

**LOCAL AGENCY FORMATION COMMISSION  
SANTA CLARA COUNTY**

**www.santaclara.lafco.ca.gov**

County Government Center, 11<sup>th</sup> Floor, East Wing  
70 West Hedding Street, San Jose, CA 95110  
(408) 299-3800 FAX 295-1613

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CHAIRPERSON: Donald F. Gage  
COMMISSIONERS: Blanca Alvarado, Suzanne Jackson, Linda LeZotte  
Susan Vicklund Wilson  
ALTERNATES: Patricia Figueroa, Pete McHugh, Chuck Reed, Mary Lou Zoglin

**AGENDA  
REGULAR MEETING  
Wednesday, August 8, 2001  
1:15 p.m.**

**CHAMBERS OF THE BOARD OF SUPERVISORS  
70 West Hedding Street, First Floor, East Wing  
San Jose, CA 95110**

The items marked with an asterisk (\*) are included in the Consent Agenda and will be taken in one motion. At the beginning of the meeting, anyone who wants to discuss a consent item should make a request to remove that item from the Consent Agenda.

If you wish to participate in the following proceedings, you are prohibited from making a campaign contribution of more than \$250 to any commissioner or alternate. This prohibition begins on the date you begin to actively support or oppose an application before LAFCO and continues until three months after a final decision is rendered by LAFCO. No commissioner or alternate may solicit or accept a campaign contribution of more than \$250 from you or your agent during this period if the commissioner or alternate knows, or has reason to know, that you will participate in the proceedings.

If you or your agent have made a contribution of more than \$250 to any commissioner or alternate during the twelve (12) months preceding the decision, in the proceeding that commissioner or alternate must disqualify himself or herself from the decision. However, disqualification is not required if the commissioner or alternate returns the campaign contribution within thirty (30) days of learning both about the contribution and the fact that you are a participant in the proceedings.

- 1. ROLL CALL**
- 2. PUBLIC PRESENTATIONS**

This portion of the meeting is reserved for persons desiring to address the Commission on any matter not on this agenda. Speakers are limited to THREE minutes. All statements that require a response will be referred to staff for reply in writing.

3. APPROVE MINUTES OF JUNE 13, 2001 MEETING

4. PUBLIC HEARINGS

✓4.1 TOWN OF LOS GATOS URBAN SERVICE AREA (USA) AMENDMENT- 2001

A request for an urban service area amendment by the Town of Los Gatos to include APN 537-05-010 and a portion of APN 537-05-014 within the Town's urban service area. The parcels are currently within the Town limits.

Possible Action: Consider request for urban service area amendment and approve staff recommendation.

4.2 OUT-OF-AGENCY EXTENSION OF WATER SERVICE BY THE CITY OF MORGAN HILL FOR FIRE PROTECTION TO KAWAHARA NURSERY LOCATED AT 698 BURNETT AVENUE

A request for an out-of-agency extension of water service by the City of Morgan Hill to Kawahara Nursery located at 698 Burnett Avenue in the unincorporated area within the sphere of influence of City of Morgan Hill.

Possible Action: Consider request for extension of water service and approve staff recommendation.

5. EXECUTIVE DIRECTOR S REPORT

Oral report

- A. Mora Drive Sewer Project: Report on status of application for pre-zoning to the Town of Los Altos Hills.
- B. CALAFCO Executive Board Nominations
- C. 2001 Annual CALAFCO Conference, October 31-November 2, 2001, Yosemite National Park

6. WRITTEN CORRESPONDENCE

7. ADJOURN

Adjourn to the next regular business meeting on October 10, 2001.

NOTE TO COMMISSIONERS:

*Upon receipt of this agenda, please contact Ruth Marston, LAFCO Clerk at (408) 299-4321 Ext. 5613 if you are unable to attend the LAFCO meeting.*

In compliance with the Americans with Disabilities Act, those requiring accommodation for this meeting should notify the Clerk of the Board's Office 24 hours prior to the meeting at (408) 299-4321, TDD (408) 993-8272.

SANTA CLARA COUNTY  
Local Agency Formation Commission

MINUTES

WEDNESDAY, JUNE 13, 2001

1. ROLL CALL

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 13th day of June, 2001 at 1:20 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California with the following members present: Commissioners Blanca Alvarado, Donald Gage, Suzanne Jackson, and Susan Vickland Wilson. LAFCO staff in attendance include Neelima Palacherla, LAFCO Executive Director; Kathy Berry, LAFCO Counsel, Kathy Kretchmer, LAFCO Counsel; Ginny Millar, LAFCO Surveyor; and, Colleen Oda, LAFCO Planner. Commissioner Linda LeZotte arrives at 2:05 p.m. The meeting is called to order by Chairperson Gage and the following proceedings are had, to wit:

2. PUBLIC PRESENTATIONS

There are no public presentations.

3. APPROVE MINUTES OF FEBRUARY 14 AND APRIL 11, 2001

On motion of Commissioner Alvarado, seconded by Commissioner Wilson, it is unanimously ordered that the minutes of February 14, and April 11, 2001 be approved as submitted.

4 PUBLIC HEARINGS

4.1 OUT-OF-AGENCY EXTENSION OF WATER SERVICE BY THE SAN MARTIN COUNTY WATER DISTRICT AND SPHERE OF INFLUENCE AMENDMENT

This being the time and place set for public hearing to consider a request for Out-of-Agency Extension of Water Service to the Household Hazardous Waste Collection Facility (HHWCF) by the San Martin County Water District (SMCWD) and Sphere of Influence (SOI) Amendment, Chairperson Gage declares the hearing open.

WEDNESDAY, JUNE 13, 2001

Neelima Palacherla, LAFCO Executive Director, advises that Kathy Kretchmer, LAFCO Counsel, has a conflict of interest on the proposal because she is representing the County of Santa Clara, Department of Environmental Health. She further advises that Kathy Berry, County Counsel, will be representing LAFCO in considering the proposal. The Commission considers the staff report from Ms. Palacherla, dated May 29, 2001, recommending that the Commission approve the extension of water service to SMCWD and approve the SOI amendment.

Ms. Palacherla refers to the map displayed on the wall and notes the parcels that are currently being served by SMCWD and parcels that are located outside the SMCWD boundary. She points out that the District Board met in June of this year and voted to annex all parcels that are currently being served by the District and/or requesting service by the District. Ms. Palacherla provides an overview of the LAFCO policies as they relate to the proposal and notes that HHWCF is taking preliminary action to address the health and safety/public benefit issues by providing a safe and reliable method for household hazardous waste. She further notes that it is unlikely that extension of water service to HHWCF would have any growth inducing impacts in the area. Ms. Palacherla refers to Sphere of Influence Finding No. 1 in her report and notes that the zoning designation should be corrected to indicate A-20 (Agriculture) instead of rural residential.

Ms. Palacherla concludes by advising that the County Department of Environmental Health is requesting a fee waiver from LAFCO for processing the application.

In response to an inquiry by Commissioner Jackson, Ms. Palacherla advises that the project deadline is September 30, 2001.

Chairperson Gage comments that currently there is no place to dump hazardous materials in the South County area and there will be a significant improvement with the construction and operation of the HHWCF.

Ben Gale, Director, Department of Environmental Health, advises that the core of the project is to serve the community in the South County. He encourages the Commission to support staff's recommendation relating to the water service connection to the HHWCF.

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

On motion of Chairperson Gage, seconded by Commissioner Alvarado, it is unanimously ordered that Resolution No. 01-8 be adopted approving extension of water service by SMCWD to HHWCF; amending the SOI of SMCWD to include the subject parcel within its sphere and adopt required findings; finding that the project is categorically exempt from the requirements of California Environmental Quality Act (CEQA); and waiving the LAFCO fee of \$5,000.

In response to an inquiry by Commissioner Jackson, Rob D'Arcy, Hazardous Materials Program Manager, Department of Environmental Health, advises that the Household Hazardous Waste (HHW) Program is a collaborative effort of 13 cities and the County to protect the environment and public from risks related to hazardous materials. He further advises that the construction project is funded by the grant awarded by the California Integrated Waste Management Board. Mr. D'Arcy points out that the project must be completed by September 30, 2001 or the County risks losing more than \$600,000 in State grant funds. He notes that in addition to the grant funds, the cities and the County are committing other funding sources to the project.

5. CONDUCTING AUTHORITY PROCEEDINGS

Ms. Palacherla advises that at the April 11, 2001 LAFCO meeting, the Commission directed staff to prepare a delegation Resolution that delegates all of the functions and responsibilities of conducting authority to the Executive Officer. She references the report dated June 1, 2001, and provides a brief overview of the Cortese Knox Hertzberg Act and Government Code Section 56300(e) as it relates to the conducting authority and protest proceedings. Ms. Palacherla recommends that the Commission adopt the delegation Resolution and adopt the procedural guidelines for the conduct of protest proceedings.

On motion of Commissioner Gage, seconded by Commissioner Alvarado, it is unanimously ordered that Resolution 01-7 be adopted delegating authority to the Executive Officer for all functions and responsibilities of conducting authority; and further that the procedural guidelines be adopted for the conduct of protest proceedings.

6. SARATOGA FIRE PROTECTION DISTRICT: REORGANIZATION ISSUES

Ms. Palacherla references the report from LAFCO Counsel dated June 6, 2001, and provides an overview of LAFCO's role regarding reorganization issues as it relates to the Saratoga Fire Protection District (SFPD). She discusses the various ways in which a proposal involving a reorganization of the SFPD and the Central Fire District (CFD) may be considered by LAFCO. Ms. Palacherla advises that the State guidelines for LAFCOs to conduct service reviews will be available in August 2001. She further advises that the SFPD has prepared a formal Request for Proposals and is considering contracting out for fire protection, emergency, and communications services.

Chairperson Gage requests public comment on this item.

Bill Sousa, Firefighters and Citizens Task Force (FACT), requests direction from LAFCO in resolving fire service issues in the City of Saratoga.

