agricultural and open space lands. However, reliance on local interpretation of State law, particularly one that has been expressly disputed, to adopt this policy may create potential liability.

As a constructive alternative, we propose that rather than requiring pre-approval for OASC agreements, the Commission establish a policy that mandates cities and special districts to notify LAFCO of OASC agreements within 30 days of execution, similar to the current requirements for entities entering into joint powers agreements (JPAs). This approach would empower the Commissioners to address any issues of noncompliance without imposing undue burdens on compliant entities.

We recommend the following revision to replace the entirety of Section 5.2.4:

Exempt OASC Agreements: *A city or special district that enters into an OASC agreement under the authority of GC §56133(e) must file a copy of the executed agreement, along with any amendments, with LAFCO within 30 days of the agreement's effective date. LAFCO retains the right to challenge any agreement it believes does not comply with §56133(e) by referring the agreement to the Commission for consideration and potential further action.*

We appreciate the opportunity to present these comments and advocate for modifications that align with LAFCO's intent while preserving special district legal rights pursuant to Government Code 56133. We respectfully encourage you to consider this modified language in lieu of the policy language current proposed.

Sincerely,

Stephanie Moreno

Stephanie Moreno
Executive Director
smoreno@gcrd.org

³ <https://lafco.org/wp-content/uploads/documents/september-26-2024-lafco-meeting/8.%20Legislative%20Update%20Rpt%209-26-2024.pdf>

⁴ <https://www.sdlafco.org/home/showpublisheddocument/7678/638515398658800000>

From: [Jaria Jaug](#)
To: [LAFCO](#)
Cc: huascar@wpusa.org
Subject: [EXTERNAL] Item 5 – Support of Strengthening Agricultural Worker Housing Policies
Date: Wednesday, October 2, 2024 10:11:46 AM

Hello,

I hope you are doing well. My name is Jaria with Working Partnerships USA and I am writing in support of the proposed LAFCO policy revision which also includes the newly introduced agricultural worker housing policies.

At Working Partnerships USA, we believe in advancing a more just economy including access to housing for all. By adding the newly introduced agricultural worker housing policies, we are able to ease the development of farmworker housing leading to more accessible housing for these workers. We must reduce the barriers to building these much-needed housing for our farmworkers who work tirelessly everyday.

We are respectfully urging LAFCO Commissioners & Staff to continue to prioritize agricultural worker housing by partnering and coordinating with the County and their agricultural worker housing workplan

Thank you

In community,

Jaria Jaug (she/her)
Associate Director of Care Policy
WORKING
PARTNERSHIPS USA

- (408) 394-6580
- jaria.jaug@wpusa.org
- wpusa.org



County of Santa Clara

Department of Planning and Development

County Government Center, East Wing, 7th Floor

70 West Hedding Street

San Jose, CA 95110

Phone: (408) 299-5700

www.sccplandev.org



DATE: October 2, 2024

TO: Neelima Palacherla
Executive Officer, Local Agency Formation Commission of Santa Clara County

FROM: Jacqueline R. Onciano
Director, Department of Planning and Development

DocuSigned by:
Jacqueline R. Onciano
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SUBJECT: Comments on Phase 1 Proposed Policy Revisions

Thank you for the opportunity to review the Local Agency Formation Commission of Santa Clara County (LAFCO) Phase 1 policy revisions. The Department of Planning and Development staff (DPD) has reviewed LAFCO's proposed policy revisions, with special attention to the major substantive changes regarding agricultural worker/employee housing. DPD is supportive of the proposed policy changes, with the understanding that they are intended to facilitate the development of agricultural worker/employee housing (i.e., Urban Service Area Policy 3.4.15, Out of Agency Service by Contract Policy 5.3.3(b), Agricultural Land Preservation and Mitigation Policy 7.2).

