



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

777 North First Street  
Suite 410  
San Jose, CA 95112

**SantaClaraLAFCO.org**

**Commissioners**

Sylvia Arenas  
Jim Beall  
Rosemary Kamei  
Yoriko Kishimoto  
Otto Lee  
Russ Melton  
Terry Trumbull

**Alternate Commissioners**

Domingo Candelas  
Helen Chapman  
Cindy Chavez  
Teresa O'Neill  
Mark Turner

**Executive Officer**

Neelima Palacherla

## REGULAR MEETING

Board of Supervisors' Chambers, 70 West Hedding Street, First Floor, San Jose

**December 4, 2024 • 1:15 PM**

## AGENDA

Chairperson: Russ Melton   ▪   Vice-Chairperson: Sylvia Arenas

### PUBLIC ACCESS AND PARTICIPATION

This meeting will be held in person at the location listed above. As a courtesy, and technology permitting, members of the public may also attend by virtual teleconference. However, LAFCO cannot guarantee that the public's access to teleconferencing technology will be uninterrupted, and technical difficulties may occur from time to time. Unless required by the Brown Act, the meeting will continue despite technical difficulties for participants using the teleconferencing option. To attend the meeting by virtual teleconference, access the meeting at <https://sccgov-org.zoom.us/j/97487391562> or by dialing **(669) 900-6833** and entering **Meeting ID 974 8739 1562#** when prompted.

### PUBLIC COMMENT INSTRUCTIONS

**Written Public Comments** may be submitted by email to [LAFCO@ceo.sccgov.org](mailto:LAFCO@ceo.sccgov.org). Written comments will be distributed to the Commission and posted to the agenda on the LAFCO website as quickly as possible but may take up to 24 hours.

**Spoken public comments may be provided in-person at the meeting.** Persons who wish to address the Commission on an item are requested to complete a Request to Speak Form and place it in the designated tray near the dais. Request to Speak Forms must be submitted prior to the start of public comment for the desired item. For items on the Consent Calendar or items added to the Consent Calendar, Request to Speak Forms must be submitted prior to the call for public comment on the Consent Calendar. Individual speakers will be called to speak in turn. Speakers are requested to limit their comments to the time limit allotted.

**Spoken public comments may also be provided through the teleconference meeting.** To address the Commission virtually, click on the link <https://sccgov-org.zoom.us/j/97487391562> to access the meeting and follow the instructions below:

- You will be asked to enter an email address and name. We request that you identify yourself by name as this will be visible online and will be used to notify you when it is your turn to speak.
- When the Chairperson calls for the item on which you wish to speak, click on "raise hand" icon. The Clerk will activate and unmute speakers in turn. Speakers will be notified shortly before they are called to speak. Call-in attendees press \*9 to request to speak, and \*6 to unmute when prompted.
- When called to speak, please limit your remarks to the time limit allotted.

## NOTICE TO THE PUBLIC

- Pursuant to Government Code §84308, no LAFCO commissioner shall accept, solicit, or direct a contribution of more than \$250 from any party, or a party's agent; or any participant or the participant's agent if the commission knows or has reason to know that the participant has a financial interest, while a LAFCO proceeding is pending, and for 12 months following the date a final decision is rendered by LAFCO. Prior to rendering a decision on a LAFCO proceeding, any LAFCO commissioner who received a contribution of more than \$250 within the preceding 12 months from a party or participant shall disclose that fact on the record of the proceeding. If a commissioner receives a contribution which would otherwise require disqualification returns the contribution within 30 days from the time the commissioner knows or should have known, about the contribution and the proceeding, the commissioner shall be permitted to participate in the proceeding. A party to a LAFCO proceeding shall disclose on the record of the proceeding any contribution of more than \$250 within the preceding 12 months by the party, or the party's agent, to a LAFCO commissioner. For forms, visit the LAFCO website at [www.santaclaralafco.org](http://www.santaclaralafco.org). No party, or the party's agent and no participant, or the participant's agent, shall make a contribution of more than \$250 to any LAFCO commissioner during the proceeding or for 12 months following the date a final decision is rendered by LAFCO.
- Pursuant to Government Code Sections 56100.1, 56300, 56700.1, 57009 and 81000 et seq., any person or combination of persons who directly or indirectly contribute(s) a total of \$1,000 or more or expend(s) a total of \$1,000 or more in support of or in opposition to specified LAFCO proposals or proceedings, which generally include proposed reorganizations or changes of organization, may be required to comply with the disclosure requirements of the Political Reform Act (See also, Section 84250 et seq.). These requirements contain provisions for making disclosures of contributions and expenditures at specified intervals. More information on the scope of the required disclosures is available at the web site of the FPPC: [www.fppc.ca.gov](http://www.fppc.ca.gov). Questions regarding FPPC material, including FPPC forms, should be directed to the FPPC's advice line at 1-866-ASK-FPPC (1-866-275- 3772).
- Pursuant to Government Code §56300(c), LAFCO adopted lobbying disclosure requirements which require that any person or entity lobbying the Commission or Executive Officer in regard to an application before LAFCO must file a declaration prior to the hearing on the LAFCO application or at the time of the hearing if that is the initial contact. In addition to submitting a declaration, any lobbyist speaking at the LAFCO hearing must so identify themselves as lobbyists and identify on the record the name of the person or entity making payment to them. Additionally, every applicant shall file a declaration under penalty of perjury listing all lobbyists that they have hired to influence the action taken by LAFCO on their application. For forms, visit the LAFCO website at [www.santaclaralafco.org](http://www.santaclaralafco.org).
- Any disclosable public records related to an open session item on the agenda and distributed to all or a majority of the Commissioners less than 72 hours prior to that meeting are available for public inspection at the LAFCO Office, 777 North First Street, Suite 410, San Jose, California, during normal business hours. (Government Code §54957.5.)
- In compliance with the Americans with Disabilities Act, those requiring accommodation for this meeting should notify the LAFCO Clerk 24 hours prior to meeting at (408) 993- 4705.

**1. ROLL CALL**

**2. PUBLIC COMMENTS**

This portion of the meeting provides an opportunity for members of the public to address the Commission on matters not on the agenda, provided that the subject matter is within the jurisdiction of the Commission. No action may be taken on off- agenda items unless authorized by law. Speakers are limited to THREE minutes. All statements that require a response will be referred to staff for reply in writing.

**3. APPROVE CONSENT CALENDAR**

The Consent Calendar includes Agenda Items marked with an asterisk (\*). The Commission may add to or remove agenda items from the Consent Calendar.

All items that remain on the Consent Calendar are voted on in one motion. If an item is approved on the Consent Calendar, the specific action recommended by staff is adopted. Members of the public who wish to address the Commission on Consent Calendar items should comment under this item.

**\*4. APPROVE MINUTES OF OCTOBER 2, 2024 LAFCO MEETING**

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**PUBLIC HEARING**

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**5. COMPREHENSIVE REVIEW AND UPDATE OF LAFCO POLICIES**

**Recommended Action:**

1. Adopt the proposed updated Chapter 2: Sphere of Influence (SOI) Policies as recommended by the LAFCO Policies Ad-Hoc Committee.
2. Adopt the proposed updated Chapter 3: Urban Service Area (USA) Policies as recommended by the LAFCO Policies Ad-Hoc Committee.
3. Adopt the proposed updated Chapter 4: Annexation, Detachment, and Reorganization Policies as recommended by the LAFCO Policies Ad-Hoc Committee.
4. Consider Policy # 5.2.4: "LAFCO Determination of Exemptions" and adopt the proposed updated Chapter 5: Out-of-Agency Services by Contract (OASC) policies, as recommended by the LAFCO Policies Ad-Hoc Committee.
5. Adopt the proposed updated Chapter 6: Island Annexation Policies as recommended by the LAFCO Policies Ad-Hoc Committee.
6. Adopt the proposed updated Chapter 7: Agricultural Land Preservation and Mitigation Policies as recommended by the LAFCO Policies Ad-Hoc Committee.
7. Adopt the proposed updated Chapter 8: Urban Growth Boundaries (UGB) Policies as recommended by the LAFCO Policies Ad-Hoc Committee.
8. Rescind the existing Boundary Agreement Lines Policies, and the Policies for Gilroy Agricultural Lands as they are no longer applicable.
9. Determine that the proposed update of LAFCO policies is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines §15060(c)(2) and §15060(c)(3).

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**ITEMS FOR ACTION / INFORMATION**

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**\*6. ADOPTION OF SCHEDULE OF 2025 LAFCO MEETINGS**

**Recommended Action:** Adopt the schedule of LAFCO meetings and application filing deadlines for 2025.

**\*7. APPOINTMENT OF 2025 LAFCO CHAIRPERSON AND VICE-CHAIRPERSON**

**Recommended Action:** Per the rotation schedule, appoint Commissioner Sylvia Arenas to serve as Chairperson for 2025; and Commissioner Rosemary Kamei to serve as Vice-Chairperson for 2025.

**\*8. EXECUTIVE OFFICER'S REPORT**

**Recommended Action:** Accept report and provide direction, as necessary.

**8.1 Meeting re. the County's Highland Campus Facilities Master Plan**

**8.2 Meetings with the City of San Jose Planning Department**

**8.3 Meetings re. Foothill Mutual Water Company**

**8.4 Special Districts Association Meetings**

**8.5 Meetings with County Planning Staff**

**8.6 Santa Clara County Association of Planning Officials' Meetings**

**8.7 LAFCO Orientation Session for County Staff**

**8.8 Promotion of Emmanuel Abello as LAFCO Analyst**

**8.9 Mileage Reimbursement for the 2024 CALAFCO Annual Conference Session Speakers**

**\*9. CALAFCO RELATED ACTIVITIES**

**Recommended Action:** Accept report and provide direction, as necessary.

**10. COMMISSIONER REPORTS**

**11. NEWSPAPER ARTICLES / NEWSLETTERS**

**11.1 The Sphere (October 2024)**

**12. WRITTEN CORRESPONDENCE**

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**CLOSED SESSION**

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**13. PERFORMANCE EVALUATION**

Public Employee Performance Evaluation (Government Code §54957)

Title: LAFCO Executive Officer

**14. REPORT OUT OF CLOSED SESSION**

**15. ADJOURN**

Adjourn to the regular LAFCO meeting on February 5, 2025 at 1:15 PM in the Board of Supervisors' Chambers, 70 West Hedding Street, San Jose.





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**Alternate Commissioners**  
Domingo Candelas  
Helen Chapman  
Cindy Chavez  
Teresa O'Neill  
Mark Turner  
**Executive Officer**  
Neelima Palacherla

**ITEM # 4**

## **LAFCO MEETING MINUTES WEDNESDAY, OCTOBER 2, 2024**

### **CALL TO ORDER**

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

### **1. ROLL CALL**

#### **Commissioners**

- Russ Melton, Chairperson
- Sylvia Arenas, Vice Chairperson
- Jim Beall (Absent)
- Rosemary Kamei
- Yoriko Kishimoto
- Otto Lee (Left at 2:01 p.m., returned at 2:32 p.m.)
- Terry Trumbull

#### **Alternate Commissioners**

- Domingo Candelas (Absent)
- Helen Chapman (Voting for Jim Beall)
- Cindy Chavez (Absent)
- Teresa O'Neill
- Mark Turner (Absent)

#### **Staff**

- Neelima Palacherla, Executive Officer
- Emmanuel Abello, Associate Analyst
- Sonia Humphrey, Clerk
- Mala Subramanian, Counsel

### **2. PUBLIC COMMENTS**

One public speaker: Virginia Chang Kiraly, San Mateo LAFCO Commissioner

**3. APPROVE CONSENT CALENDAR**

MOTION: Lee	SECOND: Trumbull	
AYES: Arenas, Chapman, Kamei, Kishimoto, Lee, Melton, Trumbull		
NOES: None	ABSTAIN: None	ABSENT: None

**Commission Action:** Chairperson Melton added Agenda Item #7 to the Consent Calendar and the Commission approved the Consent Calendar, including items #4, #6 and #7.

**\*4. TAKEN ON CONSENT: APPROVE MINUTES OF JUNE 5, 2024 LAFCO MEETING**

The Commission approved the minutes of the June 5, 2024 meeting.

**PUBLIC HEARING**

**5. COMPREHENSIVE REVIEW AND UPDATE OF LAFCO POLICIES**

MOTION: Arenas	SECOND: Trumbull	
AYES: Arenas, Chapman, Kamei, Kishimoto, Lee, Melton, Trumbull		
NOES: None	ABSTAIN: None	ABSENT: None

**Commission Action:**

- a. The Commission received the presentation on the Comprehensive Review and Update of LAFCO Policies – Phase 1.
- b. The Commission accepted public comments on the proposed LAFCO policy revisions. The Commission did not take any final action on the proposed LAFCO policy revisions at the meeting. The Commission directed staff to provide an opportunity specifically to the Office of County Counsel, San Jose City Attorney’s Office and the Santa Clara County Special Districts Association to comment on the proposed policy updates particularly as they relate to farmworker housing and out-of-agency service contracts.

**ITEMS FOR ACTION / INFORMATION**

**\*6. TAKEN ON CONSENT: PROFESSIONAL SERVICES AGREEMENT WITH ASSURA SOFTWARE, LLC FOR THE DEVELOPMENT OF A CUSTOMIZED DATABASE AND FOR PROVIDING ONGOING LICENSING AND ANCILLARY SUPPORT SERVICES**

**Commission Action:** The Commission approved the professional services agreement with Assura Software, LLC, for the design and development of a customized database to process LAFCO applications, track public inquiries, and manage the LAFCO contacts directory; and for providing ongoing licensing and ancillary support services, including, hosting, and technical support.

**\*7. TAKEN ON CONSENT: FY 2023-2024 LAFCO ANNUAL REPORT**

**Commission Action:** The Commission accepted the FY 2023-2024 LAFCO Annual Report.

**8. COMMISSIONER REPORTS**

There were none.

**9. NEWSPAPER ARTICLES / NEWSLETTERS**

There were none.

**10. WRITTEN CORRESPONDENCE**

There were none.

**11. ADJOURN**

The Commission adjourned at 3:11 p.m., to the next regular LAFCO meeting on December 4, 2024, at 1:15 p.m., in the Board of Supervisors' Chambers, 70 West Hedding Street, San Jose.

Approved on December 4, 2024

\_\_\_\_\_  
Russ Melton, Chairperson  
Local Agency Formation Commission of Santa Clara County

Prepared by: \_\_\_\_\_  
Sonia Humphrey, LAFCO Clerk





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**Commissioners**

Sylvia Arenas  
Jim Beall  
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Otto Lee  
Russ Melton  
Terry Trumbull

**ITEM # 5**

**Alternate Commissioners**

Domingo Candelas  
Helen Chapman  
Cindy Chavez  
Teresa O'Neill  
Mark Turner

**Executive Officer**

Neelima Palacherla

**LAFCO MEETING: December 4, 2024**

**TO: LAFCO**

**FROM: Neelima Palacherla, Executive Officer  
Dunia Noel, Asst. Executive Officer  
Emmanuel Abello, Analyst**

**SUBJECT: COMPREHENSIVE REVIEW AND UPDATE OF LAFCO  
POLICIES – PHASE 1**

**STAFF RECOMMENDATIONS**

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1. Adopt the proposed updated Chapter 2: Sphere of Influence (SOI) Policies as recommended by the LAFCO Policies Ad-Hoc Committee.
2. Adopt the proposed updated Chapter 3: Urban Service Area (USA) Policies as recommended by the LAFCO Policies Ad-Hoc Committee.
3. Adopt the proposed updated Chapter 4: Annexation, Detachment, and Reorganization Policies as recommended by the LAFCO Policies Ad-Hoc Committee.
4. Consider Policy # 5.2.4: "LAFCO Determination of Exemptions" and adopt the proposed updated Chapter 5: Out-of-Agency Services by Contract (OASC) policies, as recommended by the LAFCO Policies Ad-Hoc Committee.
5. Adopt the proposed updated Chapter 6: Island Annexation Policies as recommended by the LAFCO Policies Ad-Hoc Committee.
6. Adopt the proposed updated Chapter 7: Agricultural Land Preservation and Mitigation Policies as recommended by the LAFCO Policies Ad-Hoc Committee.
7. Adopt the proposed updated Chapter 8: Urban Growth Boundaries (UGB) Policies as recommended by the LAFCO Policies Ad-Hoc Committee.
8. Rescind the existing Boundary Agreement Lines Policies, and the Policies for Gilroy Agricultural Lands as they are no longer applicable.
9. Determine that the proposed update of LAFCO policies is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines §15060(c)(2) and §15060(c)(3).

## **PROJECT BACKGROUND**

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The first phase of the Comprehensive Review and Update of LAFCO Policies is focused on reviewing and updating, as necessary, the key policies that apply to processing typical LAFCO applications. Phase 1 includes seven chapters, specifically:

- Sphere of Influence (SOI) Policies (Chapter 2)
- Urban Service Area (USA) Policies (Chapter 3)
- Annexation, Detachment, and Reorganization Policies (Chapter 4)
- Out-of-Agency Service by Contract (OASC) Policies (Chapter 5)
- Island Annexation Policies (Chapter 6)
- Agricultural Land Preservation and Mitigation Policies (Chapter 7)
- Urban Growth Boundaries Policies (Chapter 8)

### **Initial LAFCO Public Hearing and First Round of Public Comments**

On August 30, 2024, staff released the proposed revisions to the above-listed LAFCO policies for public review and comment; and issued a Notice of Availability and a Notice of LAFCO Public Hearing to local agencies and interested parties, providing a link to the project webpage for the Phase 1 LAFCO Policies Comprehensive Review and Update.

On October 2, 2024, LAFCO held an initial public hearing on the Phase 1 proposed policy revisions. Detailed information on the proposed revisions to each of the policies and an explanation of the proposed revisions is provided in the [October 2<sup>nd</sup> staff report](#) – linked here and available on the LAFCO website. At the October LAFCO public hearing, the Commission received a staff presentation and accepted oral public comment on the proposed policies. LAFCO also received written comments on the proposed policies from local agencies, interested parties, and members of the public.

The Commission did not take any final action on the policies at that meeting. However, the Commission directed staff to specifically provide an opportunity to the Office of County Counsel, the San Jose City Attorney's Office, and the Santa Clara County Special Districts Association, to comment on the proposed policies, particularly as they pertain to farmworker housing and out-of-agency service contracts.

Staff has reached out to many of the local agency representatives who provided written comments in this first round (by October 2<sup>nd</sup>), to gain a clearer understanding of their concerns, and collaborate on solutions to address the issues or questions raised.

### **LAFCO Policies Ad-Hoc Committee Recommendations**

The LAFCO Policies Ad-Hoc Committee met in October to discuss the comments received. Staff worked closely with the Ad-Hoc Committee to prepare responses to the comments, and where appropriate, to revise the policies in response to the

comments. Please see **Attachment A** for the ten comment letters received by October 2<sup>nd</sup>, and **Attachment B** for the table of responses to the comments.

The Ad-Hoc Committee recommended revisions to Chapters 2, 3, 4, 5, and 6 to address the comments received; these revisions are presented as tracked changes. No changes were necessary to Chapters 7 and 8. Each of the seven chapters recommended by the Ad-Hoc Committee for adoption by the full Commission are included in **Attachment C**.

Additionally, the Ad-Hoc Committee recommended that prior to adoption of Chapter 5, the full commission consider and make a final decision on how best to address “Policy #5.2.4: LAFCO Determination of Exemptions”. To aid the Commission’s discussion of Policy #5.2.4, the Ad-Hoc Committee directed staff to prepare options and analysis for the commission’s consideration. Please see discussion and staff analysis below.

The Ad-Hoc Committee also directed LAFCO Counsel to get feedback from the County Counsel’s Office, on Policies #3.4, #5.2, #5.3.2, and #5.3.3 – specifically whether there are any unintended consequences or obstacles for the County’s agricultural worker housing program.

### **Second Round Public Review and Comment Period**

On October 29, staff published the responses to public comments received and the proposed policy revisions for a second round of public review and comment. A [Notice of Availability and Public Hearing](#) was sent to all local agencies and interested parties. As directed by the Commission on October 2<sup>nd</sup>, these policies were specifically provided to the County Counsel’s Office, San Jose City Attorney’s Office and to the Special Districts Association. LAFCO received two comment letters prior to November 13, which are included in **Attachment D**. As indicated in the Notice of Availability, staff has prepared responses to the comments received. A table with staff responses to the comments is presented in **Attachment E**.

As per the direction of the Ad-Hoc Committee, LAFCO Counsel reached out to the County Counsel’s Office on October 29, to receive feedback on the proposed policies, specifically whether there are any unintended consequences to the County’s agricultural worker housing program. Following a November 7<sup>th</sup> discussion between LAFCO Counsel and County Counsel’s Office, the County Counsel’s Office provided a comment letter (included in **Attachment D**) on November 25th. Staff responses to the comments from the County Counsel’s Office are also included in **Attachment E**.

### **POLICY # 5.2.4: LAFCO DETERMINATION OF EXEMPTIONS**

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Policy #5.2.4 in Chapter 5: Out-of-Agency Service by Contract (OASC) Policies, has to do with the issue of who should determine whether a proposed OASC is exempt from LAFCO approval under GC §56133(e). As you know, GC §56133 requires that a city or special district must apply for and obtain LAFCO approval before providing new or extended services by contract or agreement outside its jurisdictional boundaries, unless exempt pursuant to GC §56133(e).

There are essentially two options for LAFCO to consider in terms of who should determine whether a proposed OASC is exempt under GC §56133(e). Under Option 1, the determination is made by LAFCO through a transparent uniform process. Under Option 2, the determination is made by the agency providing the requested service by contract through that agency's own process.

This issue of who should determine whether a proposed 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.

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.”

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 as to 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 transparency and uniformity in the decision-making process and in the determination.

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.

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. While it is currently not a written policy, LAFCO staff regularly receives inquiries from local agencies seeking clarification on whether their proposed service extensions would qualify as exempt from LAFCO approval.

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.

Moreover, the proposed process to determine if an OASC proposal is exempt from LAFCO approval is straightforward and is not burdensome — it requires only a phone call or an email, and there is no application or fee involved.

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.

## **ENVIRONMENTAL ANALYSIS**

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The purpose of the comprehensive review and update of the current LAFCO policies is to better enable LAFCO to meet its legislative mandate, make the policies consistent with recent changes to LAFCO law, better document current/historic practices, and provide ease of use and better guidance to affected agencies, public, and potential applicants; and increase clarity and transparency of LAFCO’s policies and expectations.

The proposed Phase 1 LAFCO policy revisions include changes to the overall organization and structure of the current LAFCO policies; removal of incorrect and/or expired references to State law and inclusion of new references to relevant code sections of State law; text changes to reflect changes in State law or to provide background information.

The approval of the proposed revisions to Santa Clara LAFCO Policies – Phase 1 is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and, Section 15060(c)(3) (the activity is not a project as defined in Section 15378) because the proposed revisions to Santa Clara LAFCO policies reflect existing provisions of the Government Code that are already State law, existing policies of LAFCO that are already under implementation, historic or current Santa Clara LAFCO practice, or are entirely procedural (non-substantive) in nature.

## **NEXT STEPS**

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Upon adoption of the policies by the Commission, staff will prepare a final version of the updated LAFCO policies, compile them in a policies handbook for publication on the LAFCO website and for digital distribution to local agencies and interested parties.

### **Phase 2 to Begin in Early 2025**

In early 2025, staff will begin work on Phase 2 of the Comprehensive Review and Update of LAFCO Policies which will focus on the review and update of LAFCO’s remaining policies, including service review policies, other policies such as incorporation policies used less frequently, and policies and procedures that are related to administrative functions.

## **ATTACHMENTS**

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- Attachment A: First Round Comment Letters Received by October 2<sup>nd</sup>
- Attachment B: Table of Responses to First Round Comments
- Attachment C: Proposed Policies Recommended by the Ad-Hoc Committee –
- Chapter 2: Sphere of Influence (SOI) Policies
  - Chapter 3: Urban Service Area (USA) Policies
  - Chapter 4: Annexation, Detachment, and Reorganization Policies
  - Chapter 5: Out of Agency Services by Contract (OASC) Policies
  - Chapter 6: Island Annexation Policies
  - Chapter 7: Agricultural Land Preservation and Mitigation Policies
  - Chapter 8: Urban Growth Boundaries Policies
- Attachment D: Second Round Comment Letters Received by LAFCO
- Attachment E: Table of Responses to Second Round Comments

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

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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](mailto: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](#)

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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

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---

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](mailto: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](#)

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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](mailto:Cindy.McCormick@cityofgilroy.org)  
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# Community Development Department

Sharon Goei  
DIRECTOR

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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*".<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.

---

<sup>1</sup> *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](http://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

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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  
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[Openspaceauthority.org](https://www.openspaceauthority.org)

*We care for nature, so nature can care for you. [Visit our website](#) to discover the countless benefits of investing in nature to secure a better future for all.*



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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](#)

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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

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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](http://www.rcdsantaclara.org)  
[smoreno@gcrsd.org](mailto:smoreno@gcrsd.org)  
831-235-1799 Cell





# North Santa Clara Resource Conservation District

*An independent special district of the State of California*

888 N. 1<sup>st</sup> Street, Suite 204, San Jose, CA 95114

[www.rcdsantaclara.org](http://www.rcdsantaclara.org)

[gcrd@gcrd.org](mailto:gcrd@gcrd.org)

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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.<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

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<sup>1</sup> [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)

<sup>2</sup> <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.<sup>3</sup>

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.