John Keenan, FACT, requests assistance from LAFCO in providing direction regarding SFPD fire service.

Hugh Hexamer, Commissioner, Saratoga Fire District (SFD), references his letter to the Commission, dated June 13, 2001, and advises that the SFD Commissioners met June 12, 2001 and there was a consensus to establish a joint "boundary drop" program with Santa Clara County Central Fire District. He distributes documents including Fire and Emergency Medical Services Needs, SFPD, dated November 2000; Saratoga Public Safety Commission Study Committee on Fire Protection Delivery, dated March 8, 2001; Saratoga Fire District Joint Session Meeting Report, dated April 24, 2001; and the Saratoga City Council Staff Report, dated June 6, 2001.

Art Marshal, President, Santa Clara County Firefighters, notes that he attended the SFD meeting on June 12, 2001 and advises that six people spoke in support of contracting with County Central Fire District. He further advises that the target date for implementation of the joint "boundary drop" program is August 1, 2001.

David Dolloff, Chairperson, FACT, expresses opposition to the "boundary drop" program proposal.

Kevin Schott, member of the audience, notes that on May 13, 2001, the fire department was not able to provide an adequate level of fire service in the City of Saratoga.

In response to an inquiry by Commissioner Jackson, Ms. Kretchmer, advises that the City of Saratoga is monitoring the status of the proposed Request for Proposal (RFP) that was submitted to County Fire for review.

Chairperson Gage initiates discussion regarding LAFCO's position on the fire service issue in the City of Saratoga. Ms. Kretchmer advises that LAFCO has the authority to review and approve or disapprove proposals for changes of organization or reorganization, consistent with State law and LAFCO's written policies and guidelines. Ms. Palacherla notes that the fee for a change of reorganization is \$2,900 which does not include the Environmental Impact Report (EIR) and service review fees.

(Commissioner Alvarado leaves at 1:55 p.m.)

In response to an inquiry by Chairperson Gage, Ms. Kretchmer advises that proposals typically come before LAFCO either by petition or by resolution of the governing body of any affected local agency. She further advises that a proposal for a dissolution of the SFPD and annexation of the entire area to Central Fire Protection District could be submitted by resolution. Ms. Palacherla points out that there are a variety of methods by which the provision of service may be addressed and advises that she will provide information to any potential applicant based on the approach they wish to pursue.

7. EXECUTIVE DIRECTOR'S REPORT

A. Report on the status of Memorandum of Understanding (MOU) between LAFCO and the County for County to Provide staffing and services to LAFCO

Ms. Palacherla provides a brief overview relating to the MOU between LAFCO and the County for County to provide staffing and services to LAFCO. She advises that the MOU between LAFCO and County has been approved by the Board of Supervisors.

B. Mora Drive Sewer Project: Report on the status of application for pre-zoning to the Town of Los Altos Hills

Ms. Palacherla reports that the Town of Los Altos Hills has hired a consultant to assist with the pre-zoning application. She further reports that the pre-zoning application will be considered by the Town of Los Altos Hills.

WEDNESDAY, JUNE 13, 2001

On order of the Chairperson, there being no objection, the meeting is recessed to a Closed Session.

(Commissioner LeZotte arrives at 2:05 p.m.)

8. CLOSED SESSION

The Commission meets in closed session at 2:05 p.m. with Commissioners Donald Gage, Suzanne Jackson, Linda LeZotte, and Susan Vickland Wilson present, pursuant to Government Code Section 54957 to discuss one personnel item, appointment of LAFCO Executive Officer. The closed session is adjourned at 2:10 p.m. The regular meeting session reconvenes at 2:10 p.m. with Commissioners Donald Gage, Suzanne Jackson, Linda LeZotte, and Susan Vickland Wilson present.

9. REPORT OUT OF CLOSED SESSION

Chairperson Gage reports that there was a unanimous decision of the Commission to appoint Neelima Palacherla as the LAFCO Executive Officer, and to approve a ten percent increase in the salary for the position.

10. ADJOURNMENT

On order of the Chairperson, there being no objection, the meeting is adjourned at 2:12 p.m. to the next regular meeting to be held on Wednesday, August 8, 2001 at 1:15p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California.

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Donald F. Gage, Chairperson  
Local Agency Formation Commission

ATTEST:

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Ruth Marston, LAFCO Clerk



County Government Center, 11<sup>th</sup> Floor, East Wing  
70 West Hedding Street, San Jose, CA 95110  
(408) 299-3800 FAX 295-1613  
Neelima Palacherla, Executive Director

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August 3, 2001

TO: LAFCO

FROM: Neelima Palacherla, Executive Director *NP*

**SUBJECT: Los Gatos Urban Service Area (USA) Expansion (2001)  
Agenda Item No. 4.1**

**RECOMMENDATION**

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**1. CEQA Action**

As a Responsible Agency under CEQA, LAFCO must take the following actions regarding the Negative Declaration for any project approved by the Commission:

- a. Find that the Initial Study and Negative Declaration approved by the City of Morgan Hill was completed in compliance with CEQA and, together with the additional information being provided by the City, is an adequate discussion of the environmental impacts of the project,
- b. Find that prior to making a decision on this project, LAFCO reviewed and considered the environmental effects of the project as outlined in the Initial Study and Negative Declaration.

**2. USA Expansion**

Approve the inclusion of property as indicated in Attachment A, into the Los Gatos Urban Service Area conditioned upon:

- a. Approval of the Hillside Specific Plan amendment by the County Board of Supervisors
- b. Receipt of a revised legal description and map depicting the USA boundary and incorporating the revisions requested by the Surveyor.

## **PROJECT DESCRIPTION**

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The Town of Los Gatos proposes to expand its Urban Service Area (USA) boundary to include 11.6 acres on 17975 Foster Road constituting parcel 537-05-010 and a portion of parcel 537-05-014 up to the open space easement. These parcels, adjacent to the Town's existing urban service area boundary are currently within the Town limits and within the Town's sphere of influence. This proposal is being initiated to fulfill one of the conditions for approval of a planned development which consists of the construction of 6 homes. The Town requires that all parcels or portions of parcels on which development is proposed be included in the Town's urban service area.

## **BACKGROUND**

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The Los Gatos Town Council on June 18, 2001 conditionally approved a tentative map for a 6-lot subdivision on a 56.04-acre site that includes 5 parcels (537-05-015, 537-05-014, 537-05-010, 537-03013 and 537-05-062) with Foster Road at the northern end and Lime Kiln Road at the southern end of the project boundary.

Existing college buildings on the site are proposed to be demolished to develop 6 single-family homes on the northern portion of the site. The southern portion of the site is proposed to remain privately owned open space and will be placed in an open space easement deeded jointly to the Town and the Mid Peninsula Regional Open Space District (MROSD).

## **ENVIRONMENTAL CONSIDERATIONS**

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### **Initial Study and Negative Declaration**

An initial study and negative declaration was prepared for the proposal, a copy of which is attached. As a responsible agency under CEQA, LAFCO must find that the Initial Study and Negative Declaration approved by the Town of Los Gatos was completed in compliance with CEQA and is an adequate discussion of the environmental impacts of the project, further finding that LAFCO reviewed and considered the environmental effects of the project.

An analysis of the environmental information is contained in the attached Environmental Planner's staff report.

## **CONSISTENCY WITH TOWN AND COUNTY POLICIES**

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The two parcels involved with the USA expansion have a General Plan and Hillside Specific Plan designation of Open Space. One of the proposed lots (Lot 5) in the subdivision is located in the area designated Open Space. The Town Council on June 18, 2001 took action to amend the General Plan on portions of these parcels to exclude them

from the Open Space designation and to apply Hillside Residential designation to those portions.

The County and the Town jointly adopted the Hillside Specific Plan. Any amendment to it requires both their approval. As of writing this report, the County Board of Supervisors has not taken an action on the issue.

The zoning designation on these parcels has also been amended from HR-5 to HR-21/2 PD and from RC to RC-PD because the project is a Planned Development with clustering on the northern portion of the site and also because the Town requires a subdivision with 5 or more lots to be a Planned Development.

Based on slope density calculations, the proposed rezoning would allow a maximum of 6 dwelling units on the HR-21/2 site and a maximum of one dwelling unit on the RC site. The proposed project at 6 lots would be lower than the density allowed and is thus consistent with the Town zoning.

The site is located in Sub-Area 7 of the Hillside Specific Plan. The EIR for the Plan determined that the maximum number of dwelling units in this sub area would be 50 units. Town staff has determined that with the proposed development, there will be a maximum of 49 units and so the proposed density is consistent with the Hillside Specific Plan.

## **CONSISTENCY WITH LAFCO POLICIES**

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### **Conversion of Prime Agricultural Lands and Open Space**

No prime agricultural lands have been identified on the site. Of the two parcels in the USA expansion, the proposal for development of a single family home is only on the northern parcel (537-05-010) that is contiguous to the existing urban service area boundary. The southern parcel (537-05-014) is proposed to be placed in an open space easement and an agricultural easement which would allow for the development of a vineyard around the developed lot. The Town would restrict any future development of structures within this easement area.

### **Logical and Orderly Boundaries**

The area is already within the Town limits and the sphere of influence. The parcels on which development is proposed are adjacent to the existing urban service area boundary of the Town. The proposed building footprint on one lot in the subdivision (Lot 5) is located outside the existing urban service area boundary. As a condition of the building site approval the Town requires the boundary to be extended to include the developed area. The proposed USA boundary is intended to align with the northern end of the open space easement line. This results in the USA boundary splitting existing lines of assessment and so requires a metes and bounds description and map for the area to be included in the USA.

### **Ability of City to Provide Urban Services**

As the site had been previously developed with a college facility, certain urban services already exist on the site. West Valley Sanitation District will continue to provide sewage disposal service using an existing sanitary sewer. The Los Gatos Police Department and Green Valley Disposal will provide police and garbage service respectively. Fire service will continue to be provided by the Santa Clara County Central Fire Protection District.

