LAFCO
Local Agency Formation Commission of Santa Clara County

LAFCO MEETING AGENDA

Wednesday, December 13, 2006
1:15 p.m.

Chambers of the Board of Supervisors
70 West Hedding Street, First Floor, East Wing
San Jose, CA 95110

CHAIRPERSON: Donald F. Gage • VICE-CHAIRPERSON: Linda J. LeZotte
COMMISSIONERS: Blanca Alvarado, John Howe, Susan Vicklund-Wilson
ALTERNATES: Pete McHugh, Chuck Reed, Terry Trumbull, Roland Velasco

The items marked with an asterisk (*) are included on 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.

Disclosure Requirements

1. 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.

2. Pursuant to Government Code Sections 56700.1 and 81000 et seq., any person or combination of persons who directly or indirectly contribute $1,000 or more in support of or in opposition to a change of organization or reorganization that has been submitted to Santa Clara County LAFCO and will require an election must comply with the disclosure requirements of the Political Reform Act of 1974 which apply to local initiative measures. These requirements contain provisions for making disclosures of contributions and expenditures at specified intervals. Additional information about the requirements pertaining to the local initiative measures to be presented to the electorate can be obtained by calling the Fair Political Practices Commission at (916) 322-5660.

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 OCTOBER 11, 2006 MEETING**

PUBLIC HEARINGS

4. **REVISED DRAFT AGRICULTURAL MITIGATION POLICIES**

Possible Action: Consider the Revised Draft Agricultural Mitigation Policies, dated December 6, 2006, and staff recommendation.

5. **MAPS FOR EL CAMINO HOSPITAL DISTRICT, RANCHO RINCONADA RECREATION DISTRICT AND SARATOGA CEMETERY DISTRICT**

Possible Action: Adopt maps depicting the boundaries and spheres of influence of the following special districts: El Camino Hospital District, Rancho Rinconada Recreation District and Saratoga Cemetery District.

ITEMS FOR COMMISSION DISCUSSION / ACTION

7. **UPDATE ON CITIES' ISLAND ANNEXATION EFFORTS**

Possible Action: Accept report.

8. **APPOINTMENT OF CHAIRPERSON AND VICE-CHAIRPERSON FOR 2007**

Possible Action: Appoint Chairperson and Vice-Chairperson for 2007.

9. **2007 SCHEDULE OF LAFCO MEETINGS**

Possible Action: Adopt the schedule of meetings and filing deadlines for 2007.

10. **COMMISSIONERS' REPORTS**

11. **WRITTEN CORRESPONDENCE**

12. **NEWSPAPER ARTICLES**

13. **PENDING APPLICATIONS / UPCOMING PROJECTS**

San Martin Incorporation

14. ADJOURN

Adjourn to the next regular meeting on Wednesday, February 14, 2007.

NOTE TO COMMISSIONERS:
Upon receipt of this agenda, please contact Emmanuel Abello, LAFCO Clerk, at (408) 299-6415, 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 LAFCO Clerk 24 hours prior to the meeting at (408) 299-6415, or at TDD (408) 993-8272, indicating that message is for the LAFCO Clerk.

LOCAL AGENCY FORMATION COMMISSION OF SANTA CLARA COUNTY

MINUTES

WEDNESDAY, OCTOBER 11, 2006

1. ROLL CALL

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 11th day of October 2006 at 1:22 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: Chairperson Donald F. Gage, Commissioners Blanca Alvarado, John Howe, Linda J. LeZotte and Susan Vicklund-Wilson. Alternate Commissioners Terry Trumbull and Roland Velasco are also present.

The LAFCO staff in attendance includes Neelima Palacherla, LAFCO Executive Officer; Kathy Kretchmer, LAFCO Counsel; Dunia Noel, LAFCO Analyst; and, Ginny Millar, LAFCO Surveyor.

The meeting is called to order by the Chairperson and the following proceedings are had, to wit:

2. PUBLIC PRESENTATIONS

Brian Schmidt, Committee for Green Foothills, requests that the LAFCO website be made accessible to browsers other than Microsoft Internet Explorer, such as Mozilla Firefox. He likewise requests that the website include audio transcripts of the public meetings. Chairperson Gage informs him that staff will address the issue.

3. APPROVE MINUTES OF AUGUST 9, 2006 MEETING

On motion of Commissioner Howe, seconded by Commissioner Wilson, it is unanimously ordered on a 4-0 vote, with Commissioner Alvarado abstaining, that the minutes of August 9, 2006 meeting be approved, as submitted.

4. CONSENT CALENDAR

4.1 CUPERTINO SANITARY DISTRICT – PIKE ROAD NO. 3

On motion of Commissioner Howe, seconded by Commissioner Alvarado, it is unanimously ordered that Resolution No. 06-12 be adopted, approving the annexation of two parcels with a total area of approximately 2.19 acres, located on Pike Road in the

City of Saratoga, to Cupertino Sanitary District, and waiving further protest proceedings.

5. UPDATE ON DEVELOPMENT OF LAFCO'S AGRICULTURAL MITIGATION POLICIES

Neelima Palacherla, LAFCO Executive Officer, provides an overview of the draft Agricultural Mitigation Policies. She informs that the Commission held a planning workshop on February 16, 2006 which included a presentation by the County Deputy Commissioner of Agriculture. Discussions ensued at that workshop relating to the County's agricultural heritage, important crops, benefits of agriculture to the environment and local economy, the loss of agricultural lands, and LAFCO's role in preserving agricultural lands. She adds that on its April 12, 2006 meeting, the Commission directed staff to develop agricultural mitigation policies. She reports that on August 15, 2006, staff released the draft agricultural mitigation policies by mailing out copies to the cities and other stakeholders and posting it on the LAFCO website. Ms. Palacherla further reports that staff held a workshop on August 28, 2006 for cities and various stakeholders to discuss the draft policies. Since then, staff has received various written comments and held meetings and phone conversations with individuals and groups of stakeholders. She advises that a public hearing to adopt the policies was scheduled for October 11, 2006, however, many stakeholders have requested more time to review and comment. She states that this item is for information only.

Ms. Palacherla continues by saying that one of the issues raised by the stakeholders relates to the Commission's authority to require agricultural mitigation, its ability to condition approval of urban service area (USA) expansion on fulfillment of agricultural mitigation, and whether that situation constitutes regulating land use from which LAFCO is prohibited by the Cortese-Knox-Hertzberg (CKH) Act. Ms. Kretchmer advises that CKH Act grants authority to require agricultural mitigation through its mandate to LAFCO to preserve agricultural lands, explaining that when projects are brought before it, the Commission is required to look at the impact on agricultural lands and to ensure that mitigation is adequate.

In response to an inquiry by Chairperson Gage, Ms. Kretchmer advises that the draft policies are being developed to provide agricultural mitigation if the USA expansion by a city impacts agricultural lands. Chairperson Gage expresses concern that acquiring lands for mitigation would be difficult because the landowners would rather keep their lands to mitigate for their own projects. He adds that lands should be made available to accommodate the growing population. In response to another inquiry by Chairperson Gage, Ms. Kretchmer advises that mitigation can be done anywhere in the County because there is available land for that purpose. Chairperson Gage proposes that mitigation in other counties be allowed because most of the cities are completely built out. Ms. Kretchmer advises that the Commission may decide whether mitigation in other counties should be allowed. Along this line, Ms. Palacherla directs attention to the State Department of Conservation's Santa Clara County Important Farmland 2004 map, stating that there are agricultural lands within the spheres of influence (SOIs) of the cities and could be used for mitigation.

Commissioner Alvarado comments that by adopting the draft policies in December 2006, the Commission will strengthen its legal mandate to preserve prime agricultural lands. She recalls that participants in the 2006 CALAFCO Conference in Monterey, California, have been made aware about the huge loss of agricultural lands in the State. She adds that it is the interest of the Commission to preserve the limited remaining agricultural lands in the County. She notes that while the California Environmental Quality Act (CEQA) allows the Commission to consider environmental issues at the time of USA expansion, the draft policies attempt to emphasize the need to maintain the productive use of remaining agricultural lands. Commissioner Alvarado continues to state that severe environmental degradation in the last 50 years prompted the Federal government to enact the Endangered Species Act and the Environmental Protection Act, among others, to protect natural resources and to avert calamities triggered by environmental degradation. She informs that there is a need to elevate the preservation of agricultural lands in the County to a status of greater importance. Commissioner Alvarado indicates that if the land conversion trend continues, the County will have no more agricultural land left in 30 years and that would result in

serious economic situation. She proposes that the Commission show to the next generations how lands play a very important role in our lives, indicating that the most fundamental reason for an agricultural mitigation policy is the need to preserve agriculture, nature, open space and a way of life.

Chairperson Gage comments that land deemed as prime agricultural lands does not always mean that it is good for crops in the County, explaining that mushrooms are grown in sheds rather than on land, and that most of the garlic are grown outside of the County. He adds that other factors, such as the cost of water and relocation of processors, makes farming difficult. Chairperson Gage proposes that the draft policies should have flexibility in this regard because it would be difficult to amend it once it is in place.

Ms. Palacherla advises that LAFCO is trying to balance the demands for growth and the State's mandate to preserve open space and agricultural lands by guiding development away from existing agricultural lands, and encouraging infill of vacant lands within the cities prior to converting agricultural lands. She notes the draft policies would allow the need for growth provided that the resulting loss of agricultural land be mitigated. She continues by stating that if the draft policies are adopted, they would be applied in conjunction with existing LAFCO policies. Existing LAFCO policies provide that there should be no premature conversion of agricultural lands when there are infill opportunities within the cities. She advises that the draft policies provide details for mitigating the conversion of agricultural lands.

Ms. Palacherla continues by saying that the purpose of the draft policies is to ensure that impacts of the loss of agricultural lands are mitigated and such mitigation results in permanent preservation of agricultural lands; and, to provide advance notice of the Commission's requirements for agricultural mitigation. She indicates that staff will revise the draft policies to include a statement of purpose or intent as suggested by stakeholders.

In response to another issue raised by some stakeholders, Ms. Palacherla states that LAFCO's mitigation policies will be independent of the mitigation policies of the cities, stating that any application to LAFCO impacting agricultural lands should be

consistent with LAFCO's mitigation policies. In this regard, she advises that the draft policies encourage cities to adopt mitigation policies that are consistent with LAFCO's policies. She notes that the draft LAFCO mitigation policies are very broad to allow cities to specify the mitigation requirement suited to their local needs.

In response to an inquiry by Commissioner Alvarado, Ms. Noel advises that there are several definitions of prime agricultural lands being used in planning and agricultural circles. The draft policies define prime agricultural land using the CKH Act definition, and agricultural lands on the California's Department of Conservation's Important Farmlands Map of 2004. She also advises that grazing lands are defined as prime agricultural lands because the CKH Act defines it as such. However, the County's Department of Agriculture has informed staff that this definition would be insignificant since most grazing lands in the County are way beyond the SOIs of the cities and are unlikely to be converted. For now, that item would remain on the draft policies because it is part of the definition within the CKH Act.

In response to an inquiry by Chairperson Gage, Ms. Noel explains that non-irrigated prime agricultural lands used to grow hay could be considered as prime agricultural land based on the soils. Ms. Palacherla adds that as long as the land meets any one criteria on the draft policies, it would be considered as prime agricultural land as per the CKH Act.

Chairperson Gage comments that landowners acquire lands for a planned agriculture business regardless of the soil classification, however, they have stopped farming because it is increasingly difficult to farm in the County. Ms. Palacherla advises that while agriculture trends are changing, with some crops moving out and others gaining importance, depending on the market preferences, climate, and foreign trade, among other considerations, the quality of soil remains constant.

Ms. Noel continues her presentation by stating that the draft policies require a 1:1 mitigation ratio, or one acre preserved for every acre converted, which is commonly used in California. She indicates that even at that ratio, the impact is only partially reduced because the net effect is still a 50 percent loss. She indicates that a group of stakeholders requests that the mitigation ratio be increased to account for the potential

failure of mitigation and to further reduce the impact of the 50 percent loss. On the other hand, another group of stakeholders indicated that an increase in mitigation ratio would cause financial hardship because of prohibitive cost of lands in the County. Therefore, she continues, the 1:1 ratio is a reasonable balance between these two positions.

In response to an inquiry by Chairperson Gage, Ms. Noel advises that the mitigation ratio covers only prime agricultural lands, as defined. In response to a follow-up inquiry by Commissioner Gage, Ms. Noel informs that in cases where there are pockets of lands of lesser value within an area classified as prime agricultural land, the applicant has to demonstrate how their land had been misclassified. She adds that while the State's soil classification in the County is old, the results of new survey affirm the original classifications.

In response to an inquiry by Alternate Commissioner Velasco, Ms. Palacherla advises that while there are various arguments relating to viability of agriculture, such as the urban/agriculture edge conflict, and changing market trends and ways of farming among others, the draft policies focuses on the soil as defined by CKH Act. Alternate Commissioner Velasco expresses concern that a blanket policy would require mitigation for prime agricultural lands that are not viable for agriculture. Commissioner LeZotte explains that the Commission's mandate is to preserve agricultural lands. She continues by stating that the Commission cannot deviate from this mission to consider individual interests or specific concerns about economic viability and crop preferences. She explains that the role of LAFCO is to defend prime agricultural land and the only consideration is when something happened that the soil classification has changed. Commissioner LeZotte continues to state that the draft agricultural mitigation policies only come into play when a city is completely built out and agricultural lands needed to be converted.

Commissioner Gage proposes that the draft policies exempt prime agricultural lands that cannot be farmed because it is too close to residential areas. In this regard, Ms. Palacherla advises that the draft policies, in fact, provide a way out to landowners wanting to convert their prime agricultural land if they preserve other prime

agricultural land. Along this line, Commissioner Wilson observes that premature conversions created small agricultural lands surrounded by urban development. She notes that the draft policies would address not only the issue of premature conversion but also facilitate orderly growth. Commissioner Wilson indicates that there are tremendous amounts of infill opportunities within the boundaries of cities that should be developed first before converting prime agricultural lands.

Ms. Noel continues her report by discussing the three commonly used options for mitigation and advises that in-lieu fees should be sufficient to pay the cost of administering, managing, and enforcing agricultural lands or agricultural easements, and promoting agriculture. She informs that in response to inquiries by some stakeholders, staff would include examples of agricultural promotion, marketing the produce, and obtaining grants to support agriculture on mitigation lands. Ms. Noel likewise advises that the draft policies provide that mitigation lands and easements will be located within the County since there are still available agricultural lands that could be used for mitigation, as well as to ensure that mitigation lands are accessible to the cities and agricultural conservation entities.

In response to a suggestion by Chairperson Gage, Commissioner Alvarado indicates that a provision to allow mitigation in other counties is not needed at this time because the County has sufficient agricultural lands for mitigation. She states that since the total build-out may occur 20 to 30 years down the road, the LAFCO at that time may allow mitigation in other counties. Commissioner LeZotte expresses agreement with Commissioner Alvarado, stating that she will be a part of a consensus to disallow mitigation outside of the County. She recalls that the City of San Jose has failed to mitigate for burrowing owls because the mitigation provided was too far from the original habitat. In response to an inquiry by Commissioner Howe, Chairperson Gage explains that he is providing input to the draft policies even it is an information only item because all options should be included when the draft policies are heard by the Commission on December 13, 2006.

Ms. Noel continues her report by stating that mitigation lands or easements must be prime agricultural of equivalent quality and character to the land being converted;

should be located in the area planned or envisioned for agriculture but would otherwise be threatened or impacted by development; and, preferably, promote the creation of a permanent urban/agriculture edge. She reports that, in response to questions by some stakeholders, the policy will be revised to indicate that mitigation lands should be within a city's SOI and located in an area planned or envisioned for urban development.

Ms. Noel informs that the draft policies would likewise be revised to allow cities to adopt measures minimizing urban/agriculture edge conflict, such as the promotion of local farmers' markets and community garden programs, local farm features on the cities' websites, and community education, among others, to create sustainable communities with viable agriculture. Commissioner Alvarado requests staff for a list of ideas. Chairperson Gage informs that the cities of Gilroy and Morgan Hill have farmers' market. Commissioners Alvarado and LeZotte discusses farmers market and community gardens in San Jose, stating that there is a growing movement to buy fresh produce. In response to an inquiry by Alternate Commissioner Velasco, Ms. Noel explains that the draft policies encourage cities to employ measures to minimize urban/agriculture edge conflict and to promote agriculture. In response to a comment by Alternate Commissioner Velasco, Ms. Noel advises that the draft policies provide flexibility for cities to adopt measures that would work best for them.

Ms. Noel continues by stating the qualification criteria for a conservation entity. She indicates that staff, in response to comments from some stakeholders, would request prospective conservation entities to submit documentation to establish their compliance with these criteria. Based on experience over time, the Commission would approve a list of qualified conservation entities.

Chairperson Gage leaves at2:39 p.m. Vice-Chairperson LeZotte presides at the meeting.

Ms. Palacherla advises that when a city submits a proposal involving agricultural lands, the plan for mitigation must include an agreement between the property owner, the city, and an agricultural conservation entity. Such agreement details the mitigation for conversion of agricultural land and how the applicant proposes to mitigate the impacts on adjacent agricultural lands, along with other information to demonstrate

compliance to the draft policies. If the Commission adopts the draft policies, staff proposes to develop a checklist to guide the applicants.

Ms. Palacherla notes that the timeline for mitigation is a major concern among stakeholders. She states that some stakeholders have proposed a three-year time period with one-year extension after a LAFCO review. On why LAFCO is unable to approve a project without completion of mitigation, Ms. Palacherla states that it is LAFCO's responsibility to ensure that the agreed mitigation is implemented and that responsibility should not be delegated to another agency. She informs that LAFCO loses authority to enforce mitigation once the USA boundary amendment is approved. She adds that once mitigation is fulfilled, LAFCO will issue a certificate of completion, the boundary change becomes effective, and the city can annex the lands and begin land development. However, if mitigation requirements are not fulfilled, as the draft policies state, the conditional approval will expire. While the implementation of mitigation is pending, the city may not submit another application involving agricultural lands.

Chairperson Gage returns at 2:43 p.m.

Ms. Palacherla continues that after revising the draft policies staff will hold another workshop on the revised draft policies. Staff proposes that the draft policies will be heard on December 13, 2006. Staff report and draft policies will be available on the LAFCO website prior to the meeting. In response to an inquiry by Commissioner Howe, Ms. Palacherla explains that agricultural mitigation would not be required for agricultural lands that are within a city's boundary.

In response to an inquiry by Commissioner Alvarado, Ms. Kretchmer advises that in response to the letter by the Coyote Housing Group, LLC, the main authority for the draft policies is the CKH Act, indicating that there are very few cases brought to the courts affecting LAFCOs. Ms. Kretchmer adds that she would gather more information about this matter.

Chairperson Gage calls on the public speakers. Ms. Kretchmer clarifies that the Commission may give referrals to staff should not take action at this meeting.

Jenny Nusbaum, Planning Staff, City of San Jose, expresses support for the development of agricultural mitigation policies and directs attention to the letter

submitted by the City of San Jose. She proposes that LAFCO conduct CEQA analysis for the draft policies and solicit comments from State and Federal agencies. Secondly, she notes that restriction on new USA expansion when an earlier USA expansion is awaiting completion of mitigation should include an exemption when such USA expansion involves public safety. Ms. Nusbaum urged that, rather than use CKH Act in defining prime agricultural land, LESA model be used because it could be adjusted to suit local needs.

Commissioner Alvarado requests for a copy of the letter from the City of San Jose. In response to an inquiry by Supervisor Alvarado, Ms. Noel explains that LESA, which is an optional system used to analyze agricultural lands, was developed at the national level. States and local agencies have developed their own LESA models with the State of California having a generic version favoring larger-sized parcels located away from the urban centers. She indicates that the trend in this County is conversion of smaller parcels along the urban edge and the LESA model would not adequately meet our needs.

Brian Schmidt, Committee for Green Foothills, requests that the Commission carefully consider comments on draft policies because land developers would take advantage of any loophole, and the LESA model has loopholes. He adds that there is no need to mitigate outside of the County at this time. He expresses concern about balancing the mitigation ratio between those who wanted less with those who wanted more, noting that since the City of Davis finds 2:1 ratio feasible, there is an obligation to impose that higher ratio. He notes that CEQA requires LAFCO to impose agricultural mitigation to reduce the impact of the loss of agricultural lands. He adds that LAFCO has the authority to impose these conditions and that the draft policies do not need a CEQA document because it improves the environmental quality in the County.

Lee Wieder, Access Land Development, states that the other mission of LAFCO is to promote orderly growth. He informs that the City of Gilroy wants to grow in an orderly manner through the neighborhood districts program. He proposes that LAFCO extend the conditional approval beyond the two-year period, stating that the City cannot implement its neighborhood districts program until an area comes under the

City's jurisdiction and the specific plan has been prepared. He informs that preparation of the specific plan alone would take over two years and, in addition, more time is needed to prepare the tentative map and the final map before development could begin.

Alan Waltner, Partner, Bingham McCutchen, LLC, directs attention to his comment letter and requests the Commission to clarify to the contractors starting new projects in Gilroy which of the mitigation policies to use.

Kerry Williams, Coyote Valley Housing Group, states that the CKH Act authorizes LAFCO to approve or deny boundary extensions but does not give authority to impose mitigation if it directly regulates land use. She observes that the draft policies regulate land use because they permanently prohibit development through conservation, in-lieu fees, easements or fee-title acquisition. She requests that the mitigation policies use the LESA model and use CEQA's definition of farmlands. She expresses concern on the ability of the draft policies to accommodate creative agricultural mitigation programs like those envisioned by the Coyote Valley Specific Plan.

Chairperson Gage determines that there are no more speakers from the public and calls for the next item on the agenda.

6. UPDATE ON NORTH COUNTY AND WEST VALLEY AREA SERVICE REVIEW

Ms. Noel reports that staff met with the North County and West Valley Area Technical Advisory Committee (TAC) on September 14, 2006 to introduce the TAC members to the consultants, finalize the issues to be addressed, consider the service review process, allow the consultants to present the outline of information to collect, and review the project schedule. Future TAC meetings are tentatively scheduled in early January 2007 and late February 2007. In addition to Commissioner John Howe and LAFCO staff, the TAC consists of Debra Figone, Town Manager, Town of Los Gatos, representing the County/Cities Managers Association; Steve Psiasecki, Community Development Director, City of Cupertino, representing the Planning Officials Association; Glenn Roberts, Public Works Director, City of Palo Alto, representing the Public Works Officials Association; and Pete Siemens, Board Member, Midpeninsula

Regional Open Space District, representing the Special Districts Association. Ms. Noel further reports that staff held a separate kick-off meeting on September 14, 2006, attended by staff from affected agencies, to discuss the statutory requirements for service reviews, scope of service reviews, information needs, methods collecting information, pending applications and SOI changes, and the project schedule.

She advises that LSA Associates, consultant for the project, will prepare an administrative draft for review by staff and affected agencies. The draft will then be revised based on comments received and be released for public review in March 2007. The tentative hearings are scheduled in April and June 2007.

Commissioner LeZotte leaves at 2:56 p.m.

Commissioner Howe requests not to participate in discussions relating to El Camino Hospital District due to a potential conflict of interest. On motion of Commissioner Alvarado, seconded by Commissioner Gage, it is unanimously ordered on 4-0 vote, with Commissioner LeZotte absent, that Commissioner Howe be excused from participating in service review discussions relating to El Camino Hospital District.

On motion of Commissioner Alvarado, seconded by Commissioner Howe, it is unanimously ordered on 4-0 vote, with Commissioner LeZotte absent, that the report be accepted.

7. UPDATE ON CITIES ISLAND ANNEXATION EFFORTS

Ms. Noel reports that island annexations have been completed in Cupertino, Los Altos, Morgan Hill, Mountain View and Saratoga, and are underway in Campbell, Milpitas, Monte Sereno and San Jose. Staff and the County are finalizing completed annexations in order to provide all documents and fees to the State Board of Equalization by December 1, 2006.

She likewise advises that Governor Arnold Schwarzenegger signed into law AB 2223 (Salinas) on October 20, 2006, extending the sunset date of the streamlined annexation process from January 1, 2007 to January 1, 2014. However, she recommends that cities continue with their pocket annexations because annexing populated pockets

involves longer process, and that streamlined island annexation may not be extended further.

On motion of Commissioner Alvarado, seconded by Commissioner Wilson, it is unanimously ordered on 4-0 vote, with Commissioner LeZotte absent, that the report be accepted.

8. REPORT ON THE 2006 CALAFCO ANNUAL CONFERENCE

Ms. Noel reports that the 2006 CALAFCO Annual Conference in San Diego included several planning discussions on LAFCO's role in the Bay Area's regional housing needs assessment process, determination of water availability for LAFCO proposals, annexation and social equity issues, activities after the municipal service review and SOI updates, when is the proposed government service is too small, formulas for successful reorganization, LAFCO ethics, and legislative update. LAFCO staff, Commissioner Wilson and Javier Aguirre, Commissioner Alvarado's Policy Aide, attended the Conference. The next CALAFCO Annual Conference will be held in late August 2007 in Sacramento.

On motion of Commissioner Alvarado, seconded by Commissioner Howe, it is unanimous ordered on 4-0 vote, with Commissioner LeZotte absent, that report be accepted.

9. COMMISSIONERS' REPORTS

Commissioner Wilson informs that she and Ms. Palacherla will attend a meeting of the State Public Utilities Commission in San Francisco relating to land use oversight on private water companies. Representatives from other LAFCOs will also attend the meeting.

10. WRITTEN CORRESPONDENCE

There are no written correspondence.

11. NEWSPAPER ARTICLES

There are now newspaper articles.

12. PENDING APPLICATIONS

12.1 SAN MARTIN INCORPORATION

Ms. Palacherla informs that staff met with proponents of the San Martin incorporation relating to the petition and the notice of intent to circulate a petition. Staff is reviewing these documents before they are circulated. She notes that the incorporation proponents have indicated to move forward with this project as soon as possible, are looking into the requirements for incorporation, and are working with the Registrar of Voters.

13. ADJOURN

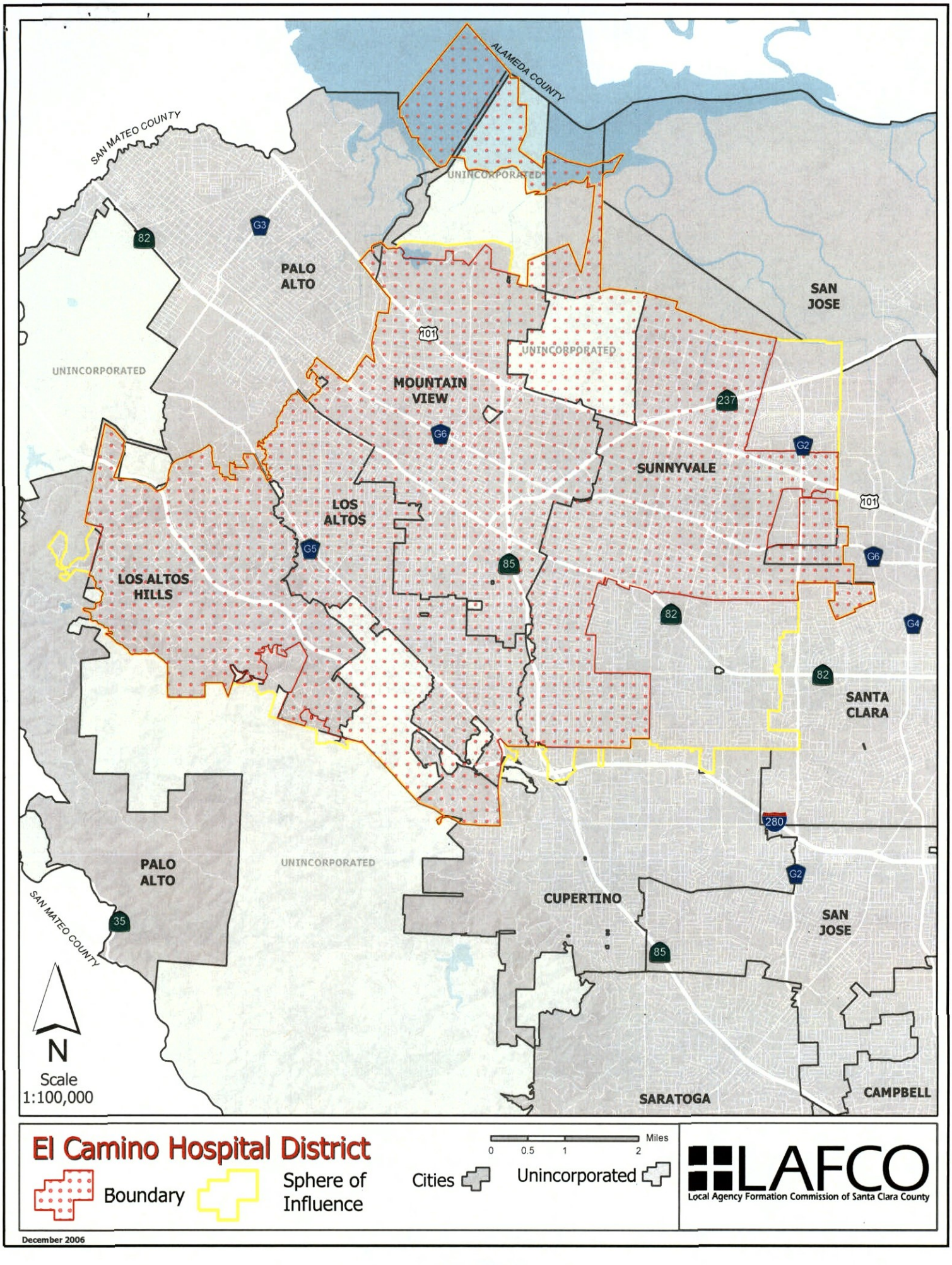
On order of the Chairperson, there being no objection, the meeting is adjourned at 3:06 p.m.

The next regular LAFCO meeting is scheduled to be held on Wednesday, December 13, 2006 at 1:15 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California.

_____
Donald F. Gage, Chairperson
Local Agency Formation Commission

ATTEST:

_____
Emmanuel Abello, LAFCO Clerk


ALAMEDA COUNTY
SAN MATEO COUNTY
UNINCORPORATED
PALO ALTO
SAN JOSE
UNINCORPORATED
UNINCORPORATED
MOUNTAIN VIEW
SUNNYVALE
LOS ALTOS
LOS ALTOS HILLS
SANTA CLARA
PALO ALTO
UNINCORPORATED
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SAN JOSE
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El Camino Hospital District
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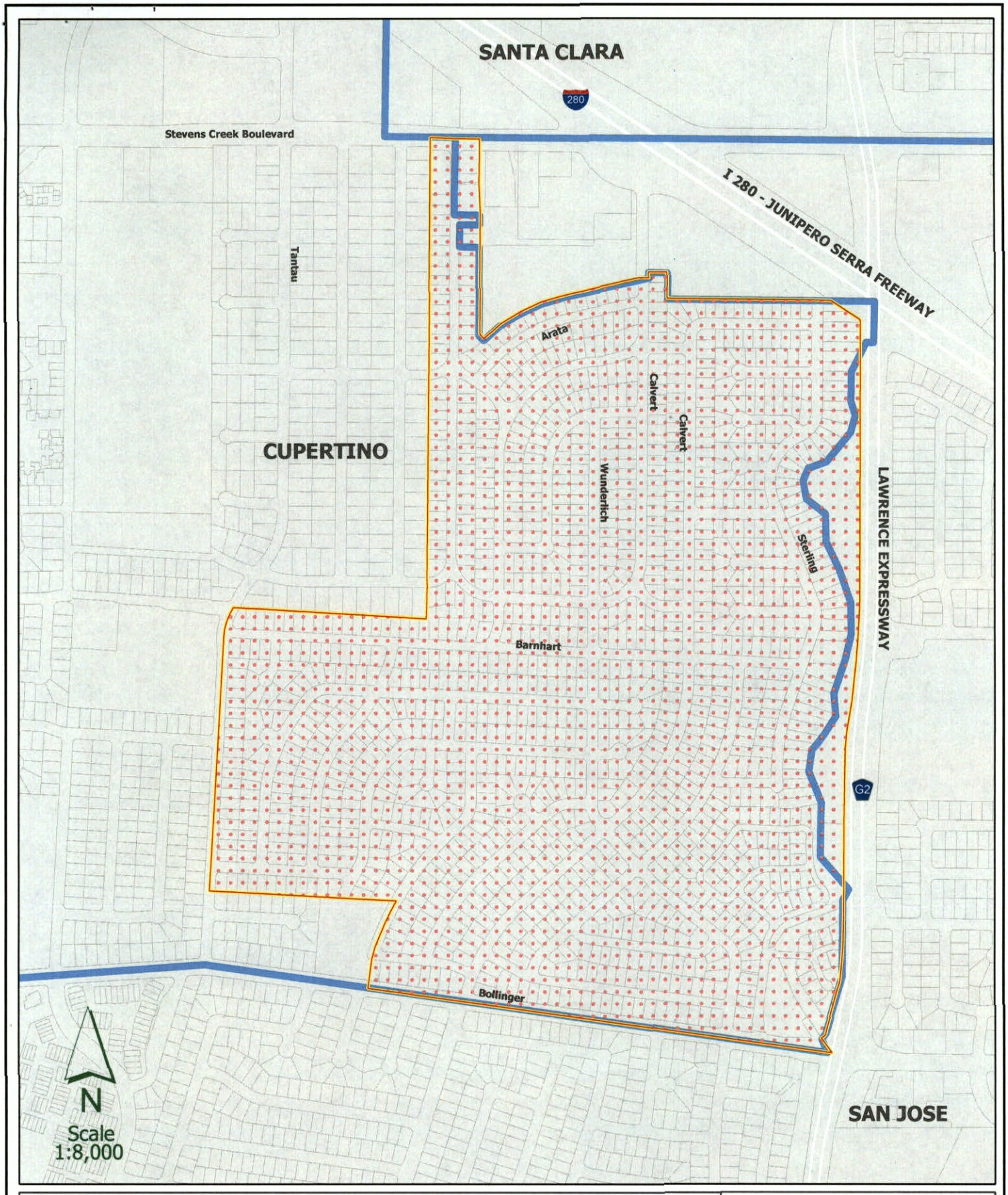
LAFCO
Local Agency Formation Commission of Santa Clara County
December 2006



Rancho Rinconada Recreation and Park District

Boundary

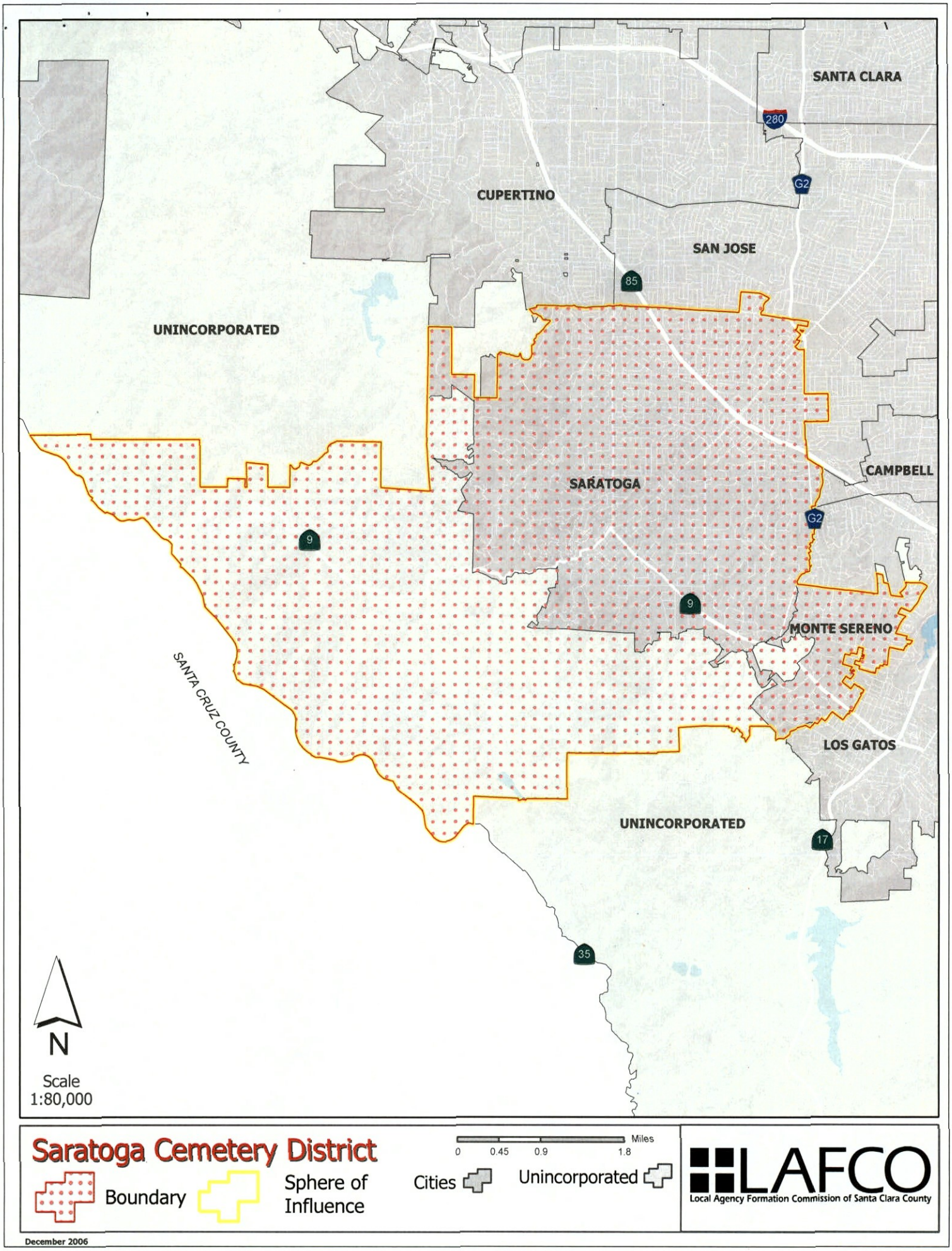
Sphere of Influence

Cities

0 0.035 0.07 0.14 Miles

LAFCO
Local Agency Formation Commission of Santa Clara County

December 2006



Saratoga Cemetery District

Boundary

Sphere of Influence

Miles
0 0.45 0.9 1.8

Cities

Unincorporated

LAFCO
Local Agency Formation Commission of Santa Clara County

December 2006

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Local Agency Formation Commission of Santa Clara County

ITEM NO. 4

LAFCO Meeting Date: December 13, 2006

TO: LAFCO

FROM: Neelima Palacherla, Executive Officer
Dunia Noel, LAFCO Analyst

SUBJECT: **LAFCO'S AGRICULTURAL MITIGATION POLICIES**
Agenda Item # 4

STAFF RECOMMENDATION

1. Consider the Revised Draft Agricultural Mitigation Policies dated December 6, 2006 **(See Attachment A)** and this staff report. Take public testimony and continue public hearing to February 14, 2007 LAFCO meeting.
2. Establish a LAFCO sub-committee composed of two commissioners to recommend policies relating to two sections in the revised draft policies namely: "Plan for Mitigation" and "Timing and Fulfillment of Mitigation", to the full commission for final action.
3. Direct staff to conduct a further assessment of potential environmental impacts associated with the adoption of LAFCO's Agricultural Mitigation Policies through the preparation of an initial study.