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](mailto:smoreno@gcrd.org)

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

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

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

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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](mailto:jaria.jaug@wpusa.org)
- [wpusa.org](http://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.

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from:

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

Measure AA 2024



**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.

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

#	COMMENT	RESPONSE
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>

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

#	COMMENT	RESPONSE
	<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>

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

#	COMMENT	RESPONSE
	<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>
2.	<p><b>COMMENTER: Adam Paszkowski, Principal Planner, City of Morgan Hill, Received 09/25/24</b></p>	
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>

**COMPREHENSIVE REVIEW AND UPDATE OF LAFCO POLICIES  
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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 “<i>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.</i>” 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.
<b>4.</b>	<b>COMMENTS: 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><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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#	COMMENT	RESPONSE
	<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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#	COMMENT	RESPONSE
9.	<b>COMMENTER: 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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#	COMMENT	RESPONSE
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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	<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>

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	<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>



## CHAPTER 2. SPHERE OF INFLUENCE POLICIES

### 2.1 SPHERE OF INFLUENCE (SOI) DEFINED

State law (GC §56076) defines a Sphere of Influence as “a plan for the probable physical boundaries and service area of a local agency, as determined by the Commission.” Local agency includes special districts and cities. In other words, a SOI boundary under State law represents the outermost possible extent of a local agency’s territorial jurisdiction and service area.

Consistent with State law, a SOI should be based on a number of factors, including sound planning principles related to a local agency’s physical geography, its anticipated and desired growth, its ability to accommodate land uses and development in a safe and appropriate manner consistent with state goals and policies, and its ability to plan for and provide services in a cost effective and efficient manner.

In Santa Clara County, the SOI is of critical importance to special districts as it delineates their potential physical boundaries and service area. However, the inclusion of an area within a city’s SOI boundary is not an indication that the city will either ultimately annex or provide services in the area. The critical boundary for cities is the Urban Service Area (USA), which is the definitive, Santa Clara LAFCO-adopted planning boundary indicating whether an area will be potentially annexed and provided with urban services. Santa Clara LAFCO-approved USAs serve the objectives of the Cortese-Knox-Hertzberg Act, such as directing the location of urban development to prevent urban sprawl, ensuring an agency’s ability to provide efficient services, and preserving agricultural and open space lands. Therefore, for cities in Santa Clara County, USAs serve the objectives of SOIs as defined in state law.

To summarize, in Santa Clara County, the following definitions are maintained:

**Special Districts SOI:** SOI for a special district, means a plan for the probable physical boundaries and service area of the district, as determined by Santa Clara LAFCO.

**Cities SOI:** For cities in Santa Clara County, a SOI generally delineates areas where the city and County have shared interests in preserving non-urban levels of land use and does not necessarily indicate areas that a city will annex or provide with urban services.

The role of USAs and the Countywide Urban Development Policies (CUDPs), both unique to Santa Clara County, are further defined and articulated in two separate chapters of the Santa Clara LAFCO policies. To fully understand how the use and application of SOI boundaries currently function in Santa Clara County, it is important to understand both the legislative history and local evolution of SOIs as a planning concept.

### 2.2 LEGISLATIVE HISTORY

Since 1963, State legislation has provided LAFCOs with authority to initiate and conduct studies on the structure of local government and the provision of services within the county. The intent of this permissive authority was to encourage LAFCOs to establish long range, comprehensive goals and plans for implementing their mandated purpose of

"discouraging urban sprawl and encouraging the orderly formation and development of local agencies."

The State Legislature declared in 1972 that LAFCOs must perform studies if they are to meaningfully carry out their "purposes and responsibilities for planning and shaping the logical and orderly development and coordination of local governmental agencies so as to advantageously provide for the present and future needs of the county and its communities". With this declaration, the Legislature amended the Knox-Nisbet Act to mandate LAFCOs to develop and determine the "sphere of influence" of each local agency within the county.

In 1983, the Cortese-Knox Act was amended to require LAFCOs to determine the SOI of each local agency by January 1, 1985, and to mandate that all changes of organization must be consistent with adopted SOIs.

The laws were further amended with the Cortese-Knox-Hertzberg Local Government Reorganization Act (CKH Act) of 2000, which requires LAFCOs to conduct a service review prior to or in conjunction with the establishment or amendment of a local agency's SOI. Furthermore, the CKH Act requires LAFCOs to review and update, as necessary, each local agency's SOI before January 1, 2008, and every five years thereafter, as needed.

These successive changes to State law reflect the evolution of state policy for SOIs to secure the purposes of state LAFCO laws and ensure proper functioning of local agencies in the delivery of services. The evolution of SOI boundaries and policies in Santa Clara County follows the evolution of SOIs in state law, as well as reflecting the unique circumstances of Santa Clara County as it responded to the challenges of rapid, unplanned, uncontrolled sprawl in the decades immediately following World War II.

### **2.3 DEVELOPMENT OF CITY AND SPECIAL DISTRICT SPHERES OF INFLUENCE IN SANTA CLARA COUNTY**

One of the first matters that the Santa Clara LAFCO addressed upon its creation in 1963 was to establish "sphere of influence" boundaries to prevent further annexation wars. These original SOIs (later to be known as boundary agreement lines) divided the county into 15 parts and were nothing more than boundaries between each of the fifteen cities to prevent a city from annexing territory in the area of interest of another. This process of establishing SOIs (or boundary agreement lines) was essentially completed in 1967.

These boundaries put a temporary halt to the annexation wars, and their adoption set the stage for the collaborative development and adoption of the CUDPs by Santa Clara LAFCO, the County and the 15 cities, including the establishment of USA boundaries for each of the 15 cities.

These original SOI boundaries in many cases extended from city limits outward to the county boundary, well beyond any interest of the cities regarding annexation, much less a city's ability to serve such an expansive area. In this regard, they furthermore did not meet the intent of the subsequent 1972 SOI mandates as prescribed in the Knox Nisbet Act.

Consequently, in June 1976, Santa Clara LAFCO renamed the SOI boundaries as the 'boundary agreement lines' and established new SOI boundaries for cities in a manner

more closely related to the state requirements. These new SOI boundaries for cities generally corresponded to the outer limits of a city's planning interest, as shown on the land use diagrams of a city general plan, and inherently included areas where both the County and the city had shared interests. It is important to note that by 1973, the County and cities had mutually agreed to the CUDPs whereby urban development would henceforth be confined to lands in city jurisdiction, and lands outside city USAs would be primarily conserved for agriculture, open space, natural resource protection, and related goals of environmental stewardship.

In 1985, Santa Clara LAFCO completed its efforts in fulfillment of state laws and formally adopted SOI boundaries for all special districts, after completing a comprehensive review and analysis necessary to make the determinations required in state law.

Between 2005 and 2010, Santa Clara LAFCO conducted its first round of service reviews and comprehensively reviewed and updated the spheres of influence of the 15 cities and 28 special districts in the county. Since that time, Santa Clara LAFCO has continued to conduct service reviews and to review and update, as necessary, the spheres of influence of cities and special districts.

## **2.4 CURRENT ROLE AND PURPOSES OF SOI BOUNDARIES**

Sphere of Influence boundaries serve multiple purposes and may be used to:

- Promote orderly urban development
- Promote cooperative planning efforts among cities, the county and special districts to address concerns regarding land use and development standards, premature conversion of agricultural and open space lands and efficient provision of public services
- Serve as a master plan for future local government reorganization by providing long range guidance for efficient provision of public services; shaping logical governmental entities able to provide services in the most economic manner, avoiding expensive duplication of services or facilities
- Guide consideration of proposals and studies for changes of organization or reorganization

## **2.5 SOI ADOPTION AND AMENDMENT POLICIES**

Santa Clara LAFCO's policies for SOIs reflect the fundamental mandates of state law, the specific roles of SOIs within Santa Clara County, and appropriate procedural considerations for future changes to SOIs. The following are Santa Clara LAFCO's policies regarding the adoption, updating, and amendment of spheres of influence:

1. **Mandate.** Consistent with GC §56425(a), LAFCO must adopt and maintain a SOI for each city and special district.
2. **Consistency with SOI:** Pursuant to GC §56375.5, LAFCO cannot take actions that are inconsistent with a SOI.

3. **Timing of Initial Adoption.** State law (GC §56426.5) directs LAFCOs to establish SOIs within one year of the effective date of formation of a special district or incorporation of a new city.
4. **Review and Updates.** Consistent with GC §56425(g), LAFCO shall review and update as necessary, each sphere of influence every five years.
5. **Initiation.** Pursuant to GC §56428(a), any person or local agency may file a written request and application with the LAFCO Executive Officer requesting LAFCO to amend an adopted SOI. Although determination of the SOI is a LAFCO responsibility, LAFCO encourages the participation of the subject city or special district and other stakeholders.
6. **Statement of Determinations.** Pursuant to GC §56425(e), in determining a SOI for a city or special district, LAFCO must consider and prepare a written statement of determinations regarding the following:
  - a. The present and planned land uses in the area, including agricultural and open space lands
  - b. The present and probable need for public facilities and services in the area
  - c. The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide
  - d. The existence of any social or economic communities of interest in the area if the Commission determines that they are relevant to the agency
  - e. For an update of the SOI of a city or special district that provides public facilities or services related to sewers, municipal or industrial water, or structural fire protection, the present and probable need for those public facilities and services of any disadvantaged unincorporated communities within the existing SOI
7. **Establishment of Special District Function and Classes of Service.** Additionally, when adopting, amending, or updating the SOI for a special district, LAFCO shall establish the nature, location, and extent of any functions or classes of services provided by existing districts and may require existing districts to file written statements with LAFCO specifying the functions or classes of service provided by the districts. (GC §56425 (i), (j))
8. **Service Review Requirement.** Consistent with GC §56430, LAFCO will prepare a service review prior to or in conjunction with the establishment or update of the SOI unless LAFCO determines that a prior service review is adequate. A SOI amendment that does not have any adverse regional, planning, economic, service, or environmental impacts will not require a service review.
9. **Consistency with Service Reviews.** LAFCO will consider applicable service reviews when rendering SOI determinations and discourage SOI amendments that undermine service review determinations and recommendations.

10. **City SOIs and Annexation.** Inclusion of territory within a city SOI should not necessarily be seen as an indication that the city will either annex or develop such territory to urban levels. The USA boundary shall serve as an indication of a city's intent for annexation, urban development and provision of urban services.
11. **Overlapping SOIs.** Spheres of Influence for cities and special districts may overlap when both agencies expect to provide different services to the area.
12. **Special Districts Providing Urban Services Outside City USAs.** Consistent with the intent of the CUDPs that urban development should occur within city USAs, and that urban services necessary for urban development should only be provided within adopted USAs, SOIs for special districts which provide urban services outside USAs shall be aligned as closely as possible with existing city USAs. LAFCO shall discourage expansion of the SOI of a special district that would extend urban services for purposes of promoting new development in unincorporated areas outside city USAs.
13. **Service Duplication.** LAFCO will discourage duplications in service provision when establishing a new SOI or amending an existing SOI.
14. **Special District "Zero SOIs."** Where a special district is coterminous with or lies substantially within the boundary or SOI of a city or another district which is capable of providing the service, the special district may be given a zero sphere of influence which encompasses no territory. The zero sphere of influence designation indicates LAFCO's determination that after consideration of all factors in GC §56425, the agency should cease to exist and that its public service responsibilities should be re-allocated to another agency, as necessary, through consolidation, merger, dissolution or establishment as a subsidiary district. The CKH Act specifies the criteria and procedures for the initiation of such subsequent reorganizations, and for the LAFCO review and approval process. Therefore, a zero SOI does not mean that LAFCO will automatically dissolve a district.
15. **City SOI Updates and Required Meeting with County.** Prior to a city submitting an application to LAFCO to update its SOI, the city shall complete the requirement contained in GC §56425(b) to meet with the County to discuss the proposed new SOI boundary and explore methods to reach agreement on development standards and planning and zoning requirements within the SOI. The purpose of this requirement is to consider city and County concerns and promote logical and orderly development within the SOI.

Pursuant to GC §56425(b) & (c), if an agreement is reached between the city and the County, the city must forward the agreement to LAFCO along with its application to update the SOI. LAFCO shall consider the agreement when determining the city's SOI and give it great weight, to the extent that it is consistent with LAFCO policies. If LAFCO's final SOI determinations are consistent with the agreement, the city and the County must adopt the agreement at noticed public hearings. After the agreement is adopted by the city and county and reflected in their respective General Plans, any County-approved development within the SOI must be consistent with the agreement terms.

Pursuant to GC §56425(d), if no agreement is reached between the city and the County, the application may be submitted to LAFCO and LAFCO shall consider a SOI for the city consistent with LAFCO policies.

## **CHAPTER 3. URBAN SERVICE AREA POLICIES**

### **3.1 INTRODUCTION**

In Santa Clara County, Urban Service Areas (USAs) are geographic planning areas that encompass all lands, incorporated or unincorporated, intended to be urbanized and provided with urban services and infrastructure upon annexation to a city.

The definition and application of USAs in Santa Clara County are unique and are part of a long-standing countywide growth management framework referred to as the Countywide Urban Development Policies (CUDPs). Under these policies, urban expansion is to occur in an orderly, efficient, and planned manner within cities, which are solely responsible for planning and accommodating urban development within explicitly adopted USA boundaries whose location and expansion is subject to Santa Clara LAFCO approval.

The USAs were first proposed by each of the 15 cities and adopted by Santa Clara LAFCO in 1972-1973 as further documented in the Countywide Urban Development Policy # 1.4. With the continued implementation of the CUDPs since the early 1970s, Santa Clara LAFCO assumed a critical role as the arbiter of urban area expansion through the review and amendment of USAs. This role gives Santa Clara LAFCO the responsibility to protect natural resource lands while facilitating the development of vibrant, more sustainable communities. Santa Clara LAFCO's ongoing mission creates public value across Santa Clara County, limiting unnecessary urban expansion, promoting appropriate infill and redevelopment, minimizing public service costs, and preserving the remaining vital natural and open space resources from which the county as a whole benefits.

Because of its advance review and determination of USA boundaries, Santa Clara LAFCO does not review proposals for city annexation of unincorporated lands located within a city's USA. State law [Government Code (GC) §56757] gives cities in Santa Clara County the authority to conduct and approve such annexations within their USA boundaries if the proposals are initiated by city resolution and meet certain conditions.

### **3.2 URBAN SERVICE AREAS DEFINED**

In Santa Clara County, USA boundaries delineate and differentiate those areas intended to be urbanized from those areas not intended to be urbanized. USAs include lands currently urbanized and annexed to cities and provided with urban services, as well as unincorporated lands that a city intends to annex in order to develop those lands and provide them with urban services within five years.

USAs intentionally exclude natural resource lands, such as agricultural and open space lands; and lands deemed generally unsuited for urban development, such as bay lands, floodplains, wetlands, hillsides and mountainous lands, seismic and/or geologic hazard areas, and very high fire hazard areas.

### 3.3 URBAN SERVICE AREA AMENDMENT PROCEDURAL POLICIES

The following procedures apply for processing of urban service area amendment proposals:

1. **Initiation.** All USA amendments require Santa Clara LAFCO approval. An USA amendment request must be initiated by city council resolution and application to LAFCO.
2. **City Evaluation.** While a city may process requests for USA amendments on behalf of property owners, it is the city's responsibility as the LAFCO applicant to first evaluate whether the request is consistent with the applicable city, county, and LAFCO policies and determine whether the city supports the request.
3. **Pre-Application Meeting.** In order to aid the city's evaluation of an USA amendment request, LAFCO encourages the city to have a pre-application meeting with LAFCO staff as early as possible to discuss its USA amendment plans and obtain more information on the LAFCO policies and procedures that may apply to the specific proposal.
4. **Major General Plan Updates.** LAFCO requires that a city establish a stable baseline of its service plans and land use designations for LAFCO's evaluation of its USA amendment request. Therefore, LAFCO will not accept an USA amendment request from a city that is in the process of conducting a major General Plan update which involves changes to land use designations and service plans. LAFCO staff may consider limited exceptions on a case-by-case basis.
5. **USA Amendment Request Frequency.** Each city may submit an USA amendment request to LAFCO once in a calendar year. The date the application is heard by LAFCO shall determine the calendar year. USA amendment requests shall be limited to once a year in order to encourage a city to consider and understand the comprehensive impacts of USA amendments on its services, facilities / infrastructure, fiscal health, and the environment; and to ensure that LAFCO considers such requests in a similarly comprehensive manner. Until a city's application has been heard and acted upon by LAFCO, no further USA amendment requests will be accepted for filing from that city.
6. **Exception to Once-a-Year Rule.** The Commission may make an exception to the once-a-year limitation for USA amendment requests when such amendment is needed to carry out some special institutional development or activity that is in the public interest. Such exceptions shall not normally be extended in connection with proposed residential, commercial, or industrial development.
7. **CEQA.** An USA amendment proposal is considered a project under the California Environmental Quality Act (CEQA). Pursuant to CEQA, a city would be the Lead Agency for such a proposal and LAFCO would be a Responsible Agency. Therefore, LAFCO is required to rely on the city's CEQA documentation (initial study, negative/mitigated negative declaration, environmental impact report, etc.), with few exceptions. Cities must consult with LAFCO on the scoping of CEQA documentation for the potential proposal.

### 3.4 URBAN SERVICE AREA AMENDMENT POLICIES AND EVALUATION CRITERIA

Review and amendment of USA boundaries is Santa Clara LAFCO's primary vehicle for ensuring orderly city growth. Therefore, Santa Clara LAFCO shall carefully consider all USA amendment requests, consistent with LAFCO policies and State law.

USA amendment proposals may involve expansion of an USA to accommodate future growth; retraction of an USA to better align with city's growth and open space / agricultural land preservation plans, and adjustments between cities' USA boundaries to facilitate island annexations and logical boundaries; and enhance service delivery and governance efficiencies.

Consistent with the CUDPs, it is the goal of Santa Clara LAFCO that future urban development and other necessary public facilities such as schools and recreational facilities should be planned and accommodated within existing urban areas, through infill and redevelopment, rather than through the expansion of USA boundaries. Such city-centered, climate-smart growth policies play a critical role in preventing sprawl, ensuring efficient delivery of services, promoting more efficient use of existing urbanized areas, and preserving open space and agricultural lands.

A complementary goal is that where expansion is necessary, it should be done to accommodate the demonstrated need for urban growth in as compact and efficient manner as possible, supportive of the above goal and rationale.

To further these goals and in accordance with GC §56668, Santa Clara LAFCO must take into account many 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. The following are Santa Clara LAFCO's policies and evaluative criteria for considering USA amendment proposals:

1. **Infill and Efficient Development Patterns.** In order to promote efficient development patterns and compact infill development and prevent the ~~premature~~ conversion of agricultural land in accordance with GC §56377, Santa Clara LAFCO shall discourage amendment proposals that seek to expand the USA when a city has a more than 5-year supply of vacant land within its existing USA or when a city does not clearly demonstrate the need for the USA amendment. LAFCO will consider the following evaluative criteria:
  - a. The city's explanation for why the USA amendment is necessary, why infill development is not undertaken first, and how an orderly, efficient growth pattern, consistent with LAFCO mandates will be maintained
  - b. The city's current vacant lands inventory for the same or similar proposed uses prepared in accordance with Santa Clara LAFCO's Vacant Lands Methodology included as Exhibit A. 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.

- c. Whether the city has a more than 5-years supply of vacant lands that can be developed for the same or similar proposed uses as determined by the LAFCO Vacant Lands Methodology. If the city has more than 5-years supply, LAFCO shall consider the city's explanation for the need for more lands at this time, along with all the other factors for considering USA amendment proposals.
- d. Whether and to what extent the city has developed and successfully implemented targeted strategies such as fiscal and regulatory incentives to generate active and more efficient use of vacant and underutilized lands within its existing boundaries
- e. Whether the city has planned for and implemented policies for encouraging higher density development in order to use land more efficiently
- f. Whether the City has applied an appropriate general plan and pre-zoning designation to the proposal area
- g. Whether the proposed urban development is imminent or is likely to occur within the proposal area within the next 5 years
- h. Whether the city has planned for locating its community's facility needs such as schools, and recreational facilities, within its existing boundaries

2. **Impacts to Agricultural and Open Space Lands.** In order to preserve agricultural and open space lands, Santa Clara LAFCO shall discourage amendment proposals that include or adversely impact agricultural lands and open space, consistent with GC §56377(a). LAFCO will consider:

- a. Whether the proposal will result in the ~~premature~~ conversion of prime agricultural lands. As defined in GC §56064, "prime agricultural land" means an area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than an agricultural use and that meets any of the following qualifications:
  - i. Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible
  - ii. Land that qualifies for rating 80 through 100 Storie Index Rating
  - iii. Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Range and Pasture Handbook, Revision 1, December 2003
  - iv. Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre

- v. Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred dollars (\$400) per acre for three of the previous five calendar years
- b. Pursuant to [GC §56668 and GC §56668\(e\)](#), whether the proposal will adversely impact the continued [agricultural](#) productivity and viability of [the](#) proposal area, and/or adjacent/surrounding [agricultural](#) lands, including but not limited to the following factors:
  - i. Whether the proposal area, and/or adjacent/surrounding lands are located within an Agricultural Resource Area or Agricultural Preservation Area designated by the County, a city, or another public land conservation entity
  - ii. Whether the proposal area, and/or adjacent/surrounding lands are located within a designated Agricultural Zoning District in an adopted County and/or City Zoning Ordinance
  - iii. Whether the proposal area, and/or adjacent/surrounding lands are designated “Agriculture” in an adopted County and/or City General Plan
  - iv. Whether the proposal would introduce incompatible land uses into an agricultural area, generate urban/agricultural conflicts, or promote land speculation and disinvestment in agriculture – disrupting the conditions necessary for agriculture to thrive
  - v. Whether public facilities or infrastructure (e.g. such as roads, sanitary sewers, water lines, stormwater drainage facilities) related to the proposal would be sized or situated as to facilitate conversion of agricultural lands located outside of the proposal area, or will be extended through adjacent/surrounding agricultural lands
  - vi. Whether natural or man-made barriers serve to buffer agricultural or existing open space lands outside of the proposal area from the effects of the proposal
  - vii. Whether the proposal area, and/or adjacent/surrounding lands include lands that are subject to a Williamson Act contract or Farmland Security Zone contract
  - viii. Whether the proposal area, and/or adjacent/surrounding lands are under an agricultural or open space conservation easement
  - [ix. Whether the proposal area, and/or adjacent/surrounding lands are designated in the Department of Conservation’s Farmland Mapping and Monitoring Program as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, or Farmland of Local Importance](#)
- c. The city’s explanation for why the conversion of agricultural lands and/or open space is necessary to promote the planned, orderly, efficient development of the city
- d. Whether the city has developed and successfully implemented measures/plans to first avoid and minimize the conversion of agricultural or

open space lands prior to bringing forward a proposal that involves conversion of agricultural or open space lands; and in instances where it is not possible to avoid or minimize conversion, whether the proposal contains mitigation for the conversion of any such lands consistent with LAFCO policies

- e. If an amendment proposal includes agricultural or open space lands for the purpose of preservation, LAFCO will require an explanation of why the inclusion of agricultural or open space lands is necessary and a demonstration that effective measures have been adopted for permanently protecting the agricultural or open space status of the affected territory. Such measures may include:
  - i. Acquisition and transfer of ownership of agricultural land or transfer of agricultural conservation easements to an agricultural conservation entity for permanent protection of the agricultural land
  - ii. Acquisition and transfer of ownership of open space or transfer of open space easements to a conservation entity for permanent protection of the open space land

3. **Logical, Orderly Boundaries.** LAFCO shall discourage amendment proposals that will not result in logical and orderly boundaries. LAFCO will consider:

- a. Whether the boundaries of the proposal are contiguous with the current USA [GC §56757(c)(6) and GC §56668(f)]
- b. Whether the proposal will result in islands, flags, peninsulas, corridors or other irregular boundary configurations which are illogical and/or difficult to serve [GC §56757(c)(4)]
- c. Whether the boundaries of the proposal follow natural and man-made features, such as ridge lines, drainage areas, watercourses, edges of right-of-way, and lines of assessment or ownership [GC §56668(a)]
- d. Whether the proposed boundaries would result in an ~~an premature~~ intrusion of urbanization into a predominantly agricultural or rural area [GC §56668(d)]

4. **Avoid Natural Hazard Lands.** In order to minimize public exposure to risks associated with natural hazards and limit unplanned public costs to maintain and repair public infrastructure, LAFCO shall discourage USA expansions into lands designated very high fire hazard zones and into lands subject to other natural hazards such as geologic / seismic hazards, flood hazards, and fire hazards, Pursuant to GC §56668(q), LAFCO will consider maps and information related to fire hazards, FEMA flood zones, earthquake fault zones and landslide hazard zones contained in:

- a. ~~Information contained in a~~ local hazard mitigation plan
- b. ~~A~~Information contained in a safety element of a general plan
- c. Any maps that identify land as a very high fire hazard severity zone pursuant to GC §51178 or maps that identify land determined to be in a state responsibility area pursuant to §4102 of the Public Resources Code

