

**COMPREHENSIVE REVIEW AND UPDATE OF LAFCO POLICIES  
WRITTEN COMMENTS RECEIVED ON OR BEFORE 10/2/2024**

#	COMMENT	RESPONSE
1.	<b>COMMENTER: Doug Muirhead, Morgan Hill Resident, Received 09/24/24</b>	
1a.	<p>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.</p>	Noted.
1b.	<p>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.</p>	Noted.

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1c.	<p>3) Urban Service Area (USA) Policies (Chapter 3) Methodology for Preparing a Vacant Lands Inventory</p> <p>[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.</p> <p>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.</p> <p>[end Policy excerpts]</p> <p>[comment]</p> <p>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.</p> <p>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.</p>	<p>The commission will review the details provided in the alternate inventory of vacant lands and evaluate each case individually. The evaluation and consideration of the city's alternate vacant lands analysis will be based on the city's reasoning for why certain lands were excluded from the inventory and LAFCO's vacant lands inventory methodology will serve as the baseline.</p>
1d.	<p>4) Out-of-Agency Service by Contract (OASC) Policies (Chapter 5) Agricultural Worker Housing</p> <p>[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.</p> <p>Service Extensions into Unincorporated Area. LAFCO shall discourage OASC proposals that are intended to support new development in the unincorporated county, with two exceptions.</p> <p>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</p> <p>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.</p> <p>[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)]</p> <p>[see also Urban Service Area (USA) Policies (Chapter 3)</p>	<p>As directed by the commission at its April 2024 meeting, the proposed policies on agricultural worker housing are intended to facilitate development of agricultural worker housing in Santa Clara County.</p> <p>Special consideration allows for greater flexibility in applying the usual or standard evaluative criteria, offering some leniency or adjustments under very specific circumstances to facilitate the development of agricultural worker housing.</p> <p>As noted in Policy #3.4.15, the commission will evaluate USA amendment proposals that meet certain criteria as listed in Policy #3.4.15(a) based on the considerations listed in Policy #3.4.15(b). Similarly, Policy # 5.3.3(b(i) lists the criteria that an OASC proposal must meet in order to qualify for LAFCO's special considerations and evaluative criteria listed in Policy #5.3.3(b)(ii).</p>

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	<p>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?</p>	
1e.	<p>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.</p>	<p>LAFCO staff has been in discussions with staff from the County Planning Department, County Department of Environmental Health, the State Water Resource Control Board (SWRCB), and Santa Clara Valley Water District to discuss the state's desires for consolidating/eliminating the small water systems and to consider any potential adverse or unintended impacts of that action on land use, planning, development and growth management in the unincorporated county; and to help identify mutually acceptable ways to implement the State's goals in a manner that avoids those potential adverse impacts.  While there is no clear-cut solution at this time, we remain committed to working closely with all stakeholders to explore viable options.</p>
1f.	<p>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,</p>	<p>The reason that the policy states that annexations should include the full width of the street right-of-way, except when the street forms the boundary between two cities rather than between a city and the county is that in the latter situation, it is appropriate and practical to include the entire</p>

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	<p>and provision of other services. [end Policy excerpts]</p> <p>[comment]</p> <p>a) "centerline okay if boundary line between two cities" Suggest "two jurisdictions" so as to include City/County (Morgan Hill)</p> <p>b) Perhaps address maintenance swaps of segments in alternating jurisdictions (Morgan Hill and County Roads)</p>	<p>road width in the city's annexation, as the road would serve lands within the city which are intended to be annexed and receive city services whereas the County does not provide urban services.</p>
1g	<p>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]</p> <p>[comment]</p> <p>Are "land uses that are allowed" defined in the Act or specific to a particular Contract?</p>	<p>The land uses allowed are any use determined by the county or city administering the preserve pursuant to GC §51231, §51238, or §51238.1 or by the Williamson Act to be compatible with the agricultural, recreational, or open-space use of land within the preserve and subject to contract.</p>
<b>2.</b>	<b>COMMENTER: Adam Paszkowski, Principal Planner, City of Morgan Hill, Received 09/25/24</b>	
2a.	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>LAFCO does not have a set of different requirements for the Builders Remedy projects.</p> <p>It is possible that the Builders Remedy projects proposed in the unincorporated County may approach LAFCO with two potential types of applications: USA amendments, or out of agency services by contract. In both cases, LAFCO will review the applications as it does any other, applying its USA and OASC policies for the evaluation and analysis of the project.</p>