DEVELOPMENT OF REVISED DRAFT AGRICULTURAL MITIGATION POLICIES

Background

In February 2006, LAFCO held a planning workshop that included a presentation by the Deputy County Agricultural Commissioner on Agriculture in Santa Clara County and LAFCO discussed its role in preserving agricultural lands. LAFCO, at its April 2006 meeting, directed staff to draft agricultural mitigation policies for LAFCO proposals that would result in the conversion of prime agricultural lands to urban uses in order to ensure that LAFCO's agricultural mitigation expectations and requirements are clear to applicants, cities, special districts and affected property owners. Staff was directed to prepare the policies for the Commission's consideration and approval in the Fall of 2006.

Public Review, Comment and Revision of the Draft Policies

The Draft Agricultural Mitigation Policies were circulated on August 14, 2006, for review and comment and scheduled for a public hearing for October 11, 2006. A workshop was held on August 28th to discuss the Draft Policies and take comment. To allow affected agencies and stakeholders additional time to provide comments and to allow LAFCO staff additional time to consider and address stakeholder concerns, the October Public hearing was postponed to December 13th. At the October 13, 2006 LAFCO meeting, staff provided an update and discussed the draft policies in the staff report **(see Attachment B for October 11 staff report)** and the commission took public testimony and discussed the issues. LAFCO staff then revised the Draft Policies and released the Revised Draft Policies for public review and comment on October 26th with comments due on November 28th. Staff then held a workshop to discuss the policies on November 13, 2006 and another workshop in south county (as requested by the City of Gilroy) on November 27th. In addition, staff met with individual and stakeholder groups and made a presentation to the Gilroy Chamber of Commerce on November 17th. **See Attachment C for overview and timeline for the development of the Revised Draft Policies.**

Attached are the written comments we have received after the October 11, 2006 LAFCO meeting. **(Attachment D)**

REVISIONS TO THE DRAFT POLICIES

Following the October 11, 2006 LAFCO meeting, staff revised the Draft Agricultural Mitigation Policies to refine and clarify the policies and to address the comments received. The majority of these changes are based directly on recommendations or suggestions made by stakeholders through the public review and comment process.

The following is a summary and description of the key revisions included in the Revised Draft Agricultural Mitigation Policies released on October 26.

Introduction

An introductory paragraph has been added to describe LAFCO's mission as established by state law and to describe how the proposed policies relate to LAFCO's existing policies on preserving agricultural lands.

Policy #5

This addition states that LAFCO will work with other stakeholders, cities and the County to develop programs and public education materials to improve the community's understanding of the importance of agriculture in Santa Clara County. The Draft Policies required the cities to establish such programs. It has

been suggested that LAFCO should take on such a role and develop programs, which may then be used by individual cities.

Policy #6

This addition provides for LAFCO to review and revise the policies as necessary to allow for revisions to address issues that might arise with the implementation of these policies.

Policy #10

This revision clarifies the requirements for location of mitigation lands and specifies that the mitigation lands be located within a city's sphere of influence and that they promote the definition of a permanent urban agricultural edge.

Policy #11

This revision encourages cities to adopt mitigation measures as necessary to reduce impacts to adjacent agricultural lands and provides examples of such measures. The prior draft policy required cities to adopt mitigation measures.

Policy #15

This revision increases the time period for fulfillment of mitigation from 2 years to 3 years following LAFCO's conditional approval.

Policy #17

This revision provides for a one-year extension following the three years allowed for the completion of the mitigation requirements, subject to LAFCO review and approval. Revisions to policies #15 and #17 are in response to comments stating that 2 years is not a sufficient time for applicants to fulfill the mitigation.

Policy #19

This revision discourages submittal of additional proposals involving agricultural lands when mitigation is pending for prior proposals. The policy also states that the status of pending mitigation will be a factor that LAFCO will consider when reviewing proposals involving agricultural lands. The prior draft disallowed the submittal of proposals when there was pending mitigation.

Additional revisions included in the Revised Draft Agricultural Mitigation Policies released on December 6, 2006

In addition to the above revisions, staff made further changes to the policies based on input from stakeholders. These revisions include:

Allow for Variations from Established Standards and Criteria

This revision adds language to Policy #2 to allow the commission to consider variations from the standards and criteria established in the policies on a case-by-

case basis. This language provides for additional flexibility in fulfilling the mitigation requirements in order to deal with unique situations.

Definition of Prime Agricultural Lands

Policy # 7 has been revised to restate the definition of prime agricultural lands included in the CKH Act and to delete the reference to agricultural lands identified on the DoC's Important Farmlands Map.

RESPONSE TO COMMENTS AND QUESTIONS ABOUT THE REVISED DRAFT POLICY

1. *Does LAFCO have the authority to adopt agricultural mitigation policies and require agricultural mitigation?*

LAFCO has received several letters questioning LAFCO's authority to adopt these policies. In the opinion of LAFCO Counsel, LAFCO has the authority to adopt agricultural mitigation policies and require agricultural mitigation. **Please see Attachment E for Legal Counsel Opinion.**

2. *To what types of LAFCO applications do the agricultural mitigation policies apply?*

These policies would apply to any type of LAFCO proposal involving agricultural lands. Typically, such LAFCO proposals will involve USA expansions. If a proposal does not result in the loss of or impacts to agricultural lands, then the policies would not apply.

3. *Will the policies apply to out of agency service extension proposals?*

Broadly, there are two types of such proposals including:

1. Extension of services to already developed areas for replacement of an on-site service such as a septic system or well, generally for health and safety reasons, and

2. Extension of services to areas proposed for new development

If an out of agency contract for services proposal does not result in conversion of agricultural lands or does not impact adjacent agricultural lands, the policies would not apply. Therefore it is likely that in the first case, the policies would not apply, whereas in the second case they would apply.

4. *Why do the proposed policies not use CEQA's definition of prime agricultural lands?*

Under the Revised Draft Policies dated December 6, 2006, "prime agricultural lands" are defined based on the Cortese Knox Hertzberg Act's (CKH Act's) definition for "prime agricultural lands" (Government Code Section 56064) as the

CKH Act provides LAFCO's authority for its actions. The definition is similar to the definition used in CEQA.

5. *How do LAFCO's policies relate to the CEQA review process?*

For boundary change proposals involving potential impacts to agricultural resources, most of the environmental analysis is performed by the agency making the proposal in conjunction with its role as lead agency as mandated by CEQA. In these situations, LAFCO takes the role of a responsible agency and provides comments to the Lead Agency on LAFCO issues. These environmental documents must fully analyze potentially feasible mitigation measures that could reduce or eliminate impacts to agricultural resources, including mitigation measures that could reduce conflicts between agricultural uses and urban uses and those that would compensate for the direct losses associated with converting prime agricultural land to non-agricultural uses.

LAFCO's Agricultural Mitigation Policies will assist LAFCO in preparing, reviewing and commenting on environmental documents. The policies will help to ensure that LAFCO's concerns and expectations are considered by the lead agencies in the environmental review process and in environmental documents prepared by cities and consultants.

6. ***Will the adoption of the agricultural mitigation policies by LAFCO result in the unintended consequences of inducing urban development in the unincorporated county?***

For over 30 years, the County of Santa Clara has not allowed urban development to occur in the unincorporated area and the County has not provided urban services to the unincorporated area based on the County's General Plan and urban development policies adopted jointly by the County, the 15 cities and LAFCO in the 1970s. To assume that these longstanding policies would be changed due to LAFCO's adoption of more specific agricultural mitigation policies would be speculative. It has been suggested that if LAFCO were to adopt more specific agricultural mitigation policies then most developers would find it less costly and less burdensome to develop a 20-unit residential subdivision in an unincorporated County area rather than a site close to the City limits that would require annexation, because no LAFCO approval would be required and no land replacement mitigation would be required under the former location.

This is a very speculative concern, given that the absolute minimum acreage that would be required for 20-unit subdivision in rural unincorporated area is 100 acres in the Rural Residential Zone (5 acre minimum lot size). However there is not very much undeveloped Rural Residential Zone land left in the County. Therefore, a 20-unit subdivision would likely have to occur in the Agricultural Medium Scale Zone (20 acres minimum lot sizes) and would require 400 acres, or 800 acres in the Agricultural Large Scale Zone (40 acres minimum lot sizes). Even

in the County's Hillside Zone a substantial amount of acreage would be required based on the County's slope density formula.

7. *How do LAFCO's Revised Draft Agricultural Mitigation Policies compare with Gilroy's policy?*

The two policies are substantially similar in the mitigation requirements and the three options that they allow for mitigation; they are similar in the mitigation requirements for impacts to adjacent lands and also similar in the requirements for the location of mitigation lands. Where they differ is in the definition of agricultural lands -- Gilroy uses the LESA model and LAFCO policies use the CKH Act definition. Gilroy's policy exempts public facilities from mitigation requirements and excludes roads and public facilities within a proposal in the calculation of mitigation acreage. LAFCO policies do not allow such exceptions. There are also differences in requirements relating to the timing and fulfillment of mitigation requirements.

8. *Why do the proposed policies not allow exemptions from mitigation based on size of parcel or viability of agriculture on a parcel?*

Just within the last 20 years, Santa Clara County has lost 11,000 acres of valuable farmland to urban development. About 600 acres of important farmland is lost each year. There remain less than 39,000 acres of agricultural lands that contain the high quality soils that have allowed agriculture to flourish in Santa Clara County. This is less than 5% of the total land within this county. Once this land is lost to urban uses, it is not likely it will ever be returned to farming. Productive agricultural land is a finite and irreplaceable natural resource. Fertile soils take thousands of years to develop. Creating them takes a combination of climate, geology, biology, and providence.

Given the rapid rate of conversion of farmland and the small quantity of remaining farmland in Santa Clara County, the Draft Policies do not use size/acreage as a factor to determine the importance of farmland for mitigation purposes. Furthermore, allowing exemptions based on size/acreage would result in the cumulative and unmitigated loss of agricultural lands. The agricultural economy continues to change and evolve and therefore it is not possible to make any meaningful long-term determination about agricultural viability based on parcel size. LAFCO's policies focus on preserving lands with quality soils, whether or not the land is actually irrigated, provided that irrigation is feasible. The Draft Policies also preserve lands that have recently demonstrated their productivity.

9. *Do the policies anticipate that there will be valid needs for exceptions or waivers to the policy?*

The revised policies (See policy #6) allow the commission to review and revise the policies as necessary in order to address issues that may arise with the implementation of the policies.

10. *What is the cost of acquiring mitigation lands?*

LAFCO's Draft Agricultural Mitigation Policies do not establish a fee for acquiring mitigation lands. The cost of acquiring mitigation lands will vary based on the details of the mitigation, such as the location of the mitigation lands, mitigation method used (acquisition and transfer of agricultural conservation easement, acquisition and transfer of ownership of agricultural land and payment of in-lieu fees), and any special negotiated terms. The City of Morgan Hill has noted that within the past four years, agricultural conservation easements have been purchased in the area south of Gilroy for approximately $15,000 per acre. LAFCO staff was unable to verify this information. In 2005, consultants for the City of San Jose conducted a very preliminary analysis of the cost of acquiring 1,500 acres of agricultural land (the consultants assumed that the land would not have further development potential) for agricultural easements and set $10,000 an acre as a placeholder figure because land acquisition is market-driven. Several groups have contested the $10,000 an acre figure. In 2006, the Silicon Valley Land Conservancy acquired agricultural conservation easements over 520 acres of undevelopable land in the Soap Lake Floodplain (south of Gilroy) at a cost of $4,200 per acre.

11. *Who ultimately determines where the mitigation will occur?*

The City and the agricultural conservation entity will determine the actual location of the mitigation. See policy #9.

12. *How would an applicant contest the soil classification?*

The applicant may submit a soil analysis that demonstrates how soil has been degraded. The analysis should focus on the soil rather than the specific crops that may be planted.

REMAINING ISSUES OF CONCERN: TIMING AND FULFILLMENT OF MITIGATION

Even with the revisions to Draft Policies relating to the Timing and Fulfillment of Mitigation that were made in the Revised Draft released in October, stakeholders remain concerned about those policies. Several suggestions have been made on how LAFCO should ensure compliance with its mitigation requirements. Some examples of these suggestions include requiring a tighter time frame for mitigation fulfillment, relying on cities to enforce the conditions, making the

boundary change effective immediately, posting security bonds and requiring development agreements. Each of these suggestions has its pros and cons for assurance of timely mitigation.

In order to find a workable solution to the issues, staff is recommending that a LAFCO sub-committee composed of 2 commissioners be established. The sub-committee will hold a meeting and invite stakeholder input and make a recommendation to the full commission for its consideration and adoption of policies.

ENVIRONMENTAL ANALYSIS

Concerns have been raised about staff's proposed draft CEQA analysis for adopting the policies. In the interest of satisfying the concerns raised, staff is proposing to do further evaluation of potential impacts for the final adoption of the policies. See Attachment F for more detailed information on this topic.

NEXT STEPS

LAFCO staff will prepare and circulate an analysis of the options related to timing and fulfillment of the mitigation requirements along with a notice of the sub-committee meeting. Tentatively, the sub-committee will meet in early February 2007 to take input from the stakeholders and formulate a recommendation. If the sub-committee makes a recommendation at that meeting, staff will incorporate the recommendation into the Draft Policy and circulate it for public review and comment. The full commission should be able to consider and take final action on the policies at its April 2007 meeting.

ATTACHMENTS

Attachment A:	Revised Draft Agricultural Mitigation Polices dated December 6, 2006
Attachment B:	October 11, 2006 LAFCO staff report
Attachment C:	Overview and timeline for development of LAFCO's Revised Draft Agricultural Mitigation Policies
Attachment D:	Comments received after October 11, 2006
Attachment E:	LAFCO Legal Counsel's opinion on LAFCO's authority
Attachment F:	Environmental analysis

LAFCO'S AGRICULTURAL MITIGATION POLICIES

LAFCO's mission is to 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's current 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 current policies require an explanation for why the inclusion of agricultural lands is necessary and how such loss will be mitigated.

It is the intent of LAFCO to set forth through written policies, LAFCO's standards and procedures for providing agricultural mitigation for LAFCO proposals involving agricultural lands, consistent with LAFCO's current policies and LAFCO's mandate.

General Policies

1. LAFCO's Agricultural Mitigation Policy establishes minimum criteria and standards for providing agricultural mitigation for LAFCO proposals involving agricultural lands.
2. LAFCO requires ~~adequate and appropriate~~ agricultural mitigation as specified herein for all LAFCO applications that impact or result in a loss of prime agricultural lands. ~~Prime agricultural lands are~~ as defined in Policy #~~7~~5. The Commission may allow variations from the minimum criteria and standards established herein, when the applicant can clearly demonstrate that the proposed mitigation will provide equivalent or higher protection of agricultural lands.
3. LAFCO encourages cities with potential LAFCO applications involving or impacting agricultural lands to adopt ~~agricultural~~citywide agricultural mitigation policies and programs that are consistent with this Policy.
4. 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 this Policy.
5. 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.

6. LAFCO will review these Policies as necessary, and determine if revisions are necessary to clarify and address issues in order to better achieve the stated intent.

Definition of Prime Agricultural Lands

57. Prime agricultural land as ~~referred to in this policy~~defined in the Cortese Knox Hertzberg Act means agricultural land that meets **any** of the following qualifications:

~~a. Lands that are designated "Prime" or lands of "Statewide Importance" or "Unique Farmland" or lands of "Local Importance" by the State Department of Conservation as shown on the "Important Farmland Map" dated 2004.~~

ab. 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.

bc. Land that qualifies for rating 80 through 100 Storie Index Rating.

cd. 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 Handbook on Range and Related Grazing Lands, July, 1967, developed pursuant to Public Law 46, December 1935.

de. 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.

ef. 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.

Mitigation Requirements

86. Proposals involving the conversion of prime agricultural lands shall not be approved unless one of the following mitigations is provided at a not less than 1:1 ~~replacement~~ ratio (1 acre preserved for every acre converted) along with the payment of necessary funds as determined by the city / agricultural conservation entity (whichever applies) to cover the costs of program administration, land management, monitoring, enforcement and promotion of agriculture on the mitigation lands:

a. ~~T~~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:

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

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

9~~7~~. Agricultural lands or conservation easements acquired and transferred to an agricultural conservation entity must be located in Santa Clara County, must be lands deemed acceptable to the city and entity and must be consistent with this Policy.

10~~8~~. ~~T~~the agricultural mitigation ~~must~~ should result in preservation of land that would ~~result in the preservation of land that~~ promote the definition or creation of a permanent urban/agricultural edge and must be:~~:~~

a. ~~Is~~ Prime~~prime~~ agricultural land ~~and~~ of equivalent quality and character as measured by the Average Storie Index rating and the Land Capability Classification rating, and

b. ~~Is~~ Located within the city's sphere of influence in an area planned/envisioned for agriculture ~~that would otherwise be threatened/impacted in the reasonably foreseeable future by development, and~~

~~c. Preferably will promote the definition or creation of a permanent urban/agricultural edge.~~

9~~11~~. Because urban uses affect adjacent agricultural practices and introduce development pressures on adjacent agricultural lands, LAFCO ~~requires~~ encourages cities with LAFCO proposals impacting agricultural lands to adopt measures to preserve 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 ~~S~~such measures ~~must~~ include, but are not limited to:

a. ~~The city requiring the e~~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. ~~The city adopting~~Adoption of ~~measures 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. ~~The city developing programs~~Development of programs to ~~improve the community understanding of the necessity of agriculture in creating sustainable communities and~~ promote~~ing~~ the continued viability of surrounding agricultural land.

~~d. Other appropriate measures to satisfy the intent of this policy may also be adopted.~~

Agricultural Conservation Entity Qualifications

12~~0~~. The agricultural conservation entity must be a city or a public or non-profit agency. The agricultural conservation entity must:

a. Be committed to preserving local agriculture and must 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 be operating in compliance with those standards.

Plan For Mitigation

13. A Plan for Agricultural Mitigation that is consistent with this Policy must be submitted at the time that a proposal impacting agricultural lands is filed with LAFCO.

14. The Plan for Mitigation shall include all of the following:

a. An agreement between the property owner(s) and the city or between the property owner, city and agricultural conservation entity (if such an entity is involved) that commits the property owner(s) to provide the appropriate mitigation for the loss of prime agricultural lands and establishes the specifics of the mitigation in a manner consistent with this Policy. The agreement would be contingent on LAFCO approval. Upon

LAFCO's conditional approval of proposal, the agreement must be recorded with the County Recorders' Office against the property to be developed.

b. Information on specific measures adopted by the city to demonstrate city's compliance with Policy #911.

c. All other supporting documents and information to demonstrate compliance with this Policy. A checklist will be developed.

Timing and Fulfillment of Mitigation

153. LAFCO will require as a condition of approval that the agricultural lands or conservation easements be acquired and transferred or the in-lieu fees be paid within ~~2~~ 3 years of ~~the~~ LAFCO's conditional approval. ~~This will provide the property owner with sufficient flexibility to meet the mitigation requirements while ensuring that agricultural mitigation is provided in a timely manner~~.

164. Upon fulfillment of the conditions of approval, LAFCO will issue a Certificate of Completion. The effective date of the boundary change will be the date of issuance of the Certificate of Completion.

175. If the conditions of approval are not met within 32 years, the ~~conditional approval will expire~~ applicant may apply to LAFCO for an extension, not exceeding 1 year. Any further consideration by LAFCO will require a new application.

186. The city will not be able to approve the related city-conducted annexation until the Certificate of Completion for an USA approval is issued.

197. ~~LAFCO will not accept other USA amendment proposals from the city until the agricultural mitigation is provided for the city's previous USA approvals.~~ LAFCO discourages submittal of additional USA amendment proposals involving agricultural lands if agricultural mitigation has not been completed for the city's previous approvals. Status of pending agricultural mitigation will be a factor that LAFCO will consider in the evaluation of proposals involving agricultural lands.

LAFCO
Local Agency Formation Commission of Santa Clara County

ITEM NO. 4
ATTACHMENT B

LAFCO Meeting Date: October 11, 2006

TO: LAFCO

FROM: Neelima Palacherla, Executive Officer NP
Dunia Noel, LAFCO Analyst DN

SUBJECT: **LAFCO'S AGRICULTURAL MITIGATION POLICIES**
Agenda Item # 5

FOR INFORMATION ONLY

No final action on the policies will be taken.

DEVELOPMENT OF DRAFT AGRICULTURAL MITIGATION POLICIES

Background

In February, LAFCO held a planning workshop that included a presentation by the Deputy County Agricultural Commissioner on Agriculture in Santa Clara County and LAFCO discussed it's role in preserving agricultural lands. LAFCO, at its April 2006 meeting, directed staff to draft agricultural mitigation policies for LAFCO proposals that would result in the conversion of prime agricultural lands to urban uses in order to ensure that LAFCO's agricultural mitigation expectations and requirements are clear to applicants, cities, special districts and affected property owners. Staff was directed to prepare the policies for the Commission's consideration and approval in the Fall of 2006.

Review and Comment on Draft Policies

The Draft Agricultural Mitigation Policies (See Attachment A for the Draft Policies and the cover letter) were circulated to cities, special districts, the County, environmental groups, farming interests and other interested parties and individuals on August 14, 2006, for review and comment. The Draft Policies were also posted on the LAFCO web site. A workshop was held on August 28th to discuss the Draft Policies and take comment. Staff from several cities, special districts, the County, as well as representatives from conservation groups and local developers attended the workshop. (See Attachment B for list of workshop attendees)

As of this date, we have received written comments on the Draft Policies from the following agencies, organizations, and individuals:

1. City of Gilroy (3 letters)
2. City of Morgan Hill (1 letter and 1 staff report)

3. City of San Jose
4. City of Sunnyvale
5. Committee for GreenFoothills
6. Friends of the Coyote Valley Greenbelt (FROG)
7. Greenbelt Alliance
8. Santa Clara Valley Audubon Society
9. Save Open Space Gilroy
10. Bingham McCutchen, LLP (representing prospective project)
11. Home Builders Association of Northern California
12. Jim Foran (personal views, not endorsed by the OSA)
13. Coyote Housing Group, LLC
14. Midpeninsula Regional Open Space District
15. W. Rocke Garcia, Blackrock
16. Patrick Congdon, (personal views, not endorsed by OSA Board)

Copies of all of the above comment letters are included in Attachment D. Staff has met with and/or has had telephone conversations with several of these groups and individuals to further discuss and address issues.

Request for Additional Time to Review and Comment and Address Issues

One of the greatest concerns expressed by affected agencies at the workshop was the proposed timeline for adopting the Draft Agricultural Mitigation Policies. Affected agencies and several stakeholders requested additional time to review the policies in order to provide thoughtful comments to LAFCO and its staff. Since the August workshop, LAFCO staff has received many comment letters, some of which identify issues that require further consideration by LAFCO staff. **Therefore, this report is for information only and not for Commission action.** This will allow affected agencies and stakeholders additional time to provide comments and to allow LAFCO staff additional time to consider and address agency and stakeholder concerns.

Provided below is a discussion of the Draft Policies and some of the concerns and questions that have been raised regarding these policies.

GENERAL POLICIES

Description of Proposed Draft Policy

Existing LAFCO policies require mitigation for the loss or conversion of agricultural lands. The proposed policies establish minimum criteria and standards for providing agricultural mitigation for LAFCO proposals in order to make LAFCO's expectations and requirements clear to affected property owners, cities, other local agencies and the public. The purpose of the proposed policies is

to ensure that impacts to agricultural lands are mitigated and that mitigation results in the permanent preservation of agricultural lands.

LAFCO will use these proposed policies to evaluate if the agricultural mitigation proposed by the applicant is adequate. Therefore, in addition to meeting the city's or other local agency's mitigation requirements, a LAFCO proposal must be consistent with LAFCO's mitigation policies. Policies #3 and #4 encourage cities to adopt citywide mitigation policies consistent with LAFCO's mitigation policies and encourage property owners and cities/agricultural conservation agencies to work together on developing mitigation measures and programs that that would be consistent with LAFCO Policies.

All LAFCO proposals that involve or impact prime agricultural lands must provide adequate and appropriate mitigation. Although this policy would apply to any type of LAFCO proposal involving agricultural lands, typically, such LAFCO proposals will involve USA expansions.

Questions and Concerns about Proposed Draft Policy

1. *Why is it important to preserve agricultural lands in Santa Clara County?*

See Attachment E.

2. *How do the Draft Policies relate to LAFCO's existing policies on agricultural preservation?*

LAFCO will use the agricultural mitigation policies in conjunction with other existing LAFCO policies when reviewing boundary change proposals. One of LAFCO's primary mandates is to preserve and protect agricultural lands and therefore LAFCO's existing policies discourage the conversion of agricultural lands. According to existing LAFCO policies and state law, LAFCO must consider if the proposed conversion of agricultural lands is premature, if there are other non-agricultural lands suitable for development, if infill opportunities have been exhausted, if all significant vacant land within the existing boundaries has been developed, if the proposal adversely affects other agricultural lands etc., along with several other factors relating to service provision and logical and orderly growth and development. Once these considerations have been evaluated and if there still is a need to expand into agricultural lands, then LAFCO will require that mitigation for the conversion of the agricultural lands be provided as per the standards set forth in Agricultural Mitigation Policy. By requiring mitigation for conversion of agricultural lands, LAFCO is helping ensure that other agricultural lands remain in agricultural use.

2. *What is LAFCO's authority under the Cortese Knox Hertzberg Local Government Reorganization Act of 2001 (CKH Act) to require agricultural mitigation? – AND - How would LAFCO's agricultural mitigation requirements be considered in the CEQA process?*

One of the essential purposes of LAFCO, as mandated by the CKH Act, is the preservation of agricultural lands. LAFCO must balance the need for growth and development with its mandate for preserving agricultural lands. The CKH Act mandates that each LAFCO develop written policies and procedures that address the protection of agricultural lands. The requirement of implementing protections for other agricultural lands, as mitigation for allowing development of agricultural lands is one way of fulfilling its mandate while striking a balance between the need for growth and agricultural preservation. The proposed Agricultural Mitigation Policies will enable LAFCO to better consider proposals involving conversion of agricultural land. Existing LAFCO policies require mitigation when a LAFCO proposal involves conversion of agricultural land. The proposed policies provide more guidance and set minimum standards and criteria for the required mitigation.

Agricultural mitigation is a tool that local governments (cities, counties and LAFCOs) commonly use to protect farmland and to maintain the economic viability of agriculture. LAFCO is required to protect agricultural lands. Agricultural mitigation is a tool that LAFCO will use where appropriate, as a way to meet its mandate of preserving agricultural lands and preventing their premature conversion.

LAFCO's Draft Agricultural Mitigation Policies will assist LAFCO in preparing, reviewing and commenting on environmental documents. The Policies will help to ensure that LAFCO's concerns and expectations are considered upfront in the environmental review process and in environmental documents prepared by cities and consultants.

3. ***Can LAFCO condition approval of proposals on provision of agricultural mitigation? Would LAFCO be regulating landuse by applying such conditions?***

The CKH Act grants LAFCO the power "to review and approve or disapprove with or without amendment, wholly, partially or conditionally," a request for a change in boundary. Govt. Code §56375(a). Furthermore, the CKH Act allows LAFCO to conditionally approve a proposal "upon the acquisition, improvement, disposition, sale, transfer or division of any property real or personal". Govt. Code §56886(h). The agricultural mitigation conditions relate to transfer of real property and therefore fall within the authority granted to LAFCO.

The CKH Act however, prohibits LAFCO from applying conditions that "would directly regulate land use, density or intensity, property development or subdivision requirements." Govt. Code §56375 (a). Direct regulation of land use generally occurs through the adoption of general plans or specific plans, zoning designations and subdivision requirements. The Draft Policies do not require LAFCO to impose a particular land use designation on any property; the policies simply require the permanent protection of lands that are already planned or designated for agriculture. The policies provide for three alternatives through which such mitigation may be fulfilled including purchase and transfer of fee title or purchase and transfer of conservation easement or payment of in-lieu fees. Like most LAFCO decisions or actions, the agricultural mitigation conditions may influence or impact land use but they do not directly regulate land use.

4. *Has LAFCO completed a nexus study under the Mitigation Fee Act?*

LAFCO's Draft Agricultural Mitigation Policies do not establish a mitigation fee and therefore LAFCO is not subject to the Mitigation Fee Act. The payment of an in-lieu fee to an agricultural entity is one of three identified options for mitigating for the conversion of prime agricultural lands. Under the Draft Policies, property owners and cities are free to meet this condition through one or more of the three options. Cities and agricultural conservation agencies are also free to establish their own agricultural mitigation fees consistent with LAFCO's Policies.

DEFINITION OF PRIME AGRICULTURAL LANDS

Description of Proposed Draft Policy

Policy #5 defines prime agricultural lands based upon local conditions. The proposed definition consists of the CKH Act's definition of prime agricultural land as well as all categories of farmland designated on the State Department of Conservation's (DoC) "Important Farmland Map" dated 2004 (see Attachment C) including "Prime", lands of "Statewide Importance", "Unique Farmland" and lands of "Local Importance". The CKH Act's definition includes those farmlands that are currently not irrigated, as long as irrigation is possible. The farmlands depicted on the DoC's map for the most part, correspond with the CKH Act's definition and include farmlands that are considered to be important at the local level. The DoC's map provides a quick visual guide to the location of agricultural lands in the county. Given the rapid rate of conversion of farmland and the small quantity of remaining farmland in Santa Clara County, the Draft Policies do not use size/acreage as a factor to determine the importance of farmland for mitigation purposes.

Questions and Concerns about Proposed Draft Policy

1. *Why is LAFCO not using the Land Evaluation Site Assessment Model (LESA) to determine whether an application requires agricultural mitigation?*

The California LESA Model is a point-based approach for rating the relative importance of agricultural land resources based upon specific measurable features and was developed in order to provide agencies with an optional methodology to ensure that significant effects on the environment of agricultural land conversions are quantitatively considered in the environmental review process. Neither LAFCO, nor cities are required to use the California LESA Model.

Although agricultural resources, and the agricultural economy can vary from county to county and vary over time, the California LESA Model uses a stationary, one-size fits all, approach to rating the relative importance of agricultural land resources. The Model favors larger sites that are located away from urban development.

According to the 2002 Census of Agriculture, 40% of all farms in Santa Clara County are 1 to 9 acres in size and the median size for a farm in Santa Clara County is 11 acres. In many urban counties, there is also a trend towards small size farms that focus on specialty crops that are located at the urban edge. These farms often market directly to clients (e.g. restaurants, people participating in community supported agriculture programs etc.) located in nearby urban centers.

Staff believes that the current California LESA Model is not an appropriate tool for rating the relative importance of agricultural land resources in Santa Clara County. The California LESA Model may have some usefulness in Santa Clara County if it were refined and calibrated to address local agricultural conditions and trends. A national survey on the use of the LESA Model found that over 200 jurisdictions (cities, states, and LAFCOs) have developed local LESA methodologies for this very reason.

2. ***Why is LAFCO's definition of prime farmland so broad and why is it not based on a minimum acreage?***

The Draft Policy includes a definition for prime agricultural land. The definition consists of the Cortese Knox Hertzberg Act's (CKH Act's) definition of prime agricultural land and as well as lands that are designated "Prime" or lands of "Statewide Importance" or "Unique Farmland" or lands of "Local Importance" as shown by the State Department of Conservation on the "Important Farmland Map" dated 2004. This definition consists of the various types of farmland

present in Santa Clara County that are considered to be important at the state level and important to the local economy.

According to the California Department of Conservation, between 2002 and 2004, nearly 1000 acres of important farmland in Santa Clara County was converted to urban development. Once farmland is converted to urban development it is unlikely it will ever return to farming. Therefore, the Draft Policy considers the loss of any amount of farmland to be important and requires that loss to be mitigated.

3. *Does LAFCO require applications involving grazing lands to mitigate for the loss of grazing lands?*

As mentioned above, the Draft Policies include a definition for prime agricultural lands that is partly derived from the CKH Act's definition of prime agricultural land. The CKH Act definition of prime agricultural land includes "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 an acre as defined by the United State Department of Agriculture in the "National Range and Pasture Handbook." Under this definition, an acre of grazing land would need to produce sufficient forage to sustain one mature cow of approximately 1,000 pounds and a calf as old as six months, or their equivalent, for an entire year.

We anticipate that the applicability of Policy #5d will be extremely limited in Santa Clara County. This definition typically applies to mild winter areas in the United States with sufficient rainfall throughout the year to create highly-productive grazing lands. However, these climatic conditions do not exist in Santa Clara County. In this region, most livestock grazing occurs on hillsides and other non-irrigated rangelands surrounding the valley floor. Typical annual carrying capacity of local rangeland can vary from 12 acres per animal unit on productive grasslands up to 30 acres or more per animal unit in areas with dense trees and brush.

In order to meet the Policy #5d definition in Santa Clara County, such grazing lands would typically have to be irrigated pasture land not already designated as prime agricultural land under Policy #5a, #5b, #5c, #5e, or #5f. Data maintained by the Santa Clara County Department of Agriculture indicates this particular definition may have little applicability in Santa Clara County.

MITIGATION REQUIREMENTS

Description of Proposed Draft Policy

Policy #6 specifies how much and what type of mitigation must be provided when a proposal involves conversion of agriculture land. The proposed policy establishes a minimum standard for mitigation at a 1:1 ratio (i.e., 1 acre of land

must be preserved for every acre that is converted to non-agriculture use). Although this ratio does not fully mitigate for the conversion of agricultural land, since in effect it only preserves 50% of the land, a 1:1 ratio is considered reasonable and is most commonly used. The policy provides three options for how the mitigation may be provided:

- Purchase and transfer agricultural land
- Purchase and transfer of agricultural conservation easements
- Payment of in-lieu fees

A city may choose to adopt a higher mitigation ratio to encourage or discourage the use of one or more of the mitigation options, as long as it meets the 1:1 requirement.

Polices # 7 and #8 specify where the mitigation must be provided. In order to obtain the most effective mitigation, the policy requires the mitigation to be provided within Santa Clara County and located in an area planned for agriculture that are likely to be threatened by future development. It is also recommended that the mitigation lands should help define a permanent / stable urban-agricultural edge. The intent of this policy is to encourage mitigation to occur on lands that are likely to be developed in the near future rather than preserving less threatened agricultural lands located far from the city boundary. Further refinement of this policy is necessary.

Policy #9 deals with LAFCO proposals that impact adjacent agricultural lands and that would induce the premature conversion of adjacent agricultural lands. The policy requires the cities to adopt certain measures, such as requiring establishment of buffers at the time of its land development process, adopting right to farm ordinances and developing programs to enhance awareness of agriculture and to promote the viability of agriculture.

Questions and Concerns about Proposed Draft Policy

1. ***Why do the Draft Policies require that agricultural mitigation occur at a 1:1 ratio and not at a higher or lower mitigation ratio?***

It has been suggested that LAFCO's policies should allow limited flexibility in the ratio to promote quality mitigation. It has also been suggested that higher ratios are not financially feasible in Santa Clara County given the high land costs.

The 1:1 mitigation ratio is a minimum mitigation ratio and is a common agricultural mitigation ratio used throughout California and in many other states. Even with a 1:1 agricultural mitigation ratio, the impact is only partially reduced (i.e. net effect is a 50% loss of farmland).

The City of Davis is the only jurisdiction in California (that we are aware of) which requires a higher agricultural mitigation ratio (2:1 is required) than 1:1. According to Mitch Sears, City of Davis Open Space Planner, the City of Davis

recently increased its agricultural mitigation ratio from 1:1 to 2:1 in order to get closer to true mitigation because any conversion of farmland is by default a loss of farmland. It has also been suggested that in the real world, mitigations are not perfect, programs and easements are often violated, or simply become infeasible and that an agricultural mitigation ratio should be a little higher (1.2:1) than 1:1 to account for the possibility of failure. Wetland restoration mitigations typically use 2:1 or 3:1 to address this very concern.

The Draft Policies set a minimum standard (1:1) for agricultural mitigation ratios and cities are free to establish higher mitigation ratios in their own citywide agricultural mitigation policies.

2. ***Why don't the Draft Policies include language favoring the use of fee title acquisitions to agriculture conservation easements as a form of agricultural mitigation?***

It is our understanding that there are pros and cons to each of these options. According to some, fee title acquisitions (with subsequent leases to farmers) may be somewhat more expensive but will provide greater public benefit, such as providing greater assurance that the protected lands will actually be used for productive farming, enabling agricultural practices that are more friendly to wildlife, allowing future recreational trail development and creating the opportunity to combine adjacent small parcels to create larger parcels that may better meet the needs of farmers.

Others have indicated that the ideal form of agricultural mitigation would be the acquisition and transfer of agricultural conservation easements because the farmer would continue to own the land and therefore the farmer would be more inclined to employ measures that support the long-term agricultural use of the property. However, as a lessee, the farmer may have less of an incentive to employ measures that support the long-term agricultural use of the property, such a purchasing expensive but necessary farming equipment or farming certain crops that have a long maturity period.

The Draft Policies do not indicate a preference toward any form of mitigation. The Draft Policies also encourage cities with potential LAFCO applications involving or impacting agricultural lands to adopt agricultural mitigation policies that are consistent with the LAFCO Policies. Cities are free to indicate in their own agricultural mitigation policies a preference or requirement for certain forms of agricultural mitigation, such as fee title acquisition. Similarly, cities are free to provide incentives to encourage the use of specific forms of agricultural mitigation. For example, a city could set an agricultural mitigation ratio of 1:1 for fee title acquisitions and 2:1 for other types of mitigation or a city could set an agricultural mitigation ratio of 2:1 for in lieu fees and 1:1 for other mitigation methods.

3. ***How can one establish that agricultural mitigation lands are "threatened / impacted in reasonably foreseeable future". –AND- Why does or doesn't LAFCO require agricultural mitigation to occur on lands that are close to the proposed development?***

Based on the comments received, there seems to be some confusion as to the criteria for location of appropriate mitigation lands. Some believe that true agricultural mitigation can only occur when it results in preservation of agricultural lands that are likely to be developed by a city in the near future. These agricultural lands would typically be located at or near the immediate urban edge. Others have expressed concern about being required to locate mitigation lands at the immediate urban edge because of the high costs of acquiring easements or fee title on those lands.