5. **Availability of Adequate Water Supply.** In order to ensure timely availability of water supplies adequate for existing and planned future needs, LAFCO shall discourage amendment proposals that do not clearly demonstrate that an adequate water supply is available to the proposal area(s) pursuant to GC §65352.5, and that water proposed to be provided to new areas does not include supplies needed for unserved properties already within the city, the city's USA or other properties already charged for city water services. In determining water availability pursuant to GC §56668(l), LAFCO will consider the following:
- a. The city's plan for providing water service to the area and its statement of existing water supply including:
    - i. The current version of the city's or water supplier's urban water management plan and capital improvement program or plan, and the current version of the groundwater management agency's groundwater sustainability plan
    - ii. A description of the source or sources of the water supply currently available to the city taking into account historical data concerning wet, normal, and dry runoff years
    - iii. The quantity of surface and groundwater that was purveyed by the city / water supplier in each of the previous five years including a description of the number of service units available; number of service units currently allocated; number of service units that are anticipating future service within the city and its current USA boundary and number of service units needed for the proposal area
  - b. Whether the city is able to provide adequate water supply to the proposal area in the next 5 years, including drought years, while reserving capacity for areas within the city and USA that have not yet developed
  - c. Whether the city is capable of providing adequate services when needed to areas already in the city, in the city's USA or to other properties entitled to service
  - d. If capacity is not reserved for unserved property within the city and its USA, the current estimate of potential unserved properties and related water supply needs
  - e. Whether additional infrastructure and or new water supplies are necessary to accommodate future development or increases in service demand. If so, whether plans, permits and financing plans are in place to ensure that infrastructure and supply are available when necessary, including compliance with required administrative and legislated processes, such as CEQA review, CEQA mitigation monitoring plans, or State Water Resources Board allocation permits. If permits are not current or in process, or allocations approved, whether approval is expected
  - f. Whether facilities or services comply with environmental and safety standards so as to permit acquisition, treatment, and distribution of necessary water

6. **Ability to Provide and Fund Public Services and Infrastructure.** In order to ensure efficient service provision, LAFCO shall discourage amendment proposals that do not clearly demonstrate that the city has the ability to provide and fund services to the proposal area without detracting from current service levels within the city, and in areas that the city has already committed to serve. Consistent with GC §56668(b) and (k), LAFCO will consider:
  - a. The city's plan for providing services (such as sewer, water, police, fire, stormwater, garbage disposal, library, lighting, parks, and street maintenance) within the proposal area prepared in accordance with LAFCO's Guide for preparing a Plan for Service included as Exhibit B, and which pursuant to GC §56653 shall include:
    - i. An enumeration and description of services currently provided and/or to be provided and the corresponding service provider
    - ii. The level and range of those services as well as detailed information on the size, location, and capacity of infrastructure both existing and required
    - iii. Estimated time frame for service delivery
    - iv. A statement indicating capital improvements, or upgrading of structures, roads, sewers, water facilities or other conditions that the city would require in the affected territory prior to providing service
    - v. A description of how the services will be financed
  - b. Whether the proposal is expected to result in any significant increase in service needs and/or new facilities, personnel, apparatus or equipment as a result of adding the proposal area
  - c. Whether the anticipated increase in service needs (e.g. increase in calls for fire and police services) and/or new facilities are likely to result in an increase in service costs and how the city plans to finance the anticipated increase in service costs
  - d. Whether the proposal will require the construction of new infrastructure (e.g. sanitary sewers, water mains, stormwater drainage facilities) and/or expansion of existing infrastructure (e.g. wastewater treatment plant, water treatment plant) and how the city plans to address the associated fiscal impacts
  - e. The ability of school districts to provide school facilities and whether there would be sufficient school capacity available to serve the affected territory at the time of development
7. **Fiscal Sustainability.** In order to ensure fiscal sustainability, LAFCO shall discourage amendment proposals that would have adverse financial impacts on the provision of government services. Consistent with GC §56668(c) & (k), LAFCO will consider the following:

- a. Financial impacts to the County, and to the affected city, special districts, and school districts and the feasibility of measures identified to mitigate any adverse impacts
  - b. Existence of any significant citywide infrastructure maintenance funding gaps and feasibility of the measures identified by the city to address such gaps
  - c. The city's anticipated need for major capital improvement projects related to water, wastewater, stormwater, roads, fire, and police services, and the feasibility of funding measures to address these needs
  - d. City's reliance on reserves to address financial impacts and consistency with the city's adopted reserve policy
8. **Island Annexations.** In order to ensure efficient service provision and orderly growth and development, LAFCO shall discourage USA amendment proposals that seek to add new lands to a city's USA when a city has unincorporated islands existing within its current USA. LAFCO will consider:
- a. Whether the city has initiated and completed annexation proceedings and / or adopted annexation plans and taken appropriate actions to annex its islands as recommended in LAFCO's Island Annexation Policies
  - b. The city's explanation of why annexation of the island(s) is not undertaken first
9. **Conformance with Service Reviews and Spheres of Influence.** In accordance with GC §56668(i), LAFCO shall consider the applicable service reviews and shall discourage amendment proposals that are inconsistent with adopted service review determinations and recommendations, or that are inconsistent with the LAFCO adopted sphere of influence for an affected local agency.
10. **Conformance with City and County General Plans.** In accordance with GC §56668(h), LAFCO shall consider whether the proposed USA amendment is consistent with the current city and county general plans and policies.
11. **Conformance with Regional Transportation Plan.** Consistent with GC §56668(g), LAFCO shall discourage USA amendment proposals that undermine the goals of the Regional Transportation Plan and Sustainable Communities Strategy prepared by the Metropolitan Transportation Commission (MTC) for the nine-county San Francisco Bay Area.
12. **Impacts on Housing.** LAFCO shall discourage USA amendment proposals that undermine Regional Housing Needs Allocation plans, reduce affordable housing stock, or propose additional urbanization without attention to affordable housing needs. LAFCO will consider:
- a. The extent to which the proposal will affect a city or county in achieving their respective Regional Housing Needs Allocation plans as determined by Association of Bay Area Governments (ABAG), consistent with GC §56668(m)

- b. Whether the proposal introduces urban uses into rural areas thus increasing the value of currently affordable rural area housing and reducing regional affordable housing supply
  - c. Whether the proposal directs growth away from agricultural/open space lands towards infill areas and encourages development of vacant land within existing urban areas thus decreasing infrastructure costs and potentially housing construction costs
  - d. Whether funding of infrastructure to support development in the proposal area imposes an unfair burden on residents or customers within the existing boundaries thus impacting housing construction costs in the proposal area and within existing boundaries
13. **Environmental Justice.** In accordance with GC §56668(p), LAFCO will consider the extent to which the amendment proposal will promote environmental justice, specifically the fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins with respect to the location of public facilities and the provision of public services in order to ensure a healthy environment for all people such that the effects of pollution are not disproportionately borne by any particular populations or communities.
14. **Public Comments.** In accordance with GC §56668(j) and (n), LAFCO shall consider comments from any affected public agencies or other public agency, proponents, landowners, voters, interested parties and members of the public.
15. **Agricultural Worker Housing Needs.** In order to promote efficient development patterns and compact infill development and prevent the ~~premature~~ conversion of agricultural land in accordance with GC §56377, Santa Clara LAFCO shall encourage, to the extent possible, 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.

~~a. However, given that a~~ Agricultural workers are an essential component of Santa Clara County's agricultural industry. ~~Santa Clara LAFCO will give special consideration to USA amendment proposals that are for agricultural worker housing which~~ and agricultural worker housing supports the preservation of open space and agricultural lands, continued sustainability of agriculture, delivery of agricultural produce, and continued viability of Santa Clara County's food system. Santa Clara LAFCO will give special consideration to USA amendment proposals that consist solely of agricultural worker housing and that meet both the following requirements:

- i. The city seeking USA amendment has methods (e.g., requirements for recordation of deed restrictions and/or affordability covenants on the property) currently in place to ensure affordability and occupancy of the proposed agricultural worker housing for eligible agricultural workers over the long term and for not less than 55 years.
- ii. The proposed agricultural worker housing will be maintained and operated by a qualified affordable housing organization that has been certified

pursuant to Health & Safety Code §17030.10, a public agency, or an employer providing housing.

b. Santa Clara LAFCO shall, and shall consider the following in evaluating such proposals:

a. i. Whether the proposal fulfills the established need for agricultural worker housing and whether it is consistent with the city and/or County's long-term agricultural land conservation plans

b. ii. Whether the proposed development of agricultural worker housing is imminent or is likely to occur within the proposal area within the next 5 years in accordance with Policy #3.4.1(g)

c. iii. Whether the proposal will result in logical and orderly boundaries in accordance with Policy #3.4.3, and whether the city has the ability to provide and fund necessary public services and infrastructure in accordance with Policy #3.4.6

~~d. 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~~

~~e.~~



# Exhibit A

## SANTA CLARA LAFCO's METHODOLOGY FOR PREPARING A VACANT LANDS INVENTORY

### Policy objective that LAFCO seeks to achieve through the Vacant Lands Inventory

LAFCO will use the information contained in a Vacant Lands Inventory to promote efficient use of land within a city's current boundaries prior to expanding its boundaries.

### What should a Vacant Lands Inventory Include?

A vacant lands inventory provides information on the rate of development within the city and the amount of vacant land located within the city's USA.

The vacant lands inventory is a one-time snapshot of vacant and underutilized lands for the same or similar land uses within the city's urban service area and it must include the following:

- A map showing the location of vacant lands. In terms of scale, a city's general plan land-use diagram or map is appropriate.
- A corresponding table listing the vacant lands with APNs, parcel sizes, current general plan designation, allowed density etc.

### Methodology for Preparing the Inventory

The following definitions and methodology shall apply for the preparation of a vacant lands inventory:

- Vacant lands are undeveloped and/or underutilized lands (i.e., lands developed to less than their ~~maximum~~-~~minimum~~ development potential as identified in the city's current general plan and zoning ordinance) located within the city's Urban Service Area, that have no active building permit.
- The city's current general plan/zoning designations shall define the maximum development potential for the vacant lands.
- The calculation of the rate of absorption of vacant lands within a city shall be based on the average number of building permits issued by the city in the previous 10 years.

**Sample Table of Residential Vacant lands Inventory for City XYZ**

RESIDENTIAL LAND USES	VACANT <b>ACREAGE</b> <b>LANDS</b> (ACRES)	ALLOWED DENSITY (UNITS/ACRE)	MAX. POTENTIAL UNITS
Rural Residential	150	1-2	300
Residential Neighborhood	115	3-8	920
Medium Density Residential	30	8-20	600
High Density Residential	25	21-40	1,000
Mixed Use Neighborhood	12	30-50	600
Specific Plan	52	500 units	500
<b>TOTALS</b>	<b>384</b>		<b>3,920 (A)</b>

**Sample Table of # of Residential Building permits issued by City XYZ in the last 10 years**

Years	# of Building Permits
Year 1	290
Year 2	277
Year 3	301
Year 4	329
Year 5	297
Year 6	318
Year 7	320
Year 8	412
Year 9	422
Year 10	450
Average # of Building Permits	341.6 (B)

**Sample Calculation of the Rate of Absorption of Vacant Land**

Years of residential development that City XYZ can accommodate within its existing vacant land = A/B

$$= 3,920/341.6$$

$$= \mathbf{11.5 \text{ years}}$$

# Exhibit B

## SANTA CLARA LAFCO'S GUIDE FOR PREPARING A PLAN FOR SERVICES

### Policy objective that LAFCO seeks to achieve through the Plan for Services

LAFCO will use the information contained in a Plan for Services to ensure that the proposed service provider is able to adequately provide services to the proposal area without detracting from current service levels within the service providers' current service area or in the areas the service provider has already committed to serve.

### What should a Plan for Service Contain?

A Plan for Service describes the services that would be provided to the proposal area upon LAFCO approval of the proposal. It explains how and when the service provider would provide the services, how much the services would cost and how those costs would be financed and whether the services and costs are considered in the service providers' long range master plans, Capital Improvement Plans, and budgets. The Plan for Service should also include information on whether the service provider is able to **adequately** meet its current service demand and describe any ongoing service or infrastructure deficiencies and the service provider's plan for addressing the deficiencies as specified in its master plans, Capital Improvement Plans, and budgets.

GC §56653 outlines the information that a Plan for Service must contain. Further clarification of the specific requirements is provided below:

1. An enumeration of current and proposed services (including but not limited to water, sewer, storm drainage, solid waste collection, fire, police, lighting, parks, library services, roads and schools) in the proposal area. A description of who currently provides the service and who would provide the service to the proposal area upon LAFCO's approval.
2. The level and range of the service provider's existing services/facilities/ infrastructure that will be used to provide the desired services to the proposal area including detailed information on the extent, size, location and capacity of existing facilities and infrastructure that will be used to provide desired services to the proposal area.
  - 2.a. For each service, the capacity analysis should include:
    - The total capacity / service units of the current system
    - Number of service units already allocated
    - Number of service units within current boundaries anticipating future service
    - Number of service units within the system available after providing service to areas within current boundaries that anticipate future service
    - Number of service units required to serve the proposed project and whether there is enough capacity within the current system
    - Number of service units proposed to be added to meet the demand

- 2.b. In the event there is a need to add service units to serve the proposed project, the applicant shall provide a plan for obtaining the capacity necessary to provide the service which must include the following information:
- Number of service units proposed to be added to meet the demand from the proposal area
  - A description of the required facility or infrastructure (new or expansions), or additional personnel or equipment
  - The viability and likely schedule for completion of the expanded capacity project, its viability, and its relation to the proposal and the proposal timeline
  - A list of required administrative and legislated processes, such as CEQA review or State Water Resources Board allocation permits, including assessment of likelihood of approval of any permits and existence of pending or threatened legal or administrative challenges if known
  - The planned total additional capacity
  - The size and location of needed capital improvements
  - The proposed project cost, financing plan and financing mechanisms including a description of the persons or properties who will be expected to bear project costs, and how much the costs will be
  - Any proposed alternative projects if the preferred project cannot be completed.
3. The estimated time frame for service delivery to the proposal area
  4. A statement indicating any capital improvements, or upgrading of structures, roads, sewer or water treatment facilities or other conditions the agency would impose or require within the affected territory prior to providing service if proposal is approved
  5. A description of the cost of services and how the services will be financed
  6. Agency's general statement of intent to provide services to the affected territory, indicating the agency's capability of providing the necessary services in a timely manner to the affected territory while being able to serve all areas within its current boundaries and without lowering the level of service provided to areas currently being served by the agency

## CHAPTER 4. ANNEXATION, DETACHMENT, AND REORGANIZATION POLICIES

### 4.1 INTRODUCTION

Under generally applicable provisions of state law, Local Agency Formation Commissions (LAFCOs) for each county are designated as the sole approval authority for annexations, detachments, other changes of organization, and reorganizations of local agencies. However, in Santa Clara County, a city annexation or reorganization (e.g., annexation to a city and detachment from one or more special districts) proposed within a city's Urban Service Area (USA) may qualify for a "city-conducted" process, pursuant to Government Code (GC) §56757. Such proposals are not heard by LAFCO, but by the City Council of the appropriate city as described further below.

The policies and procedures for annexation to cities are thus differentiated from those applicable to special districts in Santa Clara County.

The State law definitions of the types of boundary changes addressed in this chapter include the following:

- **Annexation** is a change of organization involving "the inclusion, attachment, or addition of territory to a city or special district." [GC §56017]
- **Detachment** is a change of organization involving "the exclusion, deletion, or removal from a city or district of any portion of the territory of that city or special district." [GC §56033]
- **Reorganization** is the term used for two or more concurrent changes of organizations (e.g. annexation/detachment from a city, and annexation/detachment from a special district) contained in a single proposal. [GC §56073]

### 4.2 CITY ANNEXATIONS, DETACHMENTS AND REORGANIZATIONS

The Countywide Urban Development Policies (CUDPs), jointly adopted by LAFCO, the County and the 15 cities, stipulate that urban development is to occur within cities, rather than in the unincorporated areas; and that development that requires urban services should annex to cities. LAFCO has adopted USAs for each of the cities that include lands currently urbanized and annexed to cities and provided with urban services, as well as unincorporated lands that a city intends to annex in order to develop those lands and provide them with urban services within five years. Therefore, lands that a city intends to annex must first be located within the city's USA, as approved by LAFCO.

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.

Annexation of any remaining unincorporated lands within adopted USAs (i.e. islands) has been a shared goal for the cities, County, and LAFCO. LAFCO policy encourages cities to annex such unincorporated lands in order to accommodate needed growth. (Chapter 6: Island Annexation Policies). The special allowance for "city-conducted" annexations as defined below is also intended to encourage and facilitate annexation of unincorporated lands within USAs.

The following are policies, and evaluative criteria and/or requirements for city annexations.

1. **City-Conducted Annexation.** Pursuant to GC §56757, in Santa Clara County, an annexation or a reorganization proposal that includes city annexation of unincorporated lands located within the USA of a city is not reviewed by LAFCO if the annexation or reorganization proposal is initiated by city council resolution. Further, the city council is required to conduct and approve the annexation or reorganization proposal after making all the following findings:
  - a. The unincorporated territory is located within the USA of the city as adopted by LAFCO.
  - b. The County Surveyor has determined the boundaries of the proposal to be definite and certain, and in compliance with LAFCO's Road Annexation Policies as listed in Policy #4.2.4. The city shall reimburse the county for the actual costs incurred by the County Surveyor in making this determination.
  - c. The proposal does not split lines of assessment or ownership.
  - d. The proposal does not create islands or areas in which it would be difficult to provide municipal services.
  - e. The proposal is consistent with the adopted general plan of the city.
  - f. The territory is contiguous to existing city limits
  - g. The city has complied with all conditions imposed by LAFCO for inclusion of the territory in the USA of the city.
2. **Pre-Zoning.** Consistent with GC §56375(a)(7), Santa Clara LAFCO requires pre-zoning of lands proposed for city annexation. Pre-zoning must be consistent with the city general plan designation for the lands. Both the pre-zoning and the general plan designation shall be considered in reviewing a city annexation proposal.
3. **Change of Pre-Zoning Limitation.** Pursuant to GC §56375(e), no subsequent change may be made to the city general plan or the zoning designations of the annexed territory that is not in conformance to the pre-zoning designations for a period of two years after the completion of the annexation, unless the city council makes a finding at a public hearing that a substantial change has occurred in the circumstances that necessitate the change.
4. **Annexation of Roads.** Cities shall annex appropriate segments of roads, freeways, highways, expressways, private roads or railroad rights-of-way, adjacent to or within the proposed annexation boundaries to ensure logical boundaries and efficient provision of public services. A city annexation proposal shall be designed to include:
  - a. A continuous section of roadway sufficient in length to allow road maintenance, and provision of other services such as policing of the street,

- fire protection, street maintenance, solid waste collection/disposal, by a single jurisdiction in an efficient manner without service duplication.
- b. 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.
  - c. Full-width street sections in increments of not less than one thousand linear feet, or the distance between two consecutive intersections, where 50 percent or more of the frontage on both sides of the street in said increment has been or is to be included in the city.
  - d. Existing short segments of county-maintained road to provide single-agency oversight of a full-width section of the road.
5. **Ability to Provide Public Services / Infrastructure.** Cities shall assume responsibility for ensuring that the annexed territory receives a full range of city services, and the city must clearly demonstrate its ability to provide services to the area proposed for annexation without detracting from current service levels within the city.
  6. **Concurrent Detachment from Special Districts.** Cities shall concurrently detach the affected territory from special districts that will no longer provide service upon annexation to the city.
  7. **Annexation to Special Districts for Services.** Where city annexations necessitate annexation to a special district in order to meet service needs, annexation of territory to the special district is required with consent from the special district. If the annexation territory is located outside the sphere of influence of the special district, LAFCO approval for an amendment of the special district sphere of influence and for annexation must be obtained.
  8. **Annexation of Lands Under Williamson Act.** Pursuant to GC §56856.5, annexation of territory under Williamson Act Contract to a city or special district that would provide 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.
    - a. In evaluating such annexation proposals that involve Williamson Act lands, LAFCO will consider:
      - i. Whether the city or special district will limit the provision of urban services or facilities related to sewer, non-agricultural water or streets and roads to the proposal area.
      - ii. Whether the city that would administer the contract after annexation has adopted policies and feasible implementation measures applicable to the affected territory ensuring the continuation of agricultural use and other uses allowable under the contract on a long-term basis.
      - iii. Whether the proposal encourages or is necessary to provide planned, well-ordered, and efficient urban development patterns that include appropriate consideration of the preservation of open-space lands within those urban development patterns.

- b. In approving city annexation of land subject to a Williamson Act Contract, pursuant to GC §56754, LAFCO shall, based on substantial evidence, determine one of the following:
  - i. That the city shall succeed to the rights, duties, and powers of the county pursuant to GC §51243; or
  - ii. That the city may exercise its options to not succeed to the rights, duties, and powers of the county pursuant to GC §51243.5.
- 9. **Conformance with Service Reviews and Spheres of Influence.** City annexations shall be consistent with city Spheres of Influence (SOI) and shall not undermine adopted service review determinations or recommendations.
- 10. **Annexation of Lands Outside a City's USA for Permanent Preservation of Open Space.** In general, cities are precluded from annexing lands outside adopted USA boundaries. If such annexation is to be considered, LAFCO is the approval authority. LAFCO strongly discourages city annexation of territory located outside a city's USA, unless consistent with the mission and policies of LAFCO.

LAFCO recognizes that in some limited circumstances, city annexations outside USAs may be appropriate, such as annexations that help promote permanent preservation of open space lands. Such annexation proposals outside city USAs will be considered on their merits on a case-by-case basis, and LAFCO shall reconsider allowance of exceptions to the general rule if it appears a pattern of such requests is developing.

In evaluating such annexation proposals, LAFCO shall consider, among other things, the following:

- a. The city's explanation for why the annexation is necessary, why an USA expansion is not appropriate prior to annexation, and how the annexation will result in the permanent preservation of open space.
  - b. Whether effective measures have been adopted for permanently protecting the open space status of the affected territory. Such measures may include acquisition and transfer of ownership of open space or transfer of open space conservation easements to a conservation entity for permanent preservation of the open space.
  - c. Whether the city has applied an appropriate general plan and pre-zoning designation to the proposal area indicating the open space status of the lands.
11. **City Detachments subject to City Support.** Detachment of territory from a city requires LAFCO approval and pursuant to GC §56751, LAFCO may not approve a city detachment proposal if the city adopts and transmits a resolution seeking termination of the proposal.

### 4.3 SPECIAL DISTRICT ANNEXATIONS, DETACHMENTS, AND REORGANIZATIONS

LAFCO is the approval authority for all boundary changes for special districts. State law precludes LAFCO from approving a proposal to annex territory located outside the SOI of the affected special district. Therefore, territory proposed for annexation to a special district must first be located within the affected special district's SOI as approved by LAFCO.

If an annexation proposal includes territory that is located outside the affected special district's SOI, the proposal must include a request to LAFCO for an amendment to the SOI. LAFCO has adopted policies to help guide its consideration of SOI amendment proposals. Please see "Chapter 2. Sphere of Influence Policies" for further information.

In accordance with GC §56668, LAFCO must take into account many factors when considering special district annexation/detachment proposals. Certain factors may be more applicable or relevant than others, depending on the specific proposal and circumstances. The following are LAFCO's policies and evaluative criteria for special district annexation, detachment, and reorganization proposals:

1. **Consistency with Spheres of Influence** In order to promote orderly growth and development, and efficient service provision, and pursuant to GC §56375.5, LAFCO shall not approve a special district annexation proposal located outside of the affected special district's SOI.
2. **Conformance with Service Reviews.** LAFCO shall consider the applicable service reviews and shall discourage proposals that undermine adopted service review determinations or recommendations.
3. **Impacts to Agricultural and Open Space Lands.** In order to preserve agricultural lands and open space, LAFCO shall discourage proposals that include or adversely impact agricultural lands and open space, consistent with GC §56377(a) and GC §56668(e).
4. **Logical, Orderly Boundaries.** LAFCO shall discourage proposals that will not result in logical and orderly boundaries. LAFCO will consider:
  - a. Whether the boundaries of the proposal are contiguous with the existing district boundary [GC §56668(d) & (f)]
  - b. Whether the boundaries of the proposal are definite and certain, and whether the boundaries conform with lines of assessment or ownership [§56668(f)]
  - c. Whether the proposal will result in islands, flags, peninsulas, corridors or other irregular boundary configurations which are illogical and/or difficult to serve [GC §56668(f)]
  - d. Whether the boundaries of the proposal follow natural and man-made features, such as ridge lines, drainage areas, watercourses, and edges of right-of-way [GC §56668(a)]
5. **Special District Annexations to Provide Urban Services outside City USAs.** Consistent with the intent of the Countywide Urban Development Policies (CUDPs) and the County General Plan that prohibit urban development and the provision of

urban services in unincorporated areas outside city USAs; and in order to promote efficient development patterns, and prevent the ~~premature~~ conversion of agricultural land, LAFCO shall discourage special district annexation proposals that would extend urban services such as sewer and water to unincorporated lands outside existing city USAs.

However, LAFCO recognizes that in some limited circumstances, a special district annexation proposal may be in response to an existing threat to public health and safety (e.g., existing septic system failures, well contaminations, or well failures) in the rural unincorporated area, outside city USAs. LAFCO shall consider the following criteria in evaluating such proposals on a case-by-case basis:

- a. Whether the property is currently developed.
- b. Whether the threat to public health and safety is substantial and immediate as documented by the County Department of Environmental Health and whether there are no other feasible means of addressing the situation.
- c. Whether the proposed boundaries would result in a ~~premature~~ intrusion of urbanization into a predominantly agricultural or rural area.
- d. Whether public facilities or infrastructure related to the proposal would be sized to exceed the capacity needed to address the situation and/or the development.
- e. Whether a pattern of such requests is developing, and if so, the cumulative impact of such requests. If a pattern of such requests is developing, LAFCO shall encourage affected agencies to develop and successfully implement measures/plans to first avoid and minimize such requests which may be growth inducing.