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2b.	<p>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, <i>underutilized lands</i> are defined as <i>lands developed to less than their maximum development potential</i>.</p> <ul style="list-style-type: none"> <li>Comment: Underutilized lands should be defined as “lands developed to less than their <u>minimum development density</u>”. 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).</li> </ul>	<p>Exhibit A – Santa Clara LAFCO’s Methodology for Preparing a Vacant Lands Inventory is revised to define underutilized lands as “lands developed to less than their <u>minimum</u> development density.”</p>
2c.	<p>On page 1 of 4 of Chapter 6: Island Annexation Policies, Section 6.1: Introduction states, <i>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</i>.</p> <ul style="list-style-type: none"> <li>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 <u>substantially surrounded</u>, 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”.</li> </ul>	<p>As noted in Policy #6.1, in Santa Clara County, unincorporated land located within a city’s USA is considered an island. These islands may be surrounded by the city or by a combination of the city limits and USA boundary of the city. To remove any confusion re. the definition of an island in Santa Clara County, the second sentence in 6.1 will be deleted.</p>
2d.	<p>On page 2 of 4 of Chapter 6: Island Annexation Policies, Section 6.3.1: Legislative History states, <i>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)</i>.</p> <ul style="list-style-type: none"> <li>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.</li> </ul>	<p>To highlight that a streamlined annexation process is available for islands that meet certain criteria, a new sub-title “Streamlined Island Annexations” will be added under Section 6.4 as Policy #6.4.3, and the remaining policies will be renumbered accordingly.</p>
2e.	<p>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</p>	<p>Policy #3.3.1 is amended to add that “All” USA amendments require Santa Clara LAFCO approval.</p> <p>The clarification is that LAFCO approval is not necessary for the city to provide services to areas located within city limits even though the areas are located outside the city’s urban</p>

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	<p>for the USA expansion is not necessary. Therefore, the City submits the following additional comment and request for modification to the proposed LAFCO policies.</p> <ul style="list-style-type: none"> <li>• 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”.</li> </ul> <p>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.</p>	<p>service area. To document this, Section 4.2 is amended to include the following language:</p> <p>“Historically, some cities have areas within their city limits that lie outside their USAs. Even though these areas are outside the USA, the city is not required to seek LAFCO approval to provide services to them, as long as the areas are within the city limits.”</p>
<b>3.</b>	<b>COMMENTER: Cindy McCormick, Planning Manager, City of Gilroy, Received 09/25/24</b>	
3a.	<p>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.</p> <p>With this in mind, the City respectfully submits the following comments and requests for modifications to the proposed LAFCO Policies prior to their adoption:</p> <p><b>3.4 Urban Service Area Amendment Policies and Evaluation Criteria</b></p> <p>2. <u>Impacts to Agricultural and Open Space Lands:</u></p> <p>LAFCO should <b>consider a City’s Urban Growth Boundary</b> 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 <i>Strategies to Balance Planned Growth and Agricultural Viability in the areas south and east of Gilroy</i>. These <i>Strategies</i> 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 “<i>if the City of Gilroy strengthens its 20-year boundary</i>”..., “<i>LAFCO should re-examine its policies regarding requests for expansions to Gilroy’s USA</i>”.<sup>1</sup> 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. _____</p> <p><sup>1</sup><i>Strategies to Balance Planned Growth and Agricultural Viability in the areas south and east of Gilroy</i></p>	<p>The requested policy is located in Chapter 8: UGB Policies Policy # 8.2.3 which states “LAFCO shall consider UGBs when reviewing relevant proposals, including annexations or reorganizations over which LAFCO retains review and approval authority, urban service area amendment proposals, sphere of influence amendment proposals, and out-of-agency service by contract proposals.”</p> <p>The Gilroy Agricultural Lands Policy which references the <i>Strategies to Balance Planned Growth and Agricultural Viability in the Areas South and East of Gilroy</i> are no longer applicable because the policies are no longer valid, as the commitments outlined in them remain unfulfilled, and the circumstances or conditions have since changed. These policies will therefore be removed from the LAFCO policy document and retained as-is in LAFCO archives for historic significance</p>