The intent of this policy is to encourage mitigation to occur on lands that are likely to be developed in the near future rather than preserving less threatened agricultural lands located far from the city boundary. LAFCO Staff will clarify this criterion in the Revised Draft Policies.

4. ***What do the Draft Policies mean when they say an agricultural "buffer's size, location and allowed uses must be <u>sufficient</u> to minimize conflicts between the adjacent urban and agricultural uses?" –AND- Why require agricultural buffers on adjacent agricultural lands if they are going to eventually be developed?***

Agricultural buffers are well defined areas located between non-agricultural development and agricultural land. An agricultural buffer is a tool used to help preserve the integrity of an agricultural area by minimizing conflicts between adjacent urban and agricultural uses. The purpose of an agricultural buffer is to shield agricultural operations from the effects of development and to protect development from the effects of agricultural operations. Agricultural buffers may be as small as a stand of trees, or as wide as 200 yards. In order to provide flexibility to cities and landowners, the Draft Policies do not define or set specific requirements for an agricultural buffer. Cities are free to set their own specific requirements for agricultural buffers or other methods to minimize potential conflicts between the proposed urban development and adjacent agricultural uses.

An ideal location for an agricultural buffer would be adjacent to well-defined agricultural preservation areas. However, buffers may be necessary to prevent the premature conversion of agricultural land in the short term and to allow for the continued farming on those lands. Therefore, it is appropriate to buffer existing agricultural areas from adjacent urban development in order to maintain an environment that supports the continued and potential use of these agricultural lands.

5. *What are some examples of city programs to improve community understanding of the necessity of agriculture in creating sustainable communities and promoting the continued viability of surrounding agricultural land?*

Some examples of city programs or projects include:

- Providing space for local farmers markets and/or a regional farmers market space to allow for direct sales of agricultural products
- Having a community garden program
- Providing information on local farms on city website or city newsletters or developing an expanded "County Crossroads" Map Program that identifies farms that conduct direct sales to public
- Being one of several sponsors for agricultural festivals
- Participating in a program to brand and market local agriculture (e.g. sticker program that identifies produce or products as "Santa Clara County Grown"
- Providing road or highway signs that say "These lands preserved by City of X" or "Welcome to the City X & City Y Greenbelt"

6. *What is LAFCO's authority to require cities to adopt land use policies and measures regarding agricultural protection?*

The measures (i.e. requiring agricultural buffers on land proposed for development, adopting a city Right to Farm Ordinance, and developing programs to improve community understanding and support of local agriculture) identified in this policy are common tools and techniques that local governments in California and across the nation have used to protect farmland and to ensure the economic viability of agriculture. The American Farmland Trust, a nationally recognized farmland preservation organization, has indicated that many of the most effective farmland protection programs across the nation include these common tools and techniques.

The intent of Policy #9 is to encourage the cities to employ measures to prevent the premature conversion of agricultural lands to other uses and to minimize potential conflicts between the proposed urban development and adjacent agricultural uses. Staff will clarify this policy in the Revised Draft.

AGRICULTURAL CONSERVATION ENTITY QUALIFICATIONS

Description of Proposed Draft Policy

Policy #10 establishes criteria on how an agency will qualify as an agricultural conservation entity. The intent of Policy #10 is to provide general standards that LAFCO, cities, and landowners can use to identify an agricultural conservation entity that is able (legally, technically, and financially) to hold and administer agricultural lands, agricultural conservation easements, and in-lieu fees for the

purposes of conserving and maintaining lands in agricultural production. These standards will also be useful if and when a new agricultural conservation entity is forming. Although LAFCO, cities, and landowners all play important roles in the agricultural mitigation process, the agricultural conservation entity is the entity that is largely responsible for conserving and maintaining the mitigation lands in agricultural production. Therefore, it is important that the agricultural conservation entity meet some minimum qualifications.

Questions and Concerns about Proposed Draft Policy

1. *Would LAFCO provide a list of approved agricultural conservation entities?*

No. Initially, LAFCO would require the agricultural conservation entity to submit documentation that establishes its compliance with the criteria in the LAFCO policy. LAFCO would have the discretion to determine if a particular agricultural conservation entity has met the criteria. In the future, based on its experience, LAFCO will be able to compile a list of such agencies.

Also, there has been a great deal of discussion nationally concerning the development of a national accreditation process for conservation entities. If and when this process is instituted, it may provide a useful resource for identifying qualified agricultural conservation entities.

PLAN FOR MITIGATION

Description of Proposed Draft Policy

Policies #11 and #12 discuss the application filing requirements that must be submitted along with a LAFCO proposal involving or impacting agriculture lands.

TIMING AND FULFILLMENT OF MITIGATION

Description of Proposed Draft Policy

Policies #13 through #16 specify when the mitigation must be provided and the LAFCO process for ensuring fulfillment of mitigation.

Ideally, mitigation must be provided at the time of or prior to LAFCO approval of a boundary change. One of the purposes of the Draft Policies is to provide landowners and developers with guidance on LAFCO's expectations and requirements concerning agricultural mitigation, which would enable them to provide the mitigation at the time of LAFCO approval. However, in order to provide flexibility, the policies allow LAFCO approval of a proposal to be conditioned on the mitigation requirements being completed within 2 years of LAFCO conditional approval. If the mitigation conditions are met, then the boundary change will become effective upon issuance of a Certificate of

Completion. If the conditions are not met, the approval will expire after two years.

It is the intent of this policy to strike a balance between ensuring timely, effective mitigation and ensuring that the requirements are practical and reasonable.

Policy #17 limits the number of pending USA applications (with unfulfilled mitigation requirements) to one at any given time from each city.

Questions and Concerns about Proposed Draft Policy

1. ***Why is LAFCO's approval conditional on fulfilling the mitigation requirements and why is LAFCO not relying on agreements between property owners and cities to enforce LAFCO's mitigation requirements?***

The Draft Policies require that any LAFCO proposal converting agricultural lands must provide appropriate mitigation. If LAFCO is approving a proposal with mitigation measures, then it is LAFCO's legal responsibility to ensure that the mitigation has occurred. LAFCO must accept responsibility for oversight and enforcement of its policies. LAFCO cannot delegate its legal responsibility to another agency. In Santa Clara County, the first step to converting lands from agricultural to non-agricultural uses occurs when the land is included by LAFCO into a city's USA boundary. Mitigation for conversion of agricultural lands will be required at that time. Typically, LAFCO's authority ends with the approval of an USA amendment and LAFCO has no control over the annexation or land development process after that. Therefore it is important that LAFCO ensure that the mitigation is fulfilled prior to making any boundary changes effective.

It has been suggested that an agreement between the property owner and city specifying the mitigation to be provided would suffice as adequate assurance to LAFCO that the mitigation requirements will be fulfilled. Due to the questions regarding LAFCO's ability to enter into and enforce such an agreement and for the reasons stated above, this arrangement is not recommended at this time.

2. ***Concerns that two years is too short a time frame in which to complete mitigation requirements, especially in the case of large-scale projects such as Coyote Valley development.***

This is one of the most frequently raised issues regarding the Draft Policy. Staff is looking into alternatives to address this concern. One of the suggested ways to address this issue is to extend LAFCO's conditional approval period and to establish a renewal process subject to LAFCO review. Again, although it is not appropriate to delay the mitigation for too long, a delay may be necessary in order to provide some flexibility while ensuring certainty of obtaining mitigation.

LAFCO must consider several different factors when reviewing and approving boundary changes. Boundary change proposals must be consistent with all of LAFCO policies. It is assumed that LAFCO proposals that seek to convert agricultural land to non agricultural uses are in anticipation of development within the next 5 years as required in LAFCO's USA policies and definitions. None of LAFCO's existing policies consider proposals beyond this time frame. If LAFCO wants to provide special consideration for such large-scale projects, LAFCO should first comprehensively review all of its existing policies with regard to this issue.

3. ***What is the purpose of restricting the number of pending USA applications from a city until agricultural mitigation is provided for the city's previous USA approvals?***

This policy was meant to apply only to future LAFCO proposals that involve or impact agricultural lands. The purpose of this policy is to ensure that agricultural mitigation is completed for prior projects before approving additional projects that also require agricultural mitigation and to help LAFCO monitor compliance with LAFCO's mitigation requirements. In addition, since the concept of agricultural mitigation is fairly new in this county, this practice will enable LAFCO and the agencies to work out any issues before proceeding with other applications. LAFCO staff will clarify this criterion in the Revised Draft Policies.

4. ***Why is LAFCO not establishing a maximum time limit between collection of in-lieu fees and purchase of agricultural lands?***

LAFCO, in its Draft Policies, can establish a maximum time limit between collection of in-lieu fees and purchase of agricultural mitigation lands. However, LAFCO has no ability to directly enforce such a requirement. Instead, LAFCO's Draft Policies require that a conservation entity establish 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 be operating in compliance with those standards. These standards and practices should require the timely use of in-lieu fees. Conservation entities that fail to use in-lieu fees appropriately or in a timely manner will not be considered a qualified agricultural conservation entity.

NEXT STEPS

Release of Revised Draft of Agriculture Mitigation Policies

LAFCO staff will release a Second Draft of the Agricultural Mitigation Policies following the LAFCO meeting. These Policies will be mailed to all the recipients of the first draft as well as all the workshop attendees. The revised policies will also be available for download from the LAFCO web site at www.santaclara.lafco.ca.gov

Second Workshop on the Revised Draft Policies

LAFCO staff will hold a second workshop in late October to discuss and take comment on the Second Draft Agricultural Mitigation Policies. More information on the date, time and location of workshop will be provided with the revised polices.

LAFCO Public Hearing to Adopt Policies

LAFCO will consider and adopt the agricultural mitigation policies at a public hearing.
Date: Wednesday, December 13, 2006.
Time: 1:15 pm
Place: Chambers of the Board of Supervisors
70 West Hedding Street
San Jose, CA 95110

ATTACHMENTS

Attachment A	Draft Agricultural Mitigation Policies, August 14, 2006
Attachment B	August 28, 2006 Workshop Attendees
Attachment C	DoC's Important Farmland Map dated 2004
Attachment D	Comments Received as of October 2, 2006.
Attachment E:	Why is it Important to Preserve Agricultural Lands in Santa Clara County?

OVERVIEW & TIMELINE FOR DEVELOPMENT OF LAFCO's REVISED DRAFT AGRICULTURAL MITIGATION POLICIES

Aug. 14	Draft Policies Released
Aug. 28	Staff Workshop on Draft Policies
	Additional Meetings with Stakeholders
Oct. 11	Update to LAFCO (No Action/Discussion Only Item)
Oct. 20	Written Comments from Stakeholders
Oct. 26	Revised Draft Policies Released
Nov. 13	Staff Workshop on Revised Draft Policies
	Additional Meetings with Stakeholders, including presentation to Gilroy Chamber of Commerce on November 17, 2006
Nov. 27	Staff Workshop on Revised Draft Policies in South County
Nov. 28	Written Comments Due
Dec. 6	Release of Staff Report and Revised Draft Policies dated December 6, 2006
Dec. 13	LAFCO Public Hearing

Jenny Derry
<jderry@garlic.com>

10/18/2006 04:16 PM

To: <bfaus@ci.gilroy.ca.us>, <ccasper@ci.gilroy.ca.us>, <neelima.palacherla@ceo.sccgov.org>, <dunia.noel@ceo.sccgov.org>
cc:
Subject: LAFCO hearing 10/18/06

Santa Clara County Farm Bureau
605 Tennant Ave. Suite H
Morgan Hill CA 95037

Oct. 18, 2006

LAFCO Commissioners
c/o Neelima Palacherla
70 West Hedding
San Jose, CA 95110

Dear LAFCO Commissioners:

Thank you for holding a workshop to collect comments regarding LAFCO's draft agricultural mitigation policy. Due to a previously scheduled Farm Bureau meeting, we will be unable to attend this evening, but wanted to offer the following comments.

General Policies

Farm Bureau agrees that agricultural mitigation policies will be an effective tool for protecting and preserving the most at-risk agricultural land for future use.

Definition of Prime Agricultural Lands

5a-d:
The policy does not consider whether the land is already bounded on two or more sides by city development, and this deserves consideration. During past decades in Santa Clara County, both cities and LAFCO have made decisions to annex properties around agricultural lands, effectively turning them into 'islands of agriculture.' These lands are now bounded by city developments, often including schools and housing developments, and cannot be realistically considered 'prime' because of the difficulty of farming them.

5e-f:
How did LAFCO arrive at the $400 dollar figure of income per acre?

Mitigation Requirements

6 a-c:
The mitigation requirement language is vague and discomforting. What is meant by program administration, land management, monitoring, enforcement and promotion of agriculture?

It seems that the requirements need to be delineated between outright purchase of agricultural lands and the purchase of conservation easements. No farmer or rancher will be enticed to sell development rights through a program or policy that implies that someone other than the property owner will be managing and promoting the agriculture grown or raised on the property.

The in-lieu fees need to be further defined, as there are many vague requirements that must be met by developers.

9c:
Farm Bureau questions whether LAFCO should require cities to ³develop programs to improve the community understanding of the necessity of agriculture in creating sustainable communities Š (etc.). ² Such programs will require the expenditure of public funds, and that cost will likely carry over from each city to the in-lieu fees paid by developers.

If such public education is necessary, LAFCO should consider taking on that role, and working with existing agricultural organizations, so that materials and a program can be done once for all cities in the county at minimum cost.

Timing and Fulfillment of Mitigation

The 2-year time limit for fulfilling ag mitigation agreements seems too short to be practical, given the length of time it takes to gain project approvals, the complications of real estate transactions, and the surety that funds from an eventual development will be used to pay for the ag mitigation.

For example, regarding item 15, if good progress is being made by all parties, the conditional approval should be given a one-time extension. The conservation entity would have to issue a report on the mitigation progress to LAFCO in order to gain consideration of the one-time extension. We would recommend consulting with the development community, the Open Space Authority, the Nature Conservancy, and the Silicon Valley Land Conservancy to work on realistic expectations.

Thank you for the opportunity to comment. We believe that ag mitigation policies will be an important tool to protect and preserve the productive agricultural land that is most at risk - that which is located around the cities. We look forward to working with LAFCO further on this important policy.

Sincerely,

Bill Gil
Board President

Jenny Derry
Executive Director
Santa Clara County Farm Bureau

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City of Gilroy

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95020-6197

AL PINHEIRO
MAYOR

November 6, 2006

Santa Clara County LAFCO Members
Local Agency Formation Commission
70 West Heading Street
11th Floor, East Wing
San Jose, CA 95110

Re: Proposed LAFCO Agricultural Mitigation Policy

Dear LAFCO members;

Thank you for the opportunity to review and comment on your draft Agricultural Mitigation Policies. Our remarks here are directed at the second draft dated 10/26/06. However, prior to addressing our specific concerns with the policy, Gilroy has two preliminary issues which focus on the actual root of the policy and outreach to affected stakeholders.

First, Gilroy strongly believes that the proposed policies have clearly ventured beyond the intended scope and authority granted to LAFCO's under the Cortese-Knox-Hertzberg Act. The Act expressly prohibits LAFCO's from imposing "any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements." [ref: CA Gov. Code Sec. 56375.3] In addition, LAFCO's are not afforded the broad police powers that encompass the authority to regulate land use development and associated mitigation measures as part of that discretionary review process. The proposed LAFCO agricultural policies, specifically related to the mitigation of development impacts, quite clearly represent conditions that directly regulate land use development.

Second, while the City appreciates the effort in conducting policy workshops in the San Jose metropolitan area, it seems that at least one workshop should be held in the South County region, the heart of Santa Clara County agricultural activities. Although the City of Gilroy held a Forum on October 18, this meeting was for receiving comments, not a participatory workshop where LAFCO staff could interface with local agricultural stake holders to facilitate policy development. [see attached list of attendees at the Gilroy Forum and a summary of their comments] In the spirit of developing a sincere agricultural policy, Gilroy would strongly recommend that a stake-holder workshop be held in a South County venue where LAFCO staff could dialog directly with local agricultural stake-holders.

Notwithstanding the significance of the two preceding concerns, Gilroy has the following comments regarding the proposed Agricultural Mitigation Policies:

Following two years of comprehensive study and deliberation by a large agricultural stake-holder task force, the City of Gilroy adopted an Agricultural Mitigation Policy on May 3, 2004. [*which is currently, by far, the most comprehensive agricultural mitigation policy in Santa Clara County*]. This policy was the product of our City's General Plan update and environmental review process. LAFCO had significant input here, both at the General Plan development & mitigation stage and during policy formulation. The current LAFCO policy fails to recognize this important interface. Gilroy would strongly suggest that the proposed LAFCO policy work in parallel with the City's detailed agricultural policy and not totally ignore the achievements made by many agricultural stakeholders.

Policy 19:
This policy serves no tangible purpose, other than to over-regulate and bind the review process with unrealistic controls. By asking LAFCO to take a position that "discourages submittal of additional USA amendment proposals" until conditions of prior [un-related] applications are completed ... is bureaucracy at its worst. This section simply holds up and backlogs applications and projects for no apparent reason - since the requirement to provide agricultural mitigation is already conditioned upon a specific amount of time.

Without discounting our initial reservations, Gilroy believes that a hurried processing schedule only serves to limit and unfairly control stake-holder participation. Therefore, we politely ask that this important matter be tempered by sufficient time and a studied approach. Our immediate recommendation – conduct a stake-holder workshop within the South County agricultural community it proposes to serve, and let the process be driven by a participatory environment not the bureaucracy.

Sincerely;

Al Pinheiro
Mayor, City of Gilroy

Attached:

- October 18, 2006, Gilroy comment forum

Stakeholder Forum

LAFCO Agricultural Mitigation Policy

On the evening of October 18, 2006, the City of Gilroy conducted an outreach forum to hear and receive comments regarding an Agricultural Mitigation Policy proposed by the Santa Clara County LAFCO. During the City of Gilroy's 2½ year development of their Agricultural Mitigation Policy, they constructed a comprehensive mailing list of agricultural stake holders in the south county region. This mailing list was used to disseminate the proposed LAFCO policy. Eighteen (18) stakeholders attended the forum and one e-mailed their comments.

Those in attendance were:

➢ Kon Chen	Development interest
➢ David Tran	Development interest
➢ Carolyn Tognetti	Owner of agricultural land
➢ Robert Shieles	Gilroy Environmental Action Committee
➢ Ken Bohe	Sierra Club, Loma Prieta Chapter
➢ Michael McDermott	Developer
➢ Susan Mineta	Shapell Industries
➢ Lee Wieder	Land use & development consultant
➢ Steve Brinkman	Gilroy Unified School District
➢ Joan Spencer	Gilroy Planning Commissioner
➢ Rob Oneto	RJA - Engineering & Development Firm
➢ Mary Yates	Property owner
➢ John Donahoe	RJA - Engineering & Development Firm
➢ Norm Thompson	Gilroy Planning Commissioner
➢ Joan Lewis	Gilroy Planning Commissioner
➢ James Suner	Property owner
➢ Richard Barbari	Owner of agricultural land
➢ Kristina Wyatt	Public relations firm

Via e-mail:

➢ Jenny Derry	Santa Clara County Farm Bureau

Gilroy Stakeholder Forum on 10/18/06
Proposed LAFCO Agruicultural Mitigation Policy

The following comments were received:

- Richard Barbari;
  - The need for LAFCO's agricultural policy to recognize and not supersede City's agricultural policy
  - Concern regarding a possible higher mitigation ratio than 1:1
  - The policy contributes to the high cost of land & housing

- Michael McDermott;
  - Process schedule [outreach & public hearings] for the proposed LAFCO policy
  - Question regarding the scope of the Cortese-Knox Act for LAFCO adoption of a preservation policy

- John Donahoe;
  - Use of the state Farm Land Use map
  - Definition of "Prime" farm land different from the State and too broadly defined
  - What CEQA review has been conducted by LAFCO

- Steve Brinkman;
  - Many small farms in the south county region are too small to be economically viable

- Jim Suner;
  - Many small farms in the south county region are too small to be economically viable or to support conservation easements that would be viably feasible for conservation agencies to manage
  - Was a nexus study conducted for the in-lieu fee

- Rob Oneto;
  - What specific section of the Cortese/Knox/Hertzberg Act allows LAFCO to adopt a formal agricultural mitigation program that exceeds their mission to promote agricultural preservation by ensuring that agricultural land is not prematurely urbanized
  - Was a nexus study conducted for proposed 1:1 replacement ratio or the in-lieu fees

- An analysis of the two-year window needs to be conducted to identify a realistic trigger that is tied to when the actual impact ("taking") occurs

- Lee Weider;
  - What specific section of the Cortese/Knox/Hertzberg Act allows LAFCO to create an agricultural preservation program
  - There needs to be a nexus between when the mitigation is paid and when the actual loss of agricultural use of the property occurs
  - Nexus study for the proposed in-lieu is needed
  - Section #9 needs to be clarified as to what types of activities meet the criteria for improving community understanding programs
  - Question as to whether it is LAFCO's responsibility to legally ensure mitigation occurs or the local jurisdiction

- Mary Yates;
  - Will the LAFCO agricultural policy work in concert with the City of Gilroy's agricultural policy

- Carolyn Tognetti;
  - Need to address agricultural preservation in a timely manner

- Norm Thompson;
  - What is the CEQA process and public comment period
  - Need to balance all land uses within the City of Gilroy
  - Need to fairly promote agriculture in the south county
  - Sections 16 and 17 unfairly punish

Gilroy
All the right ingredients...

November 9, 2006

Santa Clara County LAFCO members
Local Agency Formation Commission
70 West Heading Street
11th Floor, East Wing
San Jose, CA 95110

Re: Proposed LAFCO Agricultural Mitigation Policy

Dear LAFCO members,

On behalf of the Gilroy Economic Development Corporation, I would like to voice several concerns regarding the process, content and timing of the proposed agricultural mitigation policies and related approval process. LAFCO staff, knowing that these policies would have the most impacts on South County, should have conducted additional workshops and approached more stakeholders in South County. The City of Gilroy spent nearly two years holding numerous meetings with community stakeholders and Gilroy residents.

We are concerned about the wording of the proposed changes. We believe that our business prospects and the citizens of Gilroy should not be subject to arguments over interpretation or intent of the policies. The policies and definitions must be clear, concise and comprehensive. For example, "conflicts" between adjacent urban and agricultural uses must be more clearly defined, as it stands the proposed policies leave too much room for interpretation.

It is not clear from the staff documentation that has accompanied the draft LAFCO Policy that its adoption is exempt from the California Environmental Quality Act. Although the LAFCO staff characterizes the Policy as "discouraging urban sprawl" and "preserving open space and prime agricultural lands," the draft Policy can be accurately described as "discouraging the development of commercial and public-use facilities that are essential to the community." The absence of such needed development can adversely affect the environment of the community by preventing needed improvements in traffic, housing and infrastructure such as schools, hospitals or flood control. Further, the absence of needed new development can cause general decay in the urban and suburban settings of the community. By claiming that the adoption of the Ag Mitigation Policy is exempt from CEQA, LAFCO runs the risk that the adoption of the Policy will be challenged as failing to comply with CEQA.

The proposed LAFCO Policy expressly establishes a new "mitigation fee" that must comply with the requirements of the California Mitigation Fee Act. That Act and the case law regarding "takings" require that such fees be closely linked to the actual impacts of a proposed project. The open-ended description of the new mitigation fees in the Policy to include "the costs of program administration, land management, monitoring, enforcement and promotion of agriculture on the mitigation lands" appears far in excess of the actual impacts of a proposed use of agricultural land for needed development. As such, the proposed Policy runs the risk that its provisions and implementation will be challenged under the California Mitigation Fee Act.

In our opinion, this LAFCO Policy proposes land-use requirements in excess of its authority under the Cortese-Knox-Hertzberg Act.

The Gilroy Economic Development Corporation can't understand why you would develop a policy that entails virtually eliminating conditional approvals and withholding certificates of completion until mitigation efforts are accomplished to your satisfaction, when the determination of "completion" is yet to be defined. It seems as if companies that are considering taking the risk of investing in our community, providing quality job opportunities and much needed economic vitality to our city will be turned off by such policies, moving away to continue investing in other communities and countries where development, labor and environmental policies are less stringent. Such business investments in our community could prove to be a win-win situation for our entrepreneurs, our city, our county and our citizens.

The costs associated with meeting mitigation requirements may also make it prohibitive for Gilroy to meet affordable housing mandates.

We are working diligently to foster industry and opportunities based on innovation and ingenuity. We need the best and the brightest workforce living, working and investing in our community. To that end, we respectfully request that your Agricultural Mitigation Policies be tabled at your next regular meeting and more time allowed to study the issues and to allow more time for stake holder input.

Sincerely,

Larry Cope
Executive Director

Don Hordness
Royal Oaks Mushrooms
15480 Watsonville Road
Morgan Hill CA 95037

Dear Supervisor Gage and the LAFCO Commissioners:

Thanks for the opportunity to review the draft agricultural mitigation policy being considered by LAFCO.

For the most part, I agree with the concept of ag mitigation policies in Santa Clara County. One of my fellow Directors from the Farm Bureau Board was involved in the stakeholder group that helped to write the Gilroy policy. If more cities adopt such policies in the future, we will be able to preserve significant pieces of agricultural land in our county.

I am concerned about one aspect. One of my mushroom farms is located on a small parcel that is currently in the county. However, due to numerous bad planning decisions in the past by LAFCO and the City of Morgan Hill, my small mushroom farm is now surrounded by multi-family housing, a school, and a major city thoroughfare – Monterey Road. Though my farm has been in existence since 1953, it is now incompatible with the uses that the City has allowed around it. As a farmer, I must constantly deal with numerous odor complaints – especially from the school which has requested that I not work with any compost between the hours of 8 a.m. and 4 p.m. on weekdays. This is impossible for a farming operation.

Properties such as mine should be exempt from ag mitigation policies, because they are essentially parcels which should be used as city infill.

LAFCO has done a much better job in the past decade helping cities grow in a more cohesive and contiguous way. Unfortunately, properties like mine are trapped by former bad decisions. I hope you will give some consideration to this topic as you discuss the model ag mitigation policy that could be adopted by LAFCO.

If you have any questions, I may be reached at (408) 968-9404.

Sincerely,

Don Hordness

"Ken Bone"
<fishbone1@earthlink.net>

11/10/2006 04:26 PM
Please respond to
fishbone1

To: "Neelima Palacherla" <neelima.palacherla@ceo.sccgov.org>
cc:
Subject: LAFCO draft item #6 one (1) acre conversion or developed for a two (2) acre acquisition of prime agricultural or open space lands

As an unincorporated property owner, I attended the Santa Clara County's Gilroy LAFCO public hearing. Keeping in mind the stated LAFCO goals of protecting the remaining open space lands and protecting the remaining agricultural lands it is very apparent that Santa Clara County's LAFCO needs to strengthen the proposed draft LAFCO's Agricultural and Open Space Mitigation Policies by:

- **Make air-tight definitions of the terms and restrictions used in the mitigation policy.**
- **Draft item # 5 e. needs to be shortened to state: "Land planted with fruit or nut-bearing trees, vines, bushes, or crops." (This will avoid unethical land manipulation of years or monetary amounts to avoid this required mitigation)**
- **Draft item # 5 f. needs to be shortened to state: "Land that has returned from the production of unprocessed agricultural plant products." (This will avoid unethical land manipulation of years or monetary amounts to avoid this required mitigation)**
- **Draft item # 5 needs to have an item g. added that states "Land that has the potential to be productive agricultural land" (This will avoid land manipulation to avoid this required mitigation)**
- **Draft item # 5 needs to have an item h. added that states "Land that is primarily open space consisting of one or more open acres" (This will avoid land manipulation to avoid this required mitigation)**
- **Draft item # 6 needs to increase the prime agricultural acre replacement ratio from the proposed 1:1 to 1:2, one (1) acre conversion or developed for a two (2) acre acquisition of prime agricultural or open space lands or conservation easements to be acquired and transferred or the in-lieu fees be paid (similar to required mitigation other municipalities have adopted including Davis)**
- **leave LAFCO Draft items #13, and 15 as written with the 2 years of conditional approval, (that is 24 months to comply which is more than enough time for serious acquisition of the repalcement agricultural or open lands or conservation easements to be acquired and transferred or the in-lieu fees be paid) or the conditional approval must expire without any extensions.**
- **Item # 13 needs to state: "No extensions will be allowed."**
- **Item # 15 needs to re-state: "No extensions will be allowed."**

South Santa Clara County is blessed with much remaining prime agricultural lands that a large part of the rest of the county has already lost. It is appropriate to protect the remaining open and agricultural lands with required strong mitigation. It is also appropriate to have the developers, their investors, and the cities understand that the protection and mitigation must come up front in the development and city limit expansion process.

Please add my name to the LAFCO e-mail mailing list.

I would like to know your reaction to my recommendations.

Thanks for your consideration,
Ken Bone

Ken Bone
3290 Godfrey Ave.
Gilroy, CA 95020
408-848-1036
fishbone1@earthlink.net

"Carolyn Straub" <castraub@earthlink.net>

11/10/2006 08:47 AM
Please respond to castraub

To: neelima.palacherla@ceo.sccgov.org
cc:
Subject: Re: Comment of Support for New Ag Land Mitigation Policy

Dear County Officer:

We are writing to support the new ag land protection policy, at the wishes of the Loma Prieta Chapter, Sierra Club. We are both members. We are also residents of south San Jose near Coyote Valley.

Please consider the passage of this policy. It is important to preserve Santa Clara County. For some reason, there are problems with measures and policies when it comes to passage of these changes in Santa Clara County. Although this is a different measure, the example that recently comes to mind is the Nov. 7 defeat of Measure A. Other counties have such measures and policies. Why cannot Santa Clara County do something to further the saving of what is left of its lands?

Your Local Area Formation Commission (LAFCO) proposal for a new, detail agricultural land mitigation policy we also feel may be one of the best means for preserving 50% of the remaining high quality farm land in Santa Clara County.

Our local Sierra Club supports a 1:1 replacement ratio along with the payment of necessary funds to contribute to the ongoing costs of administration, monitoring, enforcement and promotion of agriculture on the mitigation lands. LAFCO needs enforceable control over the mitigation.

We two also recommend a 3-5 year period of time lengthened with a simplified renewal process for conditional approval if the mitigation isn't completed on time.

Thank you for your interest.

Sincerely,

Carolyn Straub and Stephen McHenry

439 Chateau LaSalle Dr., San Jose, CA 95111

Carolyn Straub
Writer, Editor, Copy Editor, Instructor

Website:

http://home.earthlink.net/~castraub/thecopycleaner/

CITY OF MORGAN HILL
17555 Peak Avenue, Morgan Hill, California 95037-4128 • phone (408) 779-7259 • fax (408) 779-3117

DENNIS KENNEDY
MAYOR

November 21, 2006

Santa Clara County Local Agency Formation Commission
County Government Center, 11th Floor, East Wing
70 West Hedding Street
San Jose, CA 95110

Re: Proposed LAFCO Agricultural Mitigation Policies

Dear LAFCO Commissioners:

The City of Morgan Hill appreciates that LAFCO is concerned about the important issue of preserving prime agricultural lands. However, the City of Morgan Hill strongly objects to adoption by LAFCO of the Agricultural Mitigation Policies proposed by LAFCO staff for the following reasons, which are more fully explained in the attached Statement of Opposition:

- Government Code Section 56375 clearly provides that LAFCOs do not have the authority to impose any conditions or specify application requirements that have the effect of directly regulating land use density or intensity, property development, or subdivision requirements. Land use control is a fundamental police power that under the State constitution is exercised by cities and counties, not LAFCOs.

- CEQA Guidelines clearly establish that a city is the Lead Agency and a LAFCO is a Responsible Agency for CEQA documents that address proposals for boundary changes/annexations. Therefore, cities prepare the CEQA documents that involve agricultural lands, including determinations about significant impacts and feasible mitigation measures. Cities must consult with responsible agencies such as LAFCO when preparing such CEQA documents.

- The "Proposed CEQA Analysis" proposed to serve as the basis for adoption of the policies is not adequate and is not in compliance with the California Environmental Quality Act. The proposed use of a 12-year old Program EIR prepared for the 1994 Santa Clara County General Plan, along with a categorical exemption, does not present information adequate for decision-making.

- There has been no meaningful opportunity for affected cities and stakeholders to engage in collaborative policy development and discussion which might foster subsequent adoption *by cities* of feasible and consistent policies and programs to address agricultural and open space lands – perhaps even on a regional or sub-regional basis. The first "workshop" to which the city was invited was held 12 days after the proposed policies arrived in our mailbox in August 2006. Note that the Sacramento LAFCO has been working on proposed policies for over *3 years*, but on November 1, 2006 that Commission, on the advice of its Executive Officer and Legal Counsel, decided to not hold a scheduled workshop on the policies and to continue the matter indefinitely. It was noted that staff had received *"numerous letters from attorneys including the Office of County Counsel and various cities in which they raise legal issues regarding LAFCO's purview over the preservation of agriculture and open space lands"*.

- Due to the rush to develop and adopt the proposed policies, they are not well thought out, do not appear feasible, and miss the opportunity to develop a regional approach to preservation of truly prime agricultural lands that have good prospects for long-term viability. Adoption of the proposed "one-size-fits-all" approach is quite likely to have unintended consequences, does not address exceptions or waivers, and is quite likely to lead to litigation from many quarters. The policies do not reflect the approach of other LAFCOs throughout the State.

The City of Morgan Hill is carrying out its own evaluation of greenbelt, open space and agricultural lands policies; including evaluation of financing and implementation mechanisms. The City is aware that the City of Gilroy conducted a 2-year planning effort that resulted in adoption of an agricultural mitigation program. Similarly, the City of San Jose is developing a Coyote Valley Specific Plan that will contain agricultural and greenbelt preservation policies and programs.

Morgan Hill agrees that it would be beneficial for the city to develop a set of policies that would clearly set forth the City's standards and expectations with respect to agricultural lands that would be involved in boundary changes. Such policies could establish a standardized approach to evaluation of potential impacts to agricultural lands. In addition, the policies could clearly identify what constitutes a significant loss of agricultural land and what form of mitigation for that loss would be considered feasible and acceptable.

The City of Morgan Hill urges LAFCO Commissioners to decline to adopt the proposed policies forwarded by your staff, and rather that LAFCO direct its staff to work collaboratively with the cities of Morgan Hill, Gilroy and San Jose as the cities develop their policies and programs, with the objective of developing consensus support for a different refinement of existing LAFCO policies that address proposals that involve agricultural and open space lands.

Sincerely,

Mayor Dennis Kennedy
City of Morgan Hill

STATEMENT OF OPPOSITION TO SANTA CLARA COUNTY LAFCO'S PROPOSED AGRICULTURAL MITIGATION POLICIES

Government Code Section 56375 clearly provides that LAFCOs do not have the authority to impose any conditions or specify application requirements that have the effect of directly regulating land use density or intensity, property development, or subdivision requirements. Land use control is a fundamental police power that under the State constitution is exercised by cities and counties, not LAFCOs.

LAFCO has a role in carrying out the policy of the State of California to encourage orderly growth and development, and efficient provision of community services, through review and action on proposed local agency/district boundaries. LAFCO is a boundary agency, not a land use agency. Government Code Section 56375 provides that Local Agency Formation Commissions have the following powers and duties, which are carried out consistent with a study (per §56378, 56425 or 56430), based upon findings, and subject to limitations:

- To review and act upon proposals for changes of organization or reorganization, annexations, consolidation of districts, dissolution, merger, establishment of subsidiary district, or reorganizations.
- To decide whether that territory is inhabited or uninhabited.
- For consolidations, to determine which city or district shall be the consolidated successor.
- To approve the annexation of unincorporated, noncontiguous territory for municipal purposes.
- To approve the annexation of unincorporated territory consistent with the planned and probable use of the property based upon the review of general plan and prezoning designations. No subsequent change may be made to the general plan for the annexed territory or zoning that is not in conformance to the prezoning designations for a period of two years after the completion of the annexation, unless the legislative body for the city makes a finding at a public hearing that a substantial change has occurred in circumstances that necessitate a departure from the prezoning in the application to the commission.
- To adopt written procedures for the evaluation of proposals, including written definitions not inconsistent with existing state law.
- To adopt standards and procedures for the evaluation of service plans, and the initiation of a change of organization or reorganization.
- To conduct orderly and fair hearings, incur expenses to accomplish its functions, appoint staff personnel or consultants, to review boundaries for definiteness and certainty, and other administrative functions.
- For incorporations of cities, or formation of districts, to determine the property tax revenue to be exchanged by the affected local agencies.

LAFCO's power to carry out the above duties is subject to the limitation in this section which states:

"A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements. When the development purposes are not made known to the annexing city, the annexation shall be reviewed on the basis of the adopted plans and policies of the annexing city or county. A commission shall require, as a condition to annexation, that a city prezone the territory to be annexed or present evidence satisfactory to the commission that the existing development entitlements on the territory are vested or are already at buildout, and are consistent with the city's general plan. However, the commission shall not specify how, or in what manner, the territory shall be prezoned. The decision of the commission with regard to a proposal to annex territory to a city shall be based upon the general plan and prezoning of the city."

The above paragraph clearly shows the Legislature's intent that cities and counties retain authority to regulate the use of land and development of property. Note that even the limitation in the fifth bullet above, which establishes a 2-year limitation for changing the general plan land use designation of annexed lands, is a limitation that applies directly to cities, imposed by the Legislature within the statute itself. It further supports the fact that LAFCO is not a land use agency that imposes land use conditions.

LAFCO is able to review proposals for boundary changes and either approve or disapprove of such proposals. LAFCO staff has indicated that the proposed Agricultural Mitigation Policies respond to a "mandate" that LAFCO preserve agricultural land, but no such mandate exists in the statute. The legislative intent of §56001 which is expressed in the law recognizes the complexity of planning to accommodate growth as it occurs in California. It recognizes that "logical formation and determination of local agency boundaries is an important factor in promoting orderly development and in balancing that development with sometimes competing state interests of discouraging urban sprawl, preserving open space and prime agricultural lands, and efficiently extending government services"; and it also recognizes that "providing housing for persons and families of all incomes is an important factor in promoting orderly development ... and the Legislature further finds and declares that this policy should be effected by the logical formation and modification of the boundaries of local agencies, with a preference granted to accommodating additional growth within, or through the expansion of, the boundaries of those local agencies which can best accommodate and provide necessary governmental services and housing for persons and families of all incomes in the most efficient manner feasible." This statutory language indicates that preservation of agricultural lands is not a mandate, but rather one of many factors that are considered when considering proposals for boundary changes.