6. **Ability to Provide and Fund Public Services and Infrastructure.** In order to ensure efficient service provision, LAFCO shall discourage proposals that do not clearly demonstrate that the special district has the ability to provide services to the proposal area without detracting from current service levels within the special district, and in areas that the special district has already committed to serve. Consistent with GC §56668(b) and (k), LAFCO will consider:

- a. The special district's plan for providing services within the proposal area prepared in accordance with LAFCO's Guide for preparing a Plan for Services included as Exhibit B, and which pursuant to GC §56653, shall include:
  - i. An enumeration and description of services currently provided and/or to be provided and the corresponding service provider
  - ii. The level and range of those services as well as detailed information on the size, location, and capacity of infrastructure both existing and required
  - iii. Estimated time frame for service delivery
  - iv. A statement indicating capital improvements, or upgrading of structures, roads, sewers, water facilities or other conditions that the

special district would require in the affected territory prior to providing service

- v. A description of how the services will be financed
- b. Whether the proposal is expected to result in any significant increase in service needs and/or new facilities, personnel, apparatus or equipment as a result of adding the proposal area.
- c. Whether the anticipated increase in service needs (e.g. increase in calls for fire and police services) and/or new facilities are likely to result in an increase in service costs and how the special district plans to finance the anticipated increase in service costs.
- d. Whether the proposal will require the construction of new infrastructure and/or expansion of existing infrastructure and how the special district plans to address the associated fiscal impacts.



## CHAPTER 5. OUT-OF-AGENCY SERVICE BY CONTRACT POLICIES

### 5.1 INTRODUCTION

The term “out-of-agency service by contract” (OASC) refers to an agency such as a city or special district providing new or extended services by contract or agreement outside its jurisdictional boundaries.

Prior to 1994, cities and special districts in California could avoid a LAFCO’s review process for annexation and provide services by contract outside their boundaries without obtaining LAFCO approval. This circumvented the Legislature’s intent for LAFCOs to regulate city and special district boundaries which generally determine where a city or special district provides services; furthermore, it undermined a LAFCO’s ability to guide growth, and ensure orderly development and good planning of infrastructure and services.

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. GC §56133 was enacted in 1993 as part of Assembly Bill No. 1335 and became effective on January 1, 1994. Over subsequent years, GC §56133 has been amended several times to clarify a LAFCO’s role in regulating service provision outside jurisdictional boundaries. In 2003, the law was revised to state that GC §56133 does not apply to service extensions that occurred on or before January 1, 2001.

### 5.2 PROCEDURAL POLICIES FOR OUT-OF-AGENCY SERVICE BY CONTRACT PROPOSALS

The following procedures apply for processing of OASC proposals:

1. **LAFCO approval.** Government Code §56133 requires that a city or special district must apply for and obtain LAFCO approval before providing new or extended services by contract or agreement outside its jurisdictional boundaries, unless exempt pursuant to GC §56133(e).
2. **Initiation.** An OASC application to Santa Clara LAFCO must be initiated by resolution of the city or special district that is proposing to provide the service beyond its jurisdictional boundaries.
3. **Pre-Application Meeting.** A city or special district that seeks to or receives a request to provide service outside its jurisdictional boundaries must first evaluate whether the OASC request is consistent with applicable local and Santa Clara LAFCO policies and determine whether it supports the request. In order to aid such evaluation, Santa Clara LAFCO encourages a city/special district to schedule a pre-application meeting with LAFCO staff as early as possible to discuss their OASC plans and obtain more information on the policies and procedures that may apply to the specific proposal. LAFCO staff shall also assist the city/special district in investigating annexation as an alternative to submitting a formal OASC application.

4. **LAFCO Determination of Exemptions.** It is Santa Clara LAFCO's policy to encourage local agencies to engage in cost sharing and pursue innovative partnerships while also ensuring that OASC activities do not undermine jurisdictional boundaries, reduce local agency accountability and transparency, or lead to unintended growth-inducing impacts. In order to appropriately balance these interests, Santa Clara LAFCO, and not the city or special district that would provide the service, shall determine if a proposed OASC is exempt from the requirement for LAFCO approval pursuant to exemptions in GC §56133(e). The following procedures apply:

a. The city or special district shall contact LAFCO staff for a determination on whether an OASC proposal would be eligible for an exemption under GC §56133(e). Such consultations may occur via phone or email communication. LAFCO encourages the city or district to contact LAFCO staff as early as possible to discuss its OASC plans and obtain information on the LAFCO policies and procedures that may apply to the specific proposal.

b. The Executive Officer in consultation with LAFCO Counsel, shall provide a determination on whether or not the OASC proposal is exempt, ~~(such determination shall be appealable to LAFCO as described below~~ in (d).

c. ~~The Executive Officer shall~~ ~~and~~ inform the Commission of the determination at the next available meeting, unless it is an exploratory and not a formal inquiry.

d. The city or special district, at no cost, may appeal the Executive Officer's determination on the exemption to LAFCO. The appeal must include specific substantiation for the exemption and must be made within 10 business days of receiving the EO determination.

e. The appeal shall be heard by LAFCO at its next available meeting that permits adequate public notification. If LAFCO determines that the exemption does not apply, the city or special district must apply for and obtain LAFCO approval before providing services by contract outside boundaries.

5. **Administrative Approval.** An administrative approval of an OASC, without consideration by LAFCO, may be allowed in situations that pose an urgent public health or safety concern. The administrative approval shall be made jointly by the LAFCO Chairperson (or Vice Chairperson if the Chair is not available) and the Executive Officer. Both must agree that an administrative approval of the OASC proposal is appropriate, based upon the following criteria:

a. The lack of service being requested constitutes an immediate threat to public health and safety as documented by the County Department of Environmental Health.

b. The property is currently developed.

c. There are physical constraints on the property that prohibit a conventional service delivery method typically suited to the unincorporated area (e.g., septic system, private well, etc.), and there are no other feasible means or solutions available for addressing the situation.

The Executive Officer shall inform the Commission on the administrative approval of a OASC proposal at the next regularly scheduled LAFCO meeting.

6. **CEQA.** An OASC proposal is considered a project under the California Environmental Quality Act (CEQA). The Lead Agency for an OASC proposal shall be either 1.) the city or the county with the land use approval authority for the development that would receive the service; or 2.) the city or the special district that would provide the service. Santa Clara LAFCO would be a Responsible Agency and is required to rely on the lead agency's CEQA documentation. The Lead Agencies must consult with LAFCO on the scoping of CEQA documentation for the potential proposal.
7. **Recordation of Agreement for Services.** OASC applications shall include a service agreement signed by all relevant parties including the agency that would provide the service and the property owner. Upon Santa Clara LAFCO approval of an OASC proposal and within 3 months of the date of approval, the signed service agreement must be recorded with the Santa Clara County Recorder and submitted to LAFCO staff.

### **5.3 POLICIES AND EVALUATION CRITERIA FOR OUT OF AGENCY SERVICE BY CONTRACT PROPOSALS**

Consistent with State law and the Countywide Urban Development policies (CUDPs) jointly adopted by LAFCO, the County and the 15 cities, it is Santa Clara LAFCO's goal that local agencies provide services within their jurisdictional boundaries and not extend services outside jurisdictional boundaries if annexation is a feasible alternative, unless it is in response to an existing public health and safety threat. Furthermore, in order to prevent sprawl, ensure efficient delivery of services, promote more efficient use of existing urbanized areas, and preserve open space and agricultural lands, LAFCO discourages OACS proposals that support new development in the unincorporated areas, outside city Urban Service Areas (USAs).

To further these goals, Santa Clara LAFCO shall carefully consider and evaluate OASC proposals consistent with its policies and the CKH Act. In addition to any other applicable factors enumerated in GC §56668, Santa Clara LAFCO shall consider the following policies and factors in evaluating the impacts of an OASC proposal:

1. **Conformance with Spheres of Influence.**
  - a. Pursuant to GC §56133(b), Santa Clara LAFCO may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence, in anticipation of a later annexation.
  - b. Santa Clara LAFCO may authorize a city or district to provide new or extended services outside its SOI to respond to an existing or impending threat to public health and safety (as documented by the County Environmental Health Department) in accordance with GC §56133(c)(1), and after notification to any alternate service provider in accordance with GC §56133(c)(2).
2. **Annexation as Alternative to OASC.** Where feasible and within Santa Clara LAFCO policy, annexation to the city or the special district that would provide the

service is generally preferred to service extension outside its jurisdictional boundaries. Santa Clara LAFCO will consider whether annexation is a logical alternative to extending services beyond the jurisdictional boundaries of a local agency. An OASC proposal may be appropriate in certain limited cases where immediate annexation is not a feasible alternative due to lack of contiguity or other unique local circumstances.

In accordance with GC § 56133(b), Santa Clara LAFCO may approve a OASC proposal in anticipation of a future annexation if the agency is able to provide LAFCO with a resolution of intent to annex and with appropriate assurances which demonstrate that the OASC is an intermediate step toward eventual annexation. Such assurances will be evaluated on a case-by-case basis and should include all appropriate actions including and not limited to application of a pre-zoning designation, preparation of a plan for annexation, a provision in the service contract for the property owner to consent-to-a future annexation and/or to waive protest rights.

3. **Service Extensions into Unincorporated Area.** Consistent with the CUDPs and the County General Plan that prohibit urban development and the provision of urban services in unincorporated rural areas outside city USAs, Santa Clara LAFCO shall discourage OASC proposals that are intended to support new development in the unincorporated county, with the following two exceptions.

- a. **Extensions to Address Existing Public Health and Safety Threat.** Santa Clara LAFCO recognizes that in some limited circumstances, an OASC proposal into the rural unincorporated area may be appropriate if it is the only way to resolve an existing threat to public health and safety (e.g., existing septic system failures, well contaminations, or well failures). Consistent with §56133(c), Santa Clara LAFCO shall consider the following criteria in evaluating such proposals on a case-by-case basis:

- i. Whether the property is currently developed
- ii. Whether the threat to public health and safety is substantial and immediate, as documented by the County Department of Environmental Health and whether there are any other feasible means of addressing the situation
- iii. Whether the proposal would result in an ~~premature~~ intrusion of urbanization into a predominantly agricultural or rural area [GC §56668(d)]
- iv. Whether a pattern of such requests is developing, and if so, the cumulative impact of such requests. If a pattern of such requests is developing, LAFCO shall encourage affected agencies to develop and successfully implement measures/plans to first avoid and minimize such requests which may be growth inducing

- b. **Service Extensions to Agricultural Worker Housing.** ~~Given that~~  
~~i. a~~gricultural workers are an essential component of Santa Clara County's agricultural industry, ~~Santa Clara LAFCO will give special consideration~~

~~to OASC proposals that are for~~and agricultural worker housing ~~which~~ supports the preservation of open space and agricultural lands, continued sustainability of agriculture, delivery of agricultural produce, and continued viability of Santa Clara County's food system. Santa Clara LAFCO will give special consideration to OASC proposals that consist solely of agricultural worker housing and that meet both the following requirements:

A. The County has methods (e.g., requirements for recordation of deed restrictions and/or affordability covenants on the property) currently in place to ensure affordability and occupancy of the proposed agricultural worker housing for eligible agricultural workers over the long term and for not less than 55 years or for the duration of the approved use.

B. The proposed agricultural worker housing will be maintained and operated by a qualified affordable housing organization that has been certified pursuant to Health & Safety Code §17030.10, a public agency, or an employer providing housing.

~~and~~ ii. Santa Clara LAFCO shall consider the following in evaluating such proposals, shall consider the following, in accordance with OASC Policy #5.3.2:

Ai. Whether the proposed housing is consistent with the County General Plan, Zoning ordinance and its policies/plans for agricultural land preservation

Bi. Whether the proposal fulfills the established need for agricultural worker housing and whether it is consistent with the city and /or County's long-term agricultural land conservation plans

iiiC. Whether the proposed agricultural worker housing development is imminent or is likely to occur within the next 5 years

~~iv. Whether the County 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~~

~~v. 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~~

Dvi. Whether the proposal minimizes the conversion of and/or impacts to agricultural lands, for example, by designating building envelopes, siting on lands of lesser agricultural value, etc.

4. **Public Health and Safety.** Pursuant to GC § 56133(c)(1), Santa Clara LAFCO shall consider whether the OASC proposal is in response to an existing or impending

threat to public health and safety as determined and documented by the County Environmental Health Department.

5. **Ability to provide Public Services.** Consistent with GC §56668(k), Santa Clara LAFCO shall require OASC proposals to clearly demonstrate that the city/special district has the ability to provide the proposed service without detracting from current service levels within its existing service area, and shall consider criteria listed in Policies #3.4.5, #3.4.6, and #3.4.7, as applicable.
6. **Conformance with General Plans and Policies.** Consistent with GC §56668(h), Santa Clara LAFCO shall consider whether the OASC proposal is consistent with the policies and general plans of all affected local agencies, including cities, special districts and the county.
7. **Growth Inducing Impacts.** Consistent with GC §56668(d), Santa Clara, LAFCO shall consider the growth-inducing impacts of the OASC proposal and discourage proposals that contribute to ~~premature~~ development of fringe areas or intrusion of urbanization into areas designated for non-urban uses. To limit growth inducing impacts, LAFCO shall consider whether public facilities or infrastructure related to the proposal would be sized to exceed the capacity needed for the proposed development and/or extended through agricultural, open space lands, or non-urban areas.
8. **Impacts to Agricultural and Open Space Lands.** Consistent with GC §56377(a), Santa Clara LAFCO shall discourage proposals that result in ~~premature~~ conversion of or have adverse impacts on agricultural or open space land and shall consider criteria in Policy #3.4.2(a thru d).
9. **Conformance with Service Reviews.** Consistent with GC §56668(i), Santa Clara LAFCO shall consider the applicable service reviews and shall discourage OASC proposals that undermine adopted service review determinations or recommendations.
10. **Fire Protection Contracts.** Effective January 1, 2016, GC §56134 requires LAFCO approval of a fire protection contract or agreement that provides new or extended fire protection services outside a public agency's jurisdictional boundaries and meets either of the following thresholds: (1) transfers responsibility for providing services in more than 25 percent of the area within the jurisdictional boundaries of any public agency affected by the contract; or (2) changes the employment status of more than 25 percent of the employees of any public agency affected by the contract. Santa Clara LAFCO shall consider such OASC proposals for fire protection contracts pursuant to GC §56134.

The Commission will review such proposals for consistency with the required findings of GC §56134(h)(2)(i) and (j), as well as the overall purposes of LAFCO that encourage the efficient provision of government services.

## **CHAPTER 6. ISLAND ANNEXATION POLICIES**

### **6.1 INTRODUCTION**

In Santa Clara County, unincorporated land that is located within a city's Urban Service Area (USA) is considered an island. Unincorporated islands, once also referred to colloquially as 'pockets,' are surrounded by the city limits of a city or a combination of city limits and USA boundaries. Over time, the cities have largely annexed most of the lands now within the USAs, through a combination of resident-initiated efforts, County and city programmatic efforts to annex whole islands, or on a parcel-by-parcel basis as a pre-requisite to new development or new land uses. However, some islands persist, large and small, which continue to be the subject of ongoing policy matters and annexation efforts.

The Countywide Urban Development Policies (CUDPs) stipulate that urban unincorporated islands within USAs should ultimately be annexed into their surrounding cities, so that cities have responsibility for urban services and land use authority over all lands within their USA boundaries. LAFCO has adopted USAs for cities, that include lands currently urbanized and annexed to cities and provided with urban services, as well as unincorporated lands (i.e. unincorporated urban islands) that a city intends to annex in order to develop those lands and provide them with urban services within five years.

### **6.2 HISTORY OF UNINCORPORATED URBAN ISLANDS**

The USAs of many cities contain unincorporated islands. These islands are largely a result of development that occurred in the County in the 1950s and 1960s (prior to the adoption of the CUDPs). Immediately after World War II, most of the North Valley was unincorporated, agricultural, and cities had just begun to expand and develop. During this time, rapid urban development was often scattered, discontinuous, and not necessarily required to be within cities. This resulted in some unincorporated areas being developed, while city boundaries became more sprawling and irregular. Furthermore, as urban development and city annexation continued outward, some unincorporated areas were leapfrogged over and left under County jurisdiction, some remaining agricultural, some partly developed.

Historically, it has not been the role of the County government to provide urban services and infrastructure. As a result, the County has few mechanisms or resources for providing and maintaining urban infrastructure and services. The issue is further complicated by the inefficiencies of having to ensure that services are provided for many small, widely scattered developed areas that are surrounded or substantially surrounded by cities.

Specific services in some unincorporated urban islands are provided by special districts. Residents of these areas generally receive urban levels of service for the specialized services that are provided by the districts. However, the districts do not provide a full range of services, and it is similarly inefficient to have multiple special districts providing one or two specific services to small, scattered areas.

In other cases, residents of urban unincorporated islands may utilize city-provided services for which they pay no property taxes to the city. To minimize the complexities and inequities of urban service provision and to provide more regular and logical city

boundaries, the islands within USAs should be annexed to cities. In fulfillment of that fundamental policy, over the past 50 years, the vast majority of the urban unincorporated islands that existed in the 1970s have been annexed into cities, with the assistance of LAFCO and the County.

Nonetheless, at present, there still remain many unincorporated islands in the county, the majority of which are 150 acres or smaller. They are scattered across the county, from Gilroy to Mountain View, and from Los Gatos to the eastern edges of San Jose.

### **6.3 LEGISLATIVE HISTORY**

LAFCO law includes various provisions that encourage the annexation of existing islands and discourage the creation of new islands. Moreover, since the late 1970s, State law has been amended numerous times to create additional provisions to encourage and facilitate the annexation of unincorporated islands into cities. In so doing, the state legislature has progressively and increasingly recognized the importance of island annexation to well-functioning urban areas and the relationship of such policies to other related planning goals of the state, such as curbing sprawl and preserving farmland.

In 2001, the State Legislature enacted the Cortese Knox Hertzberg Local Government Reorganization Act. One of the provisions of the Act allowed island annexations to occur through a streamlined process that does not require protest proceedings or elections, provided that the island meets specific criteria. In 2001, this provision applied to unincorporated islands up to 75 acres in size. In 2004 this provision was further amended to apply to islands up to 150 acres in size. This provision was originally set to expire on December 31, 2014. However, effective January 1, 2014, the State legislature removed the sunset date and made the streamlined island annexation provision permanent.

Currently, State law requires LAFCO to approve island annexations and waive protest proceedings, after notice and hearing, if the island annexation meets all the criteria outlined in Government Code (GC) §56375.3. This provision is limited to islands that do not exceed 150 acres in size as of January 1, 2014 pursuant to GC §56375.4. However, in Santa Clara County, pursuant to GC §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).

### **6.4 ISLAND ANNEXATION POLICIES**

1.—In order to fulfill the intent of the ~~S~~state ~~L~~egislature, ~~and~~ implement the ~~joint urban~~ development policies of the cities, County and LAFCO ~~CUDPs~~, and the interests ~~of~~ encourage efficient service provision and orderly growth and development, ~~LAFCO~~ supports and encourages the cities ~~should to~~ annex unincorporated ~~urban~~ islands within their USAs.

LAFCO has adopted the following policies to encourage the timely annexation of islands:

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

32. **Annex Entire Islands.** Where feasible, and in furtherance of goals to support orderly growth and development, cities are encouraged to annex entire islands, rather than to conduct single parcel annexations.
3. **Streamlined Island Annexations.** State law provides a streamlined process for annexation of entire islands that do not exceed 150 acres in size (as of January 1, 2014) and that meet all of the criteria outlined in GC §56375.3. ~~LAFCO will provide a fee waiver for annexations that result in elimination of entire unincorporated islands. This fee waiver will remain effective until rescinded by the commission.~~
34. **LAFCO Island Annexation Program.** In order to encourage cities to annex entire islands, LAFCO offers the following assistance:
- a. LAFCO will provide a fee waiver for annexations that result in elimination of entire unincorporated islands. This fee waiver will remain effective until rescinded by the commission.
  - b. LAFCO will provide information and expertise on the island annexation procedures to each of the cities. LAFCO will develop and provide process flow charts, and templates for public hearing notices and ~~annexation resolutions~~ templates for to cities to use. LAFCO staff will conduct workshops for cities staff or meet with individual cities to provide information on the island annexation process for city staff.
  - c. LAFCO will work with the County, the cities and other interested parties / agencies to find ways to reduce or share the cost of processing unincorporated island annexations.
554. **Island Annexations Before Seeking USA Expansion.** In the interest of orderly growth and development, cities should annex urban unincorporated islands existing within their current USAs (~~urban service areas~~), before seeking to add new lands to their USAs.
6. Prior to seeking any USA amendment, except if the USA amendment is to resolve a significant, demonstrable public health and safety issue or if the USA amendment is a minor corrective action, the city should:
- a. Initiate and complete annexation proceedings pursuant to ~~Government Code §Section~~ 56375.3(a)(1), for all unincorporated islands that meet the provisions of ~~Government Code §Section~~ 56375.3, unless the island constitutes publicly owned land, and,
  - b. For any city that has unincorporated islands larger than 150 acres, the city is strongly encouraged to adopt an annexation plan for each of the islands after holding community meetings, to apply a pre-zoning designation(s); and to adopt resolutions to initiate annexation, as appropriate.
657. **Align Development Standards.** LAFCO encourages the cities and the County to ameliorate differences between major development standards that potentially affect or hinder island annexation efforts. The County should ~~to~~ consider efforts to remove incentives for property owners in the unincorporated islands to remain in

the County, by making development standards in the unincorporated islands comparable to development standards in the surrounding city.

~~8. LAFCO will provide information on the island annexation procedures to each of the cities. LAFCO will develop process flow charts and public hearing notice / resolution templates for cities to use. LAFCO staff will conduct workshops on island annexation process for city staff.~~

~~9. LAFCO will work with the County, the cities and other interested parties / agencies to find ways to reduce or share the cost of processing unincorporated island annexations.~~

~~1076.~~ **Status Report to Commission.** LAFCO staff will report to the Commission ~~at~~ each LAFCO meeting on the status of each city's island annexation efforts, as necessary.

## **CHAPTER 7. AGRICULTURAL LAND PRESERVATION AND MITIGATION POLICIES**

### **7.1 INTRODUCTION Background**

Government Code (GC) §56377 requires LAFCO to discourage premature conversion of agricultural lands, guide development away from existing agricultural lands and promote the development of existing vacant lands within city boundaries prior to conversion of additional agricultural lands.

Consistent with GC §56377 it is LAFCO's goal to avoid or substantially minimize potential impacts to agricultural lands. Mitigation of impacts to agricultural lands cannot be viewed as the equivalent of avoidance of impacts or as an acceptable means of facilitating urban encroachment into agricultural lands where viable alternatives are available that meet the overall objectives of state law and LAFCO's mission.

The hierarchy of agricultural land preservation strategies of 1) avoidance, 2) minimizing, and then 3) mitigating impacts to agricultural lands as a last resort where conversion or other impacts cannot be avoided has been reinforced in CALAFCO's 2018 White Paper "State of the Art on Agricultural Preservation [Feb. 2018] to address the need for more effective preservation strategies, particularly on the urban fringe where agricultural land is most at risk.

Pursuant to its Urban Service Area Policies in Chapter 2, LAFCO will consider whether a city has developed and successfully implemented measures to first avoid and minimize the conversion of agricultural lands or open space prior to bringing forward a proposal that involves conversion of agricultural lands or open space; and whether the proposal contains mitigation for the conversion of any such lands consistent with LAFCO policies.

~~LAFCO's mission is to encourage orderly growth and development, discourage urban sprawl, preserve open space and prime agricultural lands, promote the efficient provision of government services and encourage the orderly formation of local agencies. LAFCO will consider impacts to agricultural lands along with other factors in its evaluation of proposals. LAFCO's Urban Service Area (USA) Amendment Policies discourage premature conversion of agricultural lands, guide development away from existing agricultural lands and require the development of existing vacant lands within city boundaries prior to conversion of additional agricultural lands. In those cases where LAFCO proposals involve conversion of agricultural lands, LAFCO's USA Amendment Policies require an explanation of why the inclusion of agricultural lands is necessary and how such loss will be mitigated.~~

### **Purpose of Policies**

The purpose of these policies is to provide guidance to property owners, potential applicants and cities on how to address agricultural mitigation for LAFCO proposals and to provide a framework for LAFCO to evaluate and process in a consistent manner, LAFCO proposals that involve or impact agricultural lands.