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3b.	<p>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.</p> <ul style="list-style-type: none"> <li>- agricultural land (noting that “prime” farmland is the threshold for consideration)</li> <li>- “premature” conversion of agricultural lands</li> <li>- “adequacy” of urban services</li> <li>- “infill” development</li> <li>- “substantially” surrounded (e.g., two-thirds)</li> </ul>	<p>Agricultural land is defined in GC §56016 and described in greater detail in USA Policy # 3.4.2(b).</p> <p>The words <i>premature</i> and <i>adequacy</i> are no longer referenced in these policies. Policy #3.4.5 includes references to adequate water supply in accordance with GC §65352.5.</p> <p>The definition of Infill is included in the sidebar as follows “Infill development refers to building on unused or underutilized lands within existing city limits or urban service areas, consistent with the city’s General Plan.”</p> <p>The term “substantially surrounded” is not relevant in Santa Clara County as the definition of an island includes all unincorporated land within a city’s USA as noted in Policy #6.1.</p>
3c.	<p>In defining vacant land, we also ask that LAFCO consider the California Department of Housing and Community Development’s <a href="#">Housing Element Site Inventory Guidebook Government Code Section 65583.2</a> (page 24) definition of <u>vacant land</u> 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 <a href="#">HCD Guidebook</a> (page 24) also states that “underutilized sites are not vacant sites”.</p>	<p>LAFCO and the HCD have distinct mandates, objectives, and needs resulting in different methodologies for preparing a vacant lands inventory. To provide guidance and clarity to potential applicants and cities, LAFCO has prepared Exhibit A, which explains LAFCO’s specific methodology.</p>
3d.	<p>Santa Clara LAFCO’s Methodology for Preparing a Vacant Lands Inventory</p> <p>In developing the <u>Methodology for Preparing a Vacant Land Inventory</u>, 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.</p> <p>In determining a City’s <u>five year supply of vacant land</u>, 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).</p>	<p>Exhibit A – Santa Clara LAFCO’s Methodology for Preparing a Vacant Lands Inventory is revised to define underutilized lands as lands developed to less than their <u>minimum</u> development density.</p> <p>The purpose of LAFCO’s vacant lands inventory is to promote efficient use of land within a city’s current boundaries prior to adding more lands. Analyzing the 5-year supply based on the maximum density provides a valuable benchmark and ensures that the full potential of development is considered first, offering a baseline from which any deviations or reductions can be rationalized in light of specific local factors. As provided for under USA Policy # 3.4.1(b), the city may prepare an additional alternate vacant lands inventory</p>

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		and explain why the alternate analysis is more appropriate, for LAFCO’s consideration.
4.	<b>COMMENTER: Green Foothills, Greenbelt Alliance, Keep Coyote Creek Beautiful, Santa Clara Valley Bird Alliance, Sierra Club-Loma Prieta, Received 10/1/24</b>	
4a.	<p>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.</p> <p style="padding-left: 40px;"><b>A. Agricultural worker housing policies should be strengthened to protect farmworkers from being evicted</b></p> <p>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.</p> <p>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:</p> <p style="padding-left: 40px;">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.</p> <p style="padding-left: 40px;">Whether the proposed agricultural worker housing will be maintained and operated by a qualified and certified affordable housing organization pursuant to Health &amp; Safety Code §17030.10, including a public agency, or an employee housing provider</p> <p>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 <b>mandatory requirements</b> 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 <b>affordable to and occupied by farmworkers into the future</b> can we avoid negatively impacting the most vulnerable among us.</p> <p>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</p>	<p>Policies #3.4.15 and #5.3.3(b) have been revised to specify that LAFCO’s special consideration for agricultural worker housing proposals applies solely to development proposals that meet certain criteria to ensure that the housing remains affordable to and occupied by agricultural workers over the long term; and is managed and operated by a certified affordable housing organization consistent with Health &amp; Safety Code §17021.8(i)(3), a public agency or an employer providing housing.</p> <p>These revisions for the most part mirror the requirements in state law for agricultural worker housing to qualify for the AB 3035 (Farmworker Housing bill authored by Assembly Member Gail Pellerin and signed into law by the Governor on 9/24/24) provisions.</p> <p>The revisions support the intent of the policy – which is to facilitate development and maintenance of agricultural worker housing, and help establish strong guardrails to prevent misuse of the policies that could lead to unintended consequences of sprawl development.</p>