A mutual benefit water company is proposed to be formed for the extraction, treatment and storage of water for domestic use for the 6 lots in the subdivision and fire protection uses in the sub division and the nearby Foster Road neighborhood.

Los Gatos Town Code and the Hillside Specific Plan require water service to be provided by a recognized public utility but the Hillside Specific Plan includes an exception in situations where it would be impossible to do so. Based on documentation from the developer that it would not be possible to serve the site with water from San Jose Water Company, the Town has approved the creation of a mutual benefit water company to provide service to the subject area. The Town's performance standards for the project include a condition that the developer post security in sufficient form and amount to secure the construction and future operation of the mutual benefit water company.

### **Ability of School District to Provide School Facilities**

The Los Gatos Union School District and the Los Gatos-Saratoga Joint Union High School District have confirmed the availability of facilities for potential students generated by the proposed development.

### **Growth Inducing Impacts**

The proposed development replaces the existing Guadalupe College facility on the project site. As the Town has provided services to this area in the past, its inclusion in the USA would not be considered growth inducing. The Town has specified in its conditions of approval that there shall be no future subdivision of the subject site.

With regard to the new mutual benefit water company established for providing water service, the Town requires that as a condition of approval the company provide domestic water service to only the six proposed lots on the project site. The remaining storage capacity will be reserved for fire protection services on the site and the Foster Road neighborhood. No domestic water will be supplied from this mutual benefit water company to other surrounding residential sites. This will ensure that there is no direct growth inducing impact because of the establishment of the mutual benefit water company to serve this sub division.

## **Fiscal Impact Analysis**

Since this area is already within the Town limits, the revenues and expenditures incurred by the different agencies will not change.

## **CONCLUSION**

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The area proposed to be included in the USA is already within the Town boundary. It is contiguous to the existing USA boundary and existing single-family residential development. The proposed USA boundary expansion does not create any likely growth inducing impacts and does not negatively impact agricultural lands or open space lands. Staff recommends that the proposed area be conditionally approved for inclusion in the USA.

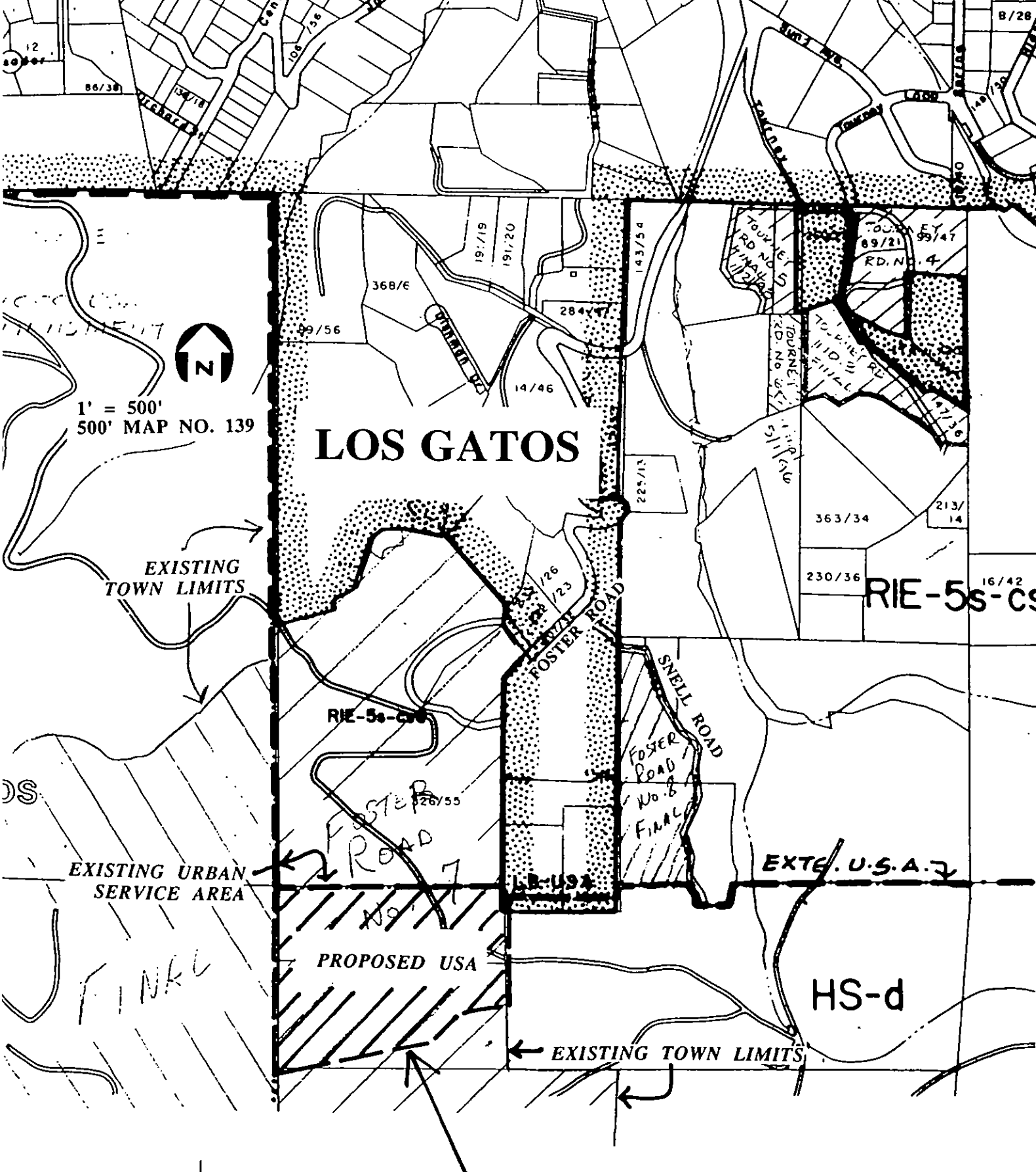
## **ATTACHMENTS**

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Map showing the area of the proposed USA expansion

Initial Study/ Negative Declaration for the 2001 Los Gatos USA Boundary Adjustment

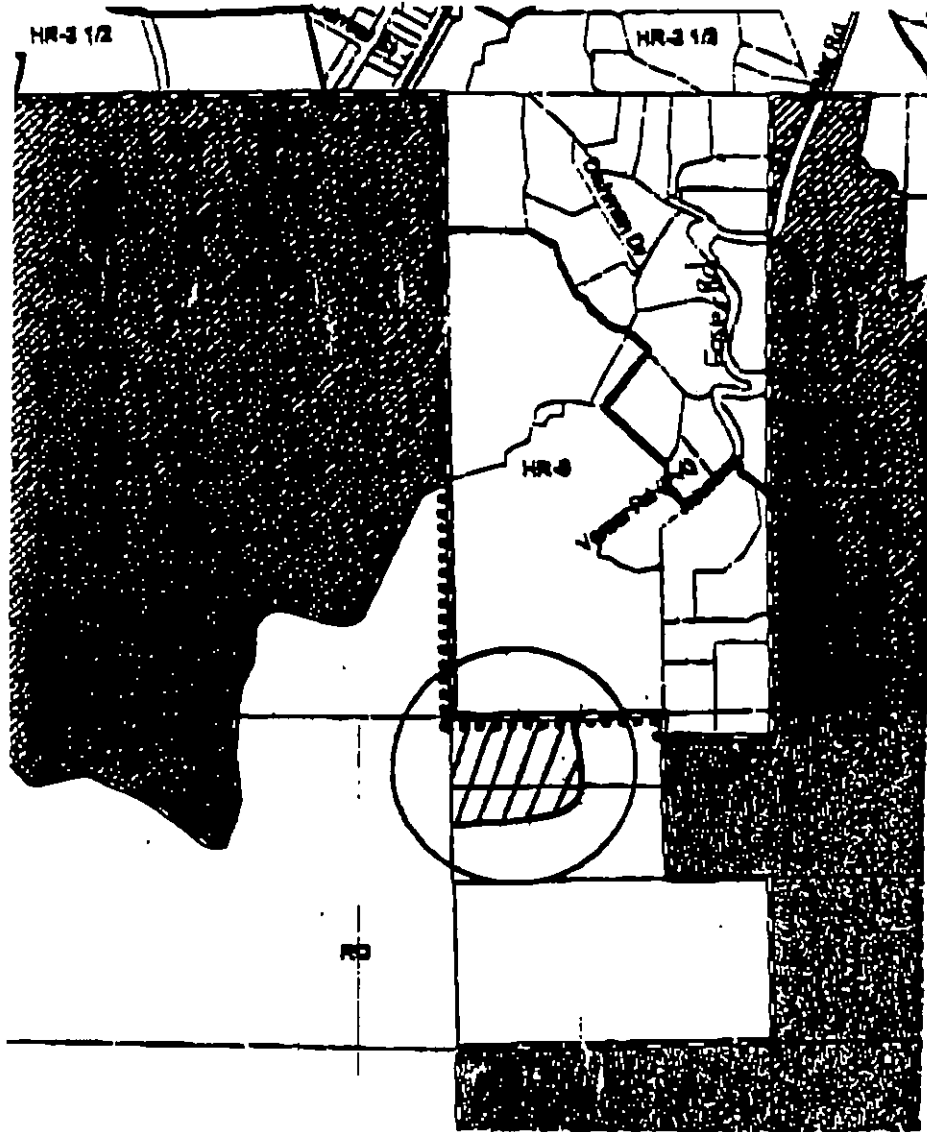
LAFCO Environmental Planner's Report



# TOWN OF LOS GATOS URBAN SERVICE AREA AMENDMENT



# 17975 FOSTER ROAD



**Proposed General Plan and Hillside Specific Plan Amendment**

**Open Space**

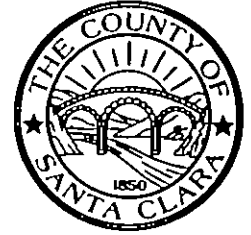
to

**Hillside Residential**

# County of Santa Clara

Environmental Resources Agency  
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Prepared by: Colleen Oda  
Approved by: Hugh Graham  
Date prepared: July 13, 2001

Hearing Date: August 8, 2001

To: The Santa Clara County Local Agency Formation Commission  
From: Santa Clara County Planning Office  
Subject: **Town of Los Gatos, Urban Service Area (USA) Amendment**

## **Recommended CEQA Action and Required Findings:**

As a Responsible Agency under CEQA, LAFCO must take the following actions regarding the Negative Declaration for any project approved by the Commission:

1. Find that [a] the Initial Study and Negative Declaration approved by the Town of Los Gatos was completed in compliance with CEQA and, together with the additional information being provided by the town, is an adequate discussion of the environmental impacts of the project, [b] prior to making a decision on this project, LAFCO reviewed and considered the environmental effects of the project as outlined in the Initial Study and Negative Declaration.