## **7.2 GENERAL POLICIES**

1. LAFCO promotes the agricultural preservation strategies of avoiding and/or minimizing potential impacts to agricultural lands in preference to mitigation, consistent with GC §56377. In reviewing proposals involving potential impacts to agricultural lands, LAFCO will strongly weigh the feasibility of avoiding and minimizing impacts prior to considering the effectiveness and utility of mitigation.
2. Given that agricultural workers are an essential component of Santa Clara County's agricultural industry, Santa Clara 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).
31. LAFCO recommends provision of agricultural mitigation as specified herein for all LAFCO applications that impact or result in a loss of prime agricultural lands as defined in Policy #67.3.1. Variation from these policies should be accompanied by information explaining the adequacy of the proposed mitigation.
42. LAFCO encourages cities with potential LAFCO applications involving or impacting agricultural lands to adopt citywide agricultural preservation and mitigation policies and programs that are consistent with these policies.
53. When a LAFCO proposal impacts or involves a loss of prime agricultural lands, LAFCO encourages property owners, cities and agricultural conservation agencies to work together as early in the process as possible to initiate and execute agricultural mitigation plans, in a manner that is consistent with these policies.
64. LAFCO will work with agricultural entities, the County, cities and other stakeholders to develop a program and public education materials to improve the community's understanding of the importance of agriculture in creating sustainable communities within Santa Clara County.
75. LAFCO will review and revise these policies as necessary.

## **7.3 DEFINITION OF PRIME AGRICULTURAL LANDS**

61. "Prime agricultural land" as defined in GC §56064 means an area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than an agricultural use and that meets any of the following qualifications:
  - a. Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.
  - b. Land that qualifies for rating 80 through 100 Storie Index Rating.
  - c. Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Range and Pasture Handbook, Revision 1, December 2003.

- d. Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre.
- e. Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred dollars (\$400) per acre for three of the previous five calendar years.

#### **7.4 MITIGATION RECOMMENDATIONS**

**71.** Proposals involving the conversion of prime agricultural lands should provide one of the following mitigations at a not less than 1:1 ratio (1 acre preserved for every acre converted) along with the payment of funds as determined by the city / agricultural conservation entity (whichever applies) to cover the costs of program administration, land management, monitoring, enforcement and maintenance of agriculture on the mitigation lands:

- a. The acquisition and transfer of ownership of agricultural land to an agricultural conservation entity for permanent protection of the agricultural land.
- b. The acquisition and transfer of agricultural conservation easements to an agricultural conservation entity for permanent protection of the agricultural land.
- c. The payment of in-lieu fees to an agricultural conservation entity that are sufficient to fully fund, with provisions for adjustment of in-lieu fees to reflect potential changes in land values at the time of actual payment

**1i.** The cost of acquisition of agricultural lands or agricultural conservation easements for permanent protection, and

**2ii.** The cost of administering, managing, monitoring and enforcing the agricultural lands or agricultural conservation easements, as well as the costs of maintaining agriculture on the mitigation lands.

~~\*with provisions for adjustment of in-lieu fees to reflect potential changes in land values at the time of actual payment~~

**82.** Agricultural lands or conservation easements acquired and transferred to an agricultural conservation entity should be located in Santa Clara County and be lands deemed acceptable to the city and entity.

**9. a.** The agricultural mitigation should result in preservation of land that would be:

**ai.** Prime agricultural land of substantially similar quality and character as measured by the Average Storie Index rating and the Land Capability Classification rating, and

**bj.** Located within cities' spheres of influence in an area planned/envisioned for agriculture, and

eiii. That would preferably promote the definition and creation of a permanent urban/agricultural edge.

103. Because urban/non-agricultural uses affect adjacent agricultural practices and introduce development pressures on adjacent agricultural lands, LAFCO encourages cities with LAFCO proposals impacting agricultural lands to adopt measures to protect adjoining agricultural lands, to prevent their premature conversion to other uses, and to minimize potential conflicts between the proposed urban development and adjacent agricultural uses. Examples of such measures include, but are not limited to:

- a. Establishment of an agricultural buffer on the land proposed for development. The buffer's size, location and allowed uses must be sufficient to minimize conflicts between the adjacent urban and agricultural uses.
- b. 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 in compliance with established standards.
- c. Development of programs to promote the continued viability of surrounding agricultural land.

## 7.5 **AGRICULTURAL CONSERVATION ENTITY QUALIFICATIONS**

11. The agricultural conservation entity should be a city or a public or non-profit agency. LAFCO encourages consideration of agricultural conservation entities that:

- a. Are committed to preserving local agriculture and have a clear mission along with strategic goals or programs for promoting agriculture in the areas that would be preserved through mitigation,
- b. Have the legal and technical ability to hold and administer agricultural lands and agricultural conservation easements and in-lieu fees for the purposes of conserving and maintaining lands in agricultural production and preferably have an established record for doing so, and
- c. Have adopted written standards, policies and practices (such as the Land Trust Alliance's "Standards and Practices") for holding and administering agricultural lands, agricultural conservation easements and in-lieu fees and are operating in compliance with those standards.

## 7.6 **TIMING AND FULFILLMENT OF MITIGATION**

121. LAFCO prefers that agricultural mitigation be in place at the time of LAFCO approval or as soon as possible after LAFCO approval. The mitigation (as detailed in the Plan for Mitigation) should be fulfilled no later than at the time of city's approval of the final map, or issuance of a grading permit or building permit, whichever occurs first.

132. Cities should provide LAFCO with information on how the city will ensure that the agricultural mitigation is provided at the appropriate time.

- 143. Cities should provide LAFCO with a report on the status of agricultural mitigation fulfillment every year following LAFCO approval of the proposal until the agricultural mitigation commitments are fulfilled.
- 154. The agricultural conservation entity should report annually to LAFCO on the use of the in-lieu fees until the fees have been fully expended.

## 7.7 PLAN FOR MITIGATION

- 161. A plan for agricultural mitigation that is consistent with these policies should be submitted at the time that a proposal impacting agricultural lands is filed with LAFCO. The plan for mitigation should include all of the following:
  - a. An agreement between the property owner, city and agricultural conservation entity (if such an entity is involved) that commits the property owner(s) to provide the mitigation for the loss of prime agricultural lands and establishes the specifics of the mitigation. Upon LAFCO approval of the proposal, the agreement should be recorded with the County Recorder's office against the property to be developed. The agreement should specify:
    - 1i. The type of mitigation that will be provided in order to mitigate for conversion of agricultural lands. (purchase of fee title or easement or payment of in-lieu fees)
    - 2ii. The agricultural conservation entity that will be involved in holding the lands, easements, or in-lieu fees.
    - 3iii. The acreage that would be preserved through mitigation and /or the amount of in-lieu fees that would be paid (with provisions to adjust fees to reflect land values at time of payment) along with the methodology adopted by the entity for calculating the in-lieu fees.
    - 4iv. The location of the mitigation lands, when possible.
    - 5v. Information on the specific measures adopted by the city as encouraged in Policy #10 (mitigation for impacts to adjacent agricultural lands)
    - 6vi. The timeframe within which the mitigation will be fulfilled, which should be no later than at the time of city's approval of the final map, or issuance of the grading permit or building permit, whichever occurs first.
    - 7vii. The mitigation agreement is to be contingent on LAFCO approval of the proposal.
  - b2. Applicant should provide all other supporting documents and information to demonstrate compliance with these policies.



## **CHAPTER 8. POLICIES ON URBAN GROWTH BOUNDARIES POLICIES AND OTHER LONG-TERM BOUNDARIES**

### **8.1 INTRODUCTION**

Urban Growth Boundaries (UGBs) are- planning boundaries adopted to establish very long term or permanent limits on potential urban expansion. UGBs have a similar overall purpose as Urban Service Areas (USAs) in that they include lands intended for urban development and protect surrounding natural resource lands. In some cases, an UGB may be adopted solely by act of the legislative body such as a city council or by means of a voter initiative, and in some cases, by a combination of the two. UGBs are not adopted or regulated by LAFCO. UGBs are intended to be amended very infrequently, within the context of a comprehensive general plan update, or by vote of the public, if adopted in that manner.

UGBs have been adopted by some of the cities of Santa Clara County, in conjunction with the County or unilaterally. Some UGBs are essentially coterminous with existing city USAs, while others may include some additional lands deemed appropriate for future consideration of urban growth. Inclusion of additional lands outside a city's USA within an UGB is not meant to convey that such lands are necessarily to be urbanized within a particular time frame, only that such lands may be considered for a city's long-term growth needs if approved for inclusion in a city's USA by LAFCO, in accordance with established LAFCO policy.

UGBs could reduce speculation about the direction and extent of potential urban expansion, helping to promote certainty, urban infill, more stable growth expectations and land use patterns, and better preservation of agricultural and other natural resource lands. Cities such as San Jose and Milpitas, were early adopters of UGBs. Both cities adopted UGBs with a reduced urban footprint and requested corresponding USA retraction to prevent sprawl and curb hillside urban development, promote viewshed preservation, and conserve valley agricultural lands.

### **8.2 POLICIES**

1. LAFCO supports adoption of UGBs that are consistent with LAFCO's goals to prevent sprawl, protect open space and agricultural lands and promote efficient delivery of services. However, an USA remains the definitive, Santa Clara LAFCO-adopted planning boundary indicating whether an area will be potentially annexed and provided with urban services.
21. LAFCO shall recognize any urban growth boundary, urban limit line, "greenline", greenbelt boundary, or other boundary adopted by a city and/or approved by voter initiative ~~to that~~ defines the limits of ~~its-a city's~~ urban development on a long term or permanent basis.

32. LAFCO shall consider these boundaries when reviewing relevant proposals, including: ~~city~~ annexations or reorganizations over which LAFCO retains review and approval ~~the~~ authority, ~~to review pursuant to Government Code Section 56826~~, urban service area amendments proposals, sphere of influence amendments proposals, and “out-of-agency service by contract” ~~proposals~~ extension services.
43. LAFCO shall discourage proposals which are inconsistent with an adopted urban growth boundary.

# ITEM # 5 Attachment D

**From:** [Alice Kaufman](#)  
**To:** [LAFCO](#)  
**Cc:** [shani.kleinhaus](#); [deb](#); [Jordan Grimes](#); [Katja Irvin](#); [Palacherla, Neelima](#)  
**Subject:** [EXTERNAL] Enviro joint letter on revised LAFCO policy update  
**Date:** Tuesday, November 12, 2024 4:55:55 PM  
**Attachments:** [LAFCO Policy Update 11.12.24 joint letter.pdf](#)

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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 revised version of the LAFCO policy update, with revisions made after the October 2, 2024 LAFCO board meeting. We strongly support this revised draft and urge the Commissioners to adopt it.

Thank you for your attention to these comments.

photo



**Alice Kaufman (she/her)**

Policy and Advocacy Director

Green Foothills | (650) 968-7243 x313 | [greenfoothills.org](http://greenfoothills.org)

*Donate to Green Foothills by 12/31 and your gift will be doubled thanks to a 2X matching grant! [Donate today.](#)*







November 12, 2024

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

RE: Comprehensive Review and Update of LAFCO Policies

Dear LAFCO Commissioners,

The undersigned environmental organizations strongly support the revised version of the LAFCO policy update, with revisions made after the October 2, 2024 LAFCO board meeting.

In particular, we appreciate and support the changes made to 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), regarding farmworker housing. These changes will ensure that when LAFCO considers proposals for USA amendments or OASCs that are intended to enable construction of farmworker housing outside of Urban Service Areas, the farmworker housing in question is far more likely to remain affordable to and occupied by farmworkers into the future.

We also appreciate the changes made to Sections 3.4.2 and 3.4.4 of the Urban Service Area Policies to include consideration of impacts to not just prime farmland, but also farmland of statewide or local importance and consideration of not just fire hazard maps, but also maps indicating FEMA flood zones, earthquake fault zones and landslide hazard zones.

Thank you to LAFCO staff and the LAFCO Ad-Hoc Committee for their hard work on this policy update. We urge the Commission to adopt the revised LAFCO policies.

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:** [Stephanie Moreno](#)  
**To:** [LAFCO](#)  
**Cc:** [Palacherla, Neelima](#)  
**Subject:** [EXTERNAL] Public comment letter: Comprehensive Review and Update of LAFCO Policies (Second Round)  
**Date:** Wednesday, November 13, 2024 4:57:07 PM  
**Attachments:** [NSCRCD LAFCO Policies w attachment 111324 Final.pdf](#)  
**Importance:** High

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Good afternoon! I have attached NSCRCD's second round comment letter regarding LAFCOs proposed *Comprehensive Review and Update of LAFCO Policies*.

I would appreciate it if you would confirm that this letter has been received prior to today's deadline in order to be included in the packet of information provided to the Commission at its public hearing.

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*  
888 N. 1st Street, Suite 204, San Jose, CA 95112  
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831-235-1799 Cell





# North Santa Clara Resource Conservation District

An independent special district of the State of California

888 N. 1<sup>st</sup> Street, Suite 204, San Jose, CA 95114

www.rcdsantaclara.org

gcrd@gcrd.org

November 13, 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 reply to LAFCO staff’s responses to our initial comments submitted on the draft *Comprehensive Review and Update of LAFCO Policies*. We continue to encourage this LAFCO and LAFCOs statewide to view and consider California’s resource conservation districts as potential collaborators in LAFCO efforts to preserve open-space and prime agricultural lands, which are goals RCDs share.

**NSCRCD Supplementary Comments:**

LAFCO Staff Response	NSCRCD Supplementary Comments to LAFCO
<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>The legislative effort to change Government Code 56133 to clarify that it is LAFCO that determines the exemption has been abandoned by CAL LAFCO because they were unable to get legislative support, and that more recent information should be taken into account by the Commission rather than relying on previously provided conceptual support for the San Diego LAFCO’s effort. This information was reported in the Riverside LAFCO Legislative Update Report dated September 26, 2024:</p> <p><i>“The CALAFCO Legislative Committee last met on June 14, 2024, as previously noted. The Committee agreed that continuing to pursue Section 56133 potential legislation for clarifying exemption language for out of area (extra territorial) extension of services was becoming a burden that might require abandonment due to roadblocks by some</i></p>

LAFCO Staff Response	NSCRCD Supplementary Comments to LAFCO
	<p><i>stakeholder organizations. The CALAFCO Board of Directors last met on July 19, 2024, and received a status briefing on legislation of interest. Additionally, the Board voted to abandon the 56133 proposed legislation.”</i></p> <p><a href="https://lafco.org/wp-content/uploads/documents/september-26-2024-lafco-meeting/8.Legislative%20Update%20Rpt%209-26-2024.pdf">https://lafco.org/wp-content/uploads/documents/september-26-2024-lafco-meeting/8.Legislative Update Rpt 9-26-2024.pdf</a></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>AB 1335 (Gotch, 1993) appears to have created the 56133 exemption by an amendment to the Cortese-Knox Local Government Reorganization Act of 1985. The bill analysis – which names CAL LAFCO as the source –explicitly states with regards to the requirement to obtain LAFCO approval:</p> <p><i>“This requirement does not apply to contracts and agreements between and among public agencies.”</i></p> <p><a href="http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_1301-1350/ab_1335_cfa_930830_171827_sen_floor">www.leginfo.ca.gov/pub/93-94/bill/asm/ab_1301-1350/ab_1335_cfa_930830_171827_sen_floor</a></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 transparency and uniformity in the decision-making process and in the determination.</p>	<p>We disagree individual LAFCOs have unilateral authority to read additional requirements into the statute that are not found in the plain text.</p> <p>Further evidence that the legislature did not intend for LAFCO to have approval authority can be found in the Assembly Committee on Local Government’s analysis of AB 402 (Dodd, 2015), which states:</p> <p><i>“AB 1335, however, recognized the need to accommodate unexpected local conditions and several exemptions were established. <b>LAFCO approval is not required for contracts or agreements solely involving two or more public agencies</b> [emphasis added] where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the exiting service provider.</i></p> <p><a href="http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0401-">http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0401-</a></p>

LAFCO Staff Response	NSCRCD Supplementary Comments to LAFCO
	<a href="http://0450/ab_402_cfa_20150521_170336_asm_floor.html">0450/ab_402_cfa_20150521_170336_asm_floor.html</a>
<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>This adoption of local policies is contrary to the following policy statement contained within the Senate bill analysis for AB 1335 (Gotch, 1993) – again the named source is CAL LAFCO:</p> <p><i>“For each of the last four or five years, LAFCOs have reacted to several bills by legislators who were upset at the way some commissions carry out the Cortese-Knox Act. Recognizing Sacramento’s frustration, LAFCOs want the Legislature to spell out clear policies for them to follow. They want to apply these new statutory policies consistently.”</i></p> <p><a href="http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_1301-1350/ab_1335_cfa_930830_171827_sen_floor">www.leginfo.ca.gov/pub/93-94/bill/asm/ab_1301-1350/ab_1335_cfa_930830_171827_sen_floor</a></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>The proposed Commission policy <u>is</u> new. If a staff practice existed, which is not supported by evidence in the record, it was not previously noticed to cities and special districts. Rather, it appears LAFCO’s policy was to not weigh in on these agreements, as stated in the agenda for the June 3, 2015 Santa Clara LAFCO Commission stated the following under Item 8.4 in response to a question LAFCO received from our special district as to the policy:</p> <p><i>“Executive Officer Palacherla informed Ms. Moreno that based on the information provided, <b>LAFCO approval would not be required because pursuant to State law, contracts between two public agencies (SCVWD and GCRCD, in this case) are exempt from LAFCO approval [emphasis added]</b> where the identified services were previously provided in the area by a public provider. In this case, the service was previously provided by the SCVWD in the area.</i></p> <p><a href="https://santaclaralafco.org/sites/default/files/meetings/agendas/LAFCO_2015_06_03_June_Agenda.pdf">https://santaclaralafco.org/sites/default/files/meetings/agendas/LAFCO_2015_06_03_June_Agenda.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</p>	<p>In its initial comment letter, NSCRCD recognized the desire for the Commissioners to be informed about services rendered outside jurisdictional boundaries to ensure compliance with its mission, and heard concern expressed by the</p>

LAFCO Staff Response	NSCRCD Supplementary Comments to LAFCO
<p>inducing impacts – rather than individual agencies making such decisions in their own interest, without a uniform process.</p>	<p>Commissioners that not every jurisdiction is complying with the law. We believe our proposed revision to the language would address those stated issues of noncompliance without imposing undue burdens on the other compliant entities. It will also help the Commission avoid potential liability that it may incur if it were to adopt a policy requirement not authorized by its enabling authorities, as was apparently adopted as policy by a number of LAFCOs, but which resulted in a Court of Appeal ruling that there was no statutory authority to impose an indemnity agreement.</p> <p><a href="https://alcl.assembly.ca.gov/system/files/2024-06/sb-1209-cortese_0.pdf">https://alcl.assembly.ca.gov/system/files/2024-06/sb-1209-cortese_0.pdf</a></p>

**Proposed Amendment:**

We again recommend compromise language for the Commission to consider by amending Section 5.2.4 to read:

***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.*

**Summary**

We sincerely appreciate the opportunity to present our supplementary comments and advocate for modifications that align with LAFCO’s intent while preserving special district legal rights pursuant to Government Code 56133. As relayed in our previous oral and written comments, and reiterated again in these public comments, we believe the proposed policy is not in conformance with LAFCO’s enabling authorities. We ask that the Commission review and consider our comments, citations, and proposed amendments in the collaborative spirit in which they are offered, and take action to amend the draft policy as presented.

Sincerely,

*Stephanie Moreno*

Stephanie Moreno  
 Executive Director  
[smoreno@gcrd.org](mailto:smoreno@gcrd.org)

Attached: NSCRCD First Comment Letter, dated October 2, 2024

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ASSISTANT COUNTY COUNSEL**

November 24, 2024

Via Electronic Mail

Malathy Subramanian

Local Agency Formation Commission of Santa Clara County

Malathy.Subramanian@bbklaw.com

Re: Santa Clara LAFCO Policy Revisions

Dear Ms. Subramanian:

Thank you for taking the time to speak with me and Assistant County Counsel Elizabeth Pianca about the proposed updates to the policies of the Local Agency Formation Commission of Santa Clara County (“Santa Clara LAFCO”) on November 7, 2024. We appreciated the opportunity to discuss possible unintended consequences of the proposed policies to the County of Santa Clara’s Agricultural Worker Housing Workplan, as directed by the Santa Clara LAFCO Board.<sup>1</sup> This letter memorializes our discussion regarding the updates to Santa Clara LAFCO’s Out-of-Agency Service Contract Policies (Chapter 5) and Urban Service Area Policies (Chapter 3).<sup>2</sup>

Updates to Out-of-Agency Service Contract Policies (Chapter 5)

In the proposed updates to the Out-of-Agency Service Contract (OASC) Policies, Section 5.3(3)(b)(i) states that qualifying OASC proposals for agricultural worker housing will

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<sup>1</sup> The Board of Supervisors, at its regular meeting on December 5, 2023 (Item No. 21), received a report on the County’s Agricultural Worker Housing Workplan. Among other actions, it directed Administration and County Counsel to work on potential changes to Santa Clara LAFCO policies and to consult with LAFCO staff on policy updates that could be submitted to Santa Clara LAFCO for consideration. Additional information regarding the Board of Supervisors action on December 5, 2023 is available at [https://sccgov.iqm2.com/Citizens/Detail\\_LegiFile.aspx?ID=117859](https://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=117859).

<sup>2</sup> We attach the draft Chapter 5 and Chapter 3 policies that you shared with us and that we reviewed during our call on November 7, 2024.

Letter to **Malathy Subramanian**  
Re: Santa Clara LAFCO Policy Revisions  
November 24, 2024  
Page 2 of 3

receive “special consideration” from Santa Clara LAFCO. We appreciate your clarification that the intent of this “special consideration” is to establish an exception to the general policy that Santa Clara LAFCO shall discourage OASC proposals that are intended to support new development in the unincorporated county.

During the meeting, we offered one comment on Section 5.3(3)(b)(i), which specifies certain qualifications for OASC proposals for agricultural worker housing. The first requirement is that the County has methods “currently in place to ensure affordability and occupancy of the proposed agricultural worker housing for eligible agricultural workers over the long term and for not less than 55 years.” As discussed during the call, the County’s Zoning Ordinance includes requirements for permanent agricultural employee housing, which may not align with the 55-year requirement. Specifically, Zoning Ordinance Section 4.10.040(E) requires recordation of permit conditions restricting the use to agricultural employee housing. Accordingly, we recommend revising the phrase to read “and for not less than 55 years or for the duration of the approved use.”<sup>3</sup>

We also discussed the distinction between the “special consideration” proposed in Section 5.3(3)(b)(i) and the exemptions addressed in Section 5.2(4). Consistent with Government Code section 56133(e), Section 5.2(4) provides that certain OASC proposal are exempt from Santa Clara LAFCO approval, including OASC proposals under section 56133(e)(3) for “[t]he provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries.” Such proposals are exempt from Santa Clara LAFCO approval under Government Code section 56133(e) and, therefore, are not subject to the restrictions or requirements outlined in Section 5.3(b)(i).<sup>4</sup>

Relatedly, we raised questions during the meeting about Section 5.2(4), which gives the Executive Officer of Santa Clara LAFCO authority to “determine if a proposed OASC is exempt from the requirement for LAFCO approval pursuant to exemptions in [Government Code section] 56133(e).” As we noted during the meeting, nothing in Government Code section 56133—or any other provision of California law—grants Santa Clara LAFCO authority to make exemption determinations. Instead, the Government Code states that the requirements for LAFCO approval of OASC proposals “do not apply” to the categories of projects described in Section 56133(e)(1)-(6).

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<sup>3</sup> We also recommend that this language—“and for not less than 55 years or for the duration of the approved use”—also be used in Section 3.4(15)(a)(i).

<sup>4</sup> The proposed edits to the policies do not address what process LAFCO would use to approve a project that is exempt under Section 56133(e)(3) but subject to LAFCO approval because it “will support or induce development.”

Letter to **Malathy Subramanian**  
Re: Santa Clara LAFCO Policy Revisions  
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Updates to Urban Service Area Policies (Chapter 3)

Finally, during the meeting, we raised a question about Section 3.4(15)(a) in the proposed updates to the Urban Service Area (USA) Policies. This Section directs Santa Clara LAFCO to give “special consideration” to qualifying USA amendment proposals that “consist solely of agricultural worker housing.” During a follow-up call after the meeting, you clarified that the intent of this “special consideration” is to establish an exception to Section 3.4, which states that Santa Clara LAFCO shall discourage USA amendment proposals “when a city has a more than 5-year supply of vacant land within its existing USA.” It may be helpful to make the impact of this “special consideration” explicit in Section 3.4(15)(a).

Thank you again for taking the time to meet with us to discuss the proposed updates to these important policies. Please do not hesitate to reach out with any further questions.

Very truly yours,

TONY LOPRESTI  
County Counsel

A handwritten signature in blue ink, appearing to read 'A Forbath', enclosed in a light blue rectangular box.