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	<p>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.</p> <p>We note that <a href="#">AB 3035 (Pellerin)</a>, 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.</p> <p>(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.</p> <p>(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.</p> <p>(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 &amp; Safety Code Section 17021.8(i)(3))</p> <p>Please incorporate language similar to <a href="#">AB 3035</a> into the new LAFCO policies in order to protect farmworkers from potential eviction.</p>	
4b.	<p><b>B. Recommendations for other proposed policy revisions</b></p> <p>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.</p> <p><b>Chapter 3: Urban Service Area Policies</b></p> <ul style="list-style-type: none"> <li>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.</li> </ul>	<p>USA Policy # 3.4.2(b) has been revised to include Policy #3.4.2(b)(xi), to provide for LAFCO consideration of the Department of Conservation’s farmland designations as referenced in its Farmland Mapping and Monitoring Program.</p> <p>USA Policy #3.4.4 has been revised to explicitly include references to maps related to flood zones, earthquake fault zones, and landslide hazard zones, in addition to fire hazard zones.</p>

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	<ul style="list-style-type: none"> <li>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.</li> </ul>	
4c.	<p><b>Chapter 5: Out-of-Agency Contract for Services Policies</b></p> <p>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.</p>	<p>OASC Policy #5.3.5 and Policy #5.3.8 are revised to make references to the more detailed criteria outlined in the Chapter 3, USA policies.</p>
5.	<p><b>COMMENTER: Serena Alvarez, Executive Director, The Salvador E. Alvarez Institute for Non-Violence, Received 10/1/24</b></p>	
5a.	<p>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.</p> <p><b>Comment re Attachment F ("Agricultural Mitigation Policy")</b></p> <p><u>"Chapter 7. Agricultural Land Preservation and Mitigation Policies" at p. 1 of 5:</u> 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.</p> <p><u>"7.2 General Policies" at p. 2 of 5:</u> 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 <i>clarified</i>. 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.</p> <p>We believe a <i>clarifying</i> 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 <i>produced</i>. 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 <a href="#">CA Farmland Conservancy Program</a></p>	<p>Santa Clara LAFCO is committed to maintaining its longstanding policies that are essential to fulfilling its mission, such as preventing urban sprawl, encouraging infill development, promoting efficient delivery of services, and preserving agricultural lands and open space. At the same time, Santa Clara LAFCO recognizes the importance of proposals that promote agricultural worker housing. By doing so, Santa Clara LAFCO aims to balance the preservation of agricultural lands with the need to support the housing needs of the workforce critical to sustaining the agricultural industry. This approach reflects LAFCO's evolving priorities while staying true to its core objectives.</p> <p>Special consideration allows for greater flexibility in applying the usual or standard evaluative criteria, offering some leniency or adjustments under very specific circumstances to facilitate the development of agricultural worker housing.</p> <p>LAFCO does not have land use authority, and therefore we do not recommend adding land use consistency findings.</p>

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	<p>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:</p> <p style="padding-left: 40px;">"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."</p> <p>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.</p> <p><b>PUBLIC RESOURCES CODE - PRC DIVISION 10.2. CALIFORNIA FARMLAND CONSERVANCY PROGRAM ACT</b> [10200 - 10264] (HEADING OF DIVISION 10.2 AMENDED BY STATS. 2022, CH. 502, SEC. 1.)</p> <p>CHAPTER 2. California Farmland Conservancy Program [10230 - 10246] (Heading of Chapter 2 amended by Stats. 2022, Ch. 502, Sec. 9.)</p> <p style="padding-left: 40px;">(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:</p> <p style="padding-left: 80px;">(6) 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.</p> <p style="padding-left: 40px;">(Amended by Stats. 2024, Ch. 7, Sec. 30. (SB 477) Effective March 25, 2024.)</p>	
<b>6.</b>	<b>COMMENTER: Andrea McKenzie, General Manager, Santa Clara Valley Open Space Authority, Received 10/2/24</b>	
6a.	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	As noted in USA policy #3.4, "... in accordance with GC §56668, Santa Clara LAFCO must take into account many