## **Background**

The Town of Los Gatos proposes to expand its Urban Service Area (USA) boundary to 11.6 acres on 17975 Foster Road that includes parcel (A.P.N 537-05-010) & a portion of parcel (A.P.N 537-05-014) up to an open space easement. The environmental assessment of the proposed residential development project that includes the two USA expansion parcels received approval in January 2001 by the Town of Los Gatos. On June 18, 2001, the proposed residential development received approval by the Los Gatos Town Council. Currently, there is no development existing on the USA expansion parcels. The parcels involved with the USA expansion are adjacent to the Los Gatos Urban Service Area boundary and inside Los Gatos Sphere of Influence.

The two parcels involved with the USA expansion currently have a Town General Plan designation of Open Space, with zoning designation of Resource Conservation (RC). However, on the June 18, 2001 Town Council Meeting, a resolution was passed to change the zoning. The zoning change for the 2 southernmost parcels of the project which are those involved with the USA expansion would be changed from Resource Conservation (RC) to Resource Conservation - Planned Development (RC-PD). This zoning change ensures that the construction of one residence is allowable to the RC-PD area of the



proposed project. The Town of Los Gatos has indicated that the resolution will become effective as of July 18, 2001.

Adjacent land uses include existing single-family residences to the north and east, and open space lands to the west and south located within the Midpeninsula Openspace District and Santa Clara Valley Water District.

## **Environmental Assessment**

### **Negative Declaration**

A Negative Declaration was prepared for the project and was adopted by the Town of Los Gatos in January 2001. There were no potentially significant impacts identified in the Initial Study. Environmental factors of specific concern to LAFCO are discussed below.

### **Environmental Factors of Concern to LAFCO**

#### **Premature Conversion of Agricultural and Open Space Lands**

The Environmental Assessment prepared for the project did not identify the existence of prime agricultural soils on the project site. The southernmost parcel of the proposed USA expansion (A.P.N. 537-05-014) would be defined as 2 parcels, an agricultural parcel and an open space parcel deeded jointly to the Town of Los Gatos and Midpeninsula Regional Open Space District. The southern portion of parcel (APN 537-05-014) is proposed to remain as private open space and northern portion to remain as agricultural land. As a condition of approval, the Town of Los Gatos will restrict development within the open easement area. Of the two USA expansion parcels, there is only proposal for construction of one single-family residence on (APN 537-05-010); the northern parcel closest to the existing Los Gatos USA boundary. Therefore, there would not be any premature conversion of either agricultural or open space lands.

#### **Growth Inducement & Precedent Setting Implications**

Changing the zoning for the two USA expansion parcels to RC-PD would allow a maximum of one dwelling unit for the RC-PD portion of the project site. Designating the zoning of the parcels to Planned Development allows for clustering and is a requirement of the Town of Los Gatos for all residential development of 5 or more lots.

The other parcels of the project are already included in the USA of Los Gatos. Expanding the USA to include the 2 southernmost parcels would thus expand the USA so that all the parcels of the proposed residential development are within the USA. Converting the USA expansion parcels to a residential use would increase compatibility with the surrounding neighborhood. Surrounding uses include other residential homes. There would be no direct growth inducement or precedent setting implications from expanding the Los Gatos Urban Service Area to include the two southern parcels of this proposed residential development since a condition of approval of this project restricts any development in the area of the open space easement along side lands of the Midpeninsula Openspace District.

#### **Provision of Public Services**

According to the Negative Declaration/Initial Study, the Town of Los Gatos does have adequate sewer and water capacities to provide services to additional residences without detracting from the existing service levels within this area.

Urban services provided from the prior land use of the Hillside Residential portion of the project site (nunnery) will be maintained and upgraded for use by the 6 single-family residences proposed. There is an existing 6" sanitary sewer service line that is regulated by the West Valley Sanitation District. Domestic and fire protection water service would be provided to the project through a mutual benefit water company to be created as a Mello-

**Roos District. The developer and future lot owners would be responsible for the entire cost of construction and maintenance of this water system formed by the Mello-Roos District. Police and garbage service would be provided by the Los Gatos Police Dept. and Green Valley Disposal. Fire service would continue to be provided by the Santa Clara County Fire Dept.**




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(408) 299-3800 FAX 295-1613  
Neelima Palacherla, Executive Director

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August 2, 2001

**TO:** LAFCO

**FROM:** Neelima Palacherla, Executive Director 

**SUBJECT:** **Out of Agency Contract for Sewer Service (Morgan Hill)**  
**Kawahara Nursery**  
Agenda Item # 4.2

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**STAFF RECOMMENDATION**

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Deny request for extension of water service for fire protection for a replacement production building at the Kawahara Nursery (APN 726-40-007) located within the sphere of influence of the City of Morgan Hill.

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**PROJECT DESCRIPTION**

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The City of Morgan Hill is seeking LAFCO approval for extending water service for fire protection to the Kawahara Nursery located at 698 Burnett Avenue. The subject property is located in the unincorporated area outside the City urban service area (USA) but within its sphere of influence (SOI). Since the proposed extension of services will be outside of the City's jurisdictional boundaries, LAFCO approval is required. See attached map for subject property and jurisdictional boundaries.

The proposed water extension request is for fire protection purposes of an 18,000 sq. ft. replacement production building on the 14.72-acre site. This building has been constructed to replace a 24,000 sq. ft. production building that was destroyed in a fire last summer. The property owner has now applied for a building permit for this building. As a condition of approval, the Santa Clara County Central Fire Protection Department requires adequate fire flow and fire protection for the building.

The required fire flow can be provided either by securing an extension of city water service or by installing a water storage tank with a capacity of 270,000 gallons and fire pump. Although it is possible to install the required water storage tank on site, the owner has requested city water service to provide the required fire flow for economic reasons because the storage tank and fire pump required would be a much more expensive option.

The City proposes to allow the owner to connect an 8" fire service line to a 12" city water main that is proposed to be installed along Burnett Avenue. The City is currently in the process of getting easements from the County to install a 12" water main along Burnett Avenue in the unincorporated county as part of another development project (Madrone Crossing Project). The water main is expected to be installed by the end of this year. From this water main, an 8" fire service line will be run to two fire hydrants on the subject site. The fire service line would also serve on-site fire sprinklers.

## **ENVIRONMENTAL ASSESSMENT**

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### **Categorical Exemption**

The project is categorically exempt from CEQA under Class 3, Section 15303 (d). See attached report from LAFCO Planner.

## **CONSISTENCY WITH LAFCO POLICIES**

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### **Project Within Sphere of Influence (SOI)**

Local LAFCO policies state that proposals for extending services outside an agency's SOI will not be considered by LAFCO. The proposal is within the SOI of the City of Morgan Hill.

### **Annexation as Alternative to Service Extension**

LAFCO policies require annexation prior to extension of services beyond an agency's boundaries. In this case, the property is outside the urban service area (USA) of Morgan Hill and is not contiguous to the City's existing USA boundary. Also, the surrounding land uses are primarily agricultural and rural in nature. These areas are not likely to be potential areas for inclusion in the City's urban service area especially since the area is not even in the city's urban growth boundary. It is therefore not logical to extend such services into this area.

### **Growth Inducing Impacts**

One of the concerns of extending service to areas beyond a city's boundaries is the potential for setting a precedent for similar service extension requests in the area. The land uses in the surrounding area are primarily agriculture or single-family homes on agricultural lands. The City is running a water main through this unincorporated area and is willing to allow a connection along the way to a property in the unincorporated area outside its urban service area. Allowing this extension of service would certainly encourage other property owners in the area to seek extensions of water to intensify/modify their land uses citing this situation as an example.

Even though the subject site is currently fully developed with green houses and buildings, and the request is only for water for fire protection, it is possible that in the future there

could be requests for water for other uses on the site especially if there already is a connection. However, there is a clause in the agreement that specifies that the water may be used solely for fire protection purposes.

### **Health and Safety/Public Benefit Issues**

See below.

### **Consistency with Policies and General Plans of all Affected Agencies**

It is a basic principle of the Urban Development / Open Space Plan, adopted by the County and the cities in 1973, that urban development should take place under the cities' jurisdictions, that cities should establish urban service areas and not allow the expansion of services outside those areas and that only lands within urban service areas should be annexed by the cities. The subject site is outside the city's urban service area boundary and extending services to development beyond the city's urban service area would be against these core development policies.

Section 18.78.080 of the Municipal Code of Morgan Hill reads as follows: "*The City shall grant no new extensions of urban services for residences beyond its urban service area except in the event that: B. An owner of an existing development requests an extension due to the failure of an existing septic system or well and the city council makes a finding that denial of services to that development would have a direct adverse impact on the public health and safety.*"

The request for extension of water service is not based on the failure of an existing well serving an existing building. On the other hand, the extension is being requested to legalize an already constructed building. More over, it has **not** been determined that the installation of the 270,000 gallon storage tank on this property is infeasible. There exists another method of service provision, namely construction of an on-site water storage tank, more suitable to the rural nature of the area.