LAFCO has no authority to impose an application submittal requirement for a "Plan for Agricultural Mitigation" for any and all LAFCO applications that involve agricultural lands (which LAFCO is defining more expansively than state law, which is not permissible). LAFCO has no authority to impose the condition that an acre of agricultural land be permanently preserved for each acre of "prime ag" land that comes into the urban service area or city limits of a city, which would have the effect of directly regulating land use. It is not legal and not appropriate that LAFCO Commissioners would be requiring or conditioning proposals that have the effect of regulating land in jurisdictions that Commissioners do not represent.

The City of Morgan Hill's General Plan policies, in conjunction with existing County of Santa Clara and LAFCO policies, do a good job of preventing premature conversion of agricultural lands. Morgan Hill's 2001 General Plan Land Use Diagram includes two rural designations which relate to agricultural use: (1) "Rural County" was applied to 8,088 acres outside the city limit in the Sphere of Influence, with these parcels generally 5 to 20 acres in size with one single family home and/or agricultural operation per parcel; and (2) "Open Space" was applied to 2,476 acres, both within the city limits and within the Sphere of Influence, with these lands being substantially unimproved and devoted to preservation of natural resources, managed production of resources, outdoor recreation, or public health and safety. Morgan Hill's Residential Development Control System (RDCS), which has existed for almost 30 years and allows an average of only 250 units per year to be developed, has clearly prevented complete urbanization within Morgan Hill's sphere of influence, unlike many other cities within the County. Morgan Hill's General Plan and RDCS emphasize preservation of agricultural and open space lands on lands outside of the Urban Growth Boundary. Lands within the UGB but not included within the USA that may contain agricultural uses are encouraged to retain such uses until such time that it is appropriate to bring the properties into the USA for urban purposes. Lands within the USA are designated for urban land uses and are not intended for agricultural use, although agricultural use may continue until such time that development actually occurs. The RDCS favors infill development.

CEQA Guidelines clearly establish that a city is the Lead Agency and a LAFCO is a Responsible Agency for CEQA documents that address proposals for boundary changes/annexations. Therefore, cities prepare the CEQA documents that involve agricultural lands, including determinations about significant impacts and feasible mitigation measures. Cities must consult with responsible agencies such as LAFCO when preparing such CEQA documents.

CEQA Guidelines §15050 provides that when a project is to be approved by more than one public agency, one agency shall the Lead Agency responsible for preparing the EIR or Negative Declaration. Section 15051(b) provides that the Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole, which is the agency with general government powers, such as a city or county, rather than an agency with a single or limited purpose. Section 15051(b)(2) provides that where a city prezones an area, the city will be the appropriate Lead Agency for any subsequent annexation/urban service area application related to the area, and should prepare the appropriate environmental document at the time of the prezoning. This section specifically provides that "The Local Agency Formation Commission shall act as a Responsible Agency".

CEQA Guidelines §15050(b) provides that a Responsible Agency shall consider the Lead Agency's EIR or Negative Declaration prior to acting upon or approving a project, certifying that its decision-making body reviewed and considered the information. Section 15050(c) provides that the determination of the Lead Agency of whether to prepare an EIR or a Negative Declaration shall be final and conclusive for all persons, including Responsible Agencies, unless that decision is successfully challenged in court, or circumstances or conditions have changed, or a Responsible Agency becomes a Lead Agency. Section 15052 provides that a Responsible Agency only becomes a Lead Agency if the Lead Agency did not prepare any environmental documents for the project, or did prepare one but a subsequent EIR is required and the Lead Agency has already granted its final approval, for which the statute of limitations for challenging that approval has expired. Also, a Responsible Agency could become a Lead Agency if the Lead Agency prepared an inadequate CEQA document without consulting the Responsible Agency and the statute of limitations for challenging that action has expired.

As detailed above, the responsibility for preparing the CEQA document used for adjustments to the boundaries of an urban service area (USA) or city limit line rests with the city or county, as the agency with land use authority. Applications for USA or annexation must be already prezoned by the City, which is when the CEQA documents are prepared by the Lead Agency, and supplied to LAFCO for use as the Responsible Agency. The City is responsible for the adequacy of the document, including information about impacts and feasible mitigation measures. The City is responsible for consulting with LAFCO and other responsible agencies during the course of preparing the CEQA document. LAFCO must then either legally challenge the adequacy of the document or use it, with the LAFCO decision-making body required only to certify that it has reviewed and considered the information.

CEQA requires consideration of impacts to agricultural lands, and cities may impose mitigation measures for significant impacts such as conversion of prime agricultural lands, but measures must be feasible. As will be reviewed later in this letter, Morgan Hill is in the middle of developing greenbelt/open space/agricultural preservation policies and mechanisms. An urban limit line and greenbelt policies have already been adopted, except for the Southeast Quadrant area, which is being further studied. Morgan Hill desires to develop a feasible approach to financing and implementing some amount of permanent open space and agricultural lands ("greenbelt") preservation. In order to be successful, Morgan Hill believes that the implementation mechanisms need to be developed with long-term land use planning principles in mind, as well as spreading the costs equitably among residents, property owners and stakeholders. Morgan Hill, not LAFCO, is the appropriate agency to design a

feasible agricultural/open space/greenbelt program and measures, and is the appropriate agency to make CEQA findings and impose CEQA mitigation measures.

The "Proposed CEQA Analysis" proposed to serve as the basis for adoption of the policies is not adequate and is not in compliance with the California Environmental Quality Act. The proposed use of a 12-year old Program EIR prepared for the 1994 Santa Clara County General Plan, along with a categorical exemption, does not present information adequate for decision-making.

The "Proposed CEQA Analysis" document released at the end of October 2006 appears to consist of a combination of a categorical exemption for "agricultural lands that are currently in agricultural use", and use of the 1994 Santa Clara County General Plan Program EIR as a basis for concluding that impacts associated with "establishing agriculture on mitigation lands not already in agricultural use" have already been analyzed and no Supplemental or Subsequent EIR is required. It appears that only these two impacts (that of "continuing" agricultural use and "establishing" agricultural use) were evaluated.

A Program EIR may be prepared on a series of actions that can be characterized as one large project and are related either geographically; as logical parts in a chain of contemplated action; in connection with issuance of rules, regulations, plans or other general criteria to govern the conduct of a continuing program; or as individual activities carried out under the same authorizing statutory or regulatory authority, with similar effects that can be mitigated in similar ways. The 1994 GP Program EIR was prepared on a proposed Santa Clara County General Plan that was itself expected to have a 15 year life, and therefore the Program EIR evaluates projected conditions through about 2009.

When a Program EIR is used with later activities, subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared. If a later activity would have effects that were not examined in the program EIR, a new Initial Study must be prepared, leading to either an EIR or a Negative Declaration. Even if the agency finds that a new document is not required, it must incorporate all feasible mitigation measures and alternatives developed in the Program EIR into the subsequent program projects/actions. The "Proposed CEQA Analysis" is not an Initial Study, and there is no information provided regarding the nature of possible impacts or whether any previous General Plan mitigation measures are required to be carried forward and applied to the current project. The currently proposed LAFCO Agricultural Mitigation Policies are not within the scope of the Santa Clara County General Plan or GP Program EIR, and therefore a new environmental document must be prepared for this subsequent project.

It may be that LAFCO is attempting to use a "Program EIR" as a "Master EIR". However, Master EIRs must be prepared in accordance with the requirements of Section 21157 of the Public Resources Code (CEQA), and there is no evidence that the General Plan Program EIR meets Master EIR requirements. In a Master EIR, there must be discussion of the types of subsequent projects and implementation tools that would be considered to be consistent with the original project description and within the scope of the Master EIR. CEQA §21157.1 and CEQA Guidelines §15177 requires preparation of an Expanded Initial Study when use of a Master EIR is proposed. Use of a certified Master EIR requires that the lead agency incorporate all feasible mitigation measures or feasible alternatives appropriate to the current project, as set forth in the Master EIR. In the required Expanded Initial Study, then, the lead agency is to analyze and make a determination about whether it would be necessary and appropriate to incorporate each Master EIR mitigation measure into the current project. The currently proposed LAFCO Agricultural Mitigation Policies are not within the scope of the Santa Clara County General Plan or GP Program EIR, and therefore a new environmental document must be prepared for this subsequent project.

The Santa Clara County General Plan Program EIR was certified in 1994. It is twelve years old. It is relevant to note that even with a Master EIR, if an application for a subsequent project is filed more than 5 years from certification, then prior to applying the Master EIR to the subsequent project, the agency must review the adequacy of the Master EIR, prepare an Expanded Initial Study, and either make the following written findings or prepare a subsequent or supplemental EIR if the findings cannot be made:

a) Substantial changes are not proposed in the project, and major revisions of the environmental impact report are not required.
b) Substantial changes have not occurred with respect to the circumstances under which the project is being undertaken, and major revisions in the environmental impact report are not required.
c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, has not become available.

The County of Santa Clara General Plan does not contemplate that effectively one-half of the remaining lands within the spheres of influence of San Jose, Gilroy and Morgan Hill would be encumbered by permanent agricultural easements, with mandated use for producing agricultural products. The 1994 General Plan defines prime agricultural land differently from the proposed LAFCO definition, using Class I and II soils and capability index as the factors considered. The GP EIR notes that most prime agricultural soils are located in the already-urbanized areas of the County. The 1994 General Plan focuses analysis on an "agricultural preserve" area within the Gilroy sphere of influence area that contained large- and medium-scale agricultural uses. The General Plan agricultural land use policies that were analyzed by the 1994 GP EIR were consistent with existing policies of LAFCO, Santa Clara County, the City of Morgan Hill General Plan, and the South County Joint Area Plan. There was no proposal for or analysis of any "one-for-one" agricultural preservation policy/program such as now being proposed by LAFCO. Rather, the substantive policy change that was analyzed (policy C-RC 42 c analyzed on page 5B-13 of the GP EIR) was that LAFCO discourage USA expansion requests when there is more than a five-year land supply in the city's USA, and encouraging retention of adjoining agricultural land in San Benito County.

The General Plan did not propose and the GP Program EIR did not analyze the impacts of or feasibility of such measures as LAFCO is now proposing. Given that permanent restrictions on land use are long-term, the accompanying environmental document must similarly analyze long-term environmental effects, including cumulative impacts. There needs to be EIR analysis of long-term water use by that level of agricultural activity, and of the policy and land use (in)consistency with the South County Joint Area Plan and the Morgan Hill, Gilroy and San Jose General Plans. The significant impacts of agricultural use that were identified in the 1994 GP EIR (erosion, high water consumption, groundwater drawdown, nitrate loading of groundwater, reduction in species diversity, destruction of archaeological remains, energy consumption, noise, odors and other forms of air pollution) must be evaluated with respect to the projected consequences of implementation of the proposed set of policies.

The proposed LAFCO policies reflect a presumption that any boundary change involving broadly-defined agricultural lands is a conversion that has significant adverse impacts which must be mitigated. The 1994 GP EIR did not use this same significance criterion. Instead, that document indicated that "an agricultural impact would be considered significant if the development or land use changes under the plan causes the loss of any prime farmland, a substantial cumulative loss of Williamson Act lands, or a substantial reduction of countywide agricultural diversity." Under this criterion, the 1994 GP EIR determined that no mitigation was required for subdivision of ranchlands or parcels in the Agricultural (A) Area, or for development of the projected number of non-residential projects on the "A" lands. For subdivision of prime agricultural lands, the mitigation measure was for the County to track future projects to determine the extent to which prime ag lands were affected, and if in the future it were found

to be substantial, then the County should require project sponsors to site buildings away from the prime soils., and to evaluate and adopt suitable mechanisms to offset impacts on prime agricultural lands. While these mechanisms could include impact fees, dedication of conservation easements and purchase of development rights, there was no analysis of a specific program, as this was to be evaluated and proposed in the future. Therefore, there was no analysis of the feasibility of a proposed set of tools/requirements, such as those LAFCO is now proposing.

With respect to feasibility of the mitigation program, there needs to be analysis of the feasibility of requiring urban developers to purchase agricultural lands equivalent to the amount of land a development needs, with respect to the possibility that housing and/or business developments may become economically infeasible, especially when considered in light of the many other mitigations and fees that development projects are subject to. If measures are disproportionately imposed, the feasibility of projects is affected, with the potential that cities are unable to meet regional fair share housing requirements or facilitate economic development projects that are needed to meet market demands and supply needed jobs.

The effect of the proposed Agricultural Mitigation Policies is a substantial change to existing General Plan policies, and CEQA requires development of current information and analysis of environmental impacts and mitigation measures. A new environmental document must be prepared. Use of the 1994 Program EIR is not an option, as it would require major revisions, and would need to incorporate and be based upon new information.

There has been no meaningful opportunity for affected cities and stakeholders to engage in collaborative policy development and discussion which might foster subsequent adoption by cities of feasible and consistent policies and programs to address agricultural and open space lands – perhaps even on a regional or sub-regional basis..

It appears that LAFCO Commissioners and Staff held a Planning Workshop on February 16, 2006. From a review of materials on LAFCO's website, it appears that the agenda included discussion of the role and purpose of LAFCOs, development of a LAFCO mission statement, a presentation by the Deputy Agricultural Commissioner regarding agriculture in Santa Clara County, a review of existing LAFCO agricultural policies, and a presentation of examples of other LAFCOs' agricultural preservation policies and programs. No minutes of the workshop are available online, but it appears from reviewing the minutes of the April 12, 2006 LAFCO meeting that the Commission directed staff to develop mitigation policies for conversion of agricultural lands. At the April 12th meeting, LAFCO staff reviewed the proposed process for developing such policies, which the minutes indicate was to include "collecting information, meeting with stakeholders, review of existing policies, research on current conditions affecting agriculture in the County, research and case studies on innovative and new forms of agriculture in the County and in other counties, and looking into agencies or organizations that implement agricultural protection programs". Staff indicated that once the draft set of policies was developed, they would be circulated to stakeholders and a workshop held.

Morgan Hill was not invited to the initial LAFCO Commission Workshop, and was not offered an opportunity to meet or assist with development of proposed policies. Gilroy and San Jose indicate that they were not contacted either, and members of the development community do not appear to have been involved. The first indication to Morgan Hill that such policies were under consideration was when they arrived in the mail on August 16, 2006. The policies arrived with an invitation to attend a "workshop" during the morning of August 28, 2006, and a request to submit comments by September 8th, so that such could be considered by LAFCO at a public hearing to adopt the policies scheduled for October 11, 2006.

On August 25, 2006, the city's Regional Planning & Transportation Council Subcommittee (RPT Committee) directed staff to send a letter to LAFCO requesting additional time to consider and develop a City of Morgan Hill response to the proposed policies. On September 22nd, the RPT Committee considered the policies along with a city staff report, and decided to place the matter on the City Council agenda of November 1, 2006. At that meeting, the City Council unanimously directed that the Mayor send a letter to LAFCO opposing adoption of the policies. The Council directed Morgan Hill staff to develop Morgan Hill Open Space and Agricultural Lands Conversion policies. That effort will be part of the city's "Phase 2 Urban Limit Line/Greenbelt" work program, which includes addressing the Southeast Quadrant, and developing a feasible greenbelt financing and implementation strategy.

Recent action by the Sacramento LAFCO reflects the concerns about legality, as well as the complexity of the matter. Sacramento LAFCO has been working on proposed policies for 3 years, but on November 1, 2006 that Commission, on the advice of its Executive Officer and Legal Counsel, decided to not hold a scheduled workshop on the policies and to continue the matter indefinitely. It was noted that staff had received "numerous letters from attorneys including the Office of County Counsel and various cities in which they raise legal issues regarding LAFCO's purview over the preservation of agriculture and open space lands". Commission legal counsel was then directed to "review the various legal opinions recently provided on the proposed policy; direct Counsel to meet with the interested parties to discuss their legal concerns; direct Counsel to write an opinion on the kind of CEQA document that would be required for this policy; direct Counsel to review and revise the proposed policy; direct staff to re-circulate the revised draft policy; and direct staff to schedule a new Workshop on the Revised Agriculture – Open Space Preservation Policy".

Morgan Hill urges LAFCO to allow the Morgan Hill planning and implementation effort regarding agricultural and open space lands to continue with Morgan Hill appropriately in the lead, and with LAFCO and other stakeholders invited to collaborate.

Due to the rush to develop and adopt the proposed policies, they are not well thought out, do not appear feasible, and miss the opportunity to develop a regional approach to preservation of truly prime agricultural lands that have good prospects for long-term viability. Adoption of the proposed "one-size-fits-all" approach is quite likely to have unintended consequences, does not address exceptions or waivers, and is quite likely to lead to litigation from many quarters. The policies do not reflect the approach of other LAFCOs throughout the State.

The policies define prime agricultural land to include lands that are designated "Prime" or lands of "Statewide Importance" or "Unique Farmland" or "Local Importance" by the State Department of Conservation as shown on the "Important Farmland Map" dated 2004." This definition includes most of the lands on the valley floor that are outside the city limits and within the sphere of influence. The definition is overly broad, and is inconsistent with the State definitions of prime agricultural land. Section 56375 does not allow LAFCOs to adopt definitions different from those in state law. The proposed LAFCO definition includes lands that are not significant agricultural properties and that should not require mitigation as a condition of their addition to the USA. An example is the six parcels located at the northeast corner of Murphy Road and Barrett Avenue. These parcels are all between one and two and a half acres in size. Substantial houses are located on five of the six parcels and the Buddhist Church is located on the sixth. As drafted, the policies would require mitigation for the loss of prime agricultural land. The policies would also require mitigation as a condition for provision of out-of-agency sewer or water service due to a failed septic system or dry well. Neither of these actions would adversely affect prime agricultural land. Policies should recognize that not all lands identified as prime agricultural land are viable agricultural parcels, thus no mitigation should be required. Policies/requirements should anticipate that there will be valid needs for waivers or exceptions.

The State Department of Conservation recommends use of the quantitative Land Evaluation and Site Assessment (LESA) model in CEQA documents to evaluate the significance of agricultural land conversion. This model is composed of six different factors used to evaluate the quality of agricultural land. Two of the factors are based upon measures of soil quality. The four other factors measure the quality of the land based on its size, water availability, surrounding agricultural lands and protected lands. Each of these factors are weighted relative to one another and combined, resulting in a single numeric score for a given project. This information is used in the CEQA document and available for review by interested persons and stakeholders, including responsible agencies such as LAFCO.

The current LAFCO approach is consistent with that of many other LAFCOs throughout the State. The Sacramento LAFCO surveyed 20 other LAFCOs regarding agricultural land preservation. Almost all of those surveyed used an approach similar to that currently used by the Santa Clara County LAFCO. Only one of the surveyed agencies, the Yolo County LAFCO, has adopted the approach proposed by the Santa Clara County LAFCO, and that was developed after a years-long, consensus-based approach involving the affected jurisdictions and stakeholders. The draft LAFCO policies would modify its approach to agricultural land preservation from one that discourages the premature conversion of agricultural land to urban use to one that requires agricultural land preservation, which is a direct regulation of land by LAFCO, which exceeds the authority given to LAFCOs by the Cortese-Knox-Hertzberg Act.

There has been no quantitative or qualitative analysis of how the proposed set of policies would play out. The policies reflect a presumption that one-half of existing vacant lands on the valley floor should be placed into permanent agricultural use. Is this truly viable? Wouldn't it be worth evaluating where the truly prime agricultural lands are located, and to target an approach to preserving those lands that have the prospect of long-term viability? Are legal principles of "nexus" and "proportionality" appropriately underpinning the proposed set of mitigation policies/requirements? Is it appropriate to make landowners/developers who produce housing to meet housing needs and workplaces to meet employment needs solely responsible for the costs of preserving one-half of the remaining lands on the valley floor? Is it legal or appropriate for 5 LAFCO Commisssioners to make land use decisions which properly should be made by the elected representatives of the involved cities and county?

As proposed, LAFCO approvals will become effective only upon implementation of all aspects of the mitigation plan. This includes the transfer of property for preservation and the payment of fees for management of the agricultural land to be preserved. If the mitigation plan is not fully implemented within three years, the LAFCO approval will expire. This approach does not recognize the realities of how urban development is financed. Funds required for this type of mitigation typically become available only after all discretionary development approvals are secured from the local land use authority (city or county). In Morgan Hill, given the time requirements associated with the Residential Development Control System competition, CEQA, subdivision, and design review processes, development approvals typically occur three to five years, or even longer, after LAFCO approval.

It does not appear that there has been any analysis of cost to acquire mitigation land. Within the past four years, agricultural conservation easements have been purchased in the area south of Gilroy for approximately $15,000 per acre. Adoption of the policies requiring mitigation will likely have the effect of increasing the value of such easements. The additional proposed fee for "managing, monitoring and enforcing the agricultural lands" and "promoting agriculture on the mitigation lands" is unknown and difficult to estimate. It is reasonable, however, to assume that the total mitigation cost will exceed $20,000 per acre. This cost should be considered with the expected cost that will be imposed on developers as a result of the adoption of the Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP) that is currently being developed by San Jose, Gilroy, Morgan Hill, the

County of Santa Clara, VTA, and the Water District. The level of such impact fees/mitigation requirements for developers is not yet known.

Under CEQA, a feasible mitigation is one that is "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors". Feasibility determinations reflect the circumstances that exist at the time a development proposal is considered. The total effect of costs to mitigate agricultural, habitat, infrastructure, affordable housing and other impacts must be balanced into feasibility determinations.

The draft policies discourage cities from submitting USA applications involving agricultural lands if mitigation has not been completed for the city's previous approvals. At the November 13th workshop, LAFCO staff essentially explained that it did not want to have to deal with too many applications at once. Is the level of staff resources at LAFCO, and/or the ability/inability of other developers to carry out mitigations, going to be the deciding factors for whether and when other urban development is allowed to occur? How will this affect the abilities of cities to meet regional housing fair share allocations?

The City of Morgan Hill is carrying out its own evaluation of greenbelt, open space and agricultural lands policies, and desires to continue that process in a deliberative manner with local residents, property owners and stakeholders, including LAFCO.

The City of Morgan Hill is carrying out its own evaluation of greenbelt, open space and agricultural lands policies; including evaluation of financing and implementation mechanisms. The City is aware that the City of Gilroy conducted a 2-year planning effort that resulted in adoption of an agricultural mitigation program. Similarly, the City of San Jose is developing a Coyote Valley Specific Plan that will contain agricultural and greenbelt preservation policies and programs.

Morgan Hill agrees that it would be beneficial for the city to develop a set of policies that would clearly set forth the City's standards and expectations with respect to agricultural lands. Such policies could establish a standardized approach to evaluation of potential impacts to agricultural lands that would be involved in boundary changes. In addition, the policies could clearly identify what constitutes a significant loss of agricultural land and what form of mitigation for that loss would be considered feasible and acceptable.

Alan C. Waltner
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November 21, 2006

VIA FIRST CLASS MAIL
And E-MAIL (neelima.palacherla@ceo.sccgov.org)

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Neelima Palacherla, Executive Officer
Santa Clara County LAFCO
70 West Hedding Street, 11th Floor
San Jose, CA 95110

RE: Comments on LAFCO's October 26, 2006 Draft Agricultural Mitigation Policies

Dear Ms. Palachera:

This letter comments on the October 26, 2006 revised draft "LAFCO's Agricultural Mitigation Policies." As indicated in our September 8 comment letter on an earlier version of the draft policy, these comments are written from the perspective of a prospective project located within the 20-year planning boundary of the City of Gilroy, but outside of the current City of Gilroy boundaries.

While the new draft policy contains several improvements, we believe certain provisions remain that will impair, rather than promote, the apparent goals of the policy, and create unnecessary barriers to needed residential and other development. We have two principal concerns that remain unresolved in the October 26 draft. First, LAFCO has not yet responded to our requests to confirm the acceptability of Gilroy's current agricultural mitigation policy, adopted May 3, 2004. Second, the draft policy's 3-year expiration provision remains unduly restrictive.

Request to Confirm the Acceptability of Gilroy's Policy. Gilroy's adoption of its own policy makes the creation of a separate and potentially inconsistent LAFCO policy redundant and unnecessary. LAFCO should either confirm the acceptability of Gilroy's policy in the annexation context, or engage in a dialogue with the City and affected parties to make any changes considered important. A more direct evaluation of Gilroy's policy would have several beneficial effects. First, it would provide guidance and certainty for projects anticipated to be annexed into Gilroy. Second, it would provide an accepted template for other jurisdictions developing their own policies. Third, it would help confirm that LAFCO's intention in adopting the policy is not to regulate land use in contravention of Government Code Section 56886. Conversely, LAFCO's failure to confirm the acceptability of Gilroy's policy would demonstrate that LAFCO in fact is intruding upon the land use authority of local Santa Clara County jurisdictions.

The current Gilroy policy is fully consistent with LAFCO's draft. It establishes a 1:1 mitigation program with the same options of fee transfer, conservation easements, or

payment of in lieu fees, specifies appropriate mitigation parcels in a manner that appears consistent with LAFCO's intent, and establishes other parameters such as the buffer area consistent with the approach taken in other cities that have been identified as a model by LAFCO. It also contains timing provisions that better account for development realities. We therefore suggest, at least with respect to annexations to Gilroy, that the Gilroy policy either be confirmed or adapted as appropriate, in lieu of adoption of a separate set of policies by LAFCO.

The 3-Year Expiration Provision. The timing provisions of the draft policy require that conservation easements be obtained within 3 years (increased from 2 years in the prior draft) of a "conditional approval" by LAFCO, after which the approval would be deemed to expire, with only a single, one-year extension possible. (Draft Policy ¶¶ 15, 17). This strict limit coupled with the uncertainty in annexation would seriously impair or preclude certain projects from obtaining financing, including the financing necessary to acquire the mitigation credits. The relatively short time period also could require significant expenditures for mitigation credits before funds are reasonably available for those credits in the normal development cycle. This is particularly true for phased development projects, where only a small portion of the property is slated for development in the near term, since the policy appears to require costly acquisition of all of mitigation credits early on in the cycle.

Both the Subdivision Map Act and development agreement statutes recognize these concerns, especially with regard to phased projects. The Map Act provides a maximum of 15 years for a tentative map (five years of discretionary extensions and 10 years of automatic extensions for phased final maps).[1] Gov't Code §§ 66452.6, et seq. Maps covered by development agreements allow tentative maps to be extended up to the term of the agreement. Gov't Code § 66452.6(a)(1). Such provisions provide the needed certainty for entitled projects by recognizing the realistic time periods often required to make phased developments feasible, including the provision of resulting mitigations such as the agricultural mitigations addressed by the draft policy.

Viewed in this context, the three year provision is unreasonable, and impermissibly intrudes on the local land use entitlement process. The potential that the annexation might not be completed would prevent projects from obtaining debt financing, or otherwise raising capital from prospective project participants. This, in turn, would create a "Catch-22" situation since those funds would be needed in order to make the required mitigation payments.

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[1] This period is exclusive of tolling periods for litigation, development moratoriums and maps covered by a development agreement.

The Gilroy policy contains a much more workable timing policy, requiring that a deferred payment or dedication agreement be entered into at the time of the initial land use approvals, but not requiring the completion of the mitigation until final map approval, or issuance of the first building permit if no map is required. Likewise, the Yolo County policy requires the applicant "to have the mitigation measure in place before the issuance of either a grading permit, a building permit or final map approval for the site." Yolo County policy at 9. This approach helps dovetail the policy with other provisions of the Planning and Zoning Law, while LAFCO's proposed 3-year expiration would not. LAFCO should not adopt timing provisions more stringent than contained in the Gilroy or Yolo policies.

Bingham McCutchen LLP
bingham.com

We appreciate this continuing opportunity to comment on this important policy document, and request that LAFCO address these key concerns during its upcoming deliberations.

Sincerely yours,

Alan C. Waltner
Partner

cc: Dunia Noel, LAFCO Analysis (dunia.noel@ceo.sccgov.org)
Jay Baska, City Administrator, City of Gilroy
Don Gage, County Supervisor, Santa Clara County

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LOMA PRIETA CHAPTER
San Mateo • Santa Clara • San Benito Counties

LAFCO of Santa Clara County
70 West Hedding Street
11th Floor, East Wing ,
San Jose, CA 95110

November 22, 2006

Re: LAFCO Proposed Agricultural Mitigation Policies

Dear Ms. Palacherla,

Thank you for the opportunity to provide comments on the proposed agricultural mitigation policies for Santa Clara County. The Sierra Club is vitally concerned about ensuring the preservation of hills, coasts, wetlands, other outlying natural areas and agricultural lands through zoning, curbing suburban highway development, control of municipal services and other devices to eliminate rural sprawl. We are excited to see that Santa Clara County LAFCO is taking such a strong step towards preserving the remaining agricultural land in the county through the establishment of specific policies.

We also would like to note that Santa Clara County LAFCO does not currently have a policy for preserving open space which, like agricultural land, is core to its mission. Now, in the context of the current effort to create an agricultural mitigation policy, is an appropriate time to consider the need to address this gap in LAFCO policies. We strongly urge the Commission to take this next step upon the completion of the agricultural mitigation policy process.

In general, the Sierra Club is deeply concerned about the historical trend for cities to grow out, consuming vast quantities of irreplaceable agricultural land and open space. These areas are critical to the quality of life in Santa Clara County and cannot be replaced. There is a finite amount of prime agricultural land remaining and its conversion to urban uses runs counter to the insight of the Precautionary Principle. We cannot know the future and should not eliminate our ability to grow food locally. A truly sustainable community is one that is designed for maximum self-sufficiency. The best means for achieving this is for cities to grow up, not out and it is imperative that LAFCO adopts policies supportive of this approach.

Specific areas we would like to address are as follows:

We would like to see the inclusion of a "definition section" at the end of the document to ensure no question of intent, meaning or purpose to the text of the policies.

Definition of Prime Agricultural Lands (section 7)
We would like to see an expansion of the types of land covered by the proposed policy to include fallow agricultural lands. These areas provide important wildlife habitat and buffers between

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urban development and wild landscapes. This can be incorporated into section 7 where covered lands are defined.

Agricultural Conservation Entity Qualifications (section 12)
It is also imperative that the conservation entity entrusted to carry out the mitigation represent the public interest. We therefore would like to see the criteria in 12C changed to require membership the Land Trust Alliance, not simply have adopted their practices and standards. Membership in the LTA demonstrates a greater commitment to the values of the LTA and assures us that the entity will operate with the public interest at the forefront of its actions.

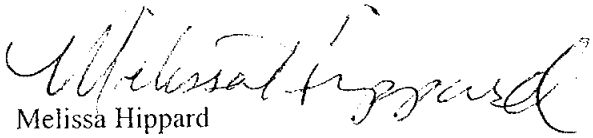
Mitigation Requirements (section 8)
The Sierra Club supports no less than a one to one mitigation for the conversion of agricultural or open space land through the process of annexation. At best, this approach would only save 50% of the remaining agricultural lands We also strongly support the proposed three year (plus one year extension) time frame for mitigation implementation. There are few remaining acres of agricultural land in Santa Clara County and it is absolutely critical that cities are encouraged to grow up, not out. The future of collective well being absolutely depends on ensuring future food security, and clean air and water. Furthermore, studies show that well designed, dense communities are healthy, safe and attractive places to live.

We recognize that many of the proposed annexations are for large projects that are anticipated to be built out over several (if not dozens) of years. Our first goal is to see that conversion of our remaining agricultural lands eliminated. However, it is important to address the reality that cities will approach LAFCO with annexation requests. When that does occur we would like the policies in place to be effective and viable. To this end we suggest that LafCo consider a range of acceptable mitigation strategies that developers can use. Some ideas include:

- buying out of development rights from areas zoned for low density development to ensure that no
- purchase easements over existing croplands
- enrollment in a program similar to the Williamson Act that provides for a long-term reduction in assessed value while the land remains in agricultural production.

The Sierra Club encourages the efficient and wise use of land. The bar must be set high for densities. A build out analysis for the County would tremendously assist in the general plan update process as well in the current HCP/NCCP process. It is important for the people of Santa Clara County to address how much growth is appropriate and where it should be.

Thank you for this opportunity to contribute to the collective wisdom. Please contact me with questions or comments.



Melissa Hippard
Chapter Director

"Couperus"
<couperusj@sbcglobal.net>

To: <neelima.palacherla@ceo.sccgov.org>
cc:
Subject: LAFCO Proposed Agricultural Mitigation Policies

11/23/2006 10:16 AM

LAFCO of Santa Clara County<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

November 23, 2006

RE: LAFCO Proposed Agricultural Mitigation Policies

Dear Ms. Palacheria,

As an interested citizen and member of a local open space committee, I applaud LAFCO's efforts to preserve our County's agricultural land – land which is fast disappearing as acres continue to be lost at an alarming rate to development. Farmland is especially in peril.

The agricultural land mitigation policy you are currently considering is a positive step.

Would you please consider in your deliberations the following points?

1) Expanding the policy to include open space lands and agricultural lands not currently in use

2) Strengthening the mitigation requirements – no less than 1 to 1 mitigation – and monitoring compliance within the three-year window

The need to protect what little remains of Santa Clara County's farmland is of paramount importance to the citizens living in this area of California. More and more people are recognizing the value of sustainable and local agriculture.

The steps being taken by LAFCO to ensure an intelligent land use policy for our region is greatly appreciated.

Sincerely,

Nancy Couperus
13680 Page Mill Road

CHAMBER OF
COMMERCE

November 27, 2006

Santa Clara County LAFCO members
Local Agency Formation Commission
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

Re: Proposed LAFCO Agricultural Mitigation Policy

Dear LAFCO members:

On behalf of the Gilroy Chamber of Commerce, we extend our appreciation for your efforts in reviewing the concerns raised regarding the proposed LAFCO Agricultural Mitigation Policy. The community of Gilroy takes pride in our efforts to do extensive outreach in the development of our City policies. A prime example is the City of Gilroy Ag Mitigation Policy drafted over a two-year period of time and involving stakeholders throughout the region. The effect was the creation of the most comprehensive agricultural mitigation policy in Santa Clara County.

As expressed at the Gilroy Chamber of Commerce Government Relations Committee on Friday, November 17, 2006, there is strong concern regarding a policy draft venturing beyond the intended scope and authority granted to LAFCO's under the Cortese-Knox-Hertzberg Act which expressly prohibits LAFCO's from imposing "any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements." A letter from the City of Gilroy states, "The proposed LAFCO agricultural policies, specifically related to the mitigation of development impacts, quite clearly represent conditions that directly regulate land use development."

The Gilroy Chamber of Commerce agrees with the position statements in the letter sent by the City of Gilroy on November 6, 2006. The concerns of the legal scope regarding the Cortese-Knox-Hertzberg Act, the accelerated time for drafting an agricultural mitigation policy that does not parallel efforts by cities within LAFCO scope of influence, the lack of outreach to stakeholders, and meeting times and locations inconvenient to the South County communities leads the Gilroy Chamber of Commerce to question the intent of the Santa Clara County LAFCO Agricultural Mitigation Policy Draft. ***Therefore, we respectfully request LAFCO delay its decision and take whatever time is necessary to discuss all stakeholder positions.***

Sincerely,

Susan Valenta
President/C.E.O.

408.842.6437 7471 Monterey Street, Gilroy, CA 95020 Fax 408.842.6010

Greenbelt Alliance

PROTECTING OPEN SPACE AND PROMOTING LIVABLE COMMUNITIES

LAFCO of Santa Clara County
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

November 27, 2006

Re: LAFCO Proposed Agricultural Mitigation Policies

Dear Ms. Neelima Palacherla,

Thank you for the opportunity to provide comments on the proposed agricultural mitigation policies for Santa Clara County. Greenbelt Alliance commends LAFCO staff for pursuing the establishment of specific policies to preserve the County's remaining agricultural lands. Cities must continue to focus on developing infill sites and promoting transit-oriented development instead of paving over valuable farmland. Most of Santa Clara's agricultural heritage was lost long ago to poorly planned development and what is left must be preserved so that our cities and towns have access to locally grown fresh produce, as well as clean air and water.

In order to maintain our quality of life in the Santa Clara Valley, our communities must grow in a sustainable manner and therefore should focus on growing up and not out. Farmland is an irreplaceable resource. Therefore, ***Greenbelt Alliance supports no less than a one to one mitigation ratio for all farmlands lost to development and that program costs should be added to the overall costs.*** Even with mitigation, only half the County's remaining farmland will be preserved through these policies. Ideally, all conversion of farmlands should cease.

Greenbelt Alliance is concerned about a potential loophole if landowners were to leave their land fallow for several years. One way to alleviate this concern is to make an addition to ***Section 7, the Definition of Prime Agricultural Lands. Fallow agricultural lands should be included as another type of land covered by the proposed policies.***

Additionally, ***we are supportive of the proposed three year (plus one year extension) time frame for mitigation implementation.*** The full cost of developing farmland must be made apparent to all parties involved. Developing farmland should neither be convenient nor free. The goal of these policies is to promote infill, prevent sprawl and encourage the efficient use of land.

Thank you again for the opportunity to comment on the proposed policies. Please contact me with any questions or comments.

Sincerely,

Michele Beasley
South Bay Field Representative
408.983.0856

"Ken Bone"
<fishbone1@earthlink.net>

11/27/2006 10:39 PM
Please respond to
fishbone1

To: "Blanca Alvarado" <blanca.alvarado@bos.sccgov.org>, "Don Gage" <don.gage@bos.sccgov.org>, "John Howe" <jh2@aol.com>, "Linda LeZotte" <linda.lezotte@ci.sj.ca.us>, "Susan Vicklund Wilson" <susan@svwilsonlaw.com>, "Pete McHugh" <Peter.Mchugh@bos.sccgov.org>, "Roland Velasco" <rvelasco@ci.gilroy.ca.us>, "Chuck Reed" <District4@ci.sj.ca.us>, "Terry Trumbull" <TerryT1011@aol.com>
cc: "Neelima Palacherla" <neelima.palacherla@ceo.sccgov.org>, "Emmanuel Abello" <emmanuel.abello@ceo.sccgov.org>, "Dunia Noel" <dunia.noel@ceo.sccgov.org>
Subject: Suggestions for the LAFCO Agricultural Mitigation Policies Oct. 26, 2006 draft that you are considering for adoption on December 13

11/27/06

LAFCO Commissioners

Neelima Palacherla, Executive Officer

LAFCO staff

c/o Emmanuel Abello, LAFCO Clerk

Attached please find my suggestions for the LAFCO Agricultural Mitigation Policies Oct. 26, 2006 draft that you are considering for adoption on December 13. I would appreciate you taking the time to thourghly review the suggestions and include the recommendations in the adopted final policy.