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	<p>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.</p> <p>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.</p> <p>We respectfully share the following comments for consideration:</p> <p style="padding-left: 40px;">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 <i>consideration</i> 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.</p> <p style="padding-left: 40px;">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 <i>required</i> for annexations for agricultural worker housing. Stronger, clearer criteria will help LAFCO implement and enforce these policies, now and in the future.</p>	<p>factors when considering an USA amendment proposal. Certain factors may be more applicable or more critical than others, depending on the specific proposal and circumstances”, LAFCO often must balance multiple priorities, with each factor carrying different weight depending on the specific proposal and the unique conditions surrounding it. For this reason, the policies include factors for consideration rather than requirements.</p> <p>In the case of the proposed new agricultural worker housing needs policies, Policies #3.4.15 and #5.3.3(b) have been revised to specify that LAFCO’s special consideration for agricultural worker housing proposals applies solely to development proposals that meet certain criteria to ensure that the housing remains affordable to and occupied by agricultural workers over the long term; and is managed and operated by a certified affordable housing organization consistent with Health &amp; Safety Code §17021.8(i)(3), a public agency or an employer providing housing.</p> <p>These revisions for the most part mirror the requirements in state law for agricultural worker housing to qualify for the AB 3035 (Farmworker Housing bill authored by Assembly Member Gail Pellerin and signed into law by the Governor on 9/24/24) provisions. The revisions support the intent of the policy – which is to facilitate development and maintenance of agricultural worker housing and help establish strong guardrails to prevent misuse of the policies that could lead to unintended consequences of sprawl development.</p>
<b>7.</b>	<b>COMMENTER: Stephanie Moreno, Executive Director, North Santa Clara Resource Conservation District, Received 10/2/24</b>	
7a.	<p>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.</p>	<p>OASC Policies Section # 5.1 is a brief background paragraph and provides a general overview and purpose of OASC. The topic of exemptions is discussed specifically in Policy #5.2.4.</p>

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	<p>Our comments focus specifically on Chapter 5. <i>Out-of-Agency Service by Contract Policies</i>:</p> <p>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:</p> <p style="padding-left: 40px;"><i>“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).</i>”</p>	<p>Policy #5.2.4 is revised to clarify the purpose of the policy and include additional clarifications on the procedures for obtaining such determinations from LAFCO.</p> <p>Also, please see OASC Policy #5.2.1 which specifically references GC §56133(e).</p>
7b.	<p>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.</p> <p>CALAFCO and individual LAFCOs initially framed this issue as one of legal interpretation, acknowledging that it would need to be resolved by legislative amendment.<sup>1</sup> During the 2020-21 legislative session, CALAFCO sought to amend §56133(e) to add “as determined by the commission or executive officer”<sup>2</sup>, but the bill did not progress. In spite of legislative intervention being an 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.<sup>3</sup></p> <p>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. <sup>4</sup> 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.</p> <p>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.</p> <p>We recommend the following revision to replace the entirety of Section 5.2.4:</p>	<p>This issue of who should determine whether an OASC is exempt from LAFCO approval under GC §56133(e), has been a topic of discussion and legislative efforts for many years now – at CALAFCO as well as at individual LAFCOs. In February 2021, Santa Clara LAFCO took action to provide conceptual support for San Diego LAFCO’s legislative effort to clarify that it is LAFCO that determines whether an exemption applies.</p> <p>In 2022, CALAFCO published a white paper on clarifying LAFCO authority to determine exemption under GC §56133(e) which states “LAFCOs maintain that the legislative intent behind the Cortese-Knox-Hertzberg Act makes it clear that the final determination of whether a service contract is exempt from a LAFCO process is a function for the LAFCO – not the contracting entities.”</p> <p>The CKH Act is silent as to who makes the decision on a GC §56133(e) exemption. It is Santa Clara LAFCO Counsel’s opinion that LAFCO has the authority to adopt a policy to make the determination whether an OASC proposal is exempt from LAFCO approval under GC §56133(e). LAFCO is best equipped and most knowledgeable to make the decision on these exemptions that are limited to avoid growth inducing impacts. By LAFCO making the decision, there is consistency in the interpretation, and it provides</p>