Council Policy No. 96-03 states that city services will not be provided outside of the city limits except when: "*The City Council finds there are unique circumstances such that the public benefits of the proposed project to be served outweigh the negative aspects of the continued decentralization of the city service area.*"

The City staff's report to the council has indicated that extending service to this property would contribute to the further decentralization of city services. The site is located about 3,000 feet from the city limits / urban service area and the nearest City hydrant. Maintenance and regular monitoring of the hydrants would become problematic for the City staff / service provider. However, the City Council determined that there are unique public benefits such as continued employment and economic benefits that outweigh the negative aspects of continued decentralization of city services.

## **Ability of the City to Provide Services**

The City of Morgan Hill has provided documentation stating that it does have the capacity to serve this property and that serving this property outside its boundary will not reduce the level of services it provides its residents.

## **Premature Conversion of Agricultural or Open Space Land**

It is very likely that the extension of water service to this property will generate future requests for similar extensions in the surrounding agricultural area. This could result in the premature conversion of agricultural land in the area.

## **CONCLUSION**

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LAFCO policies generally discourage provision of urban services outside jurisdictional boundaries. In this case, the property seeking service is outside the city's urban service and urban growth boundary; it is not contiguous to the city's urban service area or city limits and is surrounded by rural/ agricultural uses. This clearly indicates that it is not land that should in the imminent future be extended urban type services.

Inefficiencies related to costs and monitoring / maintenance of decentralized city services as well as precedent setting potential that this proposal generates are additional reasons for not extending service to this property.

While it is probably more economically feasible for the property owner to connect to city water, the alternative method of service provision to this site that would be in better compliance with established city and LAFCO policies would be the construction of an onsite water storage tank. Therefore staff recommends that the extension of water service be denied.

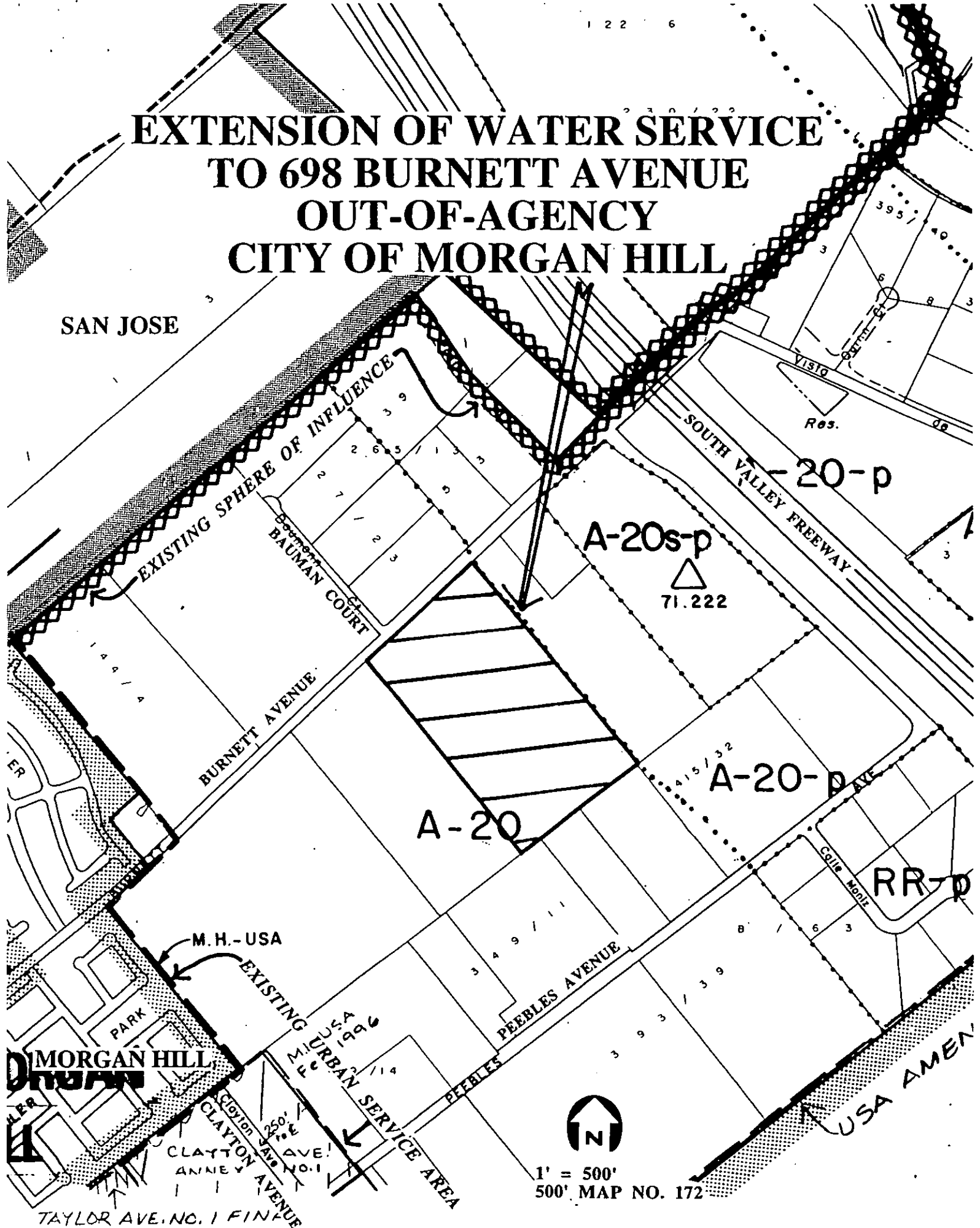
## **ATTACHMENTS**

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1. Map showing subject properties and jurisdictional boundaries and detailed map.
2. Environmental Planner's Report
3. City of Morgan Hill Resolution requesting LAFCO approval
4. Sewer Service Agreement between the City of Morgan Hill and Kawahara Nursery

# EXTENSION OF WATER SERVICE TO 698 BURNETT AVENUE OUT-OF-AGENCY CITY OF MORGAN HILL

SAN JOSE



MORGAN HILL

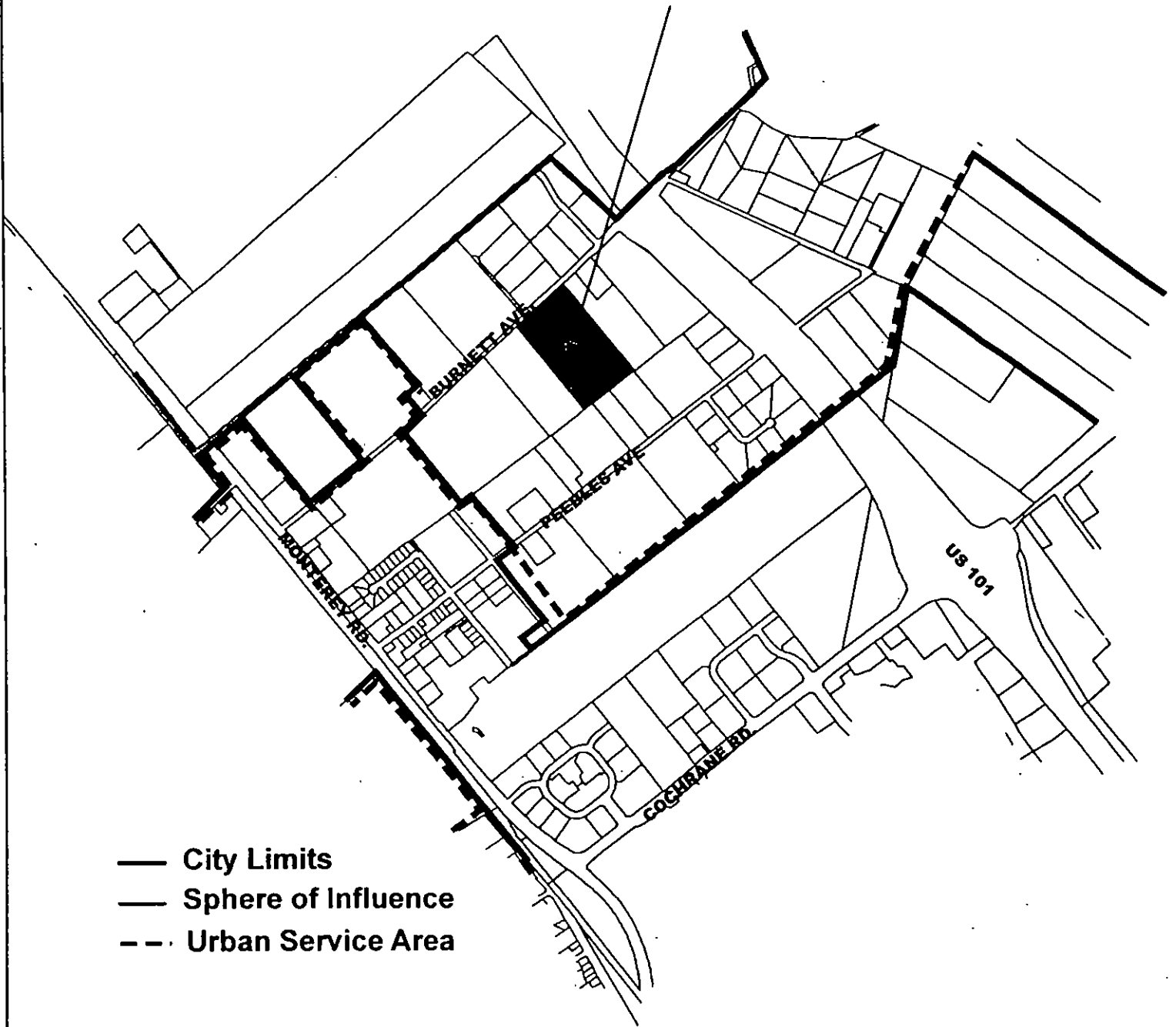


1' = 500'  
500' MAP NO. 172

TAYLOR AVE. NO. 1 FINISH



# SUBJECT PROPERTY



- City Limits
- - - Sphere of Influence
- · · Urban Service Area



City of  
Morgan Hill

## VICINITY MAP

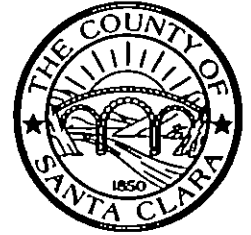
File Number: OSR-00-04  
Burnett-Kawahara




# County of Santa Clara

Environmental Resources Agency  
Planning Office

County Government Center, East Wing, 7th Floor  
70 West Hedding Street  
San Jose, California 95110-1705  
(408) 299-2454 FAX (408) 288-9198  
www.sccplanning.org



Prepared by: Colleen Oda   
Approved by: Hugh Graham  
Date prepared: August 2, 2001

Hearing Date: August 8, 2001

To: The Santa Clara County Local Agency Formation Commission  
From: Santa Clara County Planning Office  
Subject: **OUT-OF-AGENCY, CITY OF MORGAN HILL, EXTENSION OF WATER SERVICE TO 698 BURNETT AVENUE**

## **Recommended Environmental Action:**

Approve Categorical Exemption. The project is categorically exempt from the requirements of CEQA.