As an unincorporated Santa Clara County property owner, I attended Gilroy's Santa Clara County LAFCO, November 27, public workshop tonight and both verbally, and in writing presented the following requested changes and my suggested inclusion of open space mitigation in the LAFCO Agricultural Mitigation policy. I'm presenting my suggested changes directly to you today, November 27, 2006, for your individual consideration and action well in advance of your December 13 public hearing and adoption meeting. I hope my verbal and this written presentation was written into tonight's minutes. For some reason, my written input was omitted from the previous Gilroy's LAFCO hearing public input record.

I formally request that my enclosed mitigation policy and procedure recommendations be presented by the LAFCO staff to and be seriously considered by the LAFCO Commission prior to the December 13 adoption meeting, be part of the November 27, 2006, Gilroy workshop minutes, and be fully recorded as part of the public input for the development and adoption of the Santa Clara County LAFCO Open Space and Agricultural Mitigation Policy. I am available to discuss my policy and procedure recommendations with any of the LAFCO commissioners and the LAFCO staff members.

Thank you for your consideration.

Ken Bone

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LAFCO Public Input062.dc

11/27/06

LAFCO Commissioners
c/o Emmanuel Abello, LAFCO Clerk

As an unincorporated Santa Clara County property owner, I will attend the Santa Clara County's Gilroy LAFCO November 27 public workshop.

The current October 26 draft overlooks and fails to address the protection and preservation of the valuable open space habitat lands, including fallow (unseeded) agricultural open space lands. A planted orchard is considered agricultural land, but is not considered open space or open space habitat whereas a fallow field is considered open land and needs to be specifically included in the LAFCO mitigation policy. Keeping in mind the stated LAFCO goals of protecting and preserving the remaining open space and the prime agricultural lands, it is very apparent that LAFCO needs to strengthen the proposed October 26, 2000 draft of LAFCO's Agricultural (and Open Space) Mitigation Policies by including open space habitat land protection and preservation, and making the preserved ratio 2 acres preserved for every one acre converted. The following changes will strengthen the draft:

change (indicated by brackets [ ] and bold underlining) the first mission paragraph statement to read:

- LAFCO's mission is to discourage urban sprawl, preserve open space [**habitat lands, including fallow (unseeded) agricultural open space lands,**] and prime agricultural lands, promote the efficient provision of government services and encourage the orderly formation of local agencies...

change the second mission paragraph to read:

- It is the intent of LAFCO to set forth through written policies, LAFCO's standards and procedures for providing [**open space habitat lands, including fallow (unseeded) agricultural open space lands, and prime**] agricultural [**land**] mitigation for LAFCO proposals involving [**open space habitat lands, including fallow (unseeded) agricultural open space lands, and prime**] agricultural lands, consistent with LAFCO's current policies and LAFCO's mandate.

- I request that LAFCO make air-tight definitions of the terms and restrictions used in the mitigation policy, including adding a definition section at the end of the document.

My recommended changes of the following October 26 draft
General Policies are indicated by the brackets [ ] and bold underlining:

- LAFCO'S Agricultural Mitigation Policies establishes minimum criteria and standards for providing [**open space habitat land, including fallow (unseeded) agricultural open space land, and**] agricultural [**land**] mitigation for LAFCO proposals involving [**open space habitat lands, including fallow agricultural open space lands, and prime**] agricultural lands.

- Draft item 2. LAFCO requires adequate and appropriate [**open space and**] agricultural mitigation for all LAFCO applications that impact or result in loss of [**open space habitat lands, including fallow (unseeded) agricultural open space lands, and**] prime agricultural lands. Prime agricultural lands are defined in Policy #5.

- Draft item 4. When LAFCO proposal impacts or involves a loss of [**open space habitat lands, including fallow (unseeded) agricultural open space lands, and**] prime agricultural lands, ...

Definition of Prime Agricultural Lands

- Draft item **7. section d. must be omitted** because the section is too vague, the type of livestock is not identified, no known unincorporated non-irrigated acreage can support one cow per acre. (Delete this section to avoid unethical land manipulation of years, livestock numbers, or monetary amounts just to avoid this required mitigation)

- Draft item **7. section e. needs to be shortened** to state: "Land planted with fruit or nut-bearing trees, vines, bushes, or crops." (This will avoid unethical land manipulation of years or monetary amounts prior to applying just to avoid this required mitigation)

- Draft item **7. section f. needs to be shortened** to state: "Land that has returned from the production of unprocessed agricultural plant products." (This will avoid unethical land manipulation of years or monetary amounts prior to applying just to avoid this required mitigation)

    - Draft item 7 needs to have an **item 7 g. added** that states: **7 g. "All land that has the potential to be productive agricultural land**" (This will avoid land manipulation prior to applying just to avoid this required mitigation)

After Draft item 7 a **new section number 8 needs to be added**.

- **Section 8 [Definition of Open Space Habitat Lands]. [All lands that are undeveloped, undisturbed, or lie fallow (unseeded), or unused for crops or agriculture of any kind valued for its natural open space setting and valued for providing an open space habitat that may be utilized by re-introduced native plants and animals.]**

Mitigation Requirements

- Draft item 8. Proposals involving the conversion of **[open space habitat lands, including fallow (unseeded) agricultural open space lands, and]** prime agricultural lands shall not be approved unless one of following mitigations is provided at a not less than **[2:1 ratio (two (2) acres]** preserved for every **[one (1)]** acre converted...

- Draft item 8.a. The acquisition and transfer of ownership of **[open space habitat land, including fallow (unseeded) agricultural open land, and prime]** agricultural land ...

- Draft item 8. b. The acquisition and transfer of **[an open space/nature or an]** agricultural conservation easement to an **[open space/nature or an]** agricultural conservation entity for permanent protection of the **[open space habitat land, including fallow (unseeded) agricultural open space land, and prime]** agricultural land.

- Draft item 8. c. The payment of in-lieu fees to an **[open space/nature or]** agricultural ...

- Draft item 1. The acquisition of **[open space habitat lands, including fallow agricultural open space lands, and/or prime]** agricultural lands or **[open space/nature and]** agricultural conservation easements for permanent protection, and

- Draft item 2. The cost of administering, managing, monitoring, and enforcing the **[open space habitat lands, including the fallow agricultural open space lands, and/or prime]** agricultural lands or **[open space habitat lands, including fallow agricultural open space lands, and/or]** agricultural conservation easements as well as the costs of promoting **[open space habitat lands, including supervised programs of volunteers to eradicate invasive**

non native species and re-introduce native plant and animal species to the open space lands, and] agriculture on the mitigated [**agricultural**] lands.

- Draft item 9 [**Open space habitat lands and]** agricultural lands or conservation easements acquired and transferred to an [**open space/nature or**] agricultural conservation entity must be located in Santa Clara County …

- Draft item 10. The [**open space and]** agricultural mitigation [**must]** result in preservation of land that [**will promote]** the definition or creation of a permanent urban [**open space habitat and/or]** agricultural edge and must be:

- Draft item 10 a. [**Open space habitat land and/or]** agricultural land of equivalent [**or better]** quality and character ...

- Draft item 10 b. Located within the city's sphere of influence in an area planned/envisioned for [**open space habitat and/or]** agriculture [**that would otherwise be threatened / impacted in the reasonably foreseeable future by development, and]**

- Draft item c. [**Will promote the definition or creation of a permanent urban / [open space habitat and/or agricultural edge or contribute to a local open space environmental nature conservation project]**

Draft item 11.

- Draft item 11 a. Establishment of an [**open space habitat and/or]** agricultural buffer...
- Draft item 11 a. continued … LAFCO [**requires]** (**delete** "encourages") …
- Draft item 11 a. continued …(add back in must) Such measures [**must]** include, but are not limited to:

- Draft item c. Development of programs to promote the continued viability of surrounding [**open space habitat land and/or]** agricultural land.

- [**Open Space Habitat /] Agricultural Conservation Entity Qualifications**

- Draft item 12. The [**open space habitat/nature and/or]** agricultural conservation entity must be a city or a public or non-profit agency. The [**open space habitat/nature and/or]** agricultural conservation entity must:

- Draft item 12 a. Be committed to preserving local [**open space habitat and**] local agriculture and must have a clear mission along with strategic goals or programs for promoting [**open space habitat/nature and**] agriculture in the areas that would be preserved through mitigation.

- Draft item b. Have the legal and technical ability to hold and administer [**open space habitat/nature lands and**] agriculture lands ...

    - Draft item c. Have adopted written standards, policies and practices ... ...[**open space habitat/nature and**] agricultural conservation easements ...

Plan for Mitigation

    - Draft item 13. A plan for [**open space habitat/nature and**] agricultural mitigation that is consistent with the policy must be submitted at the time that the proposal impacting [**open space habitat lands and/or**] agricultural lands is filed [**and the application fees are paid.**]

Draft 14 The plan for mitigation shall include all of the following:

- Draft item 14 a. An agreement between the property owner(s) and the city or between the property owner, city and [**the open space habitat/nature or**] agricultural conservation entity ...

- Draft item 14 a. continued ...for the loss of [**the open space habitat lands and/ or the**] agricultural lands...

Timing and Fulfillment of Mitigation

Draft item 15. (Change back LAFCO Draft items #15, as previously written with the [two (2)] years of conditional approval, (that is 24 months to comply which is enough time for the serious acquisition of the replacement open space habitat lands or agricultural lands or conservation easements to be acquired and transferred or the in-lieu fees be paid, or the conditional approval may expire without any extensions.)

- Draft item 15. LAFCO will require as a condition of approval that the [**open space habitat/nature lands and the**] agricultural lands or conservation easements be acquired and transferred or the in-lieu fees be paid within [**two (2)**] years of LAFCO's conditional approval.

Draft item 17. (Change back LAFCO Draft items #17, as previously written with the [**two (2)**] years of conditional approval)

- Draft item 17. If the conditions of approval are not met within [**two (2)**] years, [**the conditional approval will expire unless the**] applicant [**pays the additional extension fees and re-applies**] to LAFCO [**within the last six (6) months of the initial two 2 year period**] for an extension, not to exceed [**one (1) additional**] year. [**All**] further consideration by LAFCO will require a new application [**and the payment of all new application fees.**]

- Draft Item # 17 needs to state at the end: ... [**No additional extensions will be considered or allowed**.]

Central and South Santa Clara County areas are blessed with remaining open space habitat land, including fallow agricultural open space land and prime agricultural land, much of which has been lost to development in other parts of the county. It is appropriate for Santa Clara County's LAFCO under the State's mandate to protect and preserve the remaining open space habitat lands and the remaining agricultural lands for future generations with required strong mitigation.

It is also appropriate for the developers, their investors, and the cities to understand that the protection, preservation, and mitigation of both the remaining open space habitat lands and agricultural lands for future Santa Clara County generations must come up front in the development and city limit expansion processes.

I formally request that my enclosed mitigation policy and procedure recommendations be presented to and be seriously considered by the LAFCO Commission, be read into the November 27, 2006, Gilroy workshop minutes, and be recorded as part of the public input for the development and adoption of the Santa Clara County LAFCO Open Space and Agricultural Mitigation Policy. I am available to discuss my policy and procedure recommendations with any of the LAFCO commission members.

Ken Bone

Ken Bone
3290 Godfrey Ave.
Gilroy, CA 95020
fishbone1@earthlink.net

"David Collier"
<david.gumbi@earthlink.net>

To: <neelima.palacherla@ceo.sccgov.org>
cc: <dunia.noel@ceo.sccgov.org>
Subject: Visibility into the projected use of in-lieu fees

11/27/2006 10:55 PM

Neelima: I have no problem with making the following comments public but I was not able to see how to enter them into the Santa Clara County LAFCO website. So this email format will have to suffice.

I see a problem for LAFCO in implementing the proposed Agriculture Mitigation Policies as revised. The problem arises when the mitigation mode of choice is the payment of in-lieu fees to an agricultural conservation entity. In this case, LAFCO may not see the details of how the money will be spent at the time of an USA application. How then will LAFCO be able to judge whether the mitigation funds will be used in a manner consistent with policies such as #9 and #10. I believe the solution lies in asking for what details of the mitigation implementation are available to be included in the Plan for Mitigation. The ag conservation entity may not have a willing seller lined up at the time of application but they may know their planned targeted area for preservation with some specificity. Whatever plans or specifics they have for the use of these fees (included projected timelines) need to be included in the cities application to LAFCO then LAFCO can judge whether the plan sufficiently supports their policy goals.

So, I suggest this requirement for information could be added to the proposed Policy #14 language in something like the following fashion:

Policy #14 The Plan for Mitigation shall include all of the following:

a. ...
b. All available specific information, including any projected timelines, on the planned use of any in-lieu fees (added)
c. Information on specific ... (as before)
d. All other supporting documents ... (as before)

The foregoing language and insertion point are only my suggestions. Please feel free to modify as you see fit.

If you have any questions on this or simply want to talk you can contact me at 408-847-3803 or at this email address of david.gumbi@earthlink.net

Thank you for all your work on this good policy.

Sincerely,

David C. Collier

MORGAN HILL CHAMBER OF COMMERCE

25 WEST FIRST STREET
POST OFFICE BOX 786
MORGAN HILL, CA 95038

408.779.9444
408.779.5405 FAX
MHCC@MORGANHILL.ORG
WWW.MORGANHILL.ORG

November 28, 2006

Santa Clara County Local Agency Formation Commission
County Government Center
70 West Hedding Street – 11th Floor – East Wing
San Jose, CA 95110
FAX: 408-295-1613

Re: Proposed LAFCO Agricultural Mitigation Policies

Dear LAFCO Commissioners:

The Morgan Hill Chamber of Commerce greatly appreciates the Commission's invaluable time and effort to review the significant issue of preserving prime agricultural lands and concerns raised regarding the proposed LAFCO Agricultural Mitigation Policies. Certainly, this is no easy task.

This communication is to inform you that the Morgan Hill Chamber of Commerce strongly supports the communications you have received from the City of Morgan Hill and the Gilroy Chamber of Commerce regarding the proposed LAFCO Agricultural Mitigation Policies. We join the City of Morgan Hill and the Gilroy Chamber of Commerce and respectfully request that, instead of rushing to adopt the proposed policies, the Commission thoughtfully postpone its decision and take all the necessary and appropriate time it takes to hold as many meaningful discussions as responsibly possible, with all stakeholders, in order to produce more productive and positive results.

In short, the Morgan Hill Chamber of Commerce also urges you to not adopt the proposed policies and, instead, partner with the Cities of Morgan Hill, Gilroy and San Jose as they develop *their* policies and programs. As Morgan Hill Mayor Dennis Kennedy states, this would result in "...the objective of developing consensus support for a different refinement of existing LAFCO policies that address proposals that involve agricultural and open space lands."

As stated above, the Commission has no easy task. Indeed, with the genuine concerns you have received, legal issues that have been raised, vast number of clarifications that need to be addressed and counterproductive impact of notifying the public on November 27 that final comments are due November 28, your decision to not adopt the proposed policies at your next meeting would be greatly appreciated. Such a decision would send a message to the Cities of Morgan Hill and Gilroy, and their respective chambers of commerce, that it will be better for us, all, to collaborate and work together to bring about immensely more productive, positive and beneficial results.

Your time and thoughtful consideration are appreciated.

Most sincerely,

Daniel L. Ehrler
President/CEO

LEAGUE of WOMEN VOTERS SAN JOSE/SANTA CLARA
P.O. Box 5374 San Jose, CA 95150
(408) 271-7163
www.lwvsjsc.org
info@lwvsjsc.org

LAFCO of Santa Clara County
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

November 28, 2006

Dear Commissioners and Staff:

The League of Women Voters supports adoption of LAFCO Agricultural Mitigation Policies. Preserving agriculture in perpetuity within Santa Clara County, with its growing population, is needed now, while there is still farmland available. LAFCO policies would provide some certainty to conservation provisions protecting agriculture now and into the future.

The League of Women Voters supports measures insuring that agricultural land is protected both in urbanized areas and outside urban growth environments. Our basic tenets also support coordination among agencies and levels of government and well-defined channels for citizen input and review.

We urge that the Policies adopted receive an annual review to allow for revisions that might be needed in actual implementation. In addition, in order to sustain public support for agriculture, community outreach and public education will be important elements of the Policies' implementation.

We have two concerns with the current draft. First, we believe that only agricultural entities that do their business in public should administer and manage mitigation funding and programs. The League strongly believes that public oversight is essential for public trust. Second, even with the changes to the draft, we remain concerned that the three year period allowed for transfer and fees following LAFCO's conditional approval may still not be long enough for some projects. While we have no solution, several suggestions were made in the last few months that should be considered. We encourage continuing talks with those most affected in order to reach an agreement.

We urge that you approve Agricultural Mitigation Policies as soon as is feasible.

Sincerely,

Bobbie Fackler

President

"Richard Hawley" <brorichard@earthlink.net>

11/28/2006 12:35 PM

To: <neelima.palacherla@ceo.sccgov.org>
cc: "'Michele Beasley'" <mbeasley@greenbelt.org>
Subject: preserving the past for the future

Neelima Palacherla
Local Area Formation Commission (LAFCO)

Dear Neelima:

Can you please help this county show some restraint in paving over the rich farmland and eliminating all vestiges of refuge for us staid city dwellers? I think you can. Please include the following in your new agricultural mitigation policy.

* No less than 1 to 1 mitigation should occur. This means that for every acre of farmland lost to development, another acre of similar land must be preserved in Santa Clara County.
* Expand the definition of lands covered to include fallow agricultural lands.
* The timing and fulfillment of mitigation must occur within the proposed three year window.

Thank you, Richard Hawley

Member of Greenbelt Alliance

LEAGUE of WOMEN VOTERS SAN JOSE/SANTA CLARA
P.O. Box 5374 San Jose, CA 95150
(408) 271-7163
www.lwvsjsc.org
info@lwvsjsc.org

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November 28, 2006

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We urge that the Policies adopted receive an annual review to allow for revisions that might be needed in actual implementation. In addition, in order to sustain public support for agriculture,community outreach and public education will be important elements of the Policies' implementation.

We have two concerns with the current draft. First, we believe that only agricultural entities that do their business in public should administer and manage mitigation funding and programs. The League strongly believes that public oversight is essential for public trust. Second, even with the changes to the draft, we remain concerned that the three year period allowed for transfer and fees following LAFCO's conditional approval may still not be long enough for some projects. While we have no solution, several suggestions were made in the last few months that should be considered. We encourage continuing talks with those most affected in order to reach an agreement.

We urge that you approve Agricultural Mitigation Policies as soon as is feasible.

Sincerely,

Bobbie Faith

President

Clysta
<clysta@igc.org>

11/28/2006 11:28 AM

To: neelima.palacherla@ceo.sccgov.org
cc: Patrick Congdon <pcongdon@openspaceauthority.org>
Subject: LAFCO Proposed Ag. Policies

Dear LAFCO Board,

Thank you for your work to construct an agricultural land mitigation policy for your jurisdiction.

I believe it is absolutely necessary for no less than a 1 to 1 mitigation approach. It must be clear that this means no over lapping or double dipping mitigation approaches. If lands are already conserved under a conservation easement or a specific species mitigation it cannot be 'reused' for another kind of mitigation.

Be certain that in the land definitions that fallow agricultural lands are included.

Have an enforced timeline (3 years with a one year maximum extension) for mitigation commitments. The blatant disregard in previous Williamson Act agreements clearly show the need for strict enforcement provisions.

And, finally, I believe it is necessary for LAFCO to have an open space policy as well as an agricultural lands policy to complete its responsibilities for making informed land use decisions for our future generations.

Thank you for your consideration of these comments.

Clysta Seney McLemore
Former Director, District 3, Santa Clara County Open Space Authority

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Department of Planning, Building and Code Enforcement
JOSEPH HORWEDEL, DIRECTOR

November 28, 2006

Neelima Palacherla
Local Agency Formation Commission of Santa Clara County
70 West Hedding Street, 11th Floor, East Wing
San Jose, CA 95110

Email: neelima.palacherla@ceo.sccgov.org; dunia.noel@ceo.sccgov.org

Fax: (408) 295-1613

RE: Comments on Local Agency Formation Commission of Santa Clara County (LAFCO) Revised (10/26/06) Draft Agricultural Mitigation Policies

Dear Ms. Palacherla:

We appreciate the opportunity to provide comments on LAFCO's Revised Draft Agricultural Mitigation Policies. While City of San Jose staff supports the intent of agricultural mitigation policies, staff has concerns about the proposed LAFCO Policies as currently drafted, given that LAFCO's proposed Policies would affect how the City of San Jose and other local jurisdictions within Santa Clara County could exercise their local land use authority for implementing growth management strategies within a jurisdiction's sphere of influence. For these reasons, City of San Jose staff is bringing forward the Policies for comment by the San Jose City Council at a public hearing to be held on December 12, 2006. If the City Council does choose to comment, they would formally adopt a resolution on December 12th to send a letter to LAFCO on December 13, 2006. The proposed letter and our staff report will be posted on the City's website at http://www.sanjoseca.gov/clerk/agenda.asp prior to the hearing on December 12th.

In addition, Planning staff would like to state for the public record that the comments provided in a letter dated September 13, 2006 by the Director of Planning, Building and Code Enforcement on LAFCO's original Draft Agricultural Mitigation Policies, are still relevant to the Revised Draft Policies, and we request that you include them for consideration for the LAFCO hearing on the Revised Draft Policies on December 13, 2006.

If you have questions or comments regarding this letter please contact me at (408) 535-7800. Thank you.

Sincerely,

Jenny Nusbaum, Senior Planner
Department of Planning, Building & Code Enforcement

"Grzan Family"
<grzan.fm@charter.net
>

To: <palacherla@ceo.sccgov.org>
cc:
Subject: LAFCO AG Land Mitigation Policy

11/29/2006 09:28 PM

Dear Ms. Palacherla:

In regards to the proposed LAFCO AG land mitigation policy:

- No less than a 1 to 1 mitigation – for every acre of agricultural land converted to urban uses an acre of similar land in Santa Clara County must be permanently preserved.
- Expand the definition of lands covered to include fallow agricultural lands.
- The timing and fulfillment of mitigation must occur within the proposed three year window.
- LAFCO needs an open space policy that is equally strong and detailed as the proposed agricultural mitigation policy.

Mr. Mark Grzan
Mayor Pro Tempore
City of Morgan Hill, CA
H 408.778.7816
C 408.840.1550
Grzan.fm@charter.net

"Ben Martin"
<benmartin12@stanfordalumni.org>

To: <neelima.palacherla@ceo.sccgov.org>
cc: <mbeasely@greenbelt.org>
Subject: New Agricultural Mitigation Policy

11/29/2006 03:54 PM

Nov 29 2006

Dear Ms. Palacherla:

As a resident of Mountain View and Santa Clara County, and a member of the Greenbelt Alliance, I am requesting input into LAFCO's consideration of a new agricultural mitigation policy. I, for one, am gravely concerned about the loss of irreplaceable agricultural lands to urban sprawl. Accordingly, I am urging your organization to formulate policies that include three stipulations. First, farmland should be preserved at a one to one mitigation, at least. Second, the definition of lands should be expanded to include fallow agricultural lands. Third, timing and fulfillment of mitigation should occur within the proposed three year window.

Thank you for allowing me to express my views in this matter. Please contact me if I can be of further assistance.

Sincerely,

Ben R Martin
49 Showers Dr #A340
Mountain View CA 94040

"Carolyn Straub" <castraub@earthlink.net>

11/29/2006 09:55 PM
Please respond to castraub

To: neelima.palacherla@ceo.sccgov.org
cc:
Subject: To: Santa Clara County LAFCO; Re: New Coyote Valley Proposal

Dear Representative:

We are writing at the urging of our local Sierra Club. We are both members of the Loma Prieta Chapter. We live in south San Jose, and therefore have great interest in future policies concerning the nearby Coyote Valley.

We understand that the Local Area Formation Commission (LAFCO), which approves annexation requests, is proposing a new, detailed agricultural land mitigation policy.

This is a beautiful Coyote Valley. It is the last remnant of what was once - by some residents' standards who were born around 1928 - the "most beautiful place in the world."

We do not have to ruin it.

We want to stress the following points, supported by Sierra Club and us, that must be considered:

- **No less than a 1 to 1 mitigation – that is, that for every acre of agricultural land converted to<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" /> urban uses, an acre of similar land in Santa Clara County must be permanently preserved.**

- Expansion of the definition of lands covered to include fallow agricultural lands.

- The timing and fulfillment of mitigation that must occur within the proposed three-year window.

- LAFCO requiring an open space policy that is equally strong and detailed as the proposed agricultural mitigation policy.

Thank you for your interest.

Sincerely,

Carolyn Straub
Stephen L. McHenry
439 Chateau LaSalle Dr.
San Jose, CA 95111

408-286-8858 (h)

Carolyn Straub
Writer. Editor. Copy Editor. Instructor

Website:

http://home.earthlink.net/~castraub/thecopycleaner/

LAFC of Santa Clara County
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

November 30, 2006

Re: LADC Proposed Agricultural Mitigation Policies

Dear Ms. Palacheria:

I am writing you to provide comments on the proposed agricultural mitigation policies for Santa Clara County. Since the failure of Proposition A to pass, I have been concerned about ensuring the preservation of outlying natural areas and agricultural lands and eliminating sprawl. It is very encouraging that Santa Clara County LAFC is taking strong steps towards preserving our remaining agricultural lands by establishing specific policies.

Santa Clara County does not currently have a policy for preserving open space which is equally important as agricultural lands. Since you are now addressing an agricultural mitigation policy, please consider doing the same for our remaining open spaces.

The Sierra Club, of which I have been a member for over 30 years, has spent considerable time addressing the problem of sprawl in the Santa Clara, San Benito, and San Mateo counties. They strongly recommend the following inclusions for any policy you select for Santa Clara County.

- For every acre of agricultural land converted to urban uses, an acre of similar land in Santa Clara County must be permanently preserved.
- Expand the definition of lands covered to include fallow agricultural lands.
- The timing and fulfillment of mitigation must occur within the proposed three-year window.
- LAFC needs an open space policy that is equally strong and detailed as the proposed agricultural mitigation policy.

The Sierra Club encourages the efficient and wise use of land. Having lived in Santa Clara County since 1953, I have witnessed directly the shrinking of our agricultural and open space lands. Now is the time to lock in a system to protect them before it is too late. Their fate lies in your wise decisions.

Thank you for reading my comments,

Jone Small Manoogian

Jone Small Manoogian
759 Maplewood Place
Palo Alto, CA 94303
650-493-0214
jmanoogs@earthlink.net

Coyote Housing Group, LLC

November 30, 2006

By Mail and By Facsimile

Ms. Neelima Palacherla
Executive Officer
Santa Clara LAFCO
70 West Hedding Street, 11th Floor, East Wing
San Jose, California 95110

Re: Draft LAFCO Agricultural Mitigation Policies

Dear Ms. Palacherla:

The Coyote Housing Group (CHG) and the Home Builders Association of Northern California (HBA) appreciate and support LAFCO's efforts to establish clear policies regarding the loss of prime agricultural land. We further appreciate LAFCO's recent revisions to the proposed policies in response to public comments. However, as stated in our previous letters dated September 26, 2006 and September 7, 2006, we continue to believe that the draft policies exceed LAFCO's legal authority under the Cortese Knox Herzberg Act. In addition, the draft policies would create overly burdensome, impractical, and unnecessary conditions to annexation that are simply infeasible for development projects and local public agencies to satisfy.

In a separate companion letter from the law firm of Morrison and Foerster on behalf of HBA and CHG, we explain why we believe LAFCO's current approach violates state law. For purposes of this letter, we focus our comments on the more practical problems LAFCO's draft policies raise, and make suggestions on alternative approaches that we believe would enable LAFCO to accomplish its desired objectives.

Why is CEQA the better framework for LAFCO to address impacts to prime agricultural land?

CEQA is the better framework for addressing impacts to agricultural lands because it provides a clear statutory means for lead and responsible agencies to impose feasible mitigation measures on development projects to address their environmental impacts. No such framework exists under the Cortese Knox Herzberg Act. Under CEQA, lead agencies, (generally cities and counties) are required to conduct a thorough review of the impacts associated with projects, to fully disclose those impacts to the public, and to impose feasible mitigation measures in consultation with responsible agencies, defined as state and local agencies with the authority to approve or carry out a development project.. In addition to the public and all interested stakeholders, lead agencies are required to consult with and request comments from responsible agencies, such as LAFCO, water districts, state agencies such as the Department of Fish and Game, Caltrans, and Regional

700 Emerson Street • Palo Alto, CA 94301 • Telephone: (650) 614-6227 • Fax: (650) 326-2920

Water Quality Control Boards. Although responsible agencies have more limited authority than lead agencies, they may require changes in a project, where feasible, to lessen or avoid the effect of that part of the project which the responsible agency will be called on to carry out or approve. Responsible agencies are also encouraged to review and comment on EIRs, particularly with respect to additional alternatives or mitigation measures which the responsible agency believes the EIR should induce. If the responsible agency disagrees with the adequacy of the lead agency's EIR, it has several remedies. (See, for example, CEQA Guidelines section 15096.) Both responsible and lead agencies are required to adopt a Mitigation, Monitoring and Reporting Plan which explains how, when, and by whom significant and potentially significant impacts shall be mitigated.

One of the key concepts under CEQA, which is notably missing from LAFCO's draft policies, is "feasibility." In assessing the feasibility of a mitigation measure, the City must consider economic and social factors, along with environmental, legal, and technological factors. (Guidelines 15131.) "Feasibility" under CEQA also encompasses "desirability" to the extent that desirability is based on a reasonable balancing of the relevant economic, social, and technological factors. Sometimes, cities have multiple policy objectives that may or may not always be compatible; for example, the desire to protect open space and agricultural lands and the need for more affordable housing. A lead agency is entitled to evaluate the feasibility of various mitigation measures and project alternatives as they relate to the city's ability to achieve its policy objectives. Responsible agencies may consult with lead agencies on these issues and offer their views, analyses, policies and criteria for project approval. They may also establish their own CEQA Implementing Guidelines that contain their objectives and policies under CEQA.

Through the CEQA process, environmental impacts are identified and feasible mitigation measures are imposed through a collaborative process between lead and responsible agencies. Both lead and responsible agencies must go through a careful balancing act to approve projects that meet their various policy objectives. This balancing act is not an excuse for needlessly creating avoidable impacts; rather, both lead and responsible agencies are required to impose mitigation measures within their authority to impose where feasible.

We believe that LAFCO's proposed policies are quite rigid in that they ignore the concept of feasibility and offer a limited means of acceptable mitigation. This "one size fits all" structure does not conform to the collaborative CEQA model and will needlessly bring LAFCO into conflict with lead agencies and leave no room for alternative or creative proposals that would accomplish LAFCO's goals but perhaps be more feasible. By establishing these policies, LAFCO understandably hopes to avoid a case by case "negotiation" with each applicant. However, the CEQA process is a collaborative process in which LAFCO is not generally a lead land use agency. Its role is to consult in the first instance with the lead agency in the development of feasible mitigation measures

that are appropriate to each project. This does not mean that LAFCO cannot publish its policies and expectations for what constitutes feasible mitigation for the loss of agricultural land. This consultative process allows lead agencies to accommodate growth needs while also protecting sensitive resources.

Delaying the Effective Date of the Boundary Change is Infeasible

We are strongly opposed to LAFCO's proposal to make the effective date of the annexation conditional upon the complete satisfaction of the mitigation requirements, such as full payment of in-lieu fees, or acquisition of agricultural lands or conservation easements. Such a condition is unprecedented, unnecessarily burdensome, and would create significant barriers for the financing of projects and the practical administration and enforcement of projects by cities.

Jurisdictional Limbo

LAFCO's proposed approach of delaying the effective date of annexation based on the satisfaction of its conditions places the land to be annexed in a sort of jurisdictional limbo. The annexing city would have no authority to formally general plan, zone, approve tentative maps, authorize improvements, form assessment districts, or take any official action concerning the land to be annexed until LAFCO's required mitigations were fulfilled. But w*ithout legally effective general plan designations, zoning, tentative maps, or other city-granted approvals establishing development rights in a particular project, a development project does not even legally exist.* Cities cannot *act* on project approvals, much less make their own approvals valid and effective, until the boundary change is effective.

Early financing of agricultural mitigation is not feasible

Investment in development projects occurs incrementally. Step by step, a little bit more money is invested to jump the next hurdle. Investment is commensurate with risk. Prezoning the land is the first step undertaken by a City. The next step is the approval of the annexation and expansion of the urban service boundary. Annexations often involve multiple, even hundreds, of property owners. After annexation occurs, and the City is able to formally GP and zone the land, individual property owners are entitled to come forward with proposals to develop specific parcels. These are typically applications for approval of tentative maps.

However, not all property owners in the annexed area may be ready or interested in developing. Some may not be ready for decades, others may never develop. For those property owners who are ready to develop, individual projects must often go through their own CEQA and community process; a project's size and scope isn't known until the tentative map is finally approved. After this, a developer must then determine if the market is ready and if financing is available to move forward with the project. If financing is available, the developer takes the next step of recording a final map. Still,

even with a final map, a developer may delay grading or building indefinitely for market or other reasons.

Under LAFCO's proposed policies, all of the impact fees must be paid for all of the land expected to be converted before the annexation is final, even though the impacts associated with the conversion may not occur for many years. In the case of multiple property owners, who would pay such fees? There may be some property owners who would like to develop, but because it will take time for infrastructure services to reach their parcels, it may be years before they are able to. How will they get the money to pay for mitigation fees when they will not have the prospect of earning a return on their investment for years to come? Should those who are most ready to develop have to pay for the rest of the property owners who are not?

In its recent workshop, LAFCO staff posed the question, "Can't you just go to the bank and borrow the money?" If only it were that easy. The reality is that no bank or private investor will fund LAFCO's required mitigation until the property owner has secured valid and binding project approvals from the annexing city, and even then, only if the project is financially feasible and economic returns are in sight (i.e., construction is ready to begin). Property owners would be caught in a kind of "Catch 22"; they cannot obtain financing until they have all the necessary regulatory agency approvals in hand, but they cannot get approval of one of the most critical regulatory approvals - the boundary change - until they have funded the mitigation.

For the above reasons, it is standard in the land use industry for impact fees and other financial commitments to be paid more proximately to the time of actual development.

How does LAFCO ensure that its mitigation measures are enforced?

LAFCO Staff is concerned that once annexation is granted, LAFCO has no further jurisdiction or authority to enforce mitigation measures. This is not true. Both lead and responsible agencies have on-going jurisdiction to enforce mitigation measures imposed as a condition of their project approval. Further, although it is the standard in the regulation of land use projects, it appears LAFCO is not comfortable delegating enforcement authority to lead agencies. Frankly, we are at a loss to understand why LAFCO cannot accept the same enforcement mechanisms that are provided for under CEQA, and which are commonly used by regulatory agencies throughout California to impose mitigation.

LAFCO's concern about approving a boundary change before mitigation is complete is not, in our view, well-founded.[1] CEQA addresses the implementation and performance of

[1] Longtin's California Land Use suggests that if a condition "is important *to the operation of an affected agency*, the commission should be careful to structure the approved proposal so that the performance would be a condition precedent to the conduct of proceeding by the conducting authority . . . so there is sufficient time for the condition to be fulfilled prior to the conducting authorities proceedings. (Longtin, California Land Use at 7.53. p. 732.) Staff appears to argue that Mr. Longtin's suggestion provides authority to

mitigation measures through two mechanisms. First, CEQA requires that mitigation measures be adopted as "enforceable conditions of approval, agreements or other measures." (Pub. Res. Code § 21081.6(b) and CEQA Guidelines § 15091(d).) Accordingly, cities and counties attach mitigation measures to their legislative land use approvals. However, a developer's failure to adhere to a mitigation measure does not invalidate the general plan designation or the zoning. Rather, if mitigation is not completed, suit may be filed to enforce the condition (*Stone v. Board of Supervisors* (1988) 205 Cal.App.3d 927.), or the public agency may require a bond or other form of security that it can use in case of default.

CEQA's second mechanism to enforce compliance with mitigation measures is the requirement that each lead and responsible agency adopt a Mitigation Monitoring and Reporting Program (MMRP). (Pub. Res. Code § 21081.6; CEQA Guidelines § 15097(a).) The Guidelines explain that:

> "In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program."

Commonly, responsible agencies ask lead agencies to assist in the enforcement of mitigation measures at the grading or building permit stage. The grading or building permit is generally a gate-keeping milestone in the development process at which

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require fulfillment of environmental mitigation prior to the effectiveness of the boundary change. We disagree. First, Mr. Longtin is referring to conditions that are in fact authorized by the CKH, which, he explains, mostly "relate to financial matters concerning the affected agencies" (*id.*) not to environmental mitigation measures governed by CEQA. (Mr. Longtin's observation supports our view that the kinds of terms and conditions authorized by section 56886 do not extend to environmental mitigation.) Further, Mr. Longtin suggests that delayed effectiveness of the approval should be considered as an option where the fulfillment of conditions is "important to the operation of an affected agency," not as a mechanism to reduce enforcement responsibilities. Mitigation for the loss of agricultural land is not "important for the operation" of either an annexing city or the de-annexing county. Long term protection for existing agricultural land has nothing to do with the operation of government. There is no basis for requiring fulfillment of such a condition before the annexation becomes effective and long before the conversion even occurs.

mitigation fees are paid or other measures are required to be accomplished before permits will be issued.

We encourage LAFCO to adopt the standard practices used by other regulatory agencies, which is to make legislative land use approvals effective immediately, but to secure performance of mitigation measures either by performance bonds, letters of credit, recorded agreement or some "gate-keeping" event like the issuance of final maps, grading or building permits.

What's the Rush? LAFCO Should Delay Action on the Proposal

Staff's current draft proposal – though well intended - is flawed and therefore is not yet ready for adoption. We are concerned that LAFCO seems to be in such a hurry to put these policies in place that LAFCO will make mistakes that undermine its ability to achieve its objectives. We note that the Sacramento LAFCO has been working on its agricultural policies for over three years, and has encountered many of the same objections LAFCO is facing here. Even the Yolo LAFCO, which Staff cites as precedent for its mitigation policies, spent over two years working collaboratively with the affected public agencies before it eventually reached consensus. (We believe, however, that Yolo's policies suffer from the same legal defects as the policies Santa Clara LAFCO is now considering.)

In order to allow LAFCO to achieve its goal of establishing policies for adequate and feasible mitigation for the conversion of prime agricultural land within the framework of applicable law, we propose that LAFCO take the following steps:

- Slow down and reframe its process into one that is collaborative and affords the time necessary for affected public agencies and stakeholders to work through the very real and challenging issues associated with this type of policy.

- Conform the "preamble language" to the Legislature's findings on LAFCO's mission in Section 56001 of the Government Code, which includes "encouraging orderly growth and development."

- Link LAFCO's policy to CEQA, which is the proper context for imposing mitigation on development projects under California law.

- Use CEQA's definition of "prime agricultural land."