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	<p><i><b>Exempt OASC Agreements:</b> 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.</i></p> <p>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.</p> <hr/> <p><sup>1</sup> <a href="https://www.edlafco.us/files/596b79503/20+Jan+Item+12+Staff+Memo+%28OASA+Policy%29.pdf">https://www.edlafco.us/files/596b79503/20+Jan+Item+12+Staff+Memo+%28OASA+Policy%29.pdf</a></p> <p><sup>2</sup> <a href="https://www.fresnolafco.org/files/89f9a2b1e/Mar2021Item+8.pdf">https://www.fresnolafco.org/files/89f9a2b1e/Mar2021Item+8.pdf</a></p> <p><sup>3</sup> <a href="https://lafco.org/wp-content/uploads/documents/september-26-2024-lafco-meeting/8.%20Legislative%20Update%20Rpt%209-26-2024.pdf">https://lafco.org/wp-content/uploads/documents/september-26-2024-lafco-meeting/8.%20Legislative%20Update%20Rpt%209-26-2024.pdf</a></p> <p><sup>4</sup> <a href="https://www.sdlafco.org/home/showpublisheddocument/7678/638515398658800000">https://www.sdlafco.org/home/showpublisheddocument/7678/638515398658800000</a></p>	<p>transparency and uniformity in the decision-making process and in the determination.</p> <p>Because state law is silent and absent a legislative proposal to date, to provide clarity, many LAFCOs (including Orange, LA, San Diego, San Bernadino, Sacramento, Mendocino) have adopted local policies to clarify that LAFCO, and not the agency providing the service, makes the exemption determination.</p> <p>The proposed Policy #5.2.4 is not new – it is for the most part existing Santa Clara LAFCO practice that we are documenting for transparency and adding a provision that allows appeal of staff decision to the full commission at no cost to the agency.</p> <p>This policy makes it explicit that LAFCO decides exemption eligibility and provides for a proactive, transparent process that would help avoid subsequent conflicts, delays, financial or service impacts for affected parties.</p> <p>Given LAFCO's authority over local agency boundaries and service extensions, it is logical for LAFCOs to be the single body to make these exemptions under a uniform process taking into account the public interest of avoiding growth inducing impacts – rather than individual agencies making such decisions in their own interest, without a uniform process.</p>
<b>8.</b>	<b>COMMENTER: Jaria Jaug, Associate Director of Care Policy, Working Partnerships USA, Received 10/2/24</b>	
8a.	<p>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 &amp; Staff to continue to prioritize agricultural worker housing by partnering and coordinating with the County and their agricultural worker housing workplan.</p>	Noted.

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9.	<b>COMMENTS: Jacqueline R. Onciano, Director, County of Santa Clara Planning and Development Department, Received 10/2/24</b>	
9a.	<p>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).</p> <p>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.</p>	<p>Policies #3.4.15 and #5.3.3(b) have been revised to specify that LAFCO’s special consideration for agricultural worker housing applies solely to development proposals that meet certain criteria to ensure that the housing remains affordable to and occupied by agricultural workers over the long term; and is managed and operated by a certified affordable housing organization consistent with Health &amp; Safety Code §17021.8(i)(3), a public agency, or an employer providing housing.</p> <p>These revisions for the most part mirror the requirements in state law for agricultural worker housing to qualify for the AB 3035 (Farmworker Housing bill authored by Assembly Member Gail Pellerin and signed into law by the Governor on 9/24/24) provisions. The policy revisions support the primary intent of the policy – which is to facilitate development and maintenance of agricultural worker housing and help establish strong guardrails to prevent misuse of the policies that could lead to unintended consequences of sprawl development.</p>
9b.	<p>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.</p> <p>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</p>	<p>Please see response to the comment above that notes that Policies #3.4.15 and #5.3.3(b) have been revised to specify that LAFCO’s special consideration for agricultural worker housing applies <u>solely</u> to development proposals that meet certain criteria to ensure that the housing remains affordable to and occupied by agricultural workers over the long term; and is managed and operated by a certified affordable housing organization consistent with Health &amp; Safety Code §17021.8(i)(3), a public agency, or an employer providing housing.</p> <p>Special consideration allows for greater flexibility in applying the usual or standard evaluative criteria, offering some leniency or adjustments under very specific</p>