## **Reasons for Recommendation:**

The project is exempt under CEQA Class 3, Section 15303(d), "New Construction or Conversion of Small Structures" which states:

*Section 15303(d) Water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve construction and location of limited numbers of new, small facilities or structures.*

The City of Morgan Hill is requesting, on behalf of the Kawahara Nursery located at 698 Burnett Avenue, LAFCO approval of an Out-of-Agency contract for services. There are approximately 14.72 acres on the subject property with one existing replacement production building for the nursery involved with this out of agency agreement. The contract would allow the City of Morgan Hill to provide water service for adequate fire flow and fire protection to an existing 18,000 sq. ft. replacement production building located on 698 Burnett Avenue (APN 726-40-007), within an unincorporated section of Morgan Hill. In the summer of 2000, a 24,000 sq. ft. production building was destroyed in a fire. This was replaced with the 18,000 sq. ft. building involved with this out-of-agency agreement which was built in January 2000. This parcel is inside the Sphere of Influence and outside the Urban Service Area of Morgan Hill.

The owner of this parcel is requesting this service agreement in order to get water service that ensures adequate fire flow and protection for the replacement production building of the nursery. Currently the replacement production building is not equipped with any fire pump. Water for the sprinklers are from a water pump that is powered by a generator servicing the entire site. The nearest fire hydrant is located over 3,000 ft. away.

The project would allow the owner to connect an eight-inch fire service line to the City of Morgan Hill's proposed twelve-inch water main located within the County of Santa Clara's right of way. The twelve-inch water main is not constructed at this time, but will be installed as part of a requirement of the Madrone Crossing Project located along Burnett Avenue expected to be approved by the City of Morgan Hill in the future. According to the City of Morgan Hill, without the service extension the applicant would be required to install an on-site water storage tank with a total minimum storage of 270,000 gallons and two on-site fire hydrants. The County Fire Marshall's Office has indicated that a permit for the hydrant system needs to be obtained prior to connecting the fire service line for the replacement reproduction building. The proposed extension of water service is thus exempt from CEQA because it meets the requirements of the Class 3 exemption.

The current zoning designation for this unincorporated area is A-20 (Agricultural with a 20-acre minimum lot size). Adjacent land uses include similar agricultural uses along with a few single-family residences.

Because no other parcels on or adjacent to Burnett Avenue have signed under the water extension agreement for this application, future applications for extension of water service would be subject to further CEQA analysis. The City of Morgan Hill's City Council determined that extension of services beyond the city's boundary does not set a precedent for other property owners in the area because the water extension requested is only for fire protection to a replacement reproduction building. There is no potential growth build-out for the project site or surrounding parcels. The project site and surrounding area has been developed to the maximum density allowed by the current zoning (A-20s).

**RESOLUTION NO. 5477**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN EXTENSION OF CITY WATER SERVICE FOR FIRE PROTECTION TO THE KAWAHARA NURSERY LOCATED AT 698 BURNETT AVENUE (APN 726-40-007)**

**WHEREAS**, Kawahara Nursery, ("OWNER") operates a wholesale and retail nursery, agricultural fields, and related production facilities on the property, ("PROPERTY"), located at 698 Burnett Avenue, APN 726-40-007, within the jurisdiction of the County of Santa Clara; and,

**WHEREAS**, OWNER desires to provide water services for a replacement production building which was recently destroyed in a fire, to serve its business interests; and,

**WHEREAS**, to receive approval of the rebuilding of the production building, OWNER is required by the Santa Clara County Fire Department to provide adequate fire flow and fire protection by either securing access to a water service line or installing a water tank with a capacity of 270,000 gallons, which tank would require a substantial amount of dedicated land thus precluding the OWNER from the full economic and other benefits of such land; and,

**WHEREAS**, a proposed CITY water main will be located directly adjacent to the PROPERTY, within the County of Santa Clara right-of-way; and,

**WHEREAS**, in recognition of the long-term presence of Kawahara Nursery in Morgan Hill, and the continued employment and economic benefits it brings to the community, the CITY desires to allow OWNER to connect an eight inch (8") fire service line to the CITY's proposed twelve inch (12") water main located within the County of Santa Clara's right-of-way; and,

**WHEREAS**, the City Council hereby finds, that based upon the above, there are unique circumstances such that the public benefits of the proposed project to be served, specifically the continued employment and economic benefits, outweigh the negative aspects of the continued decentralization of the City service area; and,

**WHEREAS**, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process; and

**WHEREAS**, such request was considered by the City Council at their regular meeting of April 4, 2001, at which time the City Council approved the Out of Agency Service Request, OSR-00-04: Burnett - Kawahara.

**NOW, THEREFORE, THE MORGAN HILL CITY COUNCIL DOES RESOLVE AS FOLLOWS:**

**SECTION 1.** The City Council hereby approves the extension of water service to the PROPERTY upon the following terms and conditions: (a) OWNER shall pay for all CITY costs incurred in connection with the extension of water service; (b) OWNER agrees and acknowledges that there is no commitment on behalf of the CITY as to the precise location or time of installation of, the CITY water main on Burnett Avenue; (c) OWNER agrees to indemnify, defend and hold harmless the CITY for extension of water service; (d) OWNER agrees and acknowledges that the water service provided is temporary in nature, is only for the current specific land use, is solely for fire protection and emergency relief purposes, and terminates if the use ends; (e) OWNER agrees to install on-site back-flow protection devices and break-off check valves as deemed necessary by the CITY's Director of Public Works, and, (f) OWNER executes a duly-recorded Agreement, which shall run with the land, containing the above conditions and restrictions.

**SECTION 2.** This project is consistent with the health, safety and welfare needs of the CITY, including provision of fire and emergency services, and provision of employment and economic interests.

**SECTION 3.** This project is consistent with Paragraph 2 of City Council Policy 96-03-Revised regarding provision of water and sewer service outside city limits, is consistent with past City practices, and is categorically exempt from CEQA under Section 15303(d).

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 16<sup>th</sup> day of May, 2001 by the following vote.

<b>AYES:</b>	<b>COUNCIL MEMBERS:</b>	<b>Larry Carr, Hedy L. Chang, Dennis Kennedy, Greg Sellers, Steve Tate</b>
<b>NOES:</b>	<b>COUNCIL MEMBERS:</b>	<b>None</b>
<b>ABSTAIN:</b>	<b>COUNCIL MEMBERS:</b>	<b>None</b>
<b>ABSENT:</b>	<b>COUNCIL MEMBERS:</b>	<b>None</b>

**☪ CERTIFICATION ☪**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. 5477 adopted by the City Council at the Regular Meeting on May 16, 2001.**

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** 5/21/01

  
\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## CITY OF MORGAN HILL

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17555 PEAK AVENUE MORGAN HILL CALIFORNIA 95037