AARON FORBATH  
Deputy County Counsel

c: James R. Williams, County Executive  
Sylvia Gallegos, Deputy County Executive  
Jacqueline R. Onciano, Director, Department of Planning and Development

Attachments:

1. Draft Updates to Santa Clara LAFCO Out-of-Agency Service Contract Policies (Chapter 5)
2. Draft Updates to Santa Clara LAFCO Urban Service Area Policies (Chapter 3)

**COMPREHENSIVE REVIEW AND UPDATE OF LAFCO POLICIES  
SECOND ROUND OF WRITTEN COMMENTS AND RESPONSES**

#	COMMENT	RESPONSE
1.	<b>COMMENTER: Green Foothills, Greenbelt Alliance, Keep Coyote Creek Beautiful, Santa Clara Valley Bird Alliance, Sierra Club-Loma Prieta, Received 11/12/24</b>	
	<p>The undersigned environmental organizations strongly support the revised version of the LAFCO policy update, with revisions made after the October 2, 2024 LAFCO board meeting.</p> <p>In particular, we appreciate and support the changes made to 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), regarding farmworker housing. These changes will ensure that when LAFCO considers proposals for USA amendments or OASCs that are intended to enable construction of farmworker housing outside of Urban Service Areas, the farmworker housing in question is far more likely to remain affordable to and occupied by farmworkers into the future.</p> <p>We also appreciate the changes made to Sections 3.4.2 and 3.4.4 of the Urban Service Area Policies to include consideration of impacts to not just prime farmland, but also farmland of statewide or local importance and consideration of not just fire hazard maps, but also maps indicating FEMA flood zones, earthquake fault zones and landslide hazard zones.</p> <p>Thank you to LAFCO staff and the LAFCO Ad-Hoc Committee for their hard work on this policy update. We urge the Commission to adopt the revised LAFCO policies.</p>	Noted.
vc2.	<b>COMMENTER: Stephanie Moreno, Executive Director, North Santa Clara Resource Conservation District, Received 11/13/24</b>	
2a.	<p>North Santa Clara Resource Conservation District (NSCRCD) appreciates the opportunity to reply to LAFCO staff’s responses to our initial comments submitted on the draft <i>Comprehensive Review and Update of LAFCO Policies</i>. We continue to encourage this LAFCO and LAFCOs statewide to view and consider California’s resource conservation districts as potential collaborators in LAFCO efforts to preserve open-space and prime agricultural lands, which are goals RCDs share.</p> <p><u>NSCRCD Supplementary Comments</u></p> <p>LAFCO Staff Response:</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>NSCRCD Supplementary Comments to LAFCO:</p>	Regardless of the CALAFCO decision to not pursue legislation,

**COMPREHENSIVE REVIEW AND UPDATE OF LAFCO POLICIES  
SECOND ROUND OF WRITTEN COMMENTS AND RESPONSES**

#	COMMENT	RESPONSE
	<p>The legislative effort to change Government Code 56133 to clarify that it is LAFCO that determines the exemption has been abandoned by CAL LAFCO because they were unable to get legislative support, and that more recent information should be taken into account by the Commission rather than relying on previously provided conceptual support for the San Diego LAFCO’s effort. This information was reported in the Riverside LAFCO Legislative Update Report dated September 26, 2024:</p> <p><i>“The CALAFCO Legislative Committee last met on June 14, 2024, as previously noted. The Committee agreed that continuing to pursue Section 56133 potential legislation for clarifying exemption language for out of area (extra territorial) extension of services was becoming a burden that might require abandonment due to roadblocks by some stakeholder organization. The CALAFCO Board of Directors last met on July 19, 2024, and received a status briefing on legislation of interest. Additionally, the Board voted to abandon the 56133 proposed legislation.”</i></p> <p><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>the current law is unchanged and remains silent as to who makes the decision on a GC §56133(e) exemption.</p> <p>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>
2b.	<p>LAFCO Staff Response:</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>NSCRCD Supplementary Comments to LAFCO:</p> <p>AB 1335 (Gotch, 1993) appears to have created the 56133 exemption by an amendment to the Cortese-Knox Local Government Reorganization Act of 1985. The bill analysis – which names CALAFCO as the source –explicitly states with regards to the requirement to obtain LAFCO approval:</p> <p><i>“This requirement does not apply to contracts and agreements between and among public agencies.”</i></p> <p><a href="http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_1301-1350/ab_1335_cfa_930830_171827_sen_floor">http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_1301-1350/ab_1335_cfa_930830_171827_sen_floor</a></p>	<p>We agree LAFCO approval is not required if an exemption applies. We continue to recommend that LAFCO make the determination on whether an exemption applies.</p>
2c.	<p>LAFCO Staff Response:</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</p>	<p>We agree LAFCO approval is not required if an exemption applies. We continue to recommend that LAFCO make the determination on whether an exemption applies.</p>

**COMPREHENSIVE REVIEW AND UPDATE OF LAFCO POLICIES  
SECOND ROUND OF WRITTEN COMMENTS AND RESPONSES**

#	COMMENT	RESPONSE
	<p>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>NSCRCD Supplementary Comments to LAFCO:</p> <p>We disagree individual LAFCOs have unilateral authority to read additional requirements into the statute that are not found in the plain text.</p> <p>Further evidence that the legislature did not intend for LAFCO to have approval authority can be found in the Assembly Committee on Local Government’s analysis of AB 402 (Dodd, 2015), which states:</p> <p><i>“AB 1335, however, recognized the need to accommodate unexpected local conditions and several exemptions were established. LAFCO approval is not required for contracts or agreements solely involving two or more public agencies [emphasis added] where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.”</i></p> <p><a href="http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0401-0450/ab_402_cfa_20150521_170336_asm_floor.html">http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0401-0450/ab_402_cfa_20150521_170336_asm_floor.html</a></p>	
2d.	<p>LAFCO Staff Response:</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>NSCRCD Supplementary Comments to LAFCO:</p> <p>This adoption of local policies is contrary to the following policy statement contained within the Senate bill analysis for AB 1335 (Gotch, 1993) – again the named source is CAL LAFCO:</p> <p><i>“For each of the last four or five years, LAFCOs have reacted to several bills by legislators who were upset at the way some commissions carry out the Cortese-Knox Act. Recognizing Sacramento’s frustration, LAFCOs want the Legislature to spell out clear policies for them to follow. They want to apply these new statutory policies consistently.”</i></p> <p><a href="http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_1301-1350/ab_1335_cfa_930830_171827_sen_floor">http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_1301-1350/ab_1335_cfa_930830_171827_sen_floor</a></p>	<p>While the 1993 Gotch Bill (AB 1335) established requirements for LAFCO approval of out-of-agency service contracts and outlined exemptions in certain situations, it also addressed several other matters including consolidation of districts. The quoted language is taken out of context. The full quote pertains to the topic of consolidation of districts and is as follows:</p> <p>“For each of the last four or five years, LAFCOs have reacted to several bills by legislators who were upset at the way some</p>

**COMPREHENSIVE REVIEW AND UPDATE OF LAFCO POLICIES  
SECOND ROUND OF WRITTEN COMMENTS AND RESPONSES**

#	COMMENT	RESPONSE
		<p>commissions carry out the Cortese-Knox Act. Recognizing Sacramento's frustration, LAFCOs want the Legislature to spell out clear policies for them to follow. They want to apply these new statutory policies consistently. LAFCOs now recognize that special districts are important to their governance. And they want to help local officials consolidate districts more efficiently. The changes in AB 1335 carry out these themes."</p>
2e.	<p>LAFCO Staff Response:</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>NSCRCD Supplementary Comments to LAFCO:</p> <p>The proposed Commission policy <u>is</u> new. If a staff practice existed, which is not supported by evidence in the record, it was not previously noticed to cities and special districts. Rather, it appears LAFCO’s policy was to not weigh in on these agreements, as stated in the agenda for the June 3, 2015 Santa Clara LAFCO Commission stated the following under Item 8.4 in response to a question LAFCO received from our special district as to the policy:</p> <p><i>“Executive Officer Palacherla informed Ms. Moreno that based on the information provided, <b>LAFCO approval would not be required because pursuant to State law, contracts between two public agencies SCVWD and GCRC, in this case) are exempt from LAFCO approval [emphasis added] where the identified services were previously provided in the area by a public provider. In this case, the service was previously provided by the SCVWD in the area.</b>”</i></p> <p><a href="https://santaclaralafco.org/sites/default/files/meetings/agendas/LAFCO_2015_06_03_June_Agenda.pdf">https://santaclaralafco.org/sites/default/files/meetings/agendas/LAFCO_2015_06_03_June_Agenda.pdf</a></p>	<p>It has been a longstanding practice for agencies to consult with LAFCO staff regarding exemptions. While it is currently not a written policy, LAFCO staff regularly receives inquiries from local agencies seeking clarification on whether their proposed service extensions would qualify as exempt from LAFCO approval.</p> <p>For example, in the cited example, LAFCO staff advised the GCRC that the service extension in question would indeed be exempt from LAFCO approval.</p>

**COMPREHENSIVE REVIEW AND UPDATE OF LAFCO POLICIES  
SECOND ROUND OF WRITTEN COMMENTS AND RESPONSES**

#	COMMENT	RESPONSE
2f.	<p>LAFCO Staff Response:</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>NSCRCD Supplementary Comments to LAFCO:</p> <p>In its initial comment letter, NSCRCD recognized the desire for the Commissioners to be informed about services rendered outside jurisdictional boundaries to ensure compliance with its mission, and heard concern expressed by the Commissioners that not every jurisdiction is complying with the law. We believe our proposed revision to the language would address those stated issues of noncompliance without imposing undue burdens on the other compliant entities. It will also help the Commission avoid potential liability that it may incur if it were to adopt a policy requirement not authorized by its enabling authorities, as was apparently adopted as policy by a number of LAFCOs, but which resulted in a Court of Appeal ruling that there was no statutory authority to impose an indemnity agreement. <a href="https://alcl.assembly.ca.gov/system/files/2024-06/sb-1209-cortese_0.pdf">https://alcl.assembly.ca.gov/system/files/2024-06/sb-1209-cortese_0.pdf</a></p> <p>Proposed Amendment:</p> <p>We again recommend compromise language for the Commission to consider by amending Section 5.2.4 to read:</p> <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>Summary:</p> <p>We sincerely appreciate the opportunity to present our supplementary comments and advocate for modifications that align with LAFCO’s intent while preserving special district legal rights pursuant to Government Code 56133. As relayed in our previous oral and written comments, and reiterated again in these public comments, we believe the proposed policy is not in conformance with LAFCO’s enabling authorities. We ask that the Commission review and consider our comments, citations, and proposed amendments in the collaborative spirit in which they are offered, and take action to amend the draft policy as presented.</p>	<p>The proposed process to determine if an OASC proposal is exempt from LAFCO approval is straightforward and is <u>not</u> burdensome — it requires only a phone call or an email, and there is no application or fee involved.</p> <p>We believe that having a clear policy reduces confusion, promotes transparency, and affords an opportunity for better communication between LAFCO and local agencies early in an agency’s planning and decision-making process, and could potentially help avoid future litigation.</p> <p>The language proposed by the commenter, however, does not address the above issues. It merely requires notification to LAFCO after the agreement has already taken effect.</p>

**COMPREHENSIVE REVIEW AND UPDATE OF LAFCO POLICIES  
SECOND ROUND OF WRITTEN COMMENTS AND RESPONSES**

#	COMMENT	RESPONSE
3.	<b>COMMENTER: Aaron Forbath, Deputy County Counsel, Office of the County Counsel, Santa Clara County, Received 11/24/24</b>	
3a.	<p>Thank you for taking the time to speak with me and Assistant County Counsel Elizabeth Pianca about the proposed updates to the policies of the Local Agency Formation Commission of Santa Clara County (“Santa Clara LAFCO”) on November 7, 2024. We appreciated the opportunity to discuss possible unintended consequences of the proposed policies to the County of Santa Clara’s Agricultural Worker Housing Workplan, as directed by the Santa Clara LAFCO Board.<sup>1</sup> This letter memorializes our discussion regarding the updates to Santa Clara LAFCO’s Out-of-Agency Service Contract Policies (Chapter 5) and Urban Service Area Policies (Chapter 3).<sup>2</sup></p> <p>Updates to Out-of-Agency Service Contract Policies (Chapter 5)</p> <p>In the proposed updates to the Out-of-Agency Service Contract (OASC) Policies, Section 5.3(3)(b)(i) states that qualifying OASC proposals for agricultural worker housing will receive “special consideration” from Santa Clara LAFCO. We appreciate your clarification that the intent of this “special consideration” is to establish an exception to the general policy that Santa Clara LAFCO shall discourage OASC proposals that are intended to support new development in the unincorporated county.</p> <p>During the meeting, we offered one comment on Section 5.3(3)(b)(i), which specifies certain qualifications for OASC proposals for agricultural worker housing. The first requirement is that the County has methods “currently in place to ensure affordability and occupancy of the proposed agricultural worker housing for eligible agricultural workers over the long term and for not less than 55 years.” As discussed during the call, the County’s Zoning Ordinance includes requirements for permanent agricultural employee housing, which may not align with the 55-year requirement. Specifically, Zoning Ordinance Section 4.10.040(E) requires recordation of permit conditions restricting the use to agricultural employee housing. Accordingly, we recommend revising the phrase to read “and for not less than 55 years or for the duration of the approved use.”<sup>3</sup></p> <p>-----</p> <p><sup>1</sup> The Board of Supervisors, at its regular meeting on December 5, 2023 (Item No. 21), received a report on the County’s Agricultural Worker Housing Workplan. Among other actions, it directed Administration and County Counsel to work on potential changes to Santa Clara LAFCO policies and to consult with LAFCO staff on policy updates that could be submitted to Santa Clara LAFCO for consideration. Additional information regarding the Board of Supervisors action on December 5, 2023 is available at <a href="https://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=117859">https://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=117859</a>.</p> <p><sup>2</sup> We attach the draft Chapter 5 and Chapter 3 policies that you shared with us and that we reviewed during our call on November 7, 2024.</p>	<p>In support of the County’s requirements for permanent agricultural worker housing, staff recommends that Policy #5.3.3(b)(i) be revised as follows:</p> <p>“The County has methods (e.g., requirements for recordation of deed restrictions and/or affordability covenants on the property) currently in place to ensure affordability and occupancy of the proposed agricultural worker housing for eligible agricultural workers over the long term and for not less than 55 years <u>or for the duration of the approved use.</u>”</p> <p>No revision is proposed to Policy #3.4.15(a)(i) as the policy is pertinent to cities and the cited Zoning Ordinance provision is specific to the County.</p>

**COMPREHENSIVE REVIEW AND UPDATE OF LAFCO POLICIES  
SECOND ROUND OF WRITTEN COMMENTS AND RESPONSES**

#	COMMENT	RESPONSE
	<p><sup>3</sup> We also recommend that this language—“and for not less than 55 years or for the duration of the approved use”—also be used in Section 3.4(15)(a)(i).</p>	
3b.	<p>We also discussed the distinction between the “special consideration” proposed in Section 5.3(3)(b)(i) and the exemptions addressed in Section 5.2(4). Consistent with Government Code section 56133(e), Section 5.2(4) provides that certain OASC proposals are exempt from Santa Clara LAFCO approval, including OASC proposals under section 56133(e)(3) for “[t]he provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries.” Such proposals are exempt from Santa Clara LAFCO approval under Government Code section 56133(e) and, therefore, are not subject to the restrictions or requirements outlined in Section 5.3(b)(i).<sup>4</sup></p> <p>-----</p> <p><sup>4</sup> The proposed edits to the policies do not address what process LAFCO would use to approve a project that is exempt under Section 56133(e)(3) but subject to LAFCO approval because it “will support or induce development.”</p>	<p>As noted in Footnote #4, the full text of GC §56133(e)(3) includes a second sentence which states – “However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county.”</p> <p>If a OASC proposal is subject to LAFCO approval under GC §56133(e)(3), then the regular LAFCO approval process for OASC proposals would apply.</p>
3c.	<p>Relatedly, we raised questions during the meeting about Section 5.2(4), which gives the Executive Officer of Santa Clara LAFCO authority to “determine if a proposed OASC is exempt from the requirement for LAFCO approval pursuant to exemptions in [Government Code section] 56133(e).” As we noted during the meeting, nothing in Government Code section 56133—or any other provision of California law—grants Santa Clara LAFCO authority to make exemption determinations. Instead, the Government Code states that the requirements for LAFCO approval of OASC proposals “do not apply” to the categories of projects described in Section 56133(e)(1)-(6).</p>	<p>We agree that LAFCO approval is not necessary if an OASC proposal is determined to be exempt under GC §56133(e)(3)(1-6). The law is silent on who makes the decision on whether a proposal qualifies for a GC §56133(e) exemption from LAFCO approval. It is Santa Clara LAFCO Counsel’s opinion that LAFCO has the authority to adopt a policy to make the</p>

**COMPREHENSIVE REVIEW AND UPDATE OF LAFCO POLICIES  
SECOND ROUND OF WRITTEN COMMENTS AND RESPONSES**

#	COMMENT	RESPONSE
		determination whether an OASC proposal is exempt.
3d.	<p>Updates to Urban Service Area Policies (Chapter 3)</p> <p>Finally, during the meeting, we raised a question about Section 3.4(15)(a) in the proposed updates to the Urban Service Area (USA) Policies. This Section directs Santa Clara LAFCO to give “special consideration” to qualifying USA amendment proposals that “consist solely of agricultural worker housing.” During a follow-up call after the meeting, you clarified that the intent of this “special consideration” is to establish an exception to Section 3.4, which states that Santa Clara LAFCO shall discourage USA amendment proposals “when a city has a more than 5-year supply of vacant land within its existing USA.” It may be helpful to make the impact of this “special consideration” explicit in Section 3.4(15)(a).</p> <p>Thank you again for taking the time to meet with us to discuss the proposed updates to these important policies. Please do not hesitate to reach out with any further questions.</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>An example of LAFCO's flexibility is that, even if a city has more than a five-year supply of vacant land within its existing USA, the commission may view an USA amendment proposal for agricultural worker housing favorably, provided it meets the specific qualifications.</p>

**ITEM # 6****2025 SCHEDULE OF LAFCO MEETINGS AND  
APPLICATION FILING DEADLINES**

<b>LAFCO MEETING</b>	<b>DEADLINE TO FILE APPLICATION</b>
February 5, 2025	December 5, 2024
April 2, 2025	February 6, 2025
June 4, 2025	April 3, 2025
August 6, 2025	June 5, 2025
October 1, 2025	August 7, 2025
December 3, 2025	October 2, 2025

TIME OF MEETINGS

1:15 PM

LOCATION OF MEETINGS

Board of Supervisors' Chambers  
70 West Hedding Street  
San Jose, CA 95110APPLICATION MAILING  
ADDRESSLAFCO Office  
777 North First Street, Suite 410  
San Jose, CA 95112  
(408) 993-4705





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

**Commissioners**  
Sylvia Arenas  
Jim Beall  
Rosemary Kamei  
Yoriko Kishimoto  
Otto Lee  
Russ Melton  
Terry Trumbull

**ITEM # 7**

**Alternate Commissioners**  
Domingo Candelas  
Helen Chapman  
Cindy Chavez  
Teresa O'Neill  
Mark Turner  
**Executive Officer**  
Neelima Palacherla

**LAFCO MEETING: December 4, 2024**

**TO: LAFCO**

**FROM: Neelima Palacherla, Executive Officer  
Emmanuel Abello, LAFCO Analyst**

**SUBJECT: APPOINTMENT OF 2025 LAFCO CHAIRPERSON AND  
VICE-CHAIRPERSON**

**STAFF RECOMMENDATION**

---

Per the rotation schedule, appoint Commissioner Sylvia Arenas to serve as Chairperson for 2025; and Commissioner Rosemary Kamei to serve as Vice-Chairperson for 2025.

**BACKGROUND**

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Pursuant to the LAFCO Bylaws, the rotation schedule for Chairperson and Vice Chairperson is as follows unless otherwise determined by the Commission:

- Cities member
- County member
- San Jose member
- Special Districts member
- County member
- Public member
- Special Districts member

On December 6, 2023, LAFCO appointed Russ Melton, Cities Member, as Chairperson, and Sylvia Arenas, County Member, as Vice-Chairperson for calendar year 2024.

In accordance with the above-mentioned rotation schedule, it is recommended that Vice Chair Arenas (County member) be appointed 2025 Chair and Commissioner Kamei (San Jose Member) be appointed 2025 Vice Chair.





Local Agency  
Formation Commission  
of Santa Clara County

777 North First Street  
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San Jose, CA 95112

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**Commissioners**

Sylvia Arenas  
Jim Beall  
Rosemary Kamei  
Yoriko Kishimoto  
Otto Lee  
Russ Melton  
Terry Trumbull

**ITEM # 8**

**Alternate Commissioners**

Domingo Candelas  
Helen Chapman  
Cindy Chavez  
Teresa O'Neill  
Mark Turner

**Executive Officer**

Neelima Palacherla

**LAFCO MEETING: December 4, 2024**

**TO: LAFCO**

**FROM: Neelima Palacherla, Executive Officer  
Dunia Noel, Asst. Executive Officer  
Emmanuel Abello, Analyst**

**SUBJECT: EXECUTIVE OFFICER'S REPORT**

**STAFF RECOMMENDATION**

---

Accept report and provide direction, as necessary.

**8.1 MEETING RE. THE COUNTY'S HIGHLAND CAMPUS FACILITIES  
MASTER PLAN**

---

On July 8<sup>th</sup>, LAFCO staff met with staff from the County Fleet and Facilities (FAF) Department to discuss the County's Highland Campus in San Martin. The County is currently developing a master plan for the campus, which aims to include agricultural worker housing and other county services on the county-owned property. At the County's request, LAFCO staff provided feedback and recommended early consideration of how services would be provided to the proposed development.

**8.2 MEETINGS WITH THE CITY OF SAN JOSE PLANNING DEPARTMENT**

---

On August 20<sup>th</sup>, LAFCO staff met with City of San Jose Planning Department staff to discuss urban service area boundaries and service extensions, addressing their questions to support their exploration of potential new uses as part of the Coyote Creek Valley Corridor Study.

Separately, on September 12<sup>th</sup>, EO Palacherla met with City of San Jose staff from the Planning Department and the City Attorney's Office to discuss the annexation process in relation to permitting and potential future development at the former Pleasant Hills Golf Course site. EO Palacherla also shared information about LAFCO's comprehensive policy review and update, encouraging their review and feedback on the proposed revisions.

### **8.3 MEETINGS RE. Foothill Mutual Water Company**

---

On September 19, 2024, LAFCO staff met with representatives from the State Water Resources Control Board (SWRCB) and Provost & Pritchard Consulting Group (PPCG), the firm contracted by SWRCB to help the Foothill Mutual Water Company (FMWC) evaluate options to address its lack of safe drinking water due to high nitrate levels. One of the options under evaluation is the potential consolidation of FMWC with the City of Morgan Hill water service. At the meeting, LAFCO staff provided preliminary information and answered questions on LAFCO policies related to water service extension outside city limits.

On November 6<sup>th</sup>, LAFCO staff attended a second meeting with representatives from SWRCB, PPCG, FMWC and the City of Morgan Hill. The group discussed potential options for FMWC and the challenges faced by other small water systems in the area. SWRCB staff has proposed a separate meeting to discuss the broader concerns surrounding other small water systems in the region. PPCG has prepared a Draft Engineering Report to evaluate alternatives for resolving the FMWC's water supply and water quality concerns. The group will continue to meet to help the FMWC vet options and understand what would be required for a feasible option.

### **8.4 SPECIAL DISTRICTS ASSOCIATION MEETINGS**

---

Commissioner Kishimoto, Alternate Commissioner Chapman, and EO Palacherla attended the June 3<sup>rd</sup> quarterly meeting of the Santa Clara County Special Districts Association, held via video conference. During the meeting, Association members engaged in a roundtable discussion on their 2024 plans. EO Palacherla provided updates on LAFCO activities and shared highlights from the June meeting agenda, including the 2025 LAFCO budget, the implementation of recommendations from LAFCO's Countywide Fire Service Review, and the two annexation applications.

Commissioner Kishimoto, Alternate Commissioner Chapman, and EO Palacherla also attended the September 9<sup>th</sup> quarterly meeting, hosted in a hybrid format at the Midpeninsula Regional Open Space District (MROSD) headquarters and online. MROSD staff delivered a presentation on the district's wildfire resiliency program, while EO Palacherla presented on the LAFCO's Comprehensive Review and Update of Policies project and answered attendees' questions. The group requested that EO Palacherla attend a special meeting of the Association to specifically discuss the proposed LAFCO policy updates. Attendees, including staff and board members from various districts, shared reports and updates on current projects and issues of interest.

EO Palacherla, along with Commissioner Kishimoto, and Alternate Commissioner Chapman attended the Association's special meeting on September 23<sup>rd</sup>, to provide a more detailed presentation on the LAFCO policies update and answer questions.

The next quarterly meeting is scheduled for December 2, 2024.

## **8.5 MEETINGS WITH COUNTY PLANNING STAFF**

---

LAFCO staff and County Planning Department staff have quarterly meetings to discuss issues of common interest or concern. At the June 13<sup>th</sup> quarterly meeting, County staff provided updates on the County housing element, housing opportunity sites, and builders remedy applications and LAFCO staff explained the city annexation process for parcels within city urban service areas.

At the next quarterly meeting on September 5<sup>th</sup>, EO Palacherla provided information on LAFCO's comprehensive review and update of policies project and solicited feedback. County staff provided an update on their housing element certification process and builders remedy applications.

## **8.6 SANTA CLARA COUNTY ASSOCIATION OF PLANNING OFFICIALS' MEETINGS**

---

EO Palacherla participated in the virtual meetings of the Santa Clara County Association of Planning Officials (SCCAPO) held on May 1<sup>st</sup>, September 4<sup>th</sup>, and November 6<sup>th</sup>. These meetings featured updates and announcements from MTC/ABAG representatives, as well as guest presentations by host cities on topics such as enhancing public hearing notice procedures and establishing fee schedules. Attendees also shared updates on various matters, including the progress of their agencies' housing elements and the submission of builder's remedy projects.

At the September and November meetings, EO Palacherla highlighted LAFCO's comprehensive policy review and update project, encouraging attendees to review the proposed LAFCO policy updates and provide feedback.