A vital component of ensuring that such measures are successful in facilitating the development and proper utilization of agricultural worker/employee housing is to require that such housing remain continually available to, and occupied by, the intended population of agricultural workers/employees. Toward this end, policies 3.4.15(d) and 5.3.3(b)(iv) are critical to include in any special consideration of projects including agricultural worker/employee housing. Requiring appropriate protections such as deed restrictions and/or affordability covenants not only ensures that such housing predominantly benefits the intended population, it also prevents misuse or abuse of LAFCO's proposed special consideration, which could lead to sprawl development and unnecessary loss of farmland, contrary to longstanding County and LAFCO policies.

To further ensure the intended outcomes of LAFCO's proposed special consideration, we recommend that LAFCO policies clarify the necessary extent or portion of a development that must be dedicated to agricultural worker/employee housing to qualify for LAFCO's special consideration. The proposed policies are unclear as to whether a project would need to be entirely dedicated (deed restricted) to agricultural worker/employee housing, or if a small portion of the project would be sufficient to qualify for LAFCO's special consideration of an urban service area amendment or out-of-agency service contract. The policies do not illuminate LAFCO's position on a project, for example, consisting of 170 market-rate housing units and 30 housing units set-aside for agricultural workers/employees, as compared to a project providing only one unit of agricultural worker/employee housing, or a project wholly dedicated to

agricultural worker/employee housing. Although articulating a specific threshold or portion of housing units dedicated for agricultural workers/employees may not be desired or necessary to include, there is currently no indication of the scale or portion of agricultural worker/employee housing that would qualify for the proposed special consideration by LAFCO.

The lack of specificity in how special consideration would be provided by LAFCO to projects involving agricultural worker/employee housing raises larger questions as to how the listed factors in policies 3.4.15 and 5.3.3(b) are intended to be used by LAFCO in evaluating a proposal. For example, are they intended to serve as a checklist of requirements, or subjective criteria open to interpretation, and what will the weighing of such factors look like in implementation.

In conclusion, DPD believes more clarity is needed on how LAFCO would apply the proposed major substantive policy changes regarding agricultural worker/employee housing. Increased clarity in this matter will safeguard against unintended consequences, namely sprawl development and unnecessary loss of farmland, and will ensure that appropriate agricultural worker/employee housing projects have clear guidance when seeking special consideration from LAFCO under the proposed policies.

c: Sonia Humphrey, LAFCO Clerk
 Sylvia Gallegos, Deputy County Executive
 Elizabeth Pianca, Assistant County Counsel

From: Yoriko Kishimoto <ykishimoto@openspace.org>

Sent: Thursday, October 3, 2024 8:24 AM

To: Palacherla, Neelima <Neelima.Palacherla@ceo.sccgov.org>

Subject: [EXTERNAL] recommendations/input for "comprehensive review and update of LAFCO policies

Hi Neelima - here it is before I forget.

To: Neelima and LAFCO policy review subcommittee

From: Yoriko Kishimoto

Date: 10/3/24

Thank you all for your hard work on this! It was hard work for me to read and review the results of your work so far.

1. I think the environmental group's letter to us is a good summary of my strong feelings on making mandatory the clauses about keeping any agricultural housing affordable and used for intended purposes and not "take into consideration". We could learn from Assembly member Pellerin's legislative language too.

* Consider adding language for removing or capping infrastructure when no longer used for purpose of affordable ag housing.

2. Chapter 2 - SOI

* Attachment A-1 p.3

* There are two policies to note on this page:

* Policy 11 **overlapping SOIs**" - may overlap for cities and special districts when both agencies expect to provide different services to the area.

* Policy 14 "LAFCO will discourage duplications in service provisions... * "where coterminous or substantially within the boundary or SOI of another city or district, special district may be given a zero SOI which encompasses no territory"

* One example is Saratoga Fire District which has gone through this zero SOI process a couple times. It does contract out most of its fire fighting services to county and it could be merged. But the costs to taxpayers are not very different and the community takes pride in the big fire station they raised funds for and the city council and community have been strongly behind it.