### CERTIFICATION

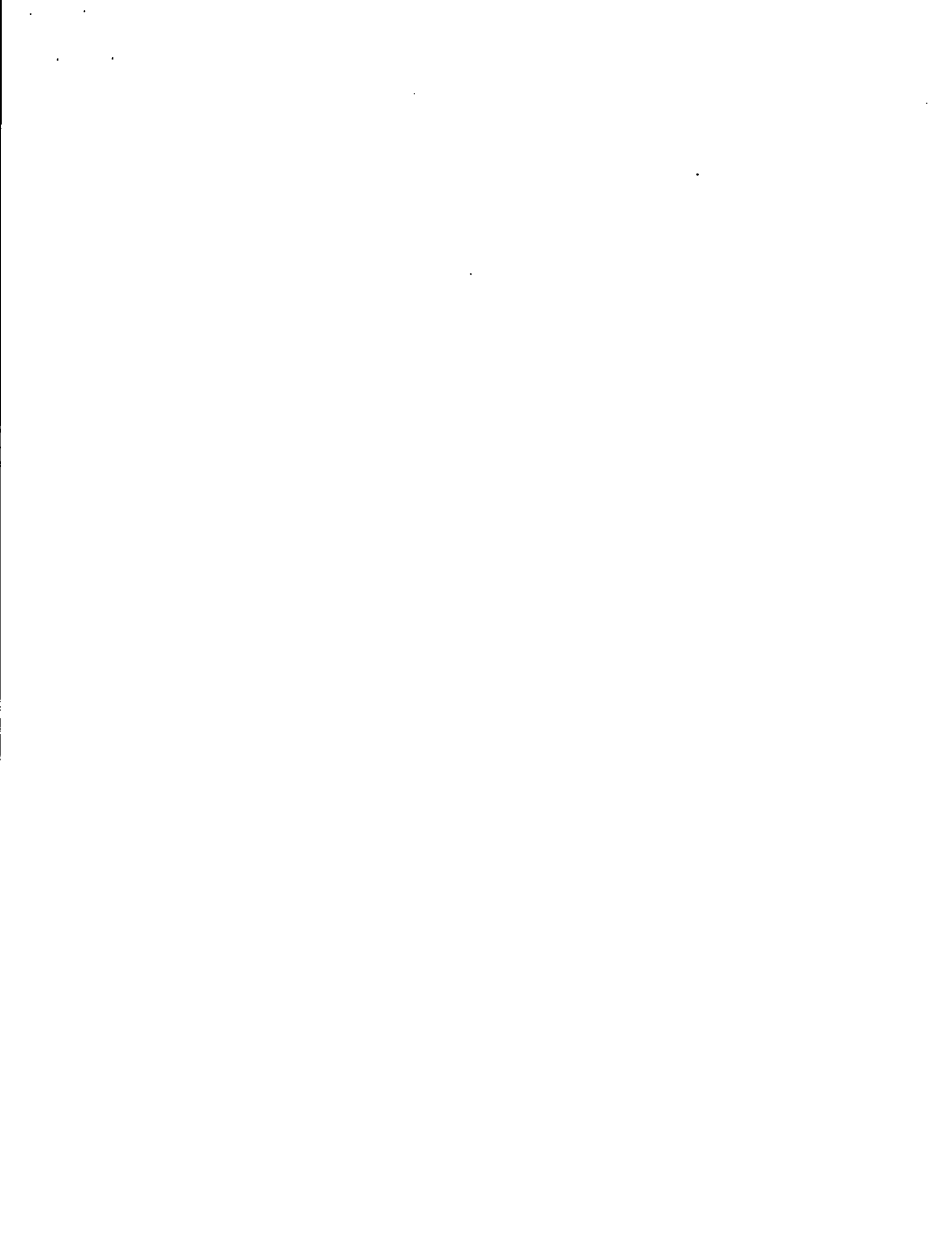
I, **Lois A. Corbet, Deputy City Clerk**, do hereby certify that the foregoing is a true and correct copy of Resolution No. 5477 adopted by the Morgan Hill City Council at the Regular Meeting of May 16, 2001.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: June 19, 2001

A handwritten signature in cursive script that reads "Lois A. Corbet".

Lois A. Corbet, Deputy City Clerk



01181

**AGREEMENT BETWEEN THE CITY OF MORGAN HILL  
AND KAWAHARA NURSERY, INC.  
REGARDING PROVISION OF WATER SERVICE**

THIS AGREEMENT is made this 19 day of June, 2001, by the CITY OF MORGAN HILL, a municipal corporation ("CITY"), and KAWAHARA NURSERY, INC., a California corporation ("OWNER").

**RECITALS**

The following recitals are a substantive part of this Agreement:

1. This AGREEMENT is entered into pursuant to City of Morgan Hill City Council's approval dated May 16, 2001.
2. The subject of this AGREEMENT is the Property described on Exhibit A attached hereto, and located at 698 Burnett Avenue, Morgan Hill, California. ("PROPERTY").
3. OWNER operates a wholesale and retail nursery, agricultural fields, and related production facilities on the PROPERTY. The PROPERTY is located within the jurisdiction of the County of Santa Clara. OWNER desires to provide water services for a replacement production building, which was recently destroyed in a fire, to serve its business interests.
4. To receive approval of the rebuilding of the production building, OWNER is required by the Santa Clara County Fire Department to provide adequate fire flow and fire protection by either installing a water tank with a capacity of 270,000 gallons or securing access to a water service line.
5. A proposed CITY water main is planned to be located directly adjacent to the PROPERTY, within the County of Santa Clara right-of-way, and is more specifically described on Exhibit A attached hereto.
6. In recognition of the long-term presence of KAWAHARA NURSERY in the Morgan Hill area, and the continued employment and economic benefits it brings to the community, and consistent with the CITY's past practice, CITY desires to enter into this AGREEMENT to allow OWNER to connect an eight inch (8") fire service line to the CITY's proposed twelve inch (12") water main located within the County of Santa Clara's right-of-way, when the water main is available for such circumstances.



7. The CITY has found, pursuant to Resolution No. 5477, that there are unique circumstances such that the public benefits of the proposed project to be served outweigh the negative aspects of the continued decentralization of the CITY service area.

8. This Agreement is not meant to, and should not, be interpreted as any commitment or guarantee of services to any parcel other than the PROPERTY, and may not be used as precedent in any future action involving the CITY.

### AGREEMENT

NOW, THEREFORE, IN RECOGNITION OF THE ABOVE RECITALS, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Encroachment Permit; Installation.** It is hereby agreed that OWNER may connect an eight inch (8") water line to the proposed CITY water main. OWNER agrees and acknowledges that the CITY makes no representations as to the final design of, or date of installation of, the CITY water main. Prior to installation of any water line, OWNER shall obtain an encroachment permit from the CITY in the form of Exhibit B attached hereto, and shall also obtain an encroachment permit from the County of Santa Clara for any and all work to be performed within the County's right-of-way. In addition, OWNER shall obtain the CITY's written approval as to the design of the water line and connection to be installed, and the means of installation. OWNER shall also obtain review and approval of such plans by the Santa Clara County Fire District. OWNER agrees to install on-site back-flow protection devices and break-off check valves as deemed necessary by the CITY's Director of Public Works. During and following installation of the hydrants, the CITY may conduct inspections of the installation. Should the CITY determine that the design and/or installations are inappropriate, CITY shall, in its discretion, reject the installation and terminate this Agreement.

2. **On Going System Maintenance.** The CITY hereby agrees to provide on-going maintenance for the proposed water main in accordance with its standard operating procedures. The OWNER hereby agrees to provide on-going maintenance for the water line and fire hydrants in accordance with generally accepted standards.

3. **Costs To Be Borne By OWNER.** OWNER agrees to pay for all costs associated with installation and maintenance of the water line and connection to the CITY water main including the following: Prior to permit issuance, OWNER agrees to pay CITY the following fees in effect at the time of permit issuance estimated below based on our current fee schedule:

A. Backflow inspection fee of \$69.00.

- B. Connection fee, for fire service only, is calculated at 50 percent of full service. The current fee is \$3,143 per acre. The estimated connection fee for the 14.72 acre PROPERTY is \$23,132.
- C. Frontage fee to be based on (1) 50 percent of the actual cost of water line or (2) the frontage fee in effect at the time, based on frontage of parcel along Burnett Avenue, whichever is greater. Based on approximately 863 feet of parcel frontage and the current fee of \$25 per foot, the estimate frontage fee is \$21,575.

In addition, OWNER agrees to pay a yearly fee of \$100.00 for ongoing CITY operation and maintenance. The first payment shall be due and payable within ten (10) days following acceptance of the installation of the water line by the CITY and connection to the CITY's water main, and payments shall thereafter be due on the anniversary date of this Agreement. This amount is subject to a yearly adjustment by the CITY commensurate with other CITY fee increases.

4. Limitation on Use of Water. OWNER agrees that water from the CITY system is to be used solely for fire protection purposes as approved by the Santa Clara County Fire District, and use of water for any other purpose shall be cause for immediate cut-off of service and termination of this Agreement.

5. Applications and Permits. OWNER shall comply with all CITY requirements for applications and permits of any nature.

6. Compliance with Law. OWNER shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

7. Notices. All notices shall be personally delivered or mailed to the addresses listed below, or to another address as may be designated by written notice. These addresses shall be used for delivery of service of process.

A. Address of OWNER is as follows:

Kawahara Nursery, Inc.  
698 Burnett Avenue  
Morgan Hill, CA 95037

B. Address of CITY is as follows:

J. Edward Tewes, City Manager  
City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, CA 95037

8. **Latent or Unknown Conditions.** Should OWNER discover any latent or unknown conditions materially differing from those represented to CITY, it shall immediately inform CITY of this and shall not proceed until written instructions are received from CITY.

9. **Time of Essence.** Time is of the essence in the performance of this Agreement.

10. **Successor's Interest.** Should the PROPERTY be sold, transferred, or encumbered in any manner, this Agreement shall become null and void, and the CITY shall have no further obligations hereunder. However, the provisions of Paragraph 11 specifically survive any expiration or nullification of this Agreement.

11. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.

12. **Indemnification.** OWNER agrees to protect, defend, and hold harmless CITY and their elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses or damages of any nature, including attorney's fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with this Agreement. The only exception to OWNER's responsibility to protect, defend, and hold harmless CITY is due to the sole negligence of CITY, or any of their elective or appointive boards, officers, agents, or employees.

13. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual written agreement executed by CITY and OWNER.

14. **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of CITY and OWNER.

15. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced pursuant to this Agreement shall be initiated in the Santa Clara County Superior Court.

16. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

17. **Termination.** This Agreement is terminable by either Party, with or without cause, upon sixty (60) days' written notice. However, any change from present use of PROPERTY, and/or any modification, extension or enlargement of the water line improvement beyond the plans approved by the CITY and the Fire District, shall

automatically terminate this Agreement. The CITY shall be entitled to remove the hydrant following termination of the Agreement. Should the OWNER elect to terminate the Agreement, all costs to remove the hydrant shall be the responsibility of the OWNER. The OWNER hereby further acknowledges that the water service provided is temporary, only for a specific land use, is to be used solely for fire protection and emergency relief purposes, and terminates when the use is terminated.

18. Preservation of Agreement. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

IN WITNESS WHEREOF, these parties have executed this Agreement on the day and year shown above.

CITY OF MORGAN HILL

KAWAHARA NURSERY, INC.