- Introduce the concepts of "significance" and "feasibility" as they are applied under CEQA.

- Provide additional flexibility in the types, location and timing of the agricultural mitigation. Satisfaction of the mitigation requirements should

be more closely linked to the timing of actual impacts (e.g., building permits).

- Revise the policies to allow for the annexation to become effective immediately with evidence of enforceable mitigation measures, such as the adoption of a Mitigation, Monitoring and Reporting Plan by the Lead Agency pursuant to CEQA, and/or the provision of security for the performance of the obligation.

- Provide additional language to ensure that the implementation of the policies is feasible for projects with long build-out scenarios, multiple permits, and complex financing.

As we have expressed on several occasions, we want to work with LAFCO to establish a legally valid and practical policy. Thank you for your consideration and allowing us to comment on the draft policies.

Sincerely,

Kerry M. Williams,
President
Coyote Housing Group, LLC

Paul Campos
Vice President & General Counsel
Homebuilders Association of
Northern California

cc: Joseph Horwedel, Planning Director, City of San Jose
Kathy Molloy Previsich, Planning Director, City of Morgan Hill
William Faus, Planning Director, City of Gilroy

Andrew Chao
<androchaos@yahoo.com>

12/02/2006 04:08 PM

To: neelima.palacherla@ceo.sccgov.org, mbeasley@greenbelt.org
cc:
Subject: Agricultural mitigation policy

Dear Ms. Palacherla,

As a resident of Santa Clara County for 18 years, and a member of the Greenbelt Alliance, I urge that LAFCO endorse 1-to-1 mitigation for agricultural land preservation, including coverage of fallow agricultural lands; with mitigation to occur within the proposed three year window.

The proximity of agricultural to urban areas was one of the original attractions that led me to relocate here from the Los Angeles area, and I hope to see that quality preserved for future generations.

Andrew Chao, M.D.
3617 Cour de Jeune
San Jose 95148

"John S. Perkins"
<perkinsjm@sbcglobal.net>

12/03/2006 02:43 PM

To: neelima.palacherla@ceo.sccgov.org
cc:
Subject:

Dear Ms. Palacherla:

As a resident of Santa Clara County for more than 52 years, I have watched our agricultural heritage lose out to poorly planned development. Once gone, farmland is usually lost forever, a terrible outcome for an irreplaceable resource. The only way we can stop this decline is to insist upon more efficient use of land by having our communities grow up and not out. And in many cases it is essential that we have appropriate mitigation regulations in place first. To achieve this, I strongly urge LAFCO to adopt the following policies as recommended by the Greenbelt Alliance, of which I am a member:

- Ensure that there be one-to-one mitigation. This means that for every acre of farmland lost to development, another acre of similar land must be preserved within Santa Clara County.
- Expand the definition of lands covered to include fallow agricultural lands.
- Ensure that timing and fulfillment of mitigation occurs within the proposed three-year window.

Thank you for your serious consideration of these measures.

John S. Perkins
620 Sand Hill Road #304F
Palo Alto, CA 94304

John Cordes
<johncordes@yahoo.com>

12/03/2006 11:20 AM

To: neelima.palacherla@ceo.sccgov.org
cc:
Subject: Comments on Lafco ag & openspace Policy

Hello Neelima,

As a Sierra Club member, I support

- No less than a 1 to 1 mitigation – for every acre of agricultural land converted to

urban uses an acre of similar land in Santa Clara County must be permanently preserved

- Expand the definition of lands covered to include fallow agricultural lands.
- The timing and fulfillment of mitigation must occur within the proposed three year

window.

- LAFCO needs an open space policy that is equally strong and detailed as the

proposed agricultural mitigation policy.

Mr. John G. Cordes
PO Box 64394
Sunnyvale, Ca 94088-4394
johncordes@yahoo.com

Mike Kahn
<mike@kahncious.net
>

12/04/2006 11:50 PM

To: neelima.palacherla@ceo.sccgov.org
cc: mbeasley@greenbelt.org
Subject: Save Santa Clara County Farmlands

Hi Neelima,

I am contacting you and LAFCO in support of farmland preservation and sprawl prevention. I am a native of Santa Clara County and I am very concerned about the longterm quality of life in this area. I am also a Greenbelt Alliance supporter and I agree with their recommendations including the following three important points:

* No less than 1 to 1 mitigation should occur. This means that for every acre of farmland lost to development, another acre of similar land must be preserved in Santa Clara County.
* Expand the definition of lands covered to include fallow agricultural lands.
* The timing and fulfillment of mitigation must occur within the proposed three year window.

Thank you for your time and consideration. May you help leave a lasting legacy in Santa Clara County.

Sincerely,
Mike

Mike Kahn
511 Walker Dr. #4 (no mail please)
Mountain View, CA 94043
mike@kahncious.net
650-269-1264 cell

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SHANGHAI, HONG KONG,
SINGAPORE, BRUSSELS

December 5, 2006

Writer's Direct Contact
415.268.7248
AMudge@mofo.com

By UPS Overnight Delivery and E-Mail

Neelima Palacherla
Executive Officer
LAFCO of Santa Clara County
70 West Hedding Street, 11th Floor, East Wing
San Jose, California 95110

Re: Draft LAFCO Agricultural Mitigation Policies

Dear Ms. Palacherla:

On behalf of the Coyote Housing Group (CHG), and the Home Builders Association of Northern California (HBA), we are writing to address some of the legal problems that we believe exist in Santa Clara County LAFCO's draft Agricultural Mitigation Policies. This is a companion letter to a letter written by Kerry Williams of CHG and Paul Campos of HBA dated November 30, 2006 that addresses some of the policy issues.

We have already discussed many of these issues with you and your staff in meetings at your office. We appreciate the time you have taken to hear our concerns. As we have expressed on several occasions, we want to work with LAFCO to establish a legally valid and practical policy. Our overarching concern is that the proposed policy does not conform to the framework of applicable law.

A. LAFCO's Authority to Adopt Mitigation Policies

We appreciate and agree with many of the edits staff made in the revised draft. In particular, we agree with the proposed amendments to encourage, but not require, cities to enact policies to protect agricultural lands. However, we continue to disagree that the Cortese-Knox Herzberg (CKH) Act authorizes LAFCO to impose environmental mitigation as a condition of a boundary change. Coyote Housing Group and HBA are not alone in reaching this legal conclusion. Similar comments have been raised by representatives of the cities of San Jose,

Gilroy and Morgan Hill.[1] Counsel for Ventura County's LAFCO has reached a similar conclusion and has advised his client that LAFCO lacks authority to impose such mitigation. (See attached opinion letter from Leroy Smith, Chief Assistant County Counsel, County of Ventura, March 8, 2006, Exhibit A.)

1. Staff's Legal Position Improperly Relies On Government Code Section 56886(h) And Misconstrues CKH's Prohibitions On Land Use Regulation.

LAFCO's most recent staff report (dated October 4, 2006) takes the position that Government Code section 56886(h), which allows conditions related to "the acquisition, improvement, disposition, sale, transfer or division of any real property or personal," authorizes LAFCO to require mitigation for the conversion of prime agricultural land under the CKH. With respect to CKH's prohibition on terms and conditions that "directly regulate land use, property development or subdivision requirements" (*see* Gov't Code §§ 56375(a) and 56886), staff says its proposed policy only *indirectly* regulates land use or property development. (*Id.*) Distinguishing mitigation from "most" forms of land use regulation (such as the adoption of general plans or zoning designations), staff argues that "the Draft Policies do not require LAFCO to impose a particular land use designation on any property; the policies simply require the permanent protection of lands that are already planned or designated for agriculture." Staff concludes that the agricultural mitigation requirements "may influence or impact land use but they do not directly regulate land use." (Staff Report dated October 4, 2006.)

2. Section 56886 is Limited in Scope and Does Not Authorize Mitigation.

Section 56886(h) does not give LAFCO mitigation powers under the CKH. First, the broad and general terms of section 56886(h) do not authorize mitigation for agricultural land conversion. As noted above, section 56886(h) allows terms and conditions related to "the acquisition, improvement, disposition, sale, transfer or division of any real property or personal." While we have not located any cases interpreting this section, standard rules of statutory construction require that this section be construed based on the plain meaning of the words used, their relationship to surrounding subsections and in light of the overall purpose of the statute. (*Roberts v. City of Palmdale* (1993) 5 Cal. 4th 363, 376 ["Legislature's intent is best deciphered by giving words their plain meanings."]; *People v. Woodhead* (1987) 43 Cal. 3d 1002, 1009 ["A statute must be construed 'in the context of the entire statutory

[1] See in particular, City of San Jose's letter dated September 13, 2006 at p. 1 in which City representatives observe that "the City is not aware of any independent authority granted to LAFCO under the Cortese-Knox Herzberg Act or otherwise to adopt agricultural mitigation policies or requirements in which all municipalities must adhere."

system of which it is a part, in order to achieve harmony among the parts.'"]; *Parris v. Zolin* (1996) 12 Cal.4th 839, 845 [statutory interpretation requires "ascertaining the intent of the Legislature in order to carry out the purpose of the law."].)

On its face, section 56886(h) does not mention environmental mitigation and nothing in the surrounding subsections suggests that section 56886 was intended to address environmental mitigation. Rather, the terms and conditions enumerated in section 56886(h) and surrounding subsections relate to financial and operational impacts of boundary changes. Had the Legislature wanted section 56886(h) to provide LAFCO with authority to impose environmental mitigation measures, we believe it would have said so expressly.[2] While the language "acquisition of real property" is broad, we do not believe the Legislature intended to allow conditions related to acquisition of property for any purpose whatsoever, but rather only for purposes related to the logical formation and determination of local agency boundaries.

In marked contrast to the CKH, furthermore, the Legislature repeatedly refers to the authority, indeed duty, of public agencies to impose feasible mitigation for the significant environmental impacts of development projects *in CEQA*. (*See, e.g.*, Pub. Res. Code §§ 21002, 21002.1(a), 21002.1(c), 21003(c), 21003(f), 21003.1(a), 21003.1(b), 21004, 21064.5, 21080 (f), 21080.1, 21081(a), 21081.6, 21082, 21091.) CEQA even contains a provision ensuring that impacts arising out of "agricultural land conversions" are considered in the environmental review process. (Pub. Res. Code § 21095.)

No such provisions exist in the CKH. Interpreting section 56886(h) to allow acquisition of land for environmental mitigation requires the reader to supply terms that simply are not there. That is prohibited under accepted rules of statutory construction. (*Edgar O. v. Superior Court* (2000) 84 Cal. App. 4th 13, 18 ["Canons of statutory construction prohibit . . . inserting words into a statute under the guise of statutory interpretation."].) CKH itself cautions that certain of its provisions regarding conditions on annexations "shall not be construed as authorizing a commission to impose any conditions which it is not otherwise authorized to impose." (Gov't Code § 56376.5.)

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[2] This conclusion can be drawn by the Legislature's use of the term "mitigate" in other sections of the CKH. For example, section 56815 allows LAFCO to impose on an incorporation "any terms and conditions that mitigate the negative fiscal effect of a proposal . . ." Similarly, section 56376 provides that "the Commission shall not impose a condition for the provision of services by the annexing city to an area which has not been placed within that city's adopted sphere of influence . . . unless than condition would mitigate effects which are the direct result of the annexation." The concept of mitigation is absent from section 56886.

The meaning of section 56886(h) should also be interpreted in light of LAFCO's primary mission, which is to "encourage orderly growth and development which are essential to the social, fiscal and economic well-being of the state . . . [through] the logical formation and determination of local agency boundaries . . ." (Gov't Code § 56001.) While LAFCO may "consider" the effect of proposed annexations on agricultural land (Gov't Code §§ 56377, 56668(e)), LAFCO's primary mission is not environmental protection, or protection of long term agricultural viability. Other statewide laws address environmental and agricultural protection, including the California Environmental Quality Act (CEQA) and the Williamson Act. Given LAFCO's core mission to bring order and logic to the formation and boundaries of local government, it is not reasonable to stretch "sale, acquisition, transfer, and division" to include mitigation of environmental impacts in the absence of a more specific language calling for such an interpretation.

3. Permanent Protection of Agricultural Land Is Prohibited By Sections 56375 and 56886.

In all events, staff's proposed mitigation policy is a direct form of land use regulation and therefore prohibited by sections 56375(a) and 56886. By staff's own description, the policy would "require the permanent protection of lands that are already planned or designated for agriculture" (Staff Report, October 4, 2006), freezing existing agricultural lands in perpetual agricultural use. LAFCO's policy would thus require that existing agricultural land be used in a particular manner and restricted from development *forever*. We can hardly imagine a more direct form of regulation of land use and property development.

Staff's attempt to distinguish its policy from "conventional" forms of land use regulation, such as general plan designations or zoning, is not persuasive. In fact, LAFCO's policy would act as a form of super-zoning in perpetuity for agricultural lands. Conventional land use regulation by cities and counties is at least subject to change. CKH's prohibition applies to all forms of direct regulation of land use or property development, not just "conventional" forms. Any term or condition that permanently restricts land to agricultural use and prohibits other development is prohibited.

In summary, not only does the plain language of section 56886(h) fail to support (or even suggest) the power to require permanent use restrictions on agricultural land, sections 56375(a) and 56886 expressly prohibit measures that permanently restrict the use and development of land, agricultural or otherwise. As recognized by these power-limited sections of the CKH, the authority to direct the *use and development* of land falls squarely and exclusively within the police power jurisdiction of *the cities or counties*. (*See* generally D. Curtin, California Land Use and Planning Law, (Solano Press, 6th ed. 2006), p. 1: "The legal basis for all land use regulation *is the police power of the city [and county]* to protect

the public health, safety and welfare of its residents." [Emphasis added.])[3] LAFCO simply lacks the power under the CKH to impose this kind of restriction on the use of property.

4. Agricultural Mitigation Can Only Be Imposed By Lead Agencies Through CEQA.

In contrast, the Legislature has, through CEQA, expressly authorized lead agencies to impose feasible mitigation measures to address the significant environmental impacts of "projects" subject to CEQA. (*See, e.g.*, Pub. Res. Code §§ 21002, 21002.1(a), 21002.1(c), 21003(c), 21003(f), 21003.1(a), 21003.1(b), 21004, 21064.5, 21080 (f), 21080.1, 21081(a), 21081.6, 21082, 21091.) Boundary changes approved by LAFCO are, of course, "projects" pursuant to CEQA. As recognized by the legal counsel for Ventura County's LAFCO, however, LAFCO's mitigation powers under CEQA are only as broad as its powers under the CKH. CEQA does not provide agencies with authority to impose mitigation measures they do not otherwise have under other laws. (Pub. Res. Code section 21004.) In light of the prohibition under the CKH for conditions that directly regulate land use, LAFCO lacks power under CEQA to do what it cannot do under CKH.

5. Ventura LAFCO Draft Policies Acknowledge Limits to LAFCO's Authority to Impose Mitigation

As noted, Ventura County's LAFCO has been reviewing this issue and has been advised by its counsel that it lacks authority to impose mitigation to address agricultural conversions under either the CKH or CEQA. See Memorandum from Chief Assistant County Counsel Leroy Smith dated March 8, 2006, attached as Exhibit A. In that Memorandum, Mr. Smith concludes, and we agree, that:

1. There is no specific or implied statutory authority for LAFCO to impose agricultural mitigation as a condition of a boundary change.

2. There are specific provisions of the CHK that prohibit conditions that directly regulate land use.

3. LAFCO's statutory purpose does not include regulation of land use.

4. CEQA only authorizes mitigation measures within LAFCO's statutory powers.

[3] Locally adopted policies purporting to give Santa Clara LAFCO "mitigation authority" do not expand its legislatively mandated powers.

Based on these limitations, Ventura LAFCO has recognized that its role on this issue is to act as a CEQA responsible agency. As explained in their staff report dated March 15, 2006:

> "In these situations, LAFCO takes the role as a responsible agency under CEQA, which ultimately requires us to adopt the analyses as presented in the environmental documents prepared by lead agencies. . . . LAFCO law contains no express authority for LAFCO to regulate land uses through directly imposed conditions of approval. Thus, short of LAFCO's authority to deny a boundary change proposal it determines to be plainly unacceptable in terms of the resultant degree of impact to agricultural land resources, LAFCO does not have the ability to require changes in the design of a development project or impose mitigation measures to minimize potential agricultural/urban interface conflicts or compensate for the conversion of prime farmland."

(Staff Report dated March 15, 2006 attached as Exhibit B, see also Exhibits C and D, copies of Ventura's draft policy and a Frequently Asked Questions memo.) We agree with the Ventura LAFCO that a LAFCO's authority is limited to that of a responsible agency under CEQA. It must look to the lead agency to impose mitigation related to land use.

B. Delay of Effective Date of Boundary Change

Given LAFCO's lack of authority to directly impose mitigation measures to protect agricultural land, it follows that it lacks authority to make boundary changes only conditionally effective until mitigation is implemented. In addition, even if LAFCO had the authority to condition the annexation upon the satisfaction of certain mitigation measures, which it does not, the proposed delay in the effective date of the boundary presents serious problems for cities and property owners which are described in CHG's and HBA's letter dated November 30, 2006.

C. Constitutional Nexus

Finally, if LAFCO were to try to enforce a policy of delayed effectiveness of annexation through lead agency-imposed mitigation, such a measure would fail constitutional nexus requirements. (*Nollan v. California Coastal Commission* (1987) 438 US 825 (requiring subject matter nexus between a condition and a development project); *Dolan v. City of Tigard* (1994) 512 U.S. 374 (requiring rough proportionality between a condition and development project.) Broadly stated, conditions of approval may only be imposed on a

development project if they are reasonable and there exists a sufficient nexus between the conditions imposed and the projected burden of the proposed development.

Staff's proposed timing fails the nexus test because satisfaction of the condition is required whether or not conversion actually occurs, and in all events, long before the impact occurs. The approval of a boundary change may, but does not ineluctably lead to conversion of prime agricultural land. For example, a city could seek annexation of adjacent farmland for the development of a residential project. After annexation, however, market conditions could change, the developer could delay the project for several years, or sell the land. A new owner could decide to leave some of the acres in agricultural use within the city limits. Under staff's proposed timing, the proponent of the original development would be required to pay for 1:1 mitigation for all of the acreage before the annexation could even become effective, long before conversion actually takes place, and without guarantee that conversion will occur at all.

D. Compliance with CEQA

We are also share a concern raised by others that the environmental impacts of LAFCO's proposed policy have themselves not been adequately addressed under CEQA as is required under that act. In its "Proposed CEQA Analysis for Adopting LAFCO's Agricultural Mitigation Policies" staff asserts that, with respect to the continuation of agricultural activities on land already in agriculture, its proposal is categorically exempt from CEQA. With respect to the establishment of new agricultural uses on lands not currently in agriculture, it asserts that the County's 1994 EIR for its General Plan Update analyzed such impacts.

We believe neither statement is true. If it could legally be adopted, LAFCO's policy would likely intensify agricultural uses on restricted lands. If land were *permanently* restricted as agricultural lands, owners are more likely to attempt to plant and harvest more aggressively as they will never be able to realize value from the land by urban development. More intense agricultural uses are likely to have environmental impacts that are more intense than a mere continuation of existing, lower intensity uses. As the County develops, more intensive agricultural uses are also likely to take place closer to existing and future urban areas, potentially creating more land use conflicts between the urban edge and agricultural lands.

Second, we are skeptical as to the extent to which the 1994 EIR for the County's General Plan anticipated the establishment of agricultural uses on lands not *now* used for agriculture, or accurately and specifically disclosed the environmental impacts of such uses. For example, if this policy is adopted, fallow land that is currently designated agricultural land may be encouraged to be used for agricultural purposes. The potential loss of habitat on such

fallow land is a reasonably foreseeable consequence of such a policy. This potential loss is not analyzed or disclosed in the 1994 EIR.

Finally, it is also reasonably foreseeable that one of the long term environmental consequences of such a policy is the displacement of development to other cities and counties. The environmental effects of such displacement and the resulting transportation, air quality, biological and other impacts, requires analysis and disclosure in a CEQA document. The County's 1994 EIR did not anticipate this impact.

In summary, we believe LAFCO's approach is legally flawed and that much more detailed disclosure of potentially significant environmental impacts is required before this policy can be adopted.

E. LAFCO Should Delay Action on the Proposal

For the above described reasons, Staff's current draft proposal is not ready yet for adoption. It requires substantial revision to adjust the policies to conform to LAFCO's proper authority, to place them within the CEQA framework as a responsible agency, and for the commission to itself comply with CEQA in adopting such a policy.

Therefore, we respectfully request that LAFCO delay any final decision or action on the Draft Policies until the appropriate changes have been made to ensure that the policies are legally valid, practical and that they can be reasonably implemented by cities and property owners. Given the complexity of the issues involved and the importance of these policies to the region, we believe your efforts would benefit from more time spent on a collaborative basis with the affected local agencies, property owners and stakeholders in order to work through these issues. We are available to assist LAFCO in achieving its goal of establishing policies that provide clear guidance to local agencies and property owners on this important issue.

Sincerely,

Anne E. Mudge

AEM:raa
Enclosures
cc: Paul Campos, HBA
Kerry Williams, Coyote Housing Group

Exhibit A

Exhibit A

MEMORANDUM
COUNTY OF VENTURA
COUNTY COUNSEL'S OFFICE

March 8, 2006

TO: Everett Millais, Executive Officer, Local Agency Formation Commission

FROM: Leroy Smith, Chief Assistant County Counsel

RE: CONDITIONING ANNEXATION APPROVALS TO PRESERVE AGRICULTURAL OR OPEN SPACE

Attention: Kim Uhlich, Senior Analyst

ISSUE

Does the Ventura County Local Agency Formation Commission (LAFCO) have the authority to impose conditions on certain boundary change approvals to require that buffers (set backs) be provided to protect adjacent agricultural or open space lands?

CONCLUSION

LAFCO does not have the authority to impose conditions that directly regulate land use, property development, or subdivision requirements. Because buffer requirements would directly regulate the use of land, LAFCO cannot impose them as a condition of approving a boundary change.

DISCUSSION

1. No Specific or Implied Grant of Authority Has Been Given.

Cities and counties possess the full scope of the police power under article XI, section 7, of the California Constitution. The police power includes the power to regulate land use, through methods such as zoning and the imposition of mitigation measures on discretionary project approvals. (*Scrutton v. County of Sacramento* (1969) 275 Cal.App.2d 412, 419-421.) Local agency formation commissions (commissions), in contrast, are bodies of special and limited jurisdiction. They are creatures of the Legislature and they have only those express (or necessarily implied) powers which are

specifically granted to them by statute. (*City of Ceres v. City of Modesto* (1969) 274 Cal.App.2d 545, 550.)

LAFCO's statutory authority is set forth in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (the Act) (Gov. Code, § 56000 et seq.)[1/] The Act clearly provides no express authority for LAFCO to impose buffers or set backs as a condition of approving boundary changes. Thus, if such a power exists, it can only exist by necessary implication. While no court has decided this precise issue, it is unlikely that a court would find that commissions have such implied powers.

The doctrine of implied powers has limitations.

> "'It cannot be invoked where the grant of express powers clearly excludes the exercise of others, or where the claimed power is incompatible with, or outside the scope of, the express power. For a power to be justified under the doctrine, it must be essential to the declared objects and purposes of the enabling act - not simply convenient, but indispensable. Any reasonable doubt concerning the existence of the power is to be resolved against the agency.' (2 Cal.Jur.3d, Administrative Law, § 39, pp. 257-258.)" (*Addison v. Department of Motor Vehicles* (1977) 69 Cal.App.3d 486, 498.)

Far from implying that commissions have the power to impose land use conditions like buffers and set backs, the Legislature has made it clear that commissions do not possess that kind of authority. (See *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 284.) For example, Government Code section 56375 which is the principal statute establishing commission powers provides that:

> "A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements." (§ 56375, subd. (a)(3).)

[1/] All code or section references are to the Government Code unless otherwise indicated.

As to conditions in particular, section 56886 lists a number of allowable conditions, and states that "Any change of organization or reorganization may provide for, or be made subject to one or more of, the following conditions." It explicitly provides, however, that "none of the following terms and conditions shall directly regulate land use, property development, or subdivision requirements." The statutorily authorized conditions generally relate to fiscal, tax, governance and service issues; none can be fairly read to authorize land use conditions, such as buffers.

Where the Legislature has emphasized that certain conditions cannot be imposed, it has attempted to ensure that commissions do not construe those limitations as authority to impose other types of conditions by negative implication. For example, the Legislature clarified that commissions shall not impose any conditions with respect to the maintenance of roads, or which require a local agency to improve an existing public facility that it does not own. (§ 56376.5, subds. (a), (b).) In the same statute, the Legislature provided that "This section shall not be construed as authorizing a commission to impose any conditions which it is not otherwise authorized to impose." (§ 56376.5, subd. (c).)

2. <u>The Legislature's Expression of LAFCO's Purposes Does Not Authorize Land Use Conditions.</u>

The overall purposes of the Act are set forth in section 56001. As relevant here, that section provides as follows:

> "The Legislature finds and declares that it is the policy of the state to encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state. The Legislature recognizes that the logical formation and determination of local agency boundaries is an important factor in promoting orderly development and in balancing that development with sometimes competing state interests of discouraging urban sprawl, preserving open-space and prime agricultural lands, and efficiently extending government services. The Legislature also recognizes that providing housing for persons and families of all incomes is an important factor in promoting orderly development. Therefore, the Legislature further finds and declares that this policy should be effected by the logical formation and modification of the boundaries

> of local agencies, with a preference granted to accommodating additional growth within, or through the expansion of, the boundaries of those local agencies which can best accommodate and provide necessary governmental services and housing for persons and families of all incomes in the most efficient manner feasible."

Your written opinion request refers to LAFCO's mandate to preserve agricultural and open space lands, raising the question of whether that might be the source of the power to impose mitigation measures like buffers. The Act, however, does not mandate that commissions preserve agricultural and open space lands. The express intent of the Legislature, consistent with the above-quoted findings and policies, is that each commission shall "exercise its powers . . . in a manner . . . that encourages and provides planned, well-ordered, efficient urban development patterns *with appropriate consideration* of preserving open-space and agricultural lands within those patterns." (§ 56300, subd. (a); emphasis added.) To be sure, the preservation of agricultural and open space lands is an extremely important consideration for LAFCO. And under some circumstances the Act expressly requires that LAFCO give priority to guiding development away from prime agricultural lands in open-space use. (§ 56377, subd. (a).) The Ventura LAFCO's policies substantially advance the legislative purpose expressed in the Act. But LAFCO must fulfill its duties by using its considerable power to disapprove or approve boundary changes, with allowable conditions, not through the direct regulation of land use.

Although there is no case law directly on point, analogous authority exists with respect to similar limited jurisdiction public entities. For example, air pollution control districts, like commissions, are creatures of statute and possess only those powers expressly granted or necessarily implied. Such districts are empowered to adopt regulations designed to reduce emissions from indirect sources of air pollution (i.e., parking facilities that attract mobile sources of pollution). (Health & Saf. Code, § 40716.) And they, like commissions, are statutorily prohibited from directly regulating land use. (*Ibid.*) The California Attorney General opined that given these limitations, districts have no power to require permits from indirect sources of air pollution, despite their broad authority to regulate indirect sources of pollution, because such regulation would deprive the cities and counties of the authority to approve or disapprove the use of land. (76 Ops.Cal.Atty.Gen. 11 (1993).) Attorney General opinions are not binding, but they are accorded great respect by the courts. (*Wenke v. Hitchcock* (1972) 6 Cal.3d 746,

751-752.) The principles expressed in the Attorney General opinion seem to be equally applicable here.

3. <u>The California Environmental Quality Act Authorizes Only Those Mitigation Measures Within LAFCO's Statutory Powers.</u>

The California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) does not itself grant additional legal authority to public agencies. Public Resources Code section 21004 provides that:

> "In mitigating or avoiding a significant effect of a project on the environment, a public agency may exercise only those express or implied powers provided by law other than this division. However, a public agency may use discretionary powers provided by such other law for the purpose of mitigating or avoiding a significant effect on the environment subject to the express or implied constraints or limitations that may be provided by law."

(See, also, § 15040 of the Guidelines for California Environmental Quality Act, Cal. Code Regs., tit. 14, ch. 3.)

Because neither the Act nor CEQA expressly or impliedly grant LAFCO the authority to impose land use conditions, there is no reasonable basis to conclude that the two statutory schemes somehow combine to create such authority. Of course, LAFCO should consider CEQA and the environmental information produced in the CEQA process when making its determinations to approve, disapprove or conditionally approve organizations or reorganizations.

Please feel free to call me at 654-2697 if you have any other questions or comments concerning this matter.

LS:csb

LAFCO/buffers wpd

Exhibit B

Ventura
Local Agency Formation Commission

STAFF REPORT

Meeting Date: March 15, 2006

Agenda Item 12

TO: LAFCO Commissioners

FROM: Kim Uhlich, Senior Analyst KU

SUBJECT: Status Report on Agricultural Buffers and Mitigation for Loss of Agricultural Lands

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Background: Agricultural Buffers & Mitigation for Loss of Agricultural Lands
When it initially created LAFCOs in 1963, part of the Legislature's intent was to limit premature conversion and loss of California's open space and agricultural lands by guiding development toward vacant urban land. Various provisions of LAFCO law support this intent by requiring LAFCO's to consider, among other factors, the effect of proposals for boundary changes on agricultural and open space lands (Cal. Gov't Code Sections 56375, 56377 and 56668). The Ventura LAFCO has also adopted local standards that identify a number of factors related to premature development of agricultural areas that should be considered when reviewing annexation proposals.

As part of the Work Plan in LAFCO's adopted FY 2005-06 budget, the Commission directed staff to draft potential revisions to the Commissioner's Handbook that address agricultural buffer policies. As a precursor to this action, staff wishes to take this opportunity to update the Commission on a number of agriculture-related issues that impact LAFCO's obligation to consider the effect of boundary change proposals on agricultural and open space lands.

Recent County of Ventura Actions Designed to Protect Agricultural Resources
One of the common issues faced by LAFCOs, cities and counties alike is how to alleviate potential conflicts when urban uses are developed adjacent to agricultural operations. This can be a particular concern at the "agricultural/urban interface", which is a term that describes a geographic area in which urban land uses are directly contiguous to agricultural land. Agricultural/urban interfaces tend to be particularly abrupt along city/county boundaries. At this time, no city in Ventura County requires the establishment of agricultural buffers for urban development projects proposed to be located at the agricultural/urban interface. However, the County has been addressing

this issue for a number of years and continues to work at strengthening their buffer requirements.

At their February 28, 2006 meeting, the Board of Supervisors directed the County Planning Department to process an amendment to the Non-Coastal Zoning Ordinance to require agricultural buffers for discretionary projects. The purpose of the Board action is formalize the County's current practice of requiring buffers for discretionary development projects located adjacent to agricultural uses on agriculturally zoned land by making it part of the County Zoning Ordinance. County Planning staff are uncertain at this time as to when this item will be ready to take back to the Board for final action, but LAFCO staff will inform the Commission when it occurs.

The County's pending action would obviously not apply to development projects on parcels located inside city boundaries adjacent to unincorporated farmland. While city representatives often agree that it is a good land use practice to create buffers, they usually assert that the land necessary to create them should be taken from the agricultural property remaining within the unincorporated areas as opposed to being removed from property within city boundaries Naturally, agricultural operators disagree and various agencies responsible for preservation of agricultural land usually adopt the opposite viewpoint

Another issue closely related to the buffer question concerns mitigation for the loss of agricultural land converted to nonagricultural uses At this time, neither the County nor any city in Ventura County requires any form of mitigation for conversion of agricultural land to nonagricultural uses However, there may soon be some change with respect to mitigation for loss of farmland at the County level. Based on a preliminary decision made by the Board of Supervisors at their February 28th meeting, the Board has agreed to decide, on a date yet to be announced, whether to direct County Planning staff to analyze the feasibility of enacting either a general plan amendment and/or an ordinance to initiate a farmland conversion mitigation program Such a program would likely require compensatory mitigation on an acre for acre basis from developers of discretionary projects that convert agricultural land to non-agricultural uses Examples of how this mitigation requirement could be satisfied include granting of, or payment of in lieu fees for, agricultural easements, deed restrictions, or some other similar means of conservation through a program managed by a public or private agricultural land trust The exact ratios and mitigation fee amounts that might be feasible would require additional analysis and discussion LAFCO staff will continue to follow the progress of this issue as it continues through the County's process and will plan to participate in ongoing policy discussions throughout the County as they might occur in the future

LAFCO as a CEQA Responsible Agency

For boundary change proposals involving potentially significant impacts to agricultural resources, most of the analysis is performed by the agency making the proposal in

conjunction with its role as lead agency as mandated by the California Environmental Quality Act (CEQA). In these situations, LAFCO takes the role as a responsible agency under CEQA, which ultimately requires us to adopt the analyses as presented in the environmental documents prepared by lead agencies. Despite LAFCO staffs' efforts to the contrary as part of our commenting responsibility, it is our opinion that the environmental documents we receive from lead agencies do not always fully analyze potentially feasible mitigation measures to reduce or eliminate significant impacts to agricultural resources As indicated in the section above, this is particularly true with regard to (city) lead agency analyses of the feasibility of requiring agricultural buffers and mitigation to compensate for direct losses associated with converting prime agricultural land to non-agricultural uses. Rather than performing a thorough analyses of potential mitigation measures as required by CEQA, lead agencies tend to adopt statements of overriding considerations, which allows projects to be approved without even partial mitigation for significant impacts

LAFCO's Statutory Authority
Attached is a memo from the Commission's legal counsel in response to a request from LAFCO staff to clarify the extent of authority LAFCOs have to impose land use or development conditions on boundary change approvals This question has been posed by staff and Commissioners in a number of contexts over the last few years, including situations related to boundary change proposals that facilitate urban development on or adjacent to prime agricultural land As this memo indicates, LAFCO law contains no express authority for LAFCO to regulate land uses through directly imposed conditions of approval. Thus, short of LAFCO's authority to deny a boundary change proposal that it determines to be plainly unacceptable in terms of the resultant degree of impact to agricultural land resources, LAFCO does not have the ability to require changes in the design of a development project or to impose mitigation measures to minimize potential agricultural/urban interface conflicts or compensate for conversion of prime farmland.

Subsequent LAFCO Actions
Based on the issues discussed above and in the context of LAFCO Counsel's opinion, staff will be preparing recommended changes to the Commissioner's Handbook to bring back to the Commission within the next few months These changes will focus primarily on specific LAFCO expectations for environmental analyses performed by lead agencies to address impacts on agricultural resources. Although such criteria would essentially restate CEQA requirements, they will hopefully provide LAFCO and applicants with clearer guidance as to the importance of thorough CEQA review as the primary information source through which the Commission considers boundary change proposals pursuant to LAFCO law. Staff would appreciate comments from the Commission as to what additional actions, if any, you would like to see LAFCO take with respect to preserving agricultural and open space lands

Exhibit C

Exhibit C

Ventura
Local Agency Formation Commission

DRAFT LAFCO POLICIES TO ADDRESS MITIGATION FOR IMPACTS TO AGRICULTURAL LAND RESOURCES

Revised 5/17/06

1. Environmental documents associated with projects that require LAFCO approval that identify potential impacts to agricultural resources shall disclose the degree of impact according to the definition of prime agricultural land as defined by Government Code Section 56064.

2. If the intent of a project, program or plan is to accommodate discretionary development that would result in a potentially significant loss of prime agricultural land as defined by Government Code Section 56064, project-specific environmental document (or the program EIR in the case of 'tiered' EIRs) shall include an analysis of potentially feasible mitigation measures to minimize the loss of agricultural lands. Such measures may include, but need not be limited to: the acquisition and dedication of farmland, development rights, open space and conservation easements to permanently protect adjacent and other agricultural lands within the County; participation in programs involving transfer of development rights; and in lieu payments to recognized government or non-profit organizations for purchase of agricultural lands within the County. The lack of a pre-adopted lead agency agricultural mitigation policy or program shall not constitute an exemption from this Policy.

3. A land's current zoning, pre-zoning, general plan land use designation or location relative to any locally adopted growth boundary shall not automatically exempt it from the provisions of LAFCO's polices regarding mitigation. Existing conditions shall be considered as the CEQA "baseline" for the purpose of analysis.

4. Changes of organization or contracts for service to accommodate farmworker housing projects on agricultural land would not be subject to LAFCO's polices regarding mitigation. Only those projects devoted exclusively to provision of farm worker housing shall be exempted from these policies.

5. Annexation for land uses that would conflict with an existing agricultural preserve (Williamson Act) contract shall be strongly discouraged, unless the Commission finds that it meets all the following criteria:
    1) The area is within the annexing agency's sphere of influence.
    2) The Commission makes findings required by Government Code Section 56856.5.
    3) The parcel or parcels are included in an approved city specific plan.

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4) The soil is not categorized as prime agricultural land.
5) Mitigation for the loss of agricultural land has been secured by the granting of a farmland conservation easement, a farmland deed restriction or other farmland conservation mechanism based on a ratio of at least one acre of like agricultural land preserved for every acre of agricultural land converted to a nonagricultural use.
6) There is a pending, or approved, rescission for the property that has been reviewed by the local jurisdictions and the Department of Conservation. The property has been non-renewed if still awaiting rescission approval.

6. If the intent of a project is to accommodate the development of discretionary, non-agricultural land uses adjacent to land designated as 'agricultural' in the applicable general plan, the CEQA document shall include an analysis of the feasibility of imposing an agricultural buffer. When a buffer requirement is determined to be feasible, the lead agency shall adopt a buffer requirement. All buffers shall be consistent with applicable buffer ordinances or general plan policies. For those jurisdictions that have not adopted buffer ordinances/policies, buffers shall be consistent with the current recommendations of the Ventura County Agricultural Commission's Office.

Exhibit D

Ventura
Local Agency Formation Commission

November 22, 2006

DRAFT AGRICULTURAL MITIGATION POLICIES: FREQUENTLY ASKED QUESTIONS

BASIC INFORMATION

1. **Has LAFCO already decided to adopt the policies?**
No. The policies are of a DRAFT nature and, as such, LAFCO is currently in the process of soliciting public review and comment. It should be noted that that the Commission may choose NOT to adopt the policies. At the next LAFCO meeting scheduled for December 6, 2006, the Commission will consider whether they wish to move forward with the policy adoption process and whether they wish to direct staff to make any amendments the draft policy language. If they decide to move forward with the adoption process, a public notice and request for further comment will be published in a general circulation newspaper prior to the next meeting at which final adoption may be considered.

2. **Is LAFCO establishing new mitigation requirements?**
No. The DRAFT policies are directed at cities, which have already have the authority to impose mitigation requirements on certain development projects pursuant to the requirements of existing state law, including the California Environmental Quality Act (CEQA) and the CEQA Guidelines.