*Suggestion: Move this to right after #11 (Overlapping SOIs) or merge @11 and 14 to say: “where coterminous or substantially within the boundary or SOI of another city or district, special district may be given a zero SOI which encompasses no territory or it may negotiate an “overlapping SOI” with city or district if delivering different services”. In other words, if both the city and special district agree on division of labor in delivering services, let them.

* If zero SOI is determined, add note that the finding is made but implementation up to districts or cities.

3. Chapter 5 Out of agency service by contract - OASC

* First, note history of debates all over state. Many LAFCOs have already passed language, and Calafco has looked into new legislation but not yet found the support because some see it as “expansion of LAFCO authority”, so it is up to each LAFCO at this point on how to interpret the situation and whether to make it explicit that only LAFCO and not any applicant is the judge of whether any exemption applies. Our attorney has advised that it is not an expansion of authority but already allowable.

We have received at least one letter from a special district opposing the new policy. Personally, I see the reasoning that LAFCO would be the expert in interpreting the exemptions.

However, there are still many questions and ambiguities on the process or procedures for a district to get the determination.

* phone call or email?

* how early in proposal development to check with LAFCO?

* if I make the phone call, will the topic be reported to the LAFCO board (and therefore public information) automatically?

<https://www.sblafco.org/files/4520b4d87/Information+Item+No+3+-+CALAFCO+Legislative+Committee.pdf>

This packet from Santa Barbara LAFCO shares the results of a survey of other LAFCOs and it has some potentially helpful language to learn from. I'll add it below.

* My suggestion is that LAFCO direct our staff to develop procedures or at least clarify the

language. It's complex enough that it may be worth an agenda item in itself.

here are some other LAFCO's language on this:

It is the policy of this Commission to delegate to the Executive Officer the authority to:

1. consult with public agencies to determine whether their out-of-area service agreements are subject to OC LAFCO review and 2) review, process, and approve out-of-area service agreements not exempt under the provisions of Government Code §56133 to ensure that such agreements do not create growth opportunities without appropriate oversight. It is also the policy of this Commission to require that any such agreements not previously considered by this Commission be considered in connection with future applications for related changes of organization and not to unilaterally seek out and review out-of-area service agreements for compliance with G.C. §56133.

The Commission shall also consider any requests to be exempt from the requirement to obtain LAFCO approval of an out-of-agency service extension, pursuant to Government Code Section 56133(e).

Agencies requesting their contracts to be exempt from Commission consideration and approval per Government Code Section 56133(e) shall provide to the Executive Officer a written description of the service arrangement and any other supporting documentation of the contractual arrangement. The Executive Officer may make a determination on the exemption, or may make a recommendation to the Commission for a Commission determination on the exemption. The Executive Officer shall endeavor to review the materials as quickly as possible and make a determination or recommendation on the exemption, to be provided based upon one or more of the following:

Policy 5 (Section 4 – Application Processing; Chapter 2. Out of Agency Service Contracts):

For a request for exemption pursuant to Government Code Section 56133(e), the Commission shall make the determination that the service(s) to be provided is/are exempt from LAFCO review. The Commission has, in cases where the service extension proposed does not facilitate development or directly affect employees, delegated the authority to make the determination for exemption pursuant to Government Code Section 56133(e) to the Executive Officer.

This policy serves as a guide to the Commission in receiving, evaluating, and acting on requests by cities and special districts to provide new or extended services other than fire protection outside their jurisdictional boundaries. The policy **appropriately balances the dual interest of the Commission to encourage local agencies to cost share and pursue creative partnerships while also ensuring out of agency activities do not undermine jurisdictional boundaries or dampen local accountability.** (italics added)

- a) The Commission determines exemption eligibility of all statutory exemptions under 56133(e) as well as local exemptions.
- b) Cities and special districts may request a no-cost determination as to whether any proposed out-of-agency services are eligible for exemption.

from:

<https://www.sblafco.org/files/4520b4d87/Information+Item+No+3+-+CALAFCO+Legislative+Committee.pdf>

Measure AA 2024