By: J. Edward Tewes  
J. Edward Tewes  
City Manager

By: David Kawahara  
Title: President

ATTEST:

By: Irma Torrez  
Irma Torrez  
City Clerk

Date: 6/19/01

APPROVED AS TO FORM:

By: Helene L. Leichter  
Helene Leichter  
City Attorney

Date: 5/25/01

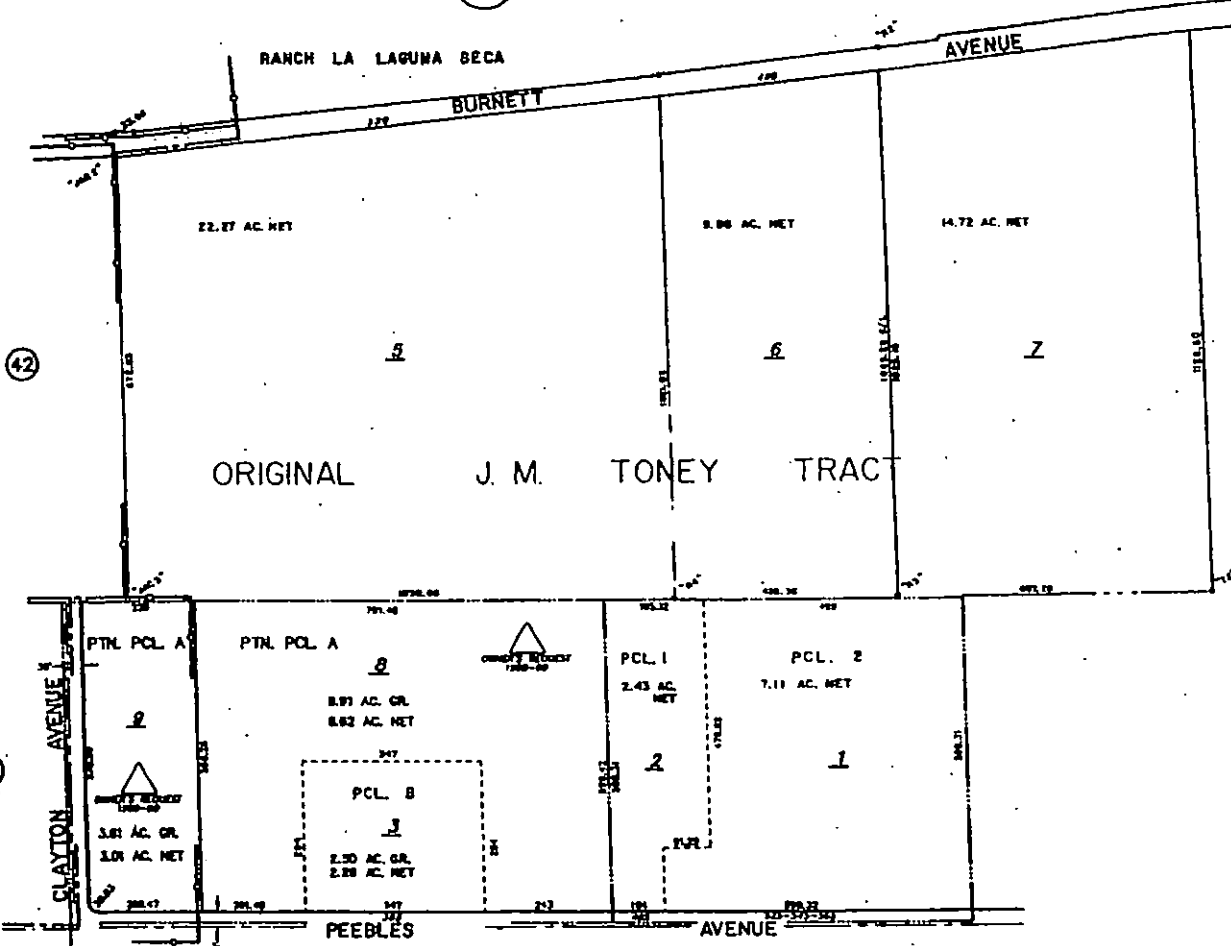
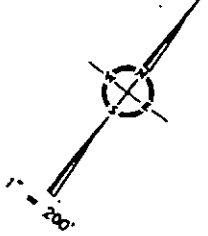
**EXHIBIT "A"**

APN 726-40-007, as identified by the Santa Clara County Records Office as of 5/1/01, comprised of 14.72 net acres.

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA

BOOK  
725

BOOK 726 PAGE 40



P.M. 418-M-14

P.M. 349-M-11

Compiled in accordance with sec. 337 of S.C. & L. code. For assessment purposes see Classification For Book Year 1999-2000 LAWRENCE E. STONE - ASSESSOR

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Santa Clara

On May 27, 2001 before me, Mary E. Garcia  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared David Kawahara  
Name(s) of Signer(s)

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Mary E. Garcia  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Agreement City of UH + Kawahara Mura

Document Date: 5-22-01 Number of Pages: 3

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer
- Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER  
Top of thumb here

Signer Is Representing:  
\_\_\_\_\_  
\_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer
- Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER  
Top of thumb here

Signer Is Representing:  
\_\_\_\_\_  
\_\_\_\_\_

**LOCAL AGENCY FORMATION COMMISSION  
SANTA CLARA COUNTY**  
www.santaclara.lafco.ca.gov

**Item No. 5 B**

County Government Center, 11<sup>th</sup> Floor, East Wing  
70 West Hedding Street, San Jose, CA 95110  
(408) 299-3800 FAX 295-1613  
Neelima Palacherla, Executive Director

---

August 2, 2001

**TO:** LAFCO

**FROM:** Neelima Palacherla, Executive Director *NP*

**SUBJECT:** CALAFCO Executive Board Nominations  
Agenda Item # 5B

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Nominations are now being sought to the CALAFCO Executive Board, in all categories (county, city, public and special district members). If you are interested in having Santa Clara LAFCO nominate you or another commissioner to the board, please let me know before or at the August 8 meeting.

Our nomination(s) must be submitted by August 31, 2001. Nominations received by this date will be included in the Recruitment Committee report. Nominations after this date will be returned, however, at the Business Meeting (Annual CALAFCO Conference), nominations will be permitted from the floor. All candidates must complete and submit a Candidate Resume Form.

Attachments:

CALAFCO Executive Board Roster  
Candidate Resume Form

**CALAFCo Executive Board Members**  
**Terms as of June 2001**

<b><i>Name and Address</i></b>	<b><i>LAFCo</i></b>	<b><i>Category</i></b>	<b><i>Term Ends</i></b>
Robert Salazar	El Dorado	City	2002
Julianne Nygaard	San Diego	City	2002
Robin Lowe	Riverside	City	2001
Don McCormack	Nevada	City	2001
Kathy Long	Ventura	County	2002
Edith Johnson	Monterey	County	2002
Denny Bungarz	Glenn	County	2001
Trish Clarke	Shasta	County	2001
Ron Wootton	San Diego	District	2002
Mel McLaughlin	Kern	District	2002
Tim Campbell	Santa Barbara	District	2001
Vacant		District	2001
Richard Rubin	Marin	Public	2002
Chris Tooker	Sacramento	Public	2002
Tom Umenhofer	Santa Barbara	Public	2001



## Candidate's Resume

Recommended by: \_\_\_\_\_ LAFCo

Category: \_\_\_\_\_  
(City, County, Public, Special District)

Date: \_\_\_\_\_

Candidate's Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_

Personal Information:

LAFCo Experience:

CALAFCo Experience:

Availability:

Other Activities or Comments:

# Next Century's Challenges . . . Last Century's Issues

It's your invitation to relearn, renew, recharge, and recreate. The 2001 Annual Conference of the California Association of Local Agency Formation Commissions is set in the forest high above it all in the Sierra Nevada hamlet of Fish Camp, adjoining Yosemite National Park in Mariposa County.

The Conference site is the *Tenaya Resort Hotel*. This Four Diamond setting in the Sierra National Forest is just three miles from the Yosemite National Park South Gate and the Mariposa Grove of Giant Sequoias. Reserve now, rooms at very special rates are limited, and there are limited numbers of weekend extensions.



- ♦ Rooms are \$120 per night during the conference (Tuesday evening, October 30 through Friday, November 2, checkout)
- ♦ A very limited number of rooms are available at the conference rate for the weekend of Friday and Saturday, November 2, and 3
- ♦ A limited number of additional rooms are available at a special rate of \$160 for the weekend covering Friday through Sunday.

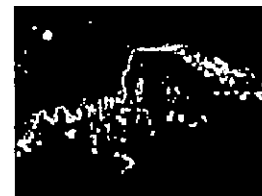
CANCELLATION POLICY: TEN DAYS PRIOR TO ARRIVAL DATE.

**Call 800-635-5807 - Option 1 to reserve your room today.**

If you have questions about the reservation, Candi Wilson is our designated representative. For photos of the Resort, check out [www.tenayalodge.com](http://www.tenayalodge.com)

**Registration is anticipated to be \$350**

## FULL MOON HALLOWEEN PARTY AT GLACIER POINT



CALAFCo's Reception this year takes you from the resort into Yosemite National Park to breathtaking Glacier Point. Our annual reception party comes with the rising of the Halloween Full Moon. This developing special event will include *Ghost Stories of Yosemite National Park* around a roaring cliffside campfire more than 3,500 feet above Yosemite Valley.

**All Hallow's Eve...the rising of the Hunter Moon...  
and a CALAFCo special event on Wednesday**

### WEDNESDAY

Registration  
Box Lunch  
LAFCo 101

*The Full Moon Halloween Reception in Yosemite*

### THURSDAY

Buffet Breakfast  
Morning Sessions  
A Four Diamond Lunch  
Afternoon Sessions  
A Four Diamond Dinner Banquet

### FRIDAY

Breakfast  
Morning Sessions  
*Head out for the weekend!!*

LAFCo of Mariposa County  
Post Office Box 2039  
Mariposa, CA 95338-2039



California Association of Local Agency Formation Commissions  
**2001 Annual Conference**  
October 31 • November 1 • November 2, 2001  
**YOSEMITE NATIONAL PARK**



**Next Century's Challenges  
Last Century's Issues**

**2001  
Annual  
Conference**  
Wednesday • Thursday • Friday  
October 31, November 1, November 2  
TENAYA LODGE RESORT • FISH CAMP  
Mariposa County, California  
Yosemite National Park