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	<p>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.</p> <p>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.</p>	<p>circumstances to facilitate the development of agricultural worker housing.</p> <p>As noted in Policy #3.4.15, the commission will evaluate USA amendment proposals that meet certain criteria as listed in Policy #3.4.15(a) based on the considerations listed in Policy #3.4.15(b). Similarly, Policy # 5.3.3(b)(i) lists the criteria that an OASC proposal must meet in order to qualify for LAFCO’s special considerations under the evaluative criteria listed in Policy #5.3.3(b)(ii).</p>
<b>10.</b>	<b>COMMENTS: Yoriko Kishimoto, LAFCO Commissioner, Received 10/2/24</b>	
10a	<p>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.</p> <p>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.</p> <p>* Consider adding language for removing or capping infrastructure when no longer used for purpose of affordable ag housing.</p>	<p>Policies #3.4.15 and #5.3.3(b) have been revised to specify that LAFCO’s special consideration for agricultural worker housing applies solely to development proposals that meet certain criteria to ensure that the housing remains affordable to and occupied by agricultural workers over the long term; and is managed and operated by a certified affordable housing organization consistent with Health &amp; Safety Code §17021.8(i)(3), a public agency, or an employer providing housing.</p> <p>These revisions for the most part mirror the requirements in state law for agricultural worker housing to qualify for the AB 3035 (Farmworker Housing bill authored by Assembly Member Gail Pellerin and signed into law by the Governor on 9/24/24) provisions. The revisions support the intent of the policy – which is to facilitate development and maintenance of agricultural worker housing and help establish strong guardrails to prevent misuse of the policies that could lead to unintended consequences of sprawl development.</p> <p>These revisions would help ensure that such housing serves its intended purpose of affordable agricultural worker housing, and remains consistently available to, and occupied by agricultural workers over a long period of time, without the need for the additional proposed language.</p>



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10b	<p>2. Chapter 2 - SOI</p> <ul style="list-style-type: none"> <li>* Attachment A-1 p.3</li> <li>* There are two policies to note on this page:</li> <li>* Policy 11 <b>overlapping SOIs</b>” - may overlap for cities and special districts when both agencies expect to provide different services to the area.</li> <li>* 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”</li> <li>* 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.</li> <li>*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.</li> <li>* If zero SOI is determined, add note that the finding is made but implementation up to districts or cities.</li> </ul>	<p>An example of an overlapping SOI as referenced in Policy #2.5.11 is when a SOI such as for the City of Cupertino (which does not provide sewer service) overlaps with the SOI of the Cupertino Sanitary District (which provides sewer service in the City of Cupertino and other areas). A zero SOI would not be appropriate in this case for the Cupertino Sanitary District as the district must exist to provide the necessary public service. LAFCO delineates a zero SOI for a district which lies within a city or another district when LAFCO determines that the district should cease to exist and that its public service responsibilities should be reallocated to another district or city. For example, LAFCO has delineated a zero SOI for the Saratoga Fire District which is completely surrounded by the SCC Central Fire Protection District and with which it contracts for service. Another example for a district with a zero SOI is the Burbank Sanitary District, as it is surrounded by the City of San Jose and includes only unincorporated lands that will eventually be annexed into the City of San Jose and detached from the district.</p> <p>However, while the delineation of a zero SOI for a district indicates that the district should cease to exist in the future, it does not mean LAFCO will automatically dissolve the district. There are specific criteria and procedures in the CKH Act that must be followed for the initiation and processing of any such subsequent reorganizations and for the LAFCO approval. Policy #2.5.14 is revised to clarify this.</p>
10c	<p>3. Chapter 5 Out of agency service by contract - OASC</p> <ul style="list-style-type: none"> <li>* 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.</li> </ul>	<p>This issue of who should determine whether an OASC is exempt from LAFCO approval under GC §56133(e), has been a topic of discussion and legislative efforts for many years now – at CALAFCO as well as at individual LAFCOs. In February 2021, Santa Clara LAFCO took action to provide conceptual support for San Diego LAFCO’s legislative effort to clarify that it is LAFCO that determines whether an exemption applies.</p>