## **8.7 LAFCO ORIENTATION SESSION FOR COUNTY STAFF**

---

On November 15, 2024, LAFCO staff conducted an orientation session for Alex Gvatua, Commissioner Lee's new Policy Aide. Following the presentation, an electronic copy of the presentation was provided to him. LAFCO staff conducts an orientation program to educate incoming Commissioners and their staff about the history of LAFCO, its mandate, policies, procedures, and programs, the role of commissioners and staff, and the LAFCO application review process.

## **8.8 PROMOTION OF EMMANUEL ABELLO AS LAFCO ANALYST**

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Emmanuel Abello's promotion from Associate LAFCO Analyst to LAFCO Analyst became effective on August 19, 2024, following review and approval by the County Employee Services Agency (ESA). In his new role, Analyst Abello will take on assignments that involve greater responsibility and autonomy. He is currently leading the design and development of a new customized database to process LAFCO applications, track public inquiries, and manage the LAFCO contacts directory more efficiently.

Emmanuel Abello joined LAFCO in November 2005 as the LAFCO Office Specialist where he handled a range of clerical, administrative and analytical tasks. In 2022, as

part of a comprehensive reclassification of LAFCO staff positions, a new LAFCO Clerk position was established to focus exclusively on clerical and administrative responsibilities, replacing the previous LAFCO Office Specialist position. During this process, Emmanuel Abello was reclassified to the newly created LAFCO Associate Analyst position in recognition of his performance of analytical and planning-related tasks while serving as the LAFCO Office Specialist. The LAFCO Associate Analyst position is alternately staffed with the LAFCO Analyst position. The County ESA policies provide a process for managers to promote employees in alternately staffed positions to the higher-level position provided they meet the employment standards and consistently demonstrate the ability to perform at the higher level in the series.

## **8.9 MILEAGE REIMBURSEMENT FOR THE 2024 CALAFCO ANNUAL CONFERENCE SESSION SPEAKERS**

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On November 20, 2024, EO Palacherla authorized a mileage reimbursement payment of \$253.81 to Phoebe Seaton of the Leadership Counsel for Justice and Accountability; and on November 21, 2024, she authorized a mileage reimbursement of \$257.28 to Beth Altshuler Muñoz of BAM Consulting, Inc. Both individuals traveled to Yosemite to serve as speakers for the general session titled *“Equity in Action: LAFCO’s Role in Environmental Justice”* at the 2024 CALAFCO Annual Conference, held at the Tenaya Lodge in Yosemite. EO Palacherla coordinated the conference session and invited these subject matter experts to participate as speakers on the panel.

The FY 2025 LAFCO budget contains sufficient funds in the Business Travel (GL 5285800) line item to cover these costs.

At its April 3, 2019 meeting, the Commission adopted Resolution No. 2019-03, delegating authority to the LAFCO Executive Officer for execution of small contracts not to exceed \$5,000 per vendor with prior LAFCO Counsel review and provided sufficient funds are contained in the appropriate line item in the LAFCO budget. Upon execution of the contracts, the Executive Officer is required to report such action to the Commission at the next LAFCO Meeting.



**Local Agency  
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San Jose, CA 95112  
[SantaClaraLAFCO.org](http://SantaClaraLAFCO.org)

**Commissioners**  
Sylvia Arenas  
Jim Beall  
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**ITEM # 9**

**Alternate Commissioners**  
Domingo Candelas  
Helen Chapman  
Cindy Chavez  
Teresa O'Neill  
Mark Turner  
**Executive Officer**  
Neelima Palacherla

**LAFCO MEETING: December 4, 2024**

**TO: LAFCO**

**FROM: Neelima Palacherla, Executive Officer  
Emmanuel Abello, LAFCO Analyst**

**SUBJECT: CALAFCO RELATED ACTIVITIES**

**STAFF RECOMMENDATION**

---

Accept report and provide direction, as necessary.

**REPORT ON THE 2024 CALAFCO ANNUAL CONFERENCE**

---

Vice Chairperson Arenas, EO Palacherla, Analyst Abello and Clerk Humphrey attended this year’s CALAFCO Annual Conference which was held at the Tenaya Lodge at Yosemite from October 16 – October 18. EO Palacherla served on the 2024 CALAFCO Conference Planning Committee and coordinated a general session entitled “Equity in Action: LAFCO’s Role in Environmental Justice”. The annual conference provided an opportunity for LAFCOs across the state to share some of their best practices and learn new techniques and approaches from other LAFCOs.

**Vice Chair Arenas Participates in Conference Session on Environmental Justice**

Vice Chairperson Arenas served as the moderator of a General Session entitled “Equity in Action: LAFCO’s Role in Environmental Justice” and facilitated the audience interaction activities during the session. The session speakers included Beth Altshuler Muñoz, President and Founder, BAM Consulting, Inc.; Keene Simonds, Executive Officer, San Diego LAFCO; and Phoebe Seaton, Co-Founder and Co-Executive Director, Leadership Counsel for Justice and Accountability. The session provided an insightful overview of environmental justice issues in land use planning; environmental justice requirements for LAFCOs, and included case studies illustrating environmental justice challenges relevant to LAFCOs.

Analyst Abello recorded and produced a video recording of the session which is available on the Santa Clara LAFCO website at <https://santaclaralafco.org/-resources/presentations>.

## **Summary of Conference Program**

In addition to the two pre-conference activities - a LAFCO 101 Session and a Mobile Workshop, "The Road to Glacier Point" that showcased how Mariposa County and Yosemite National Park collaborate on service provision; the program for the first day of the conference included two general sessions entitled "In the Halls and Behind the Walls: When Legislation Turns Political", and "Equity in Action: LAFCO's Role in Environmental Justice".

Thursday's program included regional caucus meetings and elections, CALAFCO Annual Business Meeting, commissioner and staff roundtable discussions organized by region, and breakout sessions including "Connecting the Drops: Private Water Systems in California"; "Consolidations: Beyond the LAFCO Process, the Commissioners' Role"; "What Would You Do? when presented with unusual challenges and issues"; and "What Does that LAFCO Hat Look Like?"

Friday's program included two general sessions - "Preparing for Future LAFCO Leaders, Today!" and "Empowering Water Policy Champions Through Education, Collaboration, and Inclusive Fellowship". CALAFCO has posted all conference presentation materials and handouts on its website at [www.calafco.org](http://www.calafco.org).

The 2025 CALAFCO Annual Conference is scheduled for October 22-25, 2025 at the Wyndham Bayside in San Diego, California.

Journal of the  
California Association of Local Agency Formation Commissions

ITEM # 11.1

# THE SPHERE

## 2024

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and More...

Cover Photo by  
Stephanie Pratt, Napa LAFCO

# THE SPHERE

## CALAFCO Journal

October, 2024

The Sphere is a publication of the California Association of Local Agency Formation Commissions.

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CALIFORNIA ASSOCIATION OF  
LOCAL AGENCY FORMATION  
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**CALAFCO**

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ANNUAL REPORT

### CALAFCO MISSION

*The mission of CALAFCO is to promote efficient and sustainable government services based on local community values through legislative advocacy and education.*

# A Message From The Chair of **CALAFCO**



**MARGIE MOHLER**  
Chair of the Board

**A**s we approach the end of this year, many of us naturally look toward the future and anticipate what lies ahead. While the promise of tomorrow excites us, it's essential to recognize that growth springs from reflection. What did we execute well, and where did we encounter challenges? These insights will guide our path forward.

During my tenure as Chair of the Board of Directors, I heard concern from some LAFCO members: uncertainty about the organization's impact. Rather than viewing this as a fault, I see it as an opportunity. Our mission is to provide value to our members, and we achieve this through innovative ideas, active participation, and feedback. As a volunteer-driven organization, our strength lies in collaboration.

At our last strategic planning session, the Board of Directors acknowledged room for improvement in our political effectiveness.

The previous Legislative Committee encountered several challenges, including time constraints, unproductive meetings, and limited legislative influence. Over the years, CALAFCO has received numerous complaints from members about the committee's structure, composition, and inclusivity—ranging from concerns about it being too inclusive to not inclusive enough. After thoroughly considering these complaints, challenges, and our Strategic Plan goals, the Board of Directors approved the new Legislative Policy Committee.

Subsequently, the CALAFCO Board received numerous complaints regarding the establishment of the Legislative Policy Committee and held a Special Board Meeting on September 30th. At that time, they voted

to rescind the new Legislative Policy Committee and reestablish the previous Legislative Committee. However, the action was conditioned on the Board committing to again discuss the Legislative Committee structure at its strategic planning meeting in 2025,

In addition to addressing the concern about CALAFCO's political impact, we're considering discussing other challenges:

## **1. Membership Engagement:**

Ensuring offerings for all levels of LAFCO staff. Enhancing communication channels, organizing engaging events, and fostering a robust statewide network for all LAFCO professionals.

## **2. Resource Allocation:**

Efficiently allocating resources to maximize our impact. We've been exploring ways to streamline processes, reduce administrative overhead, and allocate funds strategically.

I extend my deepest gratitude to our CALAFCO Board of Directors. Your time, dedication, and ideas shape our organization to build a stronger future. On behalf of all members a heartfelt thank you to our staff, Rene LaRoche who does all the rest.

If you're passionate about promoting efficient government services, advocating for legislative change, or contributing your unique skills, consider becoming part of our CALAFCO Board of Directors. Your involvement can make a meaningful difference.



# New Laws Affecting LAFCOs

## SB 1209 (Cortese) - Indemnification

What started in the wake of a 2022 court case, concluded on September 28, 2024, when Governor Gavin Newsom signed into law SB 1209. A CALAFCO sponsored bill, SB 1209 authorizes LAFCOs to require indemnification provisions as a condition for processing a LAFCO action, which can then be triggered if a commission approval is challenged. The bill will be chaptered as Government Code Section 56383.5, and it will take effect on January 1, 2025.

The new law also requires LAFCOs to take certain actions to maintain the indemnification. These actions include promptly notifying an applicant of any claim or action against an approval, fully cooperating in the defense of the action, and getting approval from the applicant of any settlement. Since failure to do any of those three things will negate the indemnification provision, thereby leaving a commission solely responsible for costs, LAFCOs are strongly urged to update their procedures as soon as possible to incorporate those actions.

### Background

In July, 2022, the Second District Court of Appeals determined that a LAFCO, despite prevailing in the underlying court case, could not require or rely upon indemnification because it is not expressly authorized to do so in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. Within months of that decision, a legislative proposal was crafted to add such authorization into law.

Due to major legislative deadlines that occur at the beginning of each year, the proposal was ushered along swiftly, and it was approved by the CALAFCO

*(Continued on page 10)*

## AB 3277 (Assembly Local Government Committee) Districts: property tax

A CALAFCO sponsored bill, AB 3277 adds language to Government Code Section 56810(a)(2) that limits the requirement to perform a financial analysis of ad valorem taxes during the formation of a district to only those times when a share of the taxes are actually being sought. Without this amendment, the financial analysis is required at all times - even when a share of the taxes is waived.

This bill takes effect on January 1, 2025.

## BROWN ACT CHANGES:

The following changes to the Brown Act take effect on January 1, 2025:

- ◆ **AB 2302 (Addis D) Open meetings: local agencies: teleconferences.**

This bill removes language from Government Code Section 54953 (f)(3) regarding how much members of legislative bodies may attend regularly scheduled meetings via teleconferencing, and adds in new sections to redefine the limitations.

Existing law limits teleconference attendance by members of a legislative body to three consecutive months, or 20 percent, of regular meetings within a calendar year, or more than two meetings when the legislative body meets fewer than 10 times per year. However, this bill removes that provision and redefines them based on the frequency that regular meetings are held. The new limits are:

- Two meetings per year, if the legislative body conducts regular meetings once per month, or less;

*(Continued on page 10)*

# Jerry Gladbach Water Treatment Plant Dedication

Submitted by Los Angeles LAFCO

On Thursday, June 27, 2024, the Santa Clarita Valley Water Agency (SCVWA) dedicated its on-site water treatment plant as the “E. G. ‘Jerry’ Gladbach Water Treatment Plant.” In addition to serving on the SCVWA, Jerry had been a commissioner on the Los Angeles LAFCO for twenty-one years, a CALAFCO Director from 2005 to 2013, and the 2012 CALAFCO Board Chair.

Speakers at the dedication included SCVWA Board Chair Gary Martin; City of Santa Clarita Mayor Laurene Weste; representatives of Congressman Mike Garcia, State Senator Scott Wilk, and State Assemblymember Pilar Schiavo; and Donna Gladbach (Jerry’s wife).

The speakers discussed Jerry’s decades-long service to SCVWA, LA LAFCO, CALAFCO, the Association of California Water Agencies (ACWA), and the National Water Resources Association.

While Jerry certainly had a positive impact on the water community, his wife noted that his true legacy was in the way that he lived, and she quoted Maya Angelou to describe Jerry’s life as not being measured by the breaths we take, but by the moments that take our breath away.

At the conclusion of the moving ceremony, a plaque



Above: Marsha McLean, Santa Clarita Councilmember (left), Donna Gladbach (center), and Laurene Weste, Santa Clarita Mayor (right)



recognizing Jerry was unveiled in front of the treatment building which will act as a permanent testament to his life of service.

Los Angeles Executive Officer Paul Novak and Deputy Executive Officer Adriana Romo attended the dedication.

WHY?

WHY?

WHY?

WHY?

WHY?

## Problem Solving With the 5 Whys

By René La Roche, CALAFCO Executive Director

The old *time is money* adage has never been truer in the office and business world than now, as everyone is being asked to do more with less. Given the expense involved in developing and implementing working solutions, it is imperative to develop proficiency in first identifying core problems. Yet, that is not always as easy as it seems because we often mis-define the symptoms of a problem as the underlying issue. To illustrate, consider sunburn for a moment.

Sunburn has always been a problem for me. In fact, in my younger years I considered it my arch-nemesis because my skin would turn lobster red long before anyone else among my friends. One particularly bad instance ended with my shoulders covered in one-inch-long blisters, which I later learned was a sign of a second-degree burn. Yes, sunburn was a huge problem for me. Or was it?

Like most people, I defined the problem as the thing that was immediately impacting me - in this case a sunburn. Since sunburns hurt, they made outings unpleasant, ergo, sunburns were the problem. But as I matured, I realized that the problem was that I had chosen to spend too much time in the sun for my skin tone, and that I had compounded the negative effects of that choice by not using the proper strength of

sunscreen and by choosing not to wear a hat or any other kind of protective sun covering. Reframed in that way, it becomes easier to see that sunburn was not the problem but, rather, a consequence of some poor choices. Changing the choices created a different result.

However, it took many years and, unfortunately, many sunburns before I realized the mistake I was making. It is extremely difficult to identify core problems when in the midst of them. So, what can we do to help identify them? The best thing to do is to ask questions. But, as Elon Musk has noted, "...a lot of times the question is harder than the answer."<sup>i</sup> This is where the 5 Whys can help.

### The 5 Whys

With roots in Lean Manufacturing, the 5 Whys is a simple method to peel open a problem like an onion to uncover its core issue.<sup>ii & iii</sup> Its beauty is that it does not require special training, math, or any particular skill or tool other than being able to channel one's inner toddler to repeatedly ask why something is a problem.

So, what does that look like? Consider, for example, an oft-repeated example from Taiichi

(Continued on page 13)



# Understanding AI for LAFCO Agencies: Navigating the Future of Technology

By Amanda Ross, CEO, South Fork Consulting LLC (with some help from an AI LLM)

## What is AI and How Does it Work?

First, let's demystify what is meant by "AI." In simple terms, AI refers to computer systems designed to perform tasks that typically require human intelligence. Large Language Models, a type of AI, are systems trained on vast amounts of text data, allowing them to understand and generate human-like responses. You might be surprised to learn that you're likely already interacting with AI in your daily life, perhaps through your smartphone's voice assistant or your email's spam filter or predictive text appearing as you are typing in your word document or email. While I have not applied AI to work produced by South Fork Consulting, I have played around with its applications and found that, while it can introduce errors, there are opportunities for AI to help LAFCOs and their staff.

## Possibilities of AI in LAFCO Work

In the context of LAFCO work, AI and LLMs could assist with tasks such as document review, data analysis, and report generation. For instance, these systems could help summarize lengthy municipal service reviews or sphere of influence studies, potentially saving time in the review process. They might also aid in analyzing historical data on population growth, service demands, and land use patterns to provide more accurate projections for boundary reviews and service planning. This can lead to more informed decisions about annexations, sphere of influence updates, and special district formations or dissolutions. The possibilities for AI as it continues to learn could potentially be endless.

As these LLMs advance, they can be trained to be better at producing documents that meet the needs of each LAFCO agency. They will likely allow LAFCOs to automate report generation, provide service demand forecasting for agencies, and project population growth more accurately through incorporation of multiple data sources (census data, local economic indicators, known and potential development projects, etc.) And while this is an exciting new chapter in humanity's quest for ever expanding technology, it's crucial to approach these possibilities with caution.

## AI Challenges and Risks

While AI can process information quickly, it lacks the nuanced understanding and local knowledge that LAFCO officers, staff, and commissioners have within their agencies. The complexity of boundary reviews, service planning, and community dynamics requires human judgment that cannot be replicated by AI. Transparency and explainability pose additional challenges. Many AI systems, especially complex ones like LLMs, operate as "black

*“While AI can process information quickly, it lacks the nuanced understanding and local knowledge that LAFCO officers, staff, and commissioners have within their agencies.”*

(Continued on page 12)

# CALAFCO Partners with Assura to Develop LAFCO Software Solution

By Assura Software

**N**avigating the complex twists and turns of the Cortese Knox Hertzberg Local Government Reorganization Act of 2000 (CKH) is a challenge all LAFCO practitioners are familiar with. Whether a LAFCO considers a few dozen or only a few applications per year, making sure the application is processed properly requires a focused effort to ensure the Commission's ultimate action can withstand any possible challenge.

For decades, LAFCO staff have devised methods to make sure they don't miss any subtle statutory requirements using sticky notes, whiteboards, spreadsheets, and home grown checklists to manage the process.

Yes, over the past 40 years, the software industry has developed tailored applications to meet the needs of virtually every other type of organization. The catchphrase "there's an app for that" has brought the power of information systems to bear for others, while LAFCOs were forced to improvise on their own, using administrative methods that would be familiar to our grandparents. Until now.

## Specialized Software for LAFCOs

This year, CALAFCO partnered with Assura Software, a technology company from New Zealand and CALAFCO Associate member, and Kennedy Water Consulting, another CALAFCO Associate member based in California, to develop the first ever workflow software specifically designed to assist LAFCO staff when processing applications. The software, which is a secure cloud-based application that runs on ordinary web browsers and includes a mobile app, has been built to "understand"

some of the complex rules in CKH.

For instance, if a LAFCO is processing a landowner initiated application, the information collected and workflow process will be different than if it were initiated by the vote of a board of directors. As LAFCO practitioners know, CKH has a variety of deadlines for notifications and other processes and these have been built into the software. The software automatically calculates the dates for these notifications and prompts users as the deadline nears.

## From Large to Small

The larger LAFCOs were eager to get started with San Diego LAFCO "going live" on the Assura platform in the summer of 2024. Since implementation, the new software has revolutionized their processes.



San Diego LAFCO's Executive Team, EO Keene Simonds (right) and AEO Priscilla Mumpower (left)

Assistant Executive Officer Priscilla Mumpower reports that "the Assura team has assisted LAFCO staff in creating a tailored platform that streamlines proposal management and keeps the executive team updated on all ongoing proposals." Now, all team members can see the

*(Continued on page 11)*



# From Vision to Action: Crafting a Strategic Plan that Reflects your Unique Perspective

By CV Strategies

For many agencies, a strong foundation and individual talents aren't enough to ensure continued success. Leveraging strategic planning to align your organization on both short- and long-term goals not only encourages employee adoption but also helps to mitigate financial risk.

Every successful project should begin with an audit of the organization's strengths and weaknesses – both internal and external – as well as an analysis of opportunities and threats. It's important to take the time to listen to and truly understand your staff, the public agencies you support and your commissioners. Through a deep partnership, your team can capture the big picture while also exploring every angle for a successful, multifaceted strategic plan.

By examining these factors and building a criteria framework, your organization can strategically allocate resources that leverage employee strengths and build toward common goals. This process empowers individuals and fosters creativity, which allows for more meaningful inter-department collaboration. Success can be measured throughout the strategic planning process by clearly communicating and tracking key performance indicators.

However, these plans aren't set in stone. Organizations must monitor internal and external feedback closely and adjust accordingly. It's best to revisit your strategic plan regularly, adapting to current market conditions and anticipating new threats that may be on the horizon. By continuing to evolve, you can ensure long-term success for your county's LAFCO.



## TRACKS AROUND THE STATE



**TYLER SALCIDO, Imperial LAFCO Executive Officer**

On August 26, 2024, Tyler Salcido took the helm as the new Executive Officer for Imperial LAFCO. He comes to Imperial LAFCO after previously serving as the City Manager for the City of Brawley. Tyler is new to the LAFCO world but is excited for this new journey.

**AIMEE DIAZ, Orange LAFCO Policy Analyst I**

A recent graduate of UC Irvine's Master of Public Policy Program with a focus on Social Inequity Policy, Aimee is the new Policy Analyst I in the OC. She came to LAFCO from the City of Lake Forest, where she made significant contributions through her work with the Economic Development Division. Aimee is eager to advance her talent at OC LAFCO and is already managing her first district annexation!



Newest San Diego LAFCO Employee, Jack Sellen.  
"Hired" March 2024

## NEW LAWS AFFECTING LAFCOs - SB 1209 (Cortese)

(Continued from page 4)

Board of Directors at a Special Meeting held on January 19, 2023. The bill was submitted to Legislative Counsel but immediately encountered resistance from a sister entity. That created concerns among potential authors and resulted in the bill not being introduced by the February 17, 2023, deadline. Not to be deterred, CALAFCO used the months that followed to prepare a Fact Sheet, and then to communicate extensively with stakeholders, including CSDA, CSAC, RCRC, and the League of Cities.

By the end of summer 2023, with the sister entities now comfortable with the proposal, CALAFCO's advocate, Jean Hurst, again began searching for an author. However, her efforts bumped into the holidays when key legislative staff were unavailable. On February, 2024, CALAFCO received confirmation that Senator Dave Cortese would be carrying the bill. The Senator introduced the bill on February 15, 2024, as SB 1209, and it was scheduled for hearing before the Senate Local Government Committee on March 20, 2024. However, soon after the bill's introduction, the California Building Industry Association (CBIA) notified the Senator of its intent to oppose the bill.

In a preliminary listening session, CBIA advised the Senator's staff and CALAFCO that its primary concern involved indemnification for applications that are denied. With the Author's office indicating a desire to resolve CBIA's concerns, CALAFCO committed to working towards compromise language. Based on that commitment, SB 1209 was heard before the Senate Local Government Committee as scheduled. During that hearing, the Author noted not only CBIA's concerns, but also his commitment to address them. With that contingency, the bill passed out of committee with a vote of 6-0 and no formal opposition on record.

Negotiations between the CALAFCO team and CBIA would extend over the next four months in search of language acceptable to both parties. Satisfactory language was finally crafted and SB 1209 was officially amended into its final form on June 11, 2024, and scheduled before the Assembly Local Government Committee (ALGC) on June 19, 2024. With a unanimous vote of 9 to 0, the ALGC approved the amended bill, with 32 LAFCOs, Los Angeles County, and CALAFCO in support, and the California Association of Resource Conservation Districts the only opposition.

With both local government policy committees approving, the bill passed quickly out of the Assembly with a 60 to 0 vote, and through Senate Concurrence with a 39-0 vote.

### The Team

CALAFCO wishes to extend its sincere thanks to negotiating team members Paul Novak (Los Angeles LAFCO), René LaRoche (CALAFCO), David Ruderman (Colantuono Highsmith and Whatley, LLP), and Jean Hurst (Hurst Brooks and Espinosa); to Paul Novak, Steve Lucas (Butte LAFCO) and Scott Browne (P. Scott Browne, Attorney) for co-authoring the bill proposal and for reviewing amended language; and to all of the LAFCOs who sent in letters of support.

#### **BROWN ACT CHANGES**

(Continued from page 4)

- Five meetings per year, if the legislative body conducts regular meetings twice per month; or
- Seven meetings per year, if the legislative body conducts regular meetings three or more times per month.

For purposes of this provision, the bill also requires any meetings begun on the same calendar day to be counted as separate meetings.

- ◆ **AB 2715 (Boerner) Ralph M. Brown Act: closed**

#### **sessions**

Currently, Government Code Section 54957 allows closed session discussions regarding threats to the security of public buildings, essential public services, and the public's right of access to public services or public facilities.

This bill expands the list of permissible closed session topics to cybersecurity threats by adding threats to critical infrastructure controls (defined as networks and systems controlling assets that are so vital to the local agency that their incapacity or destruction would have a debilitating impact on public health, safety, or economic security.), and threats to critical infrastructure information.