3. **Is LAFCO exceeding its legal authority?**
No. Simply stated, most of the DRAFT policies indicate that LAFCO may deny any proposal for which a lead agency did not fully comply with the California Environmental Quality Act (CEQA). Such authority already exists for LAFCO and other CEQA responsible agencies. In the case of LAFCO actions affecting territory under an active Williamson Act contract, the DRAFT policies provide for the possible denial of proposals for LAFCO action if lead agencies cannot demonstrate that they imposed mitigation requirements resulting in the permanent preservation of at least one acre of like agricultural land for every acre of agricultural land converted to an urban use.

4. **Is LAFCO usurping the land use authority of local governments?**
No. The DRAFT policies do not provide for the direct imposition of mitigation by LAFCO under any circumstance.

5. **Is LAFCO requiring lead agencies to adopt mitigation measures for development projects that result in the loss of agricultural land?**
No, with the exception of DRAFT Policy No. 5. See the response to Question # 9 below for a more detailed explanation.

6. **Would the policies effectively reduce adopted spheres of influence for cities?**
No. No part of the DRAFT policies would preclude urban uses within spheres of influence beyond that provided for by each respective city.

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DETAILED INFORMATION

7. If adopted, what would the DRAFT polices require?

The LAFCO Commission will consider a total of six DRAFT policies for adoption. In general, the policies are designed to apply to cities when they apply to LAFCO for approval of annexation proposals involving land that is defined as "prime agricultural land" pursuant to Government Code Section 56064. Four of the policies (DRAFT Policy Nos. 1, 2, 3, and 6) are exclusively procedural. Essentially, these four policies require that cities comply with certain provisions of the California Environmental Quality Act (CEQA) (Public Resources Code §21000 - §21177) and LAFCO's principal governing law (the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000) (Government Code § 56000 et seq.) for those development projects subject to CEQA and that require annexation approval from LAFCO. The purpose of the policies is to inform cities that failure to provide a full ANALYSIS and good-faith DISCLOSURE of potentially feasible mitigation measures to minimize impacts associated with loss of agricultural land as required by CEQA may be considered as a basis to deny an annexation proposal. THIS REQUIREMENT FOR ANALYSIS AND DISCLOSURE PURSUANT TO CEQA IS NOT EQUIVALENT TO A REQUIREMENT FOR MITIGATION ITSELF. In other words, WITH SPECIFIC, LIMITED EXCEPTIONS, THE DRAFT POLICIES MERELY REQUIRE CITIES TO COMPLY WITH EXISTING STATE LAW AND WELL-ESTABLISHED CEQA CASE LAW – THE DRAFT POLICIES IMPOSE NO NEW SUBSTANTIVE REQUIRMENTS ON CITIES OR PRIVATE PROPERTY OWNERS AND, AS SUCH, DO NOT IMPOSE MITIGATION.

DRAFT Policy Nos. 4 and 5 involve changes to the factors that LAFCO must consider WHEN REVIEWING PROPOSALS TO ACCOMMODATE THE PROVISION OF URBAN SERVICES TO FARM WORKER HOUSING THAT WOULD IMPACT PRIME FARM LAND, OR WHEN REVIEWING PROPOSALS THAT INVOLVE TERRITORY UNDER AN ACTIVE WILLIAMSON ACT CONTRACT. DRAFT Policy No. 4 applies only when the purpose a proposal requiring LAFCO action is to accommodate a farm worker housing project. In such a circumstance, none of the agricultural mitigation policies would apply. DRAFT Policy No. 5 would add four new criteria (Subparagraphs 1, 3, 5 and 6) not otherwise already required by existing law or local LAFCO policy (Subparagraphs 2 and 4) under which LAFCO approval of applications to annex Williamson Act-contracted land is strongly discouraged:

1) The area is within the annexing agency's sphere of influence.
2) The parcel or parcels are included in an approved city specific plan.
3) Mitigation for the loss of agricultural land has been secured by the granting of a farmland conservation easement, a farmland deed restriction or other farmland conservation mechanism based on a ratio of at least one acre of like agricultural land preserved for every acre of agricultural land converted to a nonagricultural use.
4) There is a pending, or approved, rescission for the property that has been reviewed by the local jurisdictions and the Department of Conservation. The property has been non-renewed if still awaiting rescission approval.

8. **What is the reason for these policies and under what statutory authority is LAFCO proposing to adopt them?**
By adopting the policies, LAFCO expects that lead agencies will begin to incorporate information in their environmental documents that will better assist LAFCO in performing complying with its governing statute, the Cortese-Knox-Hertzberg Act. Among other requirements, this statute calls for LAFCO to balance development needs with state interests of discouraging urban sprawl and preserving open-space and prime agricultural lands.

In its role of responsible agency, the Ventura LAFCO finds that environmental documents prepared by lead agencies often fail to provide sufficient information about potentially feasible mitigation measures that may reduce significant impacts to prime agricultural lands notwithstanding the fact that such an analysis is required by CEQA and despite specific written requests from LAFCO staff. Without this information, LAFCO is unable to rely on the environmental document as a source of information to consider the effects of boundary change proposals on agricultural land. Although the information necessary for LAFCO to perform this evaluation is not required to be provided through the CEQA document, doing so not only creates a more legally defensible document but it also eliminates the requirement to prepare additional and partially redundant studies following application to LAFCO.

LAFCO's governing law does not authorize the imposition of conditions that would directly regulate land use. Therefore, the DRAFT policies do not directly impose or otherwise *require* mitigation. Under existing provisions of CEQA, it is solely a lead agency's responsibility to impose mitigation requirements for those projects they wish to approve if, and only if, they determine the mitigation to be feasible (Public Resources Code §21002). Assuming a city prepares a complete CEQA feasibility analysis pursuant to CEQA requirements for a project that requires annexation of prime agricultural land, regardless of whether the analysis concludes that mitigation for impacts associated with conversion of agricultural land is feasible or infeasible, the DRAFT policies do not provide for any additional requirements with exception of annexations involving land under an active Williamson act contract (DRAFT Policy No. 5).

9. **What is the justification for 'requiring' mitigation for conversion of agricultural land to urban uses within city spheres of influence?**
the DRAFT policies DO NOT involve the imposition of mitigation requirements by LAFCO. However, DRAFT Policy No. 5 strongly discourages LAFCO approval of applications for annexation of land under an active Williamson Act contract if the use of the land would conflict with agricultural uses unless, among other factors, the annexing city has secured off-site mitigation based on a ratio of one acre of land preserved for every acre of land converted. It should be noted that, there are only five

cities in Ventura County (Ojai, Ventura, Santa Paula, Fillmore and Camarillo) whose sphere of influence currently includes lands under an active Williamson Act contract and the total number of acres affected is quite small.

10. Are the policies intended to be mandatory requirements or would they be merely 'guidelines'?

LAFCO policies are intended to supplement State law, not to interpret it. As such, the Commission retains the discretion to disregard any policy or policies when considering any boundary change proposal as long as their action does not conflict with State law.

11. When will the policies be considered for adoption?

LAFCO has scheduled Commission consideration of the DRAFT polices for December 6, 2006. However, on that date, LAFCO staff will recommend that the Commission postpone taking any action to consider adoption of the policies until their next meeting on January 17, 2007. At the December 6 meeting, staff will recommend that the Commission receive public comment and provide direction about any changes they wish to make to the DRAFT policy language.

12. Will the policies be subject to public review prior to being considered for adoption?

Yes. Copies of the DRAFT policies along with a notice and request for comments have been distributed to the cities, the County of Ventura, and a number of other key stakeholders and organizations that may be most likely to be directly affected by the policies. Assuming the Commission decides to consider formal adoption of the policies, the meeting at which adoption is scheduled to occur will be noticed in a general circulation newspaper and further request for public comment will be solicited. All LAFCO meetings are open to the public.

13. How can the public submit comments and when is the deadline?

Comments are encouraged to be submitted in writing, and can be mailed or faxed to the LAFCO office at the address on the first page of this Fact Sheet or they can be emailed to: ventura.lafco@ventura.org. Written comments will accepted until the meeting date on which the Commission takes action with regard to policy adoption. The Commission will accept oral comments at the meeting on December 6, 2006 and all subsequent meetings at which the policies are referenced on the agenda.

14. If adopted, when would the DRAFT policies become effective and, would they apply to LAFCO applications for which environmental documents have already been completed or are currently being prepared?

If the Commission chooses to adopt any or all of the DRAFT policies (or modifications thereof), they will likely become effective immediately. However, LAFCO staff will recommend that any adopted policies not be applied retroactively. In other words,

LAFCO does not intend for the policies to apply CEQA documents certified/approved prior to the date of policy adoption.

15. **What was the purpose of the Agricultural Policy Mitigation Workshop the LAFCO hosted on November 9 and why wasn't the event advertised to the general public?**

The primary aim of the Workshop was to serve as an informational resource for cities and private consulting firms that prepare environmental documents on behalf of cities. In recognition of the fact that CEQA obligates cities and other lead agencies to impose feasible mitigation on projects that result in significant impacts to agricultural resources, LAFCO endeavored to provide cities with information about instituting their own agricultural mitigation programs as a means to comply with current CEQA requirements. The event was not advertised to the general public because the majority of the information presented was geared toward a more limited audience of those individual who implement CEQA. With regard to the DRAFT polices themselves, LAFCO encourages any member of the public to submit comments prior to the December 6 meeting, at the December 6 meeting, and up through the date of any subsequent meeting at which the policies are referenced on the agenda.

"Ken Bone" <fishbone1@earthlink.net>

12/05/2006 03:45 PM
Please respond to fishbone1

To: "Blanca Alvarado" <blanca.alvarado@bos.sccgov.org>, "Don Gage" <don.gage@bos.sccgov.org>, "John Howe" <jh2@aol.com>, "Linda LeZotte" <linda.lezotte@ci.sj.ca.us>, "Susan Vicklund Wilson" <susan@svwilsonlaw.com>, "Pete McHugh" <Peter.Mchugh@bos.sccgov.org>, "Roland Velasco" <rvelasco@ci.gilroy.ca.us>, "Chuck Reed" <District4@ci.sj.ca.us>, "Terry Trumbull" <TerryT1011@aol.com>
cc: "Neelima Palacherla" <neelima.palacherla@ceo.sccgov.org>, "Dunia Noel" <dunia.noel@ceo.sccgov.org>, "Emmanuel Abello" <emmanuel.abello@ceo.sccgov.org>
Subject: LAFCO support letter in today's The Gilroy Dispatch Opinion page

LAFCO Commissioners and staff,

Attached is a copy of my LAFCO support editorial letter which appeared on The Gilroy Dispatch Opinion page today. It will be on their Opinion page website tomorrow at: www.gilroypispatch.com. The negative Nov. 30th LAFCO editorial is also on the website opinion page. I hope to speak for including fallow lands and open space habitat lands in the LAFCO mitigation policy at your December 13 LAFCO hearing and policy adoption meeting.

Thank you for supporting our open space and agricultural lands!

Respectfully,

Ken Bone
fishbone1@earthlink.net

Dispatch Editor LAFCO.dc

LAFCO Mitigation Plan Last Chance to Save Rural Gilroy As We Know It – Act Now

Tuesday, December 05, 2006

Dear Editor,

I was shocked by the Editorial Board's Nov. 30 negative editorial, "LAFCO ... It's Not Funny."

I support LAFCO, not as an annexation building moratorium process, but as a structured mechanism to preserve open space and agricultural lands. The editorial's lack of future insight, and the careful selection of words and terms presented a very shortsighted view of our remaining open space and agricultural lands, and the need for protection and preservation through annexation mitigation. The need for a countywide oversight for the preservation of open space and agricultural lands is demonstrated by Gilroy's two current large-scale project mitigation failures.

I commend Gilroy's mitigation policy task force for their two-year endeavor to develop the city's Agricultural Mitigation Policy adopted in May 2003, not an easy task to exclude open space lands and fallow (unseeded) lands; however, its final inadequate form was so tightly constructed to mitigate only specific "prime agricultural" land that it appears the Filice family's Glen Loma Group has received city approval to build 1,400-plus homes on 350 acres of farm, fallow and open space land without being required by Gilroy's Agricultural Mitigation Policy to mitigate even one acre for open space or agricultural preservation for our future generations. The largest housing development ever planned in Gilroy required no land mitigation. It doesn't make sense. The Gilroy mitigation policy apparently failed.

I fear the same is true for future homes to be built in the beautiful Hecker Pass gateway. I am not sure that I will want to continue to live in Gilroy for another 20 years with the addition of another 1,500-plus homes, additional traffic and stress on city services that they will generate and the permanent loss of our current open space. Will Gilroy be the same then?

Why is Gilroy the driving force for weakening LAFCO's original mitigation draft policy? Why has Gilroy pushed to double the active mitigation completion timeline from the original 24 to 48 months? Why is Gilroy demanding to stack up city expansion annexation applications instead of accepting the original process of one application at a time? Why isn't Gilroy pushing to preserve two acres for every one-acre converted by annexation? Are we so greedy or narrowly focused to get it all right now that we forget that we are the caretakers of the land? Why did we move to or decide to stay and live in Gilroy? Do we want to disregard and degrade those very same values?

We must protect the precious remaining open lands now through a structured mitigation process. Our last chance for open space lies with LAFCO's countywide oversight.

LAFCO's Dec. 13, 1:15 pm final public hearing will consider and adopt the Santa Clara County's LAFCO annexation mitigation policies in the San Jose Board of Supervisor's Chambers at 70 West Hedding Street. The LAFCO adoption meeting invitation, proposed policy for final adoption and the staff report will be on the www.santaclara.lafco.ca.gov Website under "What's New" on or before Dec. 8.

Please attend this vital LAFCO hearing, and please speak out for the protection and preservation of annexed unincorporated prime agricultural lands without the additional one year mitigation extension. This may be your last chance to support our Gilroy and South County rural open space environment!

Ken Bone, Gilroy

LAFCO ... It's Not Funny

Thursday, November 30, 2006

LAFCO isn't a comedy club, and the latest move by the Local Agency Formation Commission in Santa Clara County is no laughing matter. It's a flat-out political power grab that essentially would usurp the authority of our City Council to make land-use decisions for our city's future.

LAFCO was created by the state legislature to oversee the boundaries of cities and special districts to discourage urban sprawl. An example of bad planning LAFCO was formed to prevent: San Jose's linear annexation of both sides of what was then a busy Monterey Highway to claim the tax revenue from gas stations and businesses. Outrageously poor planning. A clear money-hungry move that should have been stopped.

Unfortunately, LAFCO - like so many government agencies - is no longer content with the more passive role of oversight and common-sense veto assigned to it. Rather, it is seeking to become the 1,000-pound gorilla that answers only to itself. LAFCO's thirst for power is seemingly insatiable, and if the latest calculated political move succeeds, Gilroy's City Council will not only have to go before LAFCO on two bended knees before any annexation could occur, but the landowners and/or developers would have to

It's unreasonable, and if LAFCO ignores the pleas from the cities, the housing industry and landowners and does pass the new "mitigation" policy it should be swiftly challenged in court.

LAFCO has overstepped its bounds and its inability to listen, compromise and take reasonable positions has turned it into an activist environmentalist policing agency rather than a vanguard for good planning.

Perhaps litigation is the only way to halt the agency's venture into what is akin to judicial activism. South County, where the remaining undeveloped land is, is the prime target of LAFCO's latest policy proposals. Our Councils, Gilroy and Morgan Hill, are not wild-eyed pro-development rogues. There is order and reason to our growth, and what we do not need is "land-use activism" from a group that is not accountable to the voters here.

The City of Gilroy has adopted an agriculture-land mitigation policy. LAFCO is not responsible for creating, amending or enforcing that policy. The City of Gilroy's leaders are accountable to the voters here.

LAFCO needs to back off, or maybe the state legislature should consider abolishing the organization.

Ruth Troetschler
<rebugging@batnet.com>

To: neelima.palacherla@ceo.sccgov.org
cc:
Subject: Revised Draft Agricultural Mitigation Policies

12/05/2006 12:32 PM

RE: Revised Draft Agricultural Mitigation Policies
From: Ruth Troetschler, 184 Lockhart Lane Los Altos, CA 94022
Date: December 5, 2006

Dear Neelima Palacherla and members of LAFCO

As an active member of both the Santa Clara Valley Audubon Society and the Loma Prieta Chapter Sierra Club, I am very concerned that LAFCO continue it efforts to protect open lands in the county, and require cities to develop within their boundaries.

I have been privileged to study the LAFCO comments by Ken Bone of Gilroy and find them compelling. I support them in their totality, and urge to you incorporate his changes in your document.

I would also suggest that any move of a city to take in ag land, should mandate an EIR, no neg decs allowed. Recently when Gilroy began to increase the size of their shopping area near 101. at least 2 Burrowing Owls were displaced, and at least one was killed. A check of the original permits for this development showed a negative dec was approved, because the land was in agriculture and it was assumed that there were no threatened species living there. This was obviously not true. Your Agricultural Mitigation Policies should be designed to prevent such impact without proper mitigation within the county.

In addition to this document, I believe that LAFCO should develop an open space policy that it is similar to the proposed Agricultural Mitigation Policy.
Thank you for your consideration.

Bhushans@aol.com
12/06/2006 10:33 PM

To: palacherla@ceo.sccgov.org
cc:
Subject: LAFCO...

Dear Ms. Palacherla,

I support your efforts to preserve farm land in Santa Clara. It is imperative that we have the ability to locally produce agricultural items; especially as oil/gasoline becomes more expensive to transport produce over larger distances. It just makes sense to preserve our agricultural lands.

Thank you,

Cybele

OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA

70 West Hedding Street
9th Floor, East Wing
San Jose, California 95110-1770
(408) 299-5900
(408) 292-7240 (FAX)

Ann Miller Ravel
COUNTY COUNSEL

Winifred Botha
Robert C. Campbell
Nancy J. Clark
Laurie F. Faulkner
ASSISTANT COUNTY COUNSEL

MEMORANDUM

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

FROM: Ann Miller Ravel, County Counsel
Robert Campbell, Assistant County Counsel
Kathy Kretchmer, Deputy County Counsel

RE: Authority to require mitigation for impacts due to loss of agricultural land

DATE: November 30, 2006

OPINION REQUESTED

You requested an opinion from this office on the following question: Does the Local Agency Formation Commission of Santa Clara County ("LAFCO") have the authority to adopt policies that establish minimum criteria and standards for providing agricultural mitigation for LAFCO proposals involving agricultural land?

CONCLUSION

The plain language of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (the "Act") clearly gives LAFCO the authority to condition approvals on the provision of mitigation for the loss of or impact to agricultural land. The Act also requires LAFCO to establish written policies and procedures. Policies that establish minimum criteria and standards for acceptable mitigation are within this authority.

BACKGROUND

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Sections 56000 et seq, "Act") establishes a local agency formation commission in each county to provide for "planned, well-ordered, efficient urban development

patterns with appropriate consideration of preserving open-space and agricultural lands within those patterns". Section 56300[1]. The primary function of a commission is to "review and approve or disapprove with or without amendment , wholly, partially, or conditionally, proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission." Section 56375(a). The commission is empowered to adopt written policies, procedures and standards for the evaluation of proposals. Section 56375(g). The commission also establishes spheres of influence and urban service areas, and is authorized to approve amendments wholly, partially or conditionally. Sections 56426 and 56428(e). The Act is the sole and exclusive authority for making changes in local government reorganization. Section 56100. The Act clearly establishes that a commission has jurisdiction over boundary changes, is to adopt written policies to guide its decision making authority and is authorized to condition its decisions.

LAFCO has established written policies and procedures which can be found on the LAFCO website at www.santaclara.lafco.ca.gov. Existing policies governing the expansion of urban service areas discourage expansions which include agricultural or other open space land unless, among other things, it is shown why the expansion is necessary and how the agricultural status of the land will be protected. If the agricultural status of the land is not protected, the current policies require an explanation of why the inclusion of agricultural land is necessary and how the loss will be mitigated. Examples of mitigation measures are provided. To provide further clarification of these existing policies, LAFCO is proposing minimum criteria and standards for providing mitigation for LAFCO proposals involving agricultural lands.

It has been suggested that LAFCO does not have the authority to require mitigation for the loss of agricultural lands. Arguments have been presented that LAFCO lacks the police powers necessary to regulate and impose mitigation measures, that the proposed mitigation is a direct regulation of land use, and that the policies are inconsistent with the role of LAFCO as a responsible agency under the California Environmental Quality Act (CEQA). You have requested our opinion on the legality of the policies. This memorandum outlines the statutory powers granted to LAFCO and concludes that the policies are consistent with those powers and therefore valid.

DISCUSSION

LAFCO is statutorily authorized to preserve prime agricultural land

The preservation of prime agricultural land is among the statutory purposes of LAFCO.

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[1]All statutory citations will be to the Government Code unless otherwise specified.

Section 56301. The Commission of Local Governance for the 21st Century, a Commission established in 1997 by AB 1484 to assess governance issues and make appropriate recommendations, and which directed special attention to the Local Government Reorganization Act, issued a Report in January, 2000 entitled *Growth Within Bounds*. The Report identifies the permanent loss of agricultural lands as perhaps the most far-reaching effect of urban/suburban sprawl. *Growth Within Bounds* also recognizes the importance of regional approaches in addressing urban growth. LAFCOs are currently the only bodies empowered by the State to consider general governance powers beyond an individual local government jurisdiction. The Report finds that most LAFCOs have agricultural policies, though the nature and rigor of the policies vary greatly. The Report further finds the efforts adopted by LAFCOs commendable and encourages all LAFCOs to adopt strong policies regarding the conversion of agricultural lands. Based on the findings and recommendations of *Growth Within Bounds*, the Local Government Reorganization Act was revised in 2000 to more clearly state the statutory directives including the preservation of agricultural land.

To accomplish the directive to preserve prime agricultural land, LAFCO must assess each proposal for its impact on these lands. Section 56668(e) requires an analysis of the effect of the proposal on maintaining the physical and economic integrity of agricultural lands. To assist in the analysis, current LAFCO policies require any proposal involving agricultural land to include an explanation of why the inclusion of agricultural land is necessary and how the loss of such lands will be mitigated. The current policies include examples of mitigation measures. LAFCO Urban Service Area Policy #8. These policies were last amended January 1, 2003.

Recognizing that there will be situations where alternatives may not exist for a project to proceed without impacting or causing the loss of agricultural land, LAFCO is proposing augmented policies that provide more specific information about acceptable mitigations for the loss of agricultural land in certain situations. The proposed policies provide a standard by which applicants can ascertain what mitigations will be acceptable to LAFCO where the loss of agricultural land is unavoidable. In order to balance the need for orderly growth and development, the proposed policies allow the applicant to secure acceptable mitigations for the loss/impacts on agricultural land. If the mitigation is secured at the time of the presentation of the project to LAFCO, LAFCO can consider approval of the project without conditions. In the alternative, the policies provide additional time for the applicant to secure appropriate mitigation to the loss of or impact to agricultural land subsequent to LAFCO's consideration of the project. In this case, the project may be approved conditioned on fulfillment of the proposed mitigation.

LAFCO's ability to exercise its powers in a manner that provides planned, well-ordered, efficient urban development patterns while discouraging urban sprawl, preserving agricultural and open space lands, and efficiently providing government services is clear. To achieve this purpose, LAFCO may require mitigation for the loss of agricultural land and may not approve a

boundary change until the mitigation is provided. The Act states and restates that the Commission is authorized to approve or disapprove projects, with or without conditions. Sections 56325(a), 56426, 56428(e), 56880. Specifically, Section 56886(h) allows for approval to be conditioned on "the acquisition, improvement, disposition, sale, transfer, or division of any property, real or personal." The purchase of agricultural property or an agricultural conservation easement fits within this authorized term and condition.

LAFCO's authority goes beyond commenting as a Responsible Agency under CEQA and allows for requiring appropriate mitigations by Commission action

Letters questioning LAFCO's proposed policies have stated that LAFCO only has the authority to comment on appropriate mitigations through the CEQA process, and has no further authority to impose the mitigations. However, it is the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 that provides the authority and procedure for LAFCO's approval of local agency boundary changes. Section 56100. LAFCO's role in commenting on the environmental documentation is only one step in LAFCO's consideration of the project.

Any action of LAFCO must be completed in compliance with CEQA. LAFCO will typically be the responsible agency reviewing the environmental documentation. As a responsible agency, LAFCO will comment on the environmental documentation circulated by the lead agency and will make sure the analysis conforms to the LAFCO's policies and mandates. The environmental documentation must be considered by LAFCO when it reviews the proposal. CEQA Guidelines Section 15096(a) states: "A responsible agency complies with CEQA by considering the EIR or negative declaration prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved." Guidelines Section 15096(g)(2) further provides that "when an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment." So LAFCO must consider and may impose mitigations consistent with its own policies when approving projects coming before it.

LAFCO's consideration of mitigations for the loss of agricultural lands is not a direct regulation of land use

A commission is prohibited from imposing any conditions that would directly regulate "land use density or intensity, property development, or subdivision requirements." Section 56375. However, the requirement to provide adequate mitigation for the loss of or impacts to agricultural land is not a direct regulation of land use, land use density or intensity, or subdivision requirements. It is not an exercise of police powers but an exercise of the authority

granted in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. It is a means to allow approval of projects that result in the loss of agricultural land. It is the setting of a standard for what LAFCO considers adequate mitigation for the loss of agricultural land. The requirement for mitigation has long been in the LAFCO policies. Through these proposed augmented policies, LAFCO is clarifying what will be considered appropriate mitigation for the loss of agricultural land. What LAFCO is requiring is a showing that the loss of agricultural land is being offset by the preservation of agricultural land elsewhere. LAFCO is not requiring any changes to existing land use designations. LAFCO is not designating what specific lands are to be preserved. Direct regulation of land use occurs through the adoption of general plans or specific plans, zoning designations and subdivision requirements. LAFCO is not requiring any of this. The mitigation requirement is not a direct regulation of land use. What LAFCO is requiring is a showing that the loss or impact to agricultural land is offset by the preservation of agriculture land elsewhere.

It is important to keep in mind that LAFCO actions by their very nature impact land use. *Growth Within Bounds* recognizes that LAFCO actions are "a key step in the process which results in major land-use change through the approval or disapproval of annexations and incorporations." The determination of an urban service area may encourage the development of land within the designated boundary, and discourage development outside of the boundary. As another example, the approval of an out-of-agency service agreement may allow for the development or continued use of a particular piece of property. Indeed, the Act also directs that land area and land use are factors to be considered in review of a proposal. Section 56668(a). Additionally, there is the provision within the Act where LAFCO is directed to require a city to prezone the area to be annexed as a condition of annexation. Section 56375. The Act indicates that LAFCO is not allowed to specify how, or in what manner, the territory is prezoned. These examples demonstrate that there is no question that LAFCO actions influence land use. But the proposed requirement of providing mitigation for the loss of agricultural land by the preservation of other existing agricultural land does not directly regulate land use.

CONCLUSION

In conclusion, the State's interest in preserving agricultural land is of compelling importance and is one of LAFCO's primary purposes. LAFCO, through the adoption of agricultural mitigation policies, is establishing standards for acceptable mitigation. Compliance with these standards will allow the approval of projects that otherwise may be denied based on their impacts. The mitigation standard is just that, a standard of what mitigation will be deemed acceptable. It is not a direct regulation of land use. The plain language of the statute gives LAFCO the authority to condition boundary change approvals on the provision of mitigation for the loss of or impact to agricultural land.

ENVIRONMENTAL ANALYSIS

LAFCO staff has proposed the use of the following California Environmental Quality Act (CEQA) approach for adopting LAFCO's Agricultural Mitigation Policies:

- The continuation of agricultural activities on land already in agricultural use is categorically exempt from CEQA.
- All potential environmental impacts associated with establishing agriculture on mitigation lands that are not currently in agricultural use have already been analyzed in a prior EIR (i.e. *Santa Clara County General Plan Environmental Impact Report, December 1994*) and no Supplemental EIR or Subsequent EIR is required.

In addition to this CEQA analysis for the adoption of LAFCO's Agricultural Mitigation Policies, LAFCO's approval of a boundary change will be subject to a separate environmental review process. This separate environmental review process will occur prior to and as part of LAFCO's application review process.

SOME STAKEHOLDERS EXPRESSED CONCERNS ABOUT THE ORIGINALLY PROPOSED CEQA APPROACH

Some stakeholders have recently raised some concerns about the proposed CEQA approach, particularly LAFCO staff's recommended use of Santa Clara County's 1994 General Plan EIR because of the age, scope, and timeframe of the EIR.

However, LAFCO staff believes that their concerns are unfounded and that the proposed CEQA approach is adequate and lawful because the document analyzed all potential environmental impacts associated with the adoption of LAFCO's Draft Agricultural Mitigation Policies. The significant impacts associated with agriculture that were analyzed in the 1994 General EIR included erosion, high water consumption, groundwater drawdown, nitrate loading of groundwater, reduction in species diversity, destruction of archaeological remains, energy consumption, noise, odors and other forms of air pollution.

REVISED CEQA APPROACH – PREPARATION OF AN INITIAL STUDY

Some stakeholders stated that the aforementioned impacts must be evaluated specifically with respect to LAFCO's adoption of its Draft Agricultural Mitigation Policies. In the interest of further allaying these concerns and conducting a more current assessment of the potential environmental impacts associated with the adoption of LAFCO's Draft Agricultural Mitigation Policies, LAFCO staff recommends the preparation of an initial study and the required CEQA documentation.

BACKGROUND ON CEQA APPROACH TO DATE

The Project is the adoption of LAFCO's Agricultural Mitigation Policies. LAFCO's current 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 agricultural lands. In those cases where LAFCO proposals involve conversion of agricultural lands, LAFCO's current policies require an explanation for why the inclusion of agricultural lands is necessary and how such loss will be mitigated.

It is the intent of LAFCO to set forth through written policies, LAFCO's standards and procedures for providing agricultural mitigation for LAFCO proposals involving agricultural lands, consistent with LAFCO's current policies and LAFCO's mandate to 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.

Under the Draft Policies, agricultural mitigation must result in the preservation of land that:

- Is prime agricultural land of equivalent quality and character as measured by the Average Storie Index rating and the Land Capability Classification rating,
- Is located within the city's Sphere of Influence Boundary in an area planned/envisioned for agriculture, and
- Will promote the definition or creation of a permanent urban/agricultural edge.

Therefore, agricultural mitigation lands will be located on unincorporated lands where agriculture is an existing use and/or where agriculture is an allowed use.

For agricultural mitigation lands that are not currently in agricultural use:
The potential environmental impacts associated with the agricultural use of these unincorporated lands were fully considered in the Environmental Impact Report ("EIR") previously prepared for the Santa Clara County General Plan (1995-2010) and certified by the Board of Supervisors by Resolution dated December 20, 1994. (*See, Santa Clara County General Plan Draft Environmental Impact Report* (File #5722-00-00-94EIR, SCH #94023004), September 1994, Chapter 5B (particularly Impact 8), on file with the Santa Clara County Planning Office.) There is no substantial evidence in the record indicating that the Project will cause any new or substantially more severe environmental impacts than previously studied, thus, no subsequent or supplemental EIR is required pursuant to Public Resources Code section 21166 or the CEQA Guidelines (14 Cal. Code Regs. §§ 15162, 15163). LAFCO finds that no further CEQA review is required for the Project.

For agricultural mitigation lands that are currently in agricultural use:
The "acquisition, sale, or other transfer of areas to allow continued agricultural use of the areas" is categorically exempt pursuant to the Class 25 exemption (14 Cal. Code Regs. § 15325(b).)

LAFCO's Agricultural Mitigation Policies also encourage cities with LAFCO proposals impacting agricultural lands to adopt measures to preserve 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. As stated above, potential environmental impacts associated with these policies have already been

analyzed in a prior EIR and no Supplemental EIR or Subsequent EIR is required and the continuation of agricultural activities on land already in agricultural use is categorically exempt from CEQA.

BACKGROUND ON THE REVISED CEQA APPROACH

LAFCO staff will prepare an initial study to determine if LAFCO's adoption of Agricultural Mitigation Policies may have a significant effect on the environment and recommend an appropriate CEQA action for the Commission's consideration. Subjects typically covered in an initial study include:

- Aesthetics
- Agricultural Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use
- Population and Housing
- Public Services
- Resources and Recreation
- Transportation/Traffic
- Utilities/Service Systems
- Mandatory Findings of Significance

LAFCO'S REVISED DRAFT AGRICULTURAL MITIGATION POLICIES

LAFCO Meeting
December 13, 2006

What is the Purpose of LAFCO's Agricultural Mitigation Policies?

- To protect and preserve agricultural lands by ensuring that the impacts to agricultural lands are reduced through mitigation
- Make LAFCO's agricultural mitigation expectations and requirements clear to affected property owners, cities, other local agencies/organizations and the interested public

How Do LAFCO's Agricultural Mitigation Policies Relate to Existing LAFCO Policies?

LAFCO's current policies :

- Discourage premature conversion of agricultural lands
- Guide development away from existing agricultural lands
- Require development of existing vacant lands within city boundaries prior to conversion of agricultural lands
- Proposals that involve conversion of agricultural lands require an explanation for why inclusion of lands is needed and how the loss will be mitigated

Proposed mitigation policies provide more detail on LAFCO's agricultural mitigation requirements

When would LAFCO's Agricultural Mitigation Policies Apply?

- Any LAFCO proposal that impacts prime agricultural land or involves the loss of prime agricultural land, such as an urban service area (USA) amendment request impacting prime agricultural land or involving the loss of prime agricultural land.

- Cities, affected property owners, and agricultural conservation agencies should work together as early in the process as possible to initiate and execute plans for agricultural mitigation.

What if an Agency has an Agricultural Mitigation Policy?

- LAFCO's agricultural mitigation policies are independent of any agency's agricultural mitigation policies
- Establishes minimum criteria and standards for providing agricultural mitigation for LAFCO proposals that impact or involve agricultural lands
- LAFCO encourages cities with potential LAFCO applications involving or impacting agricultural lands to adopt agricultural mitigation policies that are consistent with LAFCO's policies

Development of LAFCO's Agricultural Mitigation Policies

Aug. 14	**Draft Policies Released**
Aug. 28	**Staff Workshop on Draft Policies**
	Additional Meetings with Stakeholders
Oct. 11	**Update to LAFCO** (No Action/Discussion Only Item)

7

Development of LAFCO's Agricultural Mitigation Policies

Oct. 20	**Written Comments due from Stakeholders**
Oct. 26	**Revised Draft Policies Released**
Nov. 13	**Staff Workshop on Revised Draft Policies**
	Additional Meetings with Stakeholders, including a presentation to Gilroy Chamber of Commerce on November 17, 2006

8

Development of LAFCO's Agricultural Mitigation Policies

Nov. 27	Staff Workshop on Revised Draft Policies in South County
Nov. 28	Written Comments Due
Dec. 6	Release of Staff Report and Revised Draft Policies dated December 6, 2006
Dec. 13	LAFCO Public Hearing

9

October 26th Draft Policies: Major Revisions

- **Introduction**
  Addition of paragraph including LAFCO's mission, purpose of LAFCO's Agricultural Mitigation Policies and its relationship to existing LAFCO policies

- **Policy #5**
  LAFCO will work with other agencies and organizations to establish program to increase awareness of importance of agriculture in Santa Clara County

- **Policy #6**
  Provides for LAFCO to review and revise policies as necessary in order to address issues as they arise

October 26th Draft Policies: Major Revisions

- **Policy #10**
  Clarifies requirements for location of mitigation lands

- **Policy #11**
  Provides examples and encourages cities to adopt appropriate mitigation measures to reduce impacts to adjacent agricultural lands

October 26th Draft Policies: Major Revisions

- Policy #15
  Increases time period for fulfillment of mitigation from 2 to 3 years

- Policy #17
  Provides for a one-year extension of time period subject to LAFCO review and approval

- Policy #19
  Discourages, but allows LAFCO to consider additional proposals involving agricultural lands even with pending mitigation for prior proposals

December 6th Draft Policies: Additional Revisions

- Policy #2
  Adds language to allow the commission to consider variations from the standards and criteria established in the policies on a case-by-case basis.

- Policy #7
  Restates the definition of prime agricultural lands included in the CKH Act and deletes reference to agricultural lands identified on the DoC's Important Farmlands Map.

Remaining Issues of Concern

Even with the revisions to the Draft Policies relating to the timing and fulfillment of mitigation, concerns remain about policies included in the following two sections:

- Plan for Mitigation
- Timing and Fulfillment of Mitigation

Staff Recommendations

- Take public testimony and continue Public Hearing to next LAFCO meeting on February 14, 2006
- Establish a LAFCO sub-committee composed of two commissioners to recommend policies to the full commission on the two sections namely: "Plan for mitigation" and "Timing and Fulfillment of Mitigation"
- Direct staff to conduct further assessment of potential environmental impacts associated with the adoption of the policies

LAFCO
Local Agency Formation Commission of Santa Clara County

ITEM NO. 5

Hearing date: **December 13, 2006**

To: LAFCO

From: Neelima Palacherla, Executive Officer NP
Dunia Noel, LAFCO Analyst DN

Subject: **Maps for the El Camino Hospital District, Rancho Rinconada Recreation and Park District, and Saratoga Cemetery District**

Agenda Item #5

RECOMMENDATION

Staff recommends that the Commission adopt maps depicting the boundary and sphere of influence boundary for the following special districts in Santa Clara County:

1) El Camino Hospital District,
2) Rancho Rinconada Recreation and Park District, and
3) Saratoga Cemetery District

PROJECT DESCRIPTION

Maps for the districts are current as of December 6, 2006 and have been prepared for LAFCO adoption. These maps were developed based on LAFCO staff's research, information received from each of the districts, and meetings and discussions that LAFCO staff have had with each district's staff. Each district's staff has reviewed their respective map.

These maps *(to be provided at the LAFCO meeting)* will be LAFCO's official maps for these special districts and will be maintained and kept current by LAFCO staff, with the assistance of the County of Santa Clara Information Systems Department. The maps will also be included in the North and West Valley Service Review and Sphere of Influence Update Report.