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#	COMMENT	RESPONSE
	<p>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.</p> <p>However, there are still many questions and ambiguities on the process or procedures for a district to get the determination.</p> <p>* phone call or email?</p> <p>* how early in proposal development to check with LAFCO?</p> <p>* if I make the phone call, will the topic be reported to the LAFCO board (and therefore public information) automatically?</p> <p><a href="https://www.sblafco.org/files/4520b4d87/Information+Item+No+3+-+CALAFCO+Legislative+Committee.pdf">https://www.sblafco.org/files/4520b4d87/Information+Item+No+3+-+CALAFCO+Legislative+Committee.pdf</a></p> <p>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.</p> <p>* 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.</p> <p>*****</p> <p>here are some other LAFCO's language on this:</p> <p>It is the policy of this Commission to delegate to the Executive Officer the authority to:</p> <ol style="list-style-type: none"> <li>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.</li> </ol> <p>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).</p> <p>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.</p>	<p>In 2022, CALAFCO published a white paper on clarifying LAFCO authority to determine exemption under GC §56133(e) which states "LAFCOs maintain that the legislative intent behind the Cortese-Knox-Hertzberg Act makes it clear that the final determination of whether a service contract is exempt from a LAFCO process is a function for the LAFCO – not the contracting entities."</p> <p>The CKH Act is silent as to who makes the decision on a GC §56133(e) exemption. It is Santa Clara LAFCO Counsel's opinion that LAFCO has the authority to adopt a policy to make the determination whether an OASC proposal is exempt from LAFCO approval under GC §56133(e).</p> <p>LAFCO is best equipped and most knowledgeable to make the decision on these exemptions that are limited to avoid growth inducing impacts. By LAFCO making the decision, there is consistency in the interpretation, and it provides transparency and uniformity in the decision-making process and in the determination.</p> <p>Because state law is silent and absent a legislative proposal to date, to provide clarity, many LAFCOs (including Orange, LA, San Diego, San Bernadino, Sacramento, Mendocino) have adopted local policies to clarify that LAFCO, and not the agency providing the service, makes the exemption determination.</p> <p>The proposed Policy #5.2.4 is not new – it is for the most part existing Santa Clara LAFCO practice that we are documenting for transparency and adding a provision that allows appeal of staff decision to the full commission at no cost to the agency.</p> <p>This policy makes it explicit that LAFCO decides exemption eligibility and provides for a proactive, transparent process that would help avoid subsequent conflicts, delays, financial or service impacts for affected parties.</p>

**COMPREHENSIVE REVIEW AND UPDATE OF LAFCO POLICIES  
WRITTEN COMMENTS RECEIVED ON OR BEFORE 10/2/2024**

#	COMMENT	RESPONSE
	<p>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:</p> <p>*****</p> <p>Policy 5 (Section 4 – Application Processing; Chapter 2. Out of Agency Service Contracts):</p> <p>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.</p> <p>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 <b>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.</b> (italics added)</p> <p>*****</p> <p>a) The Commission determines exemption eligibility of all statutory exemptions under 56133(e) as well as local exemptions.</p> <p>b) Cities and special districts may request a no-cost determination as to whether any proposed out-of-agency services are eligible for exemption.</p> <p>*****</p> <p>from: <a href="https://www.sblafco.org/files/4520b4d87/Information+Item+No+3+-+CALAFCO+Legislative+Committee.pdf">https://www.sblafco.org/files/4520b4d87/Information+Item+No+3+-+CALAFCO+Legislative+Committee.pdf</a></p>	<p>Given LAFCO’s authority over local agency boundaries and service extensions, it is logical for LAFCOs to be the single body to make these exemptions under a uniform process taking into account the public interest of avoiding growth inducing impacts – rather than individual agencies making such decisions in their own interest, without a uniform process.</p> <p>Policy #5.2.4 is revised to address the questions raised by the commenter. The revisions clarify the purpose of the policy and include additional clarifications on the procedures for seeking exemption from LAFCO approval under GC §56133(e).</p>