## LAFCO SOFTWARE SOLUTION

(Continued from page 8)

The screenshot displays the Assura software interface for a proposal. At the top, it shows 'K Proposal No. 2024-01 - Anytown Annexation of Development A' and an 'ACTION' dropdown menu. Below this is a progress bar with five steps: 0. PRE-ADMINISTRATIVE REVIEW, 1. ADMINISTRATIVE REVIEW, 2. PRE-COMMISSION MEETING, 3. APPROVED - PENDING, and 4. PROTEST HEARING. The 'Overview' section contains a table with the following data:

State	5. Post Commission Action	ID	14
Lodged By	Kennedy, Tom	Date Lodged	16-Feb-2024 11:55 AM
Last Changed By	Whitelock, Samantha	Date Changed	13-Aug-2024 5:25 PM
Start Date	16-Feb-2024 11:51 AM	Category	Planning

The 'Proposal Details' section includes the following information:

- Date Received: 16-Feb-2024
- Proposal Type: Reorganization
- Proposal Number: 2024-01
- Proposal Source: Board Resolution
- Proposal Name: Anytown Annexation of Development A
- OPR Title: [Empty field]
- State Clearing House Number: [Empty field]

exact status of any proposal from anywhere - including their phone - without having to track down the analyst or find their notes or checklist. Executive Officer Keene Simonds adds “the new norm out of the pandemic of regular teleworking practices means greater importance in technology to help bridge the

communication gaps that exist when employees are not in the same place; among other benefits, Assura is San Diego LAFCO’s investment in bridging the communication gap to help ensure proposals are proceeding as intended.”

Additionally, the Assura system automatically develops a detailed, complete administrative record that documents each step of the application process. While no LAFCO wants to experience a challenge to their process, using the Assura system will save time and legal costs should that happen. Assura can also incorporate local county policies into the workflows as the software is highly configurable to meet specific needs.

### What About Smaller LAFCOs?

Understanding that smaller LAFCOs have limited budgets, Assura partnered with CALAFCO over the summer to develop a shared system tailored specifically to smaller LAFCOs. From a call seeking volunteers, four LAFCOs generously provided personnel to work on the project. The group, composed of Shiva Frentzen (El Dorado LAFCO), Krystle Heaney (Shasta LAFCO), JD Hightower (San Joaquin LAFCO), Mitzi Stites (San Joaquin LAFCO), and Jeren Seibel (Marin LAFCO), brought diverse experience and great insight to the effort. They met several times to review software capabilities and were able to develop a basic version that will bring the benefits of a customized installation to a shared system - at an affordable cost.

“  
Assura  
partnered with  
CALAFCO over the  
summer to develop  
a shared system  
tailored specifically  
to smaller LAFCOs.”

This shared system features user level account security, which means that a LAFCO’s staff members can only see the data of their LAFCO - and no other LAFCOs. Since it is a shared server, the CALAFCO workgroup also identified workflow processes that would be of use to all participants. Through this collaboration, the system that was developed features all the tools most LAFCOs will need. This system is expected to be a boon for part time EOs who process very few applications, as the Assura system will guide them through the process and make sure that nothing is missed.

### Why Assura Software?

**a. User Experience:** Assura’s intuitive interface ensures that users of all skill levels can navigate and utilize Assura Software effectively. With a focus on user-centric design, users experience a smooth transition and immediate productivity gains because it looks like the normal process.

**b. Flexibility and Accessibility:** Available on both web and mobile platforms, Assura Software provides the flexibility to manage tasks from anywhere. This cross-platform compatibility is ideal for teams and individuals who need consistent access and functionality across devices.

**c. Security and Scalability:** Assura Software invests in the security of their platform to ensure it is as robust as possible. The Assura Software solution also scales as user needs evolve, ensuring long-term value and adaptability.



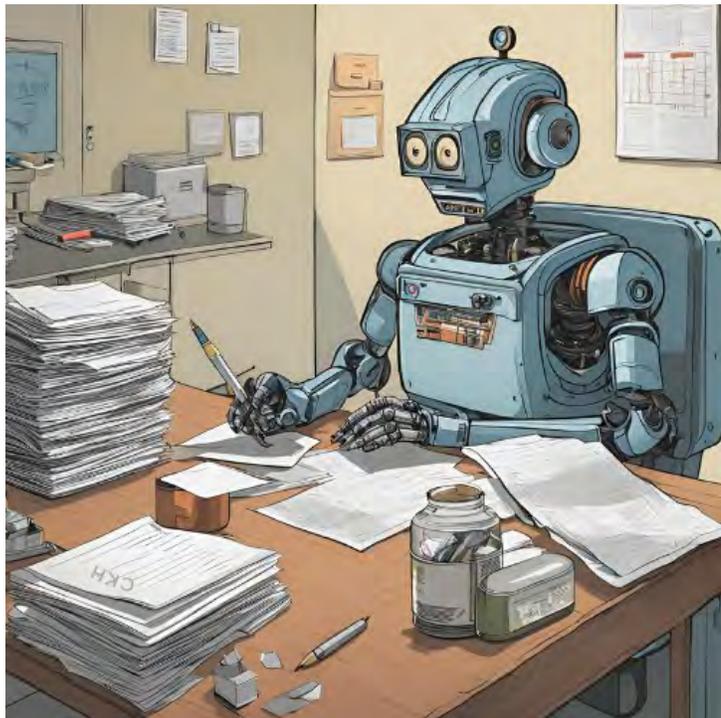
More information on the Assura solution can be found online at <https://www.assurasoftware.com/LAFCO>.

## AI FOR LAFCO AGENCIES

(Continued from page 7)

boxes," making it difficult to understand how they arrive at their conclusions. This lack of transparency can be particularly problematic for government agencies like LAFCOs, which are required to provide clear justifications for their decisions to the public and stakeholders.

It is also crucial to understand that AI can sound intelligent or correct without actually being accurate. These systems are designed to generate plausible-sounding text based on patterns in their training data, but they don't truly understand the content in the way humans do. They can make mistakes, present outdated information, or even generate entirely fictitious "facts" that sound convincing. As an example, consider the case of a lawyer who



recently used an LLM to generate an argument for court and submitted the brief without a review. Several of the cases used for the legal precedents in the argument weren't real, the LLM misidentified judges, and it included companies that didn't exist. The incident made headlines and the law firm was fined. This phenomenon, sometimes called "AI delusion," underscores the need for rigorous human oversight and verification of any AI-generated content.

If LAFCOs do consider integrating AI into their operations, it should be done with caution and through a carefully planned approach. This might include starting with small, low-risk projects, ensuring full transparency about AI use, maintaining strong human oversight, and investing in comprehensive training for staff. For example, a LAFCO agency could start with tasking an LLM to summarize long documents or review an application for completeness. Any use of AI would need to be checked for biases, errors, or incorrect information.

## The Future is Already Here

Today, right now, consultants can use AI for summarization, data processing, document creation, and idea generation. Even if LAFCOs themselves don't directly implement AI systems, they may interact with AI through their consultants' work. LAFCOs should consider adding clauses to consultant contracts requiring disclosure of any AI use in their work for LAFCOs. Just as subcontractors are required to be listed in contracts, AI should too. This transparency can help ensure that LAFCOs are fully aware of how AI might be influencing the information and recommendations.

No one knows what the future will hold. Major advancements in technology are always met with concern and skepticism. While it's important to embrace the future, the use of AI in LAFCO operations requires careful consideration and a cautious approach for now. Collaboration will be key in navigating this new technology. Engaging with other LAFCOs and government agencies to share experiences, best practices, and lessons learned in AI implementation can help us all navigate this complex and somewhat exciting new chapter of the human experience.

### UPCOMING CALAFCO EVENTS

#### 2025 Staff Workshop

April 30 – May 2

Temecula Creek Inn, Temecula, California  
Hosted by Riverside LAFCO

#### 2025 Annual Conference

October 22 – 24

Wyndham Bayside Hotel, San Diego, California

#### 2026 Staff Workshop

Spring, 2026

Location: TBD

## THE 5 WHYS

*(Continued from page 6)*

Ohno's 1988 analysis of Toyota's Production in which a machine stops. Using the 5 Whys method, questions and answers might look something like:

1. *Why did the machine stop?*  
*There was an overload and the fuse blew.*
2. *Why was there an overload?*  
*The bearing was not sufficiently lubricated.*
3. *Why was it not lubricated sufficiently?*  
*The lubrication pump was not pumping sufficiently.*
4. *Why was it not pumping sufficiently?*  
*The shaft of the pump was worn and rattling.*
5. *Why was the shaft worn out?*  
*There was no strainer attached and metal scrap got in.<sup>iv</sup>*

As you can see, the underlying problem was much more serious than a fuse. Without engaging in this exercise, the machine operator would have been doomed to making repeated, and increasingly more serious, repairs in the future.

While the above is a simplistic example, Toyota applied this method to larger scale questions that compared their operations to those of other companies. Some of their greatest transformations came from asking questions like: "Why can one person at Toyota Motor Company operate only one machine, while at the Toyoda textile plant one young woman oversees 40 to 50 automatic looms?" Starting with this inquiry and engaging in the iterative questioning process, Toyota found that Toyoda's looms stopped when weaving was complete. Based on that discovery, Toyota changed its machines so that they stopped when machining was finished. That led to broad-scale manufacturing innovations through the development and application of automation.<sup>v</sup>

Engaging in the 5 Whys recognizes that problem solving is complicated and provides a way to differentiate between what is cause and what is effect. In fact, the technique is so effective that it is now a core exercise in the Analyze phase of Lean Six Sigma - a method taught and used extensively to improve an organization's operations through the elimination of waste and unnecessary steps.

So, the next time a problem comes your way, pause, take a breath, and go through the 5 Whys exercise. You may find that hats and SPF 100 sunscreen are your solution.

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California Association of  
Local Agency Formation Commissions

**CALAFCO**

SUPPORTING SUSTAINABLE  
COMMUNITY GROWTH

# ANNUAL REPORT

FISCAL YEAR 2023-2024



Photo By  
Crystal Craig, Riverside LAFCO  
2nd Place Winner, 2024 Staff Photo Contest

**CALAFCO**

1451 River Park Drive, Suite 185, Sacramento, California 95815  
(916) 442-6536

# CALAFCO LEADERSHIP

June 30, 2024



Photo By  
José Henriquez, Sacramento LAFCO  
3rd Place Winner, 2024 Staff Photo Contest

## BOARD OF DIRECTORS

Margie Mohler (*Napa - City*), Chair  
Acquanetta Warren (*San Bernardino - City*), Vice-Chair  
Gay Jones (*Sacramento - District*), Treasurer  
Blake Inscore (*Del Norte - City*), Secretary

Bill Connelly (*Butte - County*)  
Kimberly Cox (*San Bernardino - District*)  
Rodrigo Espinosa (*Merced - County*)  
Yxstian Guitierrez (*Riverside - County*)  
Kenneth Leary (*Napa - Public*)  
Gordon Mangel (*Nevada - District*)

Michael McGill (*Contra Costa - District*)  
Derek McGregor (*Orange - Public*)  
Anita Paque (*Calaveras - Public*)  
Wendy Root Askew (*Monterey - County*)  
Josh Susman (*Nevada - Public*)  
Tamara Wallace (*El Dorado - City*)

## STAFF

René LaRoche, Executive Director  
Clark Alsop, Legal Counsel  
Brandon Dante, Accountant  
Jeni Tickler, Administrator

Steve Lucas, Executive Officer  
José Henriquez, Deputy Executive Officer  
Dawn Mittleman Longoria, Deputy Executive Officer  
Gary Thompson, Deputy Executive Officer

**CALAFCO**

1451 River Park Drive, Suite 185, Sacramento, California 95815  
(916) 442-6536



Photo By  
Stephanie Pratt, Napa LAFCO  
1st Place Winner, 2024 Staff Photo Contest

## ASSOCIATION MANAGEMENT

The past year has been a banner year of change for CALAFCO. Guided by the 2023-2026 Strategic Plan, concerted effort has been focused on modernizing the Association. Included among those efforts was a move to a new office space, transitioning our bookkeeping system to a cloud system, building a new website on an association management platform to provide a one-stop shop format for members, and more. Together, the changes helped to create a more sustainable organization by creating new efficiencies and reducing costs.

While efficiency and sustainability are worthy goals unto themselves, the changes are expected to also help position CALAFCO for future growth, new offerings, and increased political effectiveness and relevance. Of more importance for this report, however, is that the changes, combined with higher revenues, also resulted in FY 23-24 enjoying record-breaking Net Revenues and our highest ever Net Asset Balance.

Of course, every success stands on the back of another and so, too, with this. Kudos must be extended to previous Boards and staff who did the hard work to get us to where CALAFCO has structurally balanced budgets that fully fund operations from member dues. By making that shift previously, the Association is now seeing the benefits as event returns translate directly into the Association's Net Revenue, with that net amount being further amplified through placement in interest-bearing accounts and certificates of

*(Continued on page 17)*

deposit.

## Correction

While the transition to the new cloud bookkeeping system in July, 2023, has provided many new financial tools and reports, it was not a smooth process because of the age of our former system. While we were finally able to transfer over all of our data, we had not immediately noticed that the salary that was paid on July 5, 2024, and which was attributable to the last quarter of FY 23-24 under accrual accounting rules, had not posted correctly. The mis-posting was discovered later in the year and the journal adjusted accordingly; however, that correction results in a change from last year's reported data. Specifically, the FY 23-24 Net Assets that were reported as \$235,066 on previous year end Balance Sheets, were actually \$227,053 as shown in the Statement of Financial Position comparison in this year's report.

Member Dues

△ 3.1%

Event Revenues

△ 26%

Other Revenues

△ 261%

Total Expenses

△ 1.2%

Total Revenues

▲ 18%

Revenue of \$131,281, which is nearly three times the FY 22-23 Net Revenues of \$44,473.

Higher Net Revenues, in turn, boosted the Association's Net Assets, which posted a 57.8% increase over the prior year (\$358,334 compared to \$227,053.)

## Financial Picture

Overall, CALAFCO finished Fiscal Year 2023-2024 in a strong financial position. Revenues increased and expenses were relatively flat, which resulted in healthy returns.

Total revenues increased by 18% due to:

- A 26.3% increase in event revenues due to significantly higher attendance;
- A 3.1% CPI increase of member dues, and
- Other Revenues posting a 261% increase due to higher interest rates on financial accounts.

With the pandemic behind us, we are again offering our full calendar of events and, as evidenced by the attendance at the 2023 annual conference, they seem to be enjoying a great deal of energy and interest. Unfortunately, the smaller size of the 2024 conference facility prevents a determination of whether significantly higher attendance is the new trend.

Taken together, the increased revenues along with total expenses that were held to a mere 1.2% increase, had a synergistic effect that returned an Annual Net

Net Revenues (Return)

3X ▲

Net Assets

▲ 57.8%

(Continued on page 18)

More impressively, however, is that a full 79% of revenues was spent on the delivery of CALAFCO's mission-driven programs, while only 17% went to operational administrative expenses, and 4% went to Board support and regional officer stipends.

## Conclusion

As can be seen in the financial statements that follow, adhering to the actions defined in the 2023-2024 Strategic Plan have brought CALAFCO a successful year with increased revenues and nearly flat expenses. The cumulative effect for the Association is that Net Assets at fiscal year-end are higher than the Association has ever enjoyed. However, given that most of the cost cutting actions have now occurred, repeating this performance will rely heavily on the attendance numbers of future events.



Gay Jones  
Board Treasurer



René LaRoche  
Executive Director

## The Data

The financial data that follows draws from the Association's year-end financial statements, which were prepared in accordance with Generally Accepted Accounting Principles (GAAP). This report, which incorporates data from those year-end statements, was prepared without audit from the books and records of the corporation.

CALAFCO employs multiple safeguards to guarantee that the Association's assets are safeguarded from unauthorized use, and that all transactions are scrutinized to ensure that they are authorized, executed, and recorded properly. Association bookkeeping and reconciliations are performed by Books in Balance of San Rafael, California, with the Board presented with financial reports on a quarterly basis. Annual tax filings are prepared by the Association's accountant, Brandon Dante, and reviewed and approved by the Board prior to filing.

Unabridged copies of all financial statements can be found in the Board's July 19, 2024, agenda packet or may be obtained by sending an email request to [info@calafco.org](mailto:info@calafco.org).



# AT A GLANCE

## What We Did:

- 26% Increase in Event Revenue
- 195% Increase in Net Revenue
- 56% Increase in Net Assets
- Maintained Operational Costs through Cost Reductions and New Efficiencies
  - ⇒ New Lower Cost Office Space
  - ⇒ New Accountant
  - ⇒ Association Management System with event registration and online payment processing
  - ⇒ Transitioned from Desktop to Cloud accounting software which provides better data reporting
  - ⇒ Offsite bookkeeper
- Advocacy
  - ⇒ 2,532 Bills Reviewed
  - ⇒ 2 Bills Sponsored

## How We Did It:

### Staffing:

- 1.3 Full Time Equivalent Employees
- 4 Regional Officers
- 50-60 Volunteers Assisting with Event Planning and Staffing



# PROGRAMS vs OPERATIONS SPENDING

- \$372,301 spent for programs
- \$20,070 spent for Board support & Regional Officer Stipends
- \$80,987 spent for operations

While Personnel expenses totaled \$205,214, only 10% of that time/expense went to operational administration. The remaining 90% was used to provide the Association's exempt-purpose programs.

That means that in Fiscal Year 2023-2024, 79% of CALAFCO'S expenses went to the delivery of our mission-driven programming, 4% went to Board support and Regional Officer Stipends, and 17% went to our operating expenses and other Professional Services.

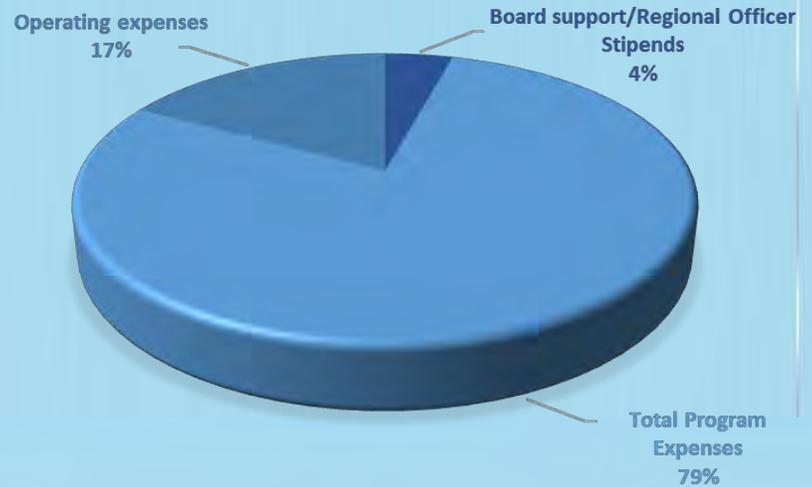
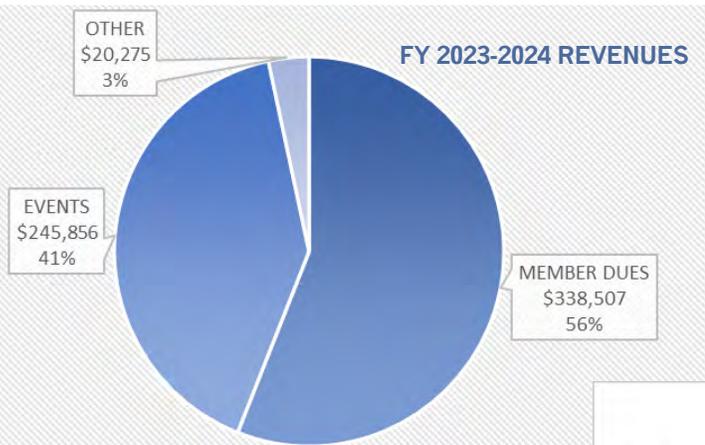


Photo By  
Kristina Grabow, Sacramento LAFCO  
2024 Staff Photo Contest Entry

# STATEMENT OF ACTIVITY

YEAR ENDED JUNE 30, 2024

REVENUES	2024	2023
Dues	\$ 338,507	\$ 312,011
Contributions	\$ 325	\$ 0
Conferences	\$ 182,096	\$ 148,388
Workshops	\$ 63,760	\$ 42,055
CALAFCO U Trainings	\$ 0	\$ 4,250
Other Revenues	\$ 19,950	\$ 5,520
<b>Total Revenues</b>	<b>\$ 604,639</b>	<b>\$ 512,224</b>
EXPENSES		
Personnel	\$ 205,214	\$ 197,116
Board Meeting Expenses and EO/DEO Stipends	\$ 20,070	\$ 23,763
Professional Services	\$ 28,606	\$ 25,768
Operating Expenses	\$ 31,860	\$ 31,844
Conference Expenses	\$ 125,325	\$ 144,866
Workshop Expenses	\$ 57,207	\$ 36,198
Legislative Services	\$ 5,076	\$ 5,196
Research & White Papers	\$ 0	\$ 3,000
<b>Total Expenses</b>	<b>\$ 473,357</b>	<b>\$ 467,751</b>
NET		
<b>Net Revenue</b>	<b>\$ 131,281</b>	<b>\$ 44,473</b>

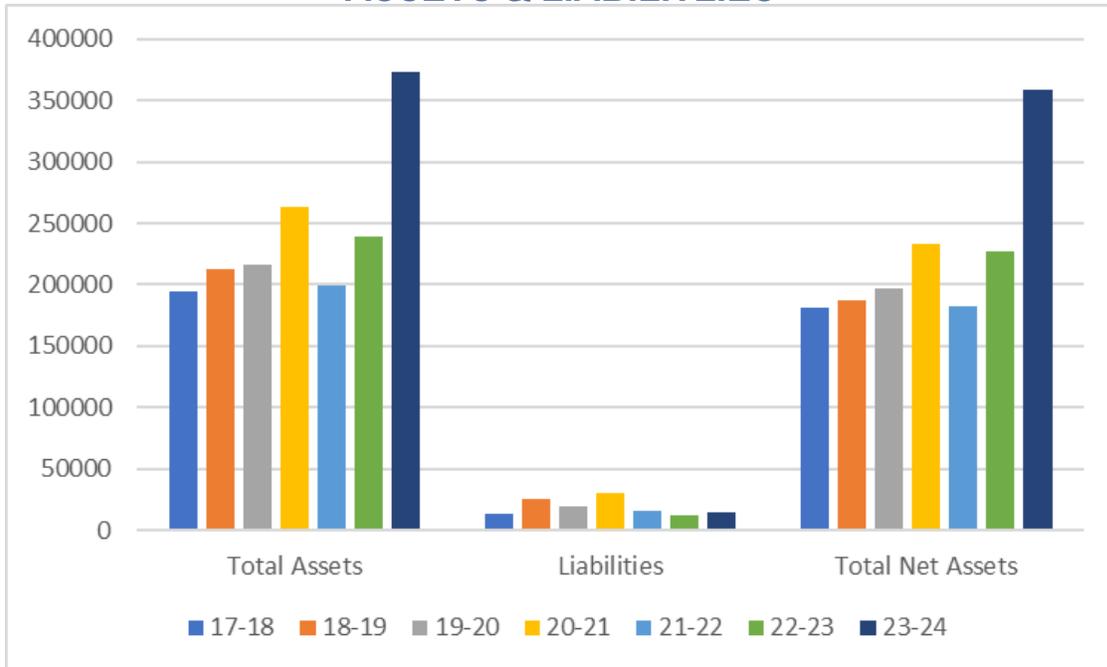


# STATEMENT OF FINANCIAL POSITION

YEAR ENDED JUNE 30, 2024

ASSETS	2024	2023
Cash and Cash Equivalents	\$ 365,055	\$ 265,119
Accounts and Other Receivables	-\$ 8,316	-\$ 28,931
Prepaid and Deferred Expenses	\$ 16,169	\$ 2,700
<b>Total Assets</b>	<b>\$ 372,907</b>	<b>\$238,888</b>
LIABILITIES		
Accounts and Other Payables	\$ 2,051	\$ 3,825
Deferred Income	\$ 2,400	\$ 0
Accrued Expenses	\$ 10,122	\$ 8,010
<b>Total Liabilities</b>	<b>\$ 14,573</b>	<b>\$ 11,835</b>
NET ASSETS		
Unrestricted	\$ 64,299	\$ 19,826
Fund Reserve	\$ 162,754	\$ 162,754
Net Surplus/Deficit	\$ 131,281	\$ 44,473
<b>Net Assets</b>	<b>\$ 358,334</b>	<b>\$ 227,053</b>
<b>Total Liabilities &amp; Net Assets</b>	<b>\$ 372,907</b>	<b>\$ 238,888</b>

## ASSETS & LIABILITIES



# Thank You to Our Associate Members

## GOLD ASSOCIATE MEMBERS



**BBK**  
BEST BEST & KRIEGER LLP

COLANTUONO  
HIGHSMITH  
WHATLEY, PC

CV STRATEGIES

**PLANWEST**  
PARTNERS, INC. 



## SILVER ASSOCIATE MEMBERS

- Assura Software
- Berkson Associates
- Chase Design, Inc.
- City of Rancho Mirage
- County Sanitation Districts of L.A. County
- Cucamonga Valley Water District
- David Scheurich
- DTA
- E Mulberg & Associates
- Economic & Planning Systems (EPS)
- Goleta West Sanitary District
- Griffith, Masuda & Hobbs, a Professional Law Corp
- HdL Coren & Cone
- Hinman & Associates Consulting
- Holly Owen, AICP
- Kennedy Water Consulting, LLC
- LACO Associates
- Policy Consulting Associates
- P. Scott Browne
- QK
- Rancho Mission Viejo
- Sloan Sakai Yeung & Wong, LLP
- South Fork Consulting, LLC
- SWALE Inc.
- Terranomics Consulting

California Association of  
Local Agency Formation Commissions

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**CALAFCO**

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SUPPORTING SUSTAINABLE  
COMMUNITY GROWTH

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