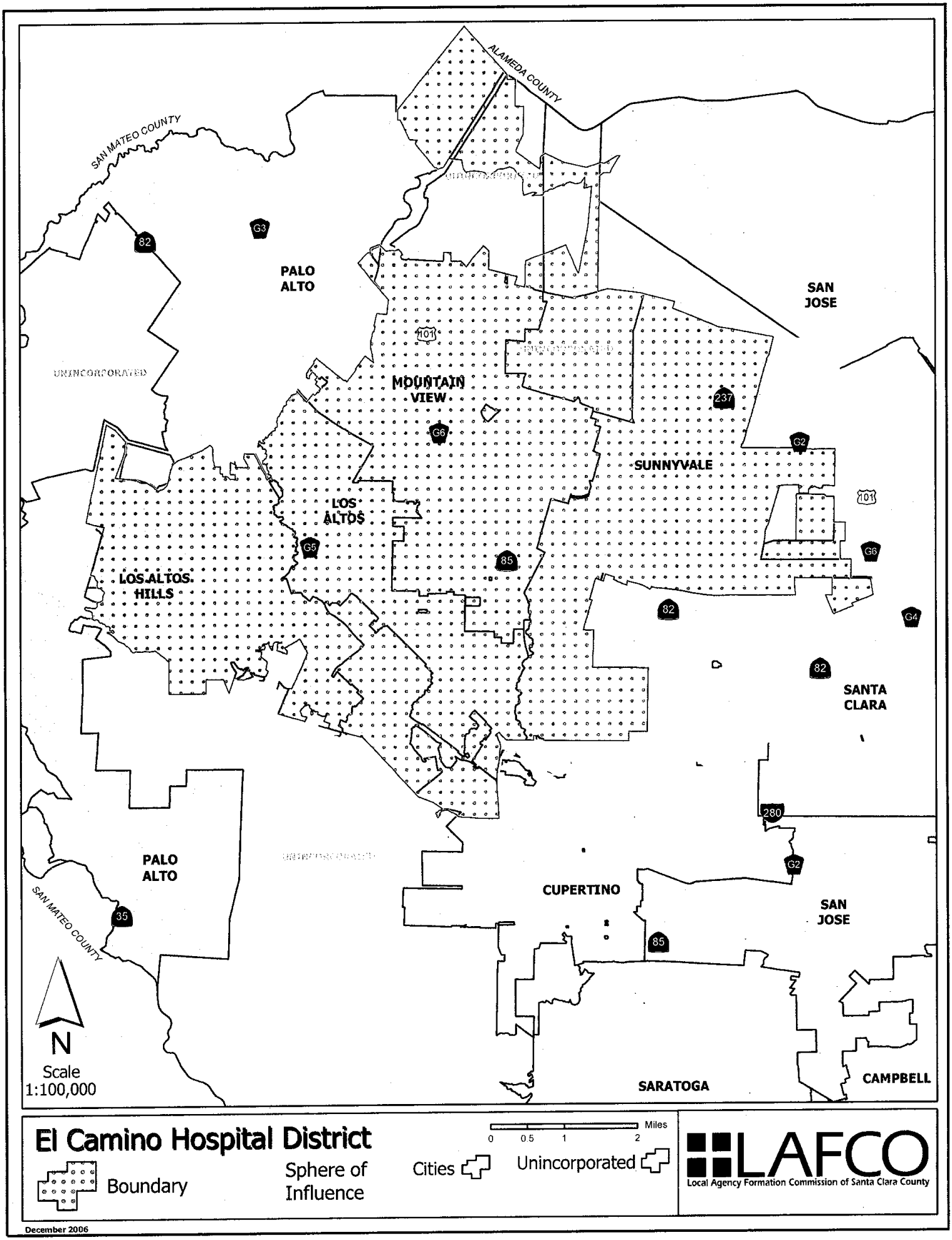
BACKGROUND

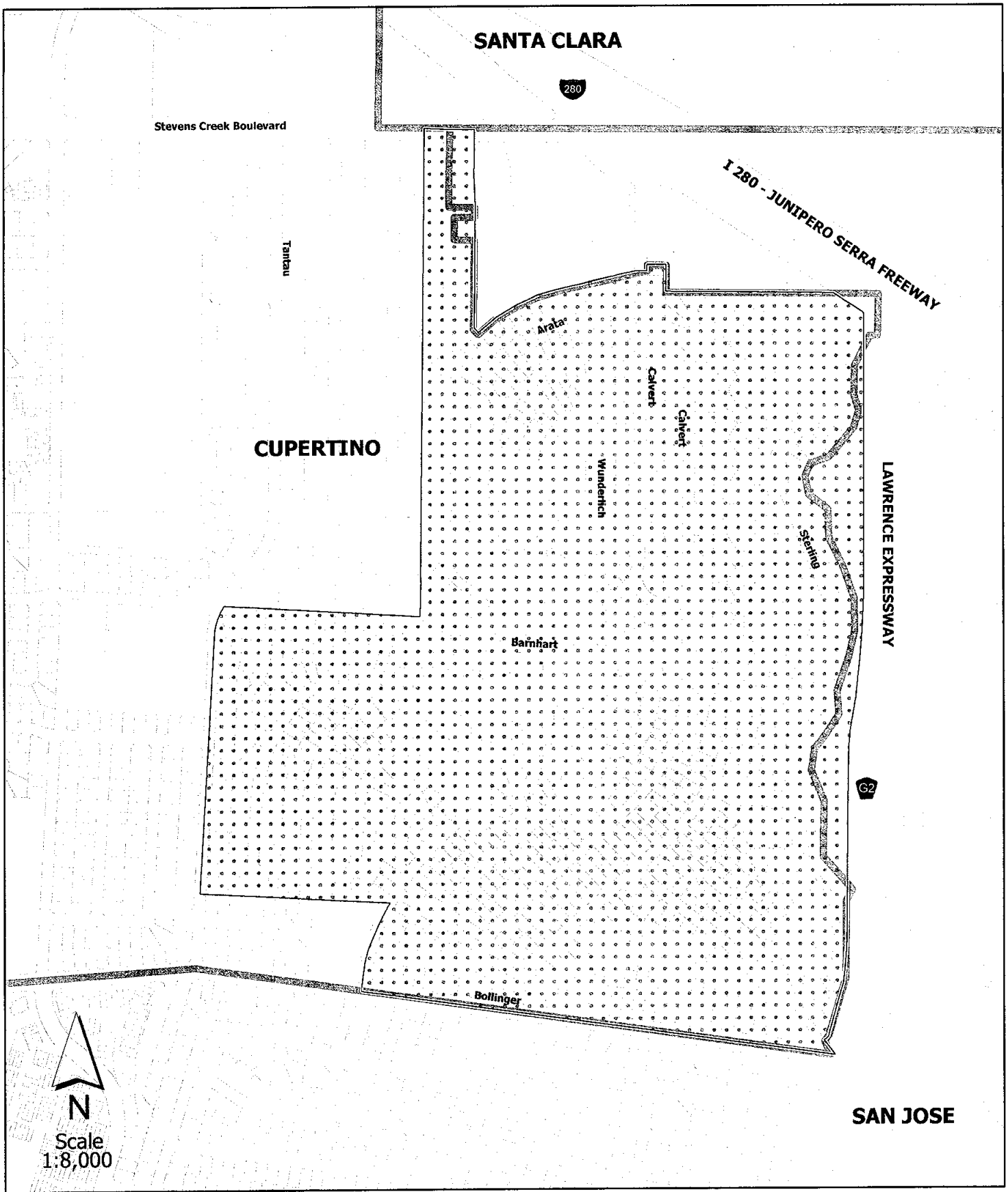
In preparation for LAFCO's Service Reviews and Sphere of Influence Updates, LAFCO staff has undertaken the task of developing and maintaining maps of special district boundaries and their Sphere of Influence (SOI) boundaries in

Geographic Information Systems (GIS). LAFCO contracted with the County of Santa Clara's Information Systems Department (ISD) to prepare boundary maps for special districts in Santa Clara County.

Prior to this project, LAFCO did not have boundary maps for special districts in Santa Clara County. As a result, these maps were prepared using various information sources, including historical sphere of influence documents, LAFCO resolutions, district legal descriptions, information obtained from the County of Santa Clara Assessor and Registrar of Voters, as well as information obtained from the staff of all three districts.

These maps could not have been prepared without the assistance of the El Camino Hospital District's staff, Rancho Rinconada Recreation and Park District's staff, Saratoga Cemetery District's staff, and County of Santa Clara staff, including staff from the Information Services Department, Surveyor's Office, Controller's Office, Planning Office, Registrar of Voters Office, and Assessor's Office.


ALAMEDA COUNTY
SAN MATEO COUNTY
PALO ALTO
SAN JOSE
UNINCORPORATED
MOUNTAIN VIEW
SUNNYVALE
LOS ALTOS
LOS ALTOS HILLS
SANTA CLARA
PALO ALTO
CUPERTINO
SAN JOSE
SARATOGA
CAMPBELL
SAN MATEO COUNTY
N
Scale 1:100,000
El Camino Hospital District
Boundary
Sphere of Influence
Cities
Unincorporated
Miles
0 0.5 1 2
LAFCO
Local Agency Formation Commission of Santa Clara County
December 2006



Rancho Rinconada Recreation and Park District

Boundary

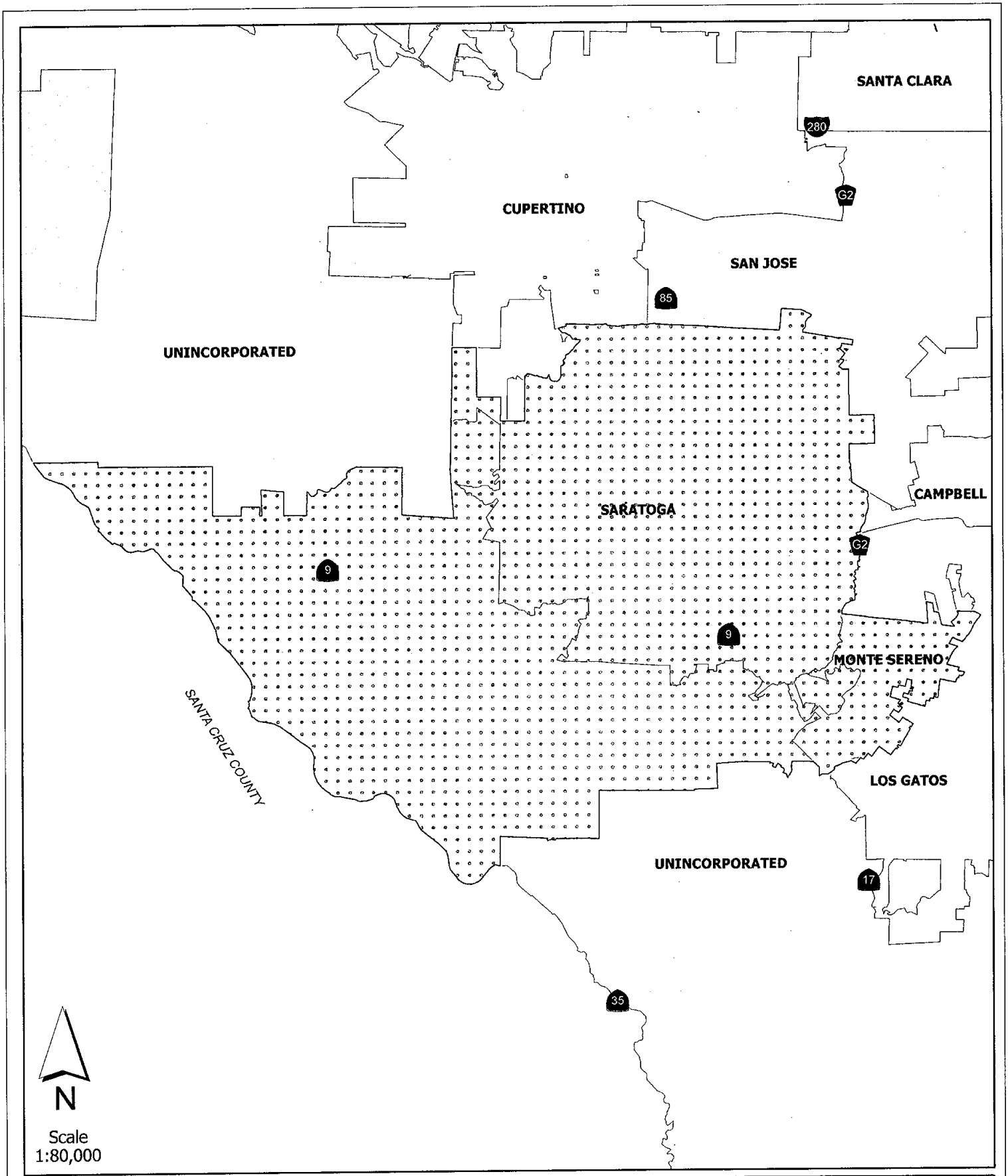
Sphere of Influence

Cities

0 0.035 0.07 0.14 Miles

LAFCO
Local Agency Formation Commission of Santa Clara County

December 2006



Saratoga Cemetery District

Boundary

Sphere of Influence

Miles
0 0.45 0.9 1.8

Cities

Unincorporated

LAFCO
Local Agency Formation Commission of Santa Clara County

December 2006

LAFCO
Local Agency Formation Commission of Santa Clara County

ITEM NO. 7

LAFCO Meeting: December 13, 2006

TO: LAFCO

FROM: Neelima Palacherla, Executive Officer
Dunia Noel, Analyst

SUBJECT: **Update on Island Annexations**

Agenda Item #7

STAFF RECOMMENDATION

Accept Report.

BACKGROUND

Forty-One Unincorporated Islands Annexed in 2006

The Cities of Campbell, Cupertino, Los Altos, Milpitas, Morgan Hill, Mountain View, San Jose and Saratoga completed a combined total of 41 unincorporated island annexations (see Attachment), consisting of approximately 765 acres this year. In doing so, the cities of Campbell, and Los Altos have annexed all of their unincorporated islands that are ≤ 150 acres in size and eligible for annexation under the streamlined island annexation law.

The City of San Jose has indicated that they plan to annex 49 additional unincorporated islands over the next 4 years. The City of Los Gatos indicated that they would not pursue annexation of their unincorporated islands without first receiving substantial support from the unincorporated island residents. The City of Monte Sereno was able to start their island annexation process in 2006, but was not able get a majority of the City Council to support the annexation of their three remaining islands. Some city officials have recently expressed interest in trying to complete the process next year.

Working with the Cities and the County, LAFCO staff helped coordinate the overall island annexation program. LAFCO staff assisted and advised cities on their public outreach process, attended island annexation community meetings and hearings, provided technical assistance on the island annexation process and law, and worked with and completed all necessary paperwork as required by the State Board of Equalization. All necessary documents and fees were provided to the State Board

Equalization by December 1, 2006 ensuring that the completed annexations will be reflected in the next tax roll. Although completed successfully, the aforementioned activities have required a substantial amount of LAFCO staff time, and much of that staff time was in addition to the staff work that would be typically be covered by LAFCO fees.

LAFCO Fee Waiver Expires January 1, 2007

LAFCO, as part its adoption of Island Annexation Policies in February 2005, authorized a 2-year fee waiver for annexations that result in the elimination of entire unincorporated islands. The current LAFCO fee is $959 for each annexation area. So far, LAFCO has waived $39,319 in fees. Under LAFCO's Island Annexation policies, the fee waiver will expire on January 1, 2007, which was the sunset date for the island annexation law. However, the sunset date was recently extended to January 1, 2014.

COMPLETED ISLAND ANNEXATIONS

1. Campbell Island Annexations	Effective Date	Acreage
Campbell Pocket #1: North Pocket	Nov. 22, 2006	31.49
Campbell Pocket #2: South Pocket	Nov. 22, 2006	54.45
Campbell Pocket #3: Southwest Pocket	Nov. 22, 2006	1.04
		86.98

2. Cupertino Island Annexations	Effective Date	Acreage
Cupertino Pocket #3: McClellan Road	Nov. 7, 2006	0.57
Cupertino Pocket #4: Stevens Canyon Road	Nov. 7, 2006	6.93
Cupertino Pocket #5: Rainbow Drive	Nov. 7, 2006	0.44
Cupertino Pocket #6: S. Stelling Road	Nov. 7, 2006	0.37
Cupertino Pocket #7: Rainbow Drive	Nov. 7, 2006	0.37
Cupertino Pocket #9: Upland Way	Nov. 7, 2006	0.95
Cupertino Pocket #10: Upland Way	Nov. 7, 2006	6.71
Cupertino Pocket #11: Seven Springs Parkway	Nov. 7, 2006	1.04
		17.38

3. Los Altos Island Annexations	Effective Date	Acreage
Los Altos Pocket #1: Blue Oak Lane	Jul. 1, 2006	12.49
Los Altos Pocket #2: Woodland Acres	Jul. 1, 2006	79.20
		91.69

4. Milpitas Island Annexation	Effective Date	Acreage
Milpitas 1990-03	Nov. 20, 2006	5.03
		5.03

5. Morgan Hill Island Annexations	Effective Date	Acreage
Morgan Hill Pocket #1: Tilton and Hale	Jun. 9, 2006	2.60
Morgan Hill Pocket #2: East of Hale	Jun. 9, 2006	3.59
Morgan Hill Pocket #3: Teresa Lane and Sabini Ct.	Jun. 9, 2006	17.86
Morgan Hill Pocket #5: Cochrane and Mission View	Jun. 9, 2006	54.92
Morgan Hill Pocket #6: Cochrane and Peet	Jun. 9, 2006	141.99
Morgan Hill Pocket #7: Diana and El Dorado II	Jun. 9, 2006	23.99
Morgan Hill Pocket #8: US101 and Condit	Jun. 9, 2006	62.34
Morgan Hill Pocket #9: East Dunne-Wong	Jun. 9, 2006	4.83
Morgan Hill Pocket #10: Murphy Avenue	Jun. 9, 2006	2.34
Morgan Hill Pocket #11: Condit and Murphy	Jun. 9, 2006	18.71
Morgan Hill Pocket #12: DeWitt Avenue	Jun. 9, 2006	2.00
Morgan Hill Pocket #13: Tennant and Railroad	Jun. 9, 2006	2.83
Morgan Hill Pocket #14: Monterey Road	Jun. 9, 2006	20.26
Morgan Hill Pocket #16: Diana and Jasmine	Jul. 11, 2006	19.04
Morgan Hill Pocket #17: West Edmundson and Piazza	Jun. 9, 2006	12.64
		389.94

6. Mountain View Island Annexations	Effective Date	Acreage
Mountain View Pocket #1: Eunice Avenue	Nov. 20, 2006	0.78
Mountain View Pocket #2: Highway 85	Nov. 20, 2006	21.90
Mountain View Pocket #3: Stevens Creek	Nov. 20, 2006	2.52
		25.20

7. San Jose Island Annexations	Effective Date	Acreage
San Jose Pocket #1: Cypress No. 30	Nov. 29, 2006	3.43
San Jose Pocket #2: Penitencia No. 73	Nov. 29, 2006	7.11
San Jose Pocket #5: Piedmont No. 51	Nov. 29, 2006	2.30
San Jose Pocket #6: Story Road No. 59	Nov. 29, 2006	3.58
San Jose Pocket #8: Sunol No. 74	Nov. 29, 2006	1.71
San Jose Pocket #9: Sunol No. 75	Nov. 29, 2006	3.63
San Jose Pocket #10: Sunol No. 76	Nov. 29, 2006	1.89
		23.65

8. Saratoga Island Annexations	Effective Date	Acreage
Saratoga Pocket #1: Hidden Hill Rd 2006-01	Oct. 17, 2006	19.83
Saratoga Pocket #2: Prospect Road	Oct. 17, 2006	105.08
		124.91

TOTAL ACREAGE ANNEXED	**764.78**

LAFCO
Local Agency Formation Commission of Santa Clara County

ITEM NO. 8

December 13, 2006

TO: LAFCO

FROM: Neelima Palacherla, Executive Officer

SUBJECT: **Appointment of 2007 Chairperson and Vice Chairperson**

Agenda Item # 8

RECOMMENDATION

Per the rotation schedule, the Chairperson for 2007 will be the San Jose representative to LAFCO and Commissioner Alvarado as Vice Chair. However, Commissioner LeZotte's term on the city council expires at the end of the year and San Jose's representative on LAFCO has not yet been named.

DISCUSSION

Appointment of Chair and Vice Chair is made on a calendar year basis. LAFCO's rotation schedule is as follows:

City representative
County representative
San Jose representative
County representative
Public representative

The Chair for the previous year was Commissioner Don Gage, County representative and the vice chair was Commissioner LeZotte, San Jose representative. In accordance with the rotation schedule, the San Jose representative is appointed as the 2007 Chairperson and Commissioner Alvarado as the Vice Chairperson.

LAFCO
Local Agency Formation Commission of Santa Clara County

ITEM NO. 9

2007 SCHEDULE OF LAFCO MEETINGS AND APPLICATION FILING DEADLINES

FILING DEADLINE	LAFCO MEETING*
Wednesday, December 20, 2006	Wednesday, February 14, 2007
Wednesday, February 21, 2007	Wednesday, April 11, 2007
Wednesday, April 18, 2007	Wednesday, June 6, 2007
Wednesday, June 13, 2007	Wednesday, August 8, 2007
Wednesday, August 15, 2007	Wednesday, October 10, 2007
Wednesday, October 17, 2007	Wednesday, December 12, 2007

TIME OF MEETINGS: 1:15 PM

LOCATION OF MEETINGS: Board of Supervisors' Chambers
County Government Center
70 West Hedding Street, 1st Floor
San Jose, CA 95110

FILING LOCATION: LAFCO Office
70 West Hedding Street, 11th Floor
San Jose, CA 95110
(408) 299-6415

**Generally every second Wednesday of even months.*

Journal of the California Association of Local Agency Formation Commissions

The Sphere

December, 2006

A New Tool for the LAFCo Toolbox

By Pat McCormick, Executive Officer, Santa Cruz LAFCo

Context

The City of Watsonville is a Latino - majority city of 50,000 people substantially surrounded by prime agricultural lands and wetlands. In 2005, the City applied for a 90-acre annexation titled "Manabe - Burgstrom" after the two long -term family partnerships that owned the land. LAFCo had previously denied municipal annexation of these lands in 1977 and 1997 because they are prime agricultural lands and LAFCo believed that there were other sites upon which the potential industrial uses could be developed or redeveloped.

The covenant is a new tool for annexations in situations where future land uses are an issue

On LAFCo's part, the proposed annexation area had been a purposeful "peninsula" of unannexed agricultural land bordered on 2½ sides by longstanding industrial lands and 1 side by newly developing residential lands, both within the city limits. The County of Santa Cruz adopted a growth management referendum in 1978 that prohibits the conversion of commercial agricultural lands, such as Manabe - Burgstrom, out of agricultural use. The City of Watsonville prezoned the lands for industrial and other job -development uses along with the restoration of a degraded wetland on the site. So, LAFCo's decision on this site involved a de facto land use decision.

LAFCo's denial of the annexation in 1999 led to the City re -thinking its planning process. Instead of litigating, approaching the Legislature, or re -applying, City officials joined with the agricultural, environmental, and labor opponents of the Manabe-Burgstrom annexation in a multi - year consensus project led by a non -profit entitled "Action Pajaro Valley." Action Pajaro Valley promulgated a Growth Management Strategy that proposed a 25 -year urban limit line. The only "greenfield" sites for major new employers were on the Manabe-Burgstrom properties. All the other new jobs would occur on infill - development and redevelopment. This growth strategy was turned into an initiative, which the voters of Watsonville approved in 2002.

The Hearing

The LAFCo hearing was held on October 19, 2005. As a product of the Action Pajaro Valley consensus project, there was overwhelming local support for the annexation. The LAFCo Commissioners acknowledged the broad support, but also kept their "LAFCo hats" on. The Commissioners remembered the 200 acres immediately north of Manabe-Burgstrom, for which LAFCo had approved annexations for industrial development in the 1970's. This acreage hadn't found a market for industrial development, and, after re - zoning, was in the process of being developed for residential uses. The Commissioners were concerned that the same scenario would happen on the Manabe - Burgstrom site. If so, the job - creating potential of the Manabe - Burgstrom site would be lost, and the other potential "greenfield" sites are located outside the city's 25 -year urban growth boundary, are farther from the urban center, and have more constraints and significant political opposition.


Burgstrom Property

At the hearing, the property owners made an offer to covenant their properties to become a long -term center for job growth. This covenant had the potential to address the Commission's concerns about rezoning while avoiding a situation of directly regulating land use as prohibited by the Local Government Reorganization Act. The motion directed staff to return

Continued on Page 5

The Sphere

CALAFCO Journal

December, 2006

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

To submit articles, event announcements, comments or other materials noteworthy to LAFCo commissioners and staff, please contact the Editor at 916-442-6536 or wchiat@calafco.org.

The contents of this newsletter do not necessarily represent the views of CALAFCO, its members, or their professional or official affiliations.

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Sacramento, CA 95814
916-442-6536

www.calafco.org

FROM THE EXECUTIVE DIRECTOR

Reflections on LAFCo

Bill Chiat
Executive Director

November marks my second anniversary with CALAFCO. It continues to be a wonderful opportunity to work with each of you. As many know, in my work in cities, counties, and special districts I've had the opportunity to interact with LAFCo from the applicant side. So it's been enlightening and a joy to experience the LAFCo perspective on the issues we face.

The occasion prompted me to reflect on some observations of Local Agency Formation Commissions from both in and outside.

Tough Issues, Decisions

LAFCos have long faced difficult issues and decisions. With the pressure to balance resource preservation and accommodate growth for housing and jobs, the decisions before LAFCo are increasingly complex. Commissioners and staff consider a wide range of challenging issues in their decisions. As growth moves further into suburban and rural counties, commissioners and staff are stepping forward to carefully consider how proposals meet the intent of Cortese-Knox-Hertzberg and locally adopted policies on orderly growth and resource preservation. Water availability is but one example. I'm impressed with the interest and attention that staff and commissioners have given at CALAFCO conferences, workshops, and courses on water issues. The same is true on other topics—as the information and responsibilities change, LAFCo officials want to learn. There is a commitment to understand these tough issues and to make the best decisions.

Leadership on challenging decisions is difficult. LAFCos demonstrate their willingness to understand issues and apply local community needs by making those decisions. Commissioners around the state are providing the leadership to address growth, services and preservation.

Independence

Two related facets caught my attention. LAFCo is one of the only regional boards or commissions where the Legislature has expressly instructed commissioners to consider decisions independent of their appointing authority. This independence in thinking is a hallmark for LAFCo. Since 2000, that independence has been further defined at the staff level too. Commissions are now required to retain their own staff. Many commissions have taken on the independence issue and separated their staff from the county, for both practical and perceptional reasons. Many more are now looking at options to assure communities that they and their staff are giving an independent review of the decisions before it.

Part of the growing respect for the role and authorities of LAFCo that I sense in Sacramento and among our peer agencies is because of the seriousness and independence with which LAFCos approach their decisions.

Accountability of Local Governments

Creating viable new governments, adding powers to agencies, reviewing local services and determining changes in boundaries have long been on LAFCo agendas. But it's this 'watchdog' role that is emerging as an important contribution to assuring efficient local services. The Municipal Service Reviews are but one tool that LAFCos are perfecting in their desire to produce a value-added contribution to the community. Creating new governments and adding responsibilities to

Continued on Page 10

FROM THE BOARD CHAIR

Cheers from the Chair

By Kathy Long, CALAFCO Board Chair

KATHY LONG
CALAFCO Board Chair

Work, Work, Work! The work of the CALAFCO Board and our Executive Director for the next year is already well underway! We came out of the September Annual Conference energized and excited about the confidence the members demonstrated in support of the new dues structure, the proposed member benefits and scope of work for the Association, and the positive comments from our overall conference programs.

Thank you for taking the time to send in evaluations from the conference –we received from you high ratings on the location, the roundtable discussions, the programs and panelists, awards recognition and the opportunity to listen and learn from fellow LAFCos.

Thank you again to the San Diego team of **Shirley Anderson**, **Claire Riley** and **Mike Ott** and many others who put this together. Work is now underway for the 2007 conference to take place in Sacramento, with **Chris Tooker** from the CALAFCO Board agreeing to Chair the conference –thank you Chris!

The Board of Directors gave the green light for future CALAFCO U programs, such as the Nov. 17th course on CEQA for LAFCo, which was held in Irvine. Also on the calendar for 2007, is the Staff Workshop, to be held April 11-13 in Newport Beach. The Legislative Committee held its first meeting Oct. 6th, looking ahead to the 2007 issues, including reform of the MSR factors and service extensions outside of boundaries and spheres.

These programs are member benefits that will continue to be supported as we also look ahead to new opportunities. That look will take place at the Board of Directors Strategic Planning Workshop January 11-12 in Sacramento. With the By-laws revised and adopted and our financial house in order, we will now take the time to think long term and plan for the continued improvement of the Association's work. We welcome your ideas and input at all times, workshops, conferences, and at Board meetings. We can only envision the future of the Association if we have been good listeners and open to new ideas.

Thank you for participating and may you have a joyous holiday season!

CALAFCO Board Officers Re-Elected

At their first meeting of the fiscal year, the Board of Directors unanimously re-elected it officers to serve for 2006-07.

Elected officers include:

Chair	**Kathy Long** (county-Ventura LAFCo)
Vice Chair	**Peter Herzog** (city-Orange LAFCo)
Secretary	**Roger Anderson** (public-Santa Cruz LAFCo)
Treasurer	**Susan Vicklund Wilson** (public-Santa Clara LAFCo)

Chair Long made several committee chair appointments at the meeting. Those include:

Conference Chair	**Chris Tooker** (public-Sacramento LAFCo)
Nominations Committee	**Jerry Allen** (county-Monterey LAFCo)
Awards Committee	**Sepi Richardson** (city-San Mateo LAFCo)

CALAFCO Annual Meeting

MEMBERSHIP ELECTS NEW BOARD MEMBERS

CALAFCO members elected three new members to the Board of Directors at the Annual Meeting in San Diego.

MARY JANE GRIEGO was elected to a county seat. She serves as a county member of the Yuba LAFCo. Mary Jane has served on the Yuba County Board of Supervisors since 2000, representing District 3.

GAY JONES was elected to a special district seat. Gay serves as a special district alternate member of the Sacramento LAFCo. She is a member of the Sacramento Metropolitan Fire District Board of Directors, representing District 8. Gay also recently retired as a Captain with SMFD.

CATHY SCHLOTTMANN was elected to a special district seat. She serves as a special district alternate member on the Santa Barbara LAFCo. Cathy is a member of the Mission Hills Community Services District Board of Directors.

Re-elected Board members include **Roger Anderson** (Santa Cruz), **Jerry Gladbach** (Los Angeles), **Matt Gourley** (Monterey), **Kathy Long** (Ventura), **Sepi Richardson** (San Mateo) and **Chris Tooker** (Sacramento).

Several CALAFCO Board members concluded their service on the Board and were thanked by Boardmembers and the membership for their years of service and contributions. Those leaving the Board included:

Gary Lewis, County Member, Lake LAFCo

Mel McLaughlin, Special District Member, Kern LAFCo

Elliot Mulberg, Special District Member, Sacramento LAFCo. Elliot is not going far, however. He accepted a position as Senior Analyst with Monterey LAFCo.

Around the State

NAPA

LAFCo of Napa County has hired **Tracy Geraghty** as its new staff analyst. Tracy formerly worked as a project manager for Pacific Municipal Consultants (Davis, CA) and as a field representative to former Assemblywoman Pat Wiggins (Assembly District No. 7).

In November, Napa County voters approved the formation of the Napa County Park and Regional Open Space District. The countywide District becomes the 18th special district in Napa County under the jurisdiction of LAFCO.

Keene Simonds, Executive Officer

STANISLAUS

Stanislaus LAFCO is proud to announce the appointment of **Elizabeth Contreras** as the new Assistant Executive Officer. Elizabeth previously worked for San Joaquin LAFCO.

Marjorie Blom, Executive Officer

EL DORADO

El Dorado LAFCO is pleased to welcome **Robert Larsen** and **Norm Rowett** as the alternate special district member and alternate public member, respectively. Both have brought with them a keen insight from past roles to the Commission.

The Commission and staff would also like to congratulate **Erica Frink**, El Dorado LAFCO Policy Analyst, on her recent marriage to Christopher Sanchez. We wish them many happy years together. Please note that Erica has also subsequently changed her last name to her married name.

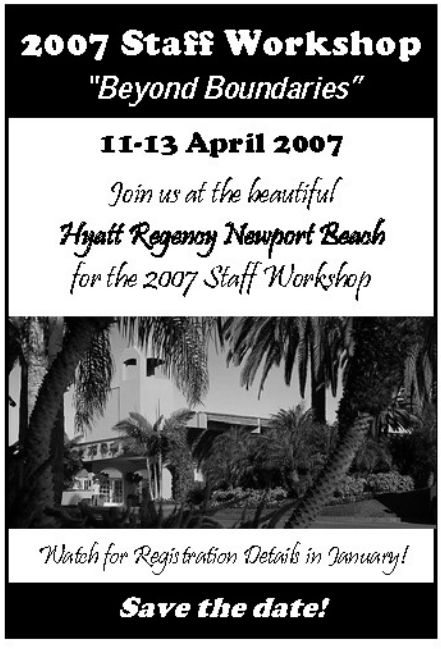
José C. Henríquez, Executive Officer

MARIN LAFCO AMENDS SPHERE FOR SAN RAFAEL

After a lengthy review of San Rafael and its unincorporated areas, Marin LAFCO revised and amended the Sphere of Influence for the City of San Rafael this past spring. San Rafael is the urban center and county seat of Marin County with a population of over 68,000. Ten unincorporated areas were also studied during this SOI review. One of the areas studied was the 1,180 acre St. Vincent's/Silveira area which for years has been controversial in nature due to it being one of the last large developable areas in the County's City-Centered Corridor. This area lies between the city limits of San Rafael and Novato.

During its General Plan 2020 process in 2003, San Rafael formally requested to exclude the St. Vincent's/Silveira properties from its sphere of influence. The St. Vincent's property owners proposed development of 766 housing units and fought to remain in the San Rafael's sphere and obtain city services. The City, however, wanted to exclude this area from its sphere, saying that extension of the requested services was not feasible. After detailed review and public hearings, the Commission excluded the St. Vincent's/Silveira area from San Rafael's Sphere of Influence.

This situation has been common in Marin County LAFCo's recent SOI reviews - excluding territory from city spheres if the city's general plan or other fundamental underlying circumstances show that annexation will be prevented for the foreseeable future. Since the change in definition of the Cortese-Knox-Hertzberg Act of a sphere of influence from "...a plan for the *ultimate* boundary and service area of a local government agency..." to "...a plan for the *probable* boundary...," Marin LAFCO has taken this more pragmatic look at all its city spheres of influence.



New Tool for the LAFCo Toolbox

Continued from Cover

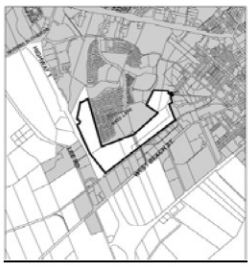
with a covenant that was acceptable to the City and property owners and was enforceable, if one could be crafted. If such a covenant could be prepared, the property owners would voluntarily record the covenant prior to the LAFCo Executive Officer recording the Certificate of Completion.

Manabe ("ma-NAH-be") Property

If no covenant could be prepared to implement the property owners' promises, then the matter would return to the Commission for further motions on the disposition of the proposed reorganization.

Covenant

The development of a covenant turned out to be a state-of-the-art exercise in California annexation practice. In order to increase the future number of parties who could enforce the covenant, two additional parties were asked to become signatories: the County of Santa Cruz and the Watsonville Wetlands Watch, a local environmental group that had opposed the Manabe-Burgstrom Reorganization in 1999 and had signed the Action Pajaro Valley consensus growth strategy in 2002.



Site Map

Conclusion

After much hard work by representatives of all the parties in the negotiation, a covenant was successfully drafted. LAFCo unanimously found the covenant to be acceptable in March 2006. As stated in Article 3 of the covenant, through the year 2030 the principal uses of the annexed lands will be for a business park. Big boxes and auto sales are prohibited. A freshwater wetland will be restored. The covenant and reorganization were recorded on August 1, 2006. The covenant is a new tool available for use in annexations in a small number of situations where future land uses are an issue.

For more information please visit the Santa Cruz LAFCo website at:

http://santacruzlafco.org/pages/agendas.html#Manabe

BAY AREA LAFCOs MEET WITH ABAG

At the 2006 Annual Conference, Mark Pisano, executive director of the Southern California Association of Governments, who was a panelist on the session dealing with "unwelcomed growth," mentioned the idea of LAFCos and Council of Governments (COGs) getting together to exchange information and discuss topics of mutual interest. Staff from the Bay Area LAFCos thought this was a good idea, especially in light of Assemblywoman Noreen Evans's then-proposed legislation (AB 2158) to add LAFCo spheres of influence (SOI) and LAFCo policies as factors that COGs would use in the development of Regional Housing Needs Allocations (RHNA) methodology.

These thoughts resulted in a recent meeting between LAFCo staffs from Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma and staff from the Association of Bay Area Governments (ABAG), our COG. Although AB 2158 was vetoed after the meeting was set up, the group still had a lot to talk about!

The meeting provided an occasion for ABAG staff members to discuss with LAFCos ABAG's *Projections 2007* project and the process for developing the RHNA methodology, the timeline for assigning RHNAs to jurisdictions, and the value of including city SOIs in the mix. In the next few months, the ABAG Board of Directors will consider a number of options regarding the RHNA methodology.

This was a great opportunity to better understand the nexus between SOIs and RHNA and how COGs and LAFCos can coordinate our efforts. The group agreed to meet annually and share information regarding changes in spheres and projections.

A special thanks to Carole Cooper, Sonoma LAFCo, for coordinating this effort.

Editors Note: *Similar meetings have now been held with the Sacramento Association of Governments, and the Southern California Association of Governments.*

THIRD INSTALLMENT

"As the Sewer Turns:" The Los Osos Community Services District

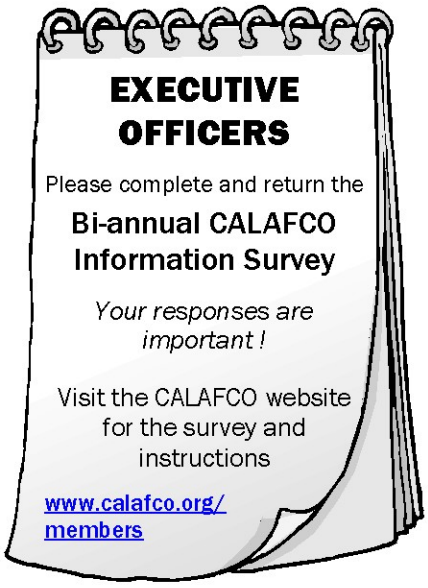
By Paul Hood, Executive Officer, San Luis Obispo LAFCo

Well, this is the final episode of the continuing saga of "As the Sewer Turns." After four LAFCo hearings, on September 21 the Commission unanimously denied the proposal to dissolve the Los Osos Community Services District. Previous articles have reported on the waste water treatment project saga and the way it has split the community. The primary reason for the Commission's denial vote was that if the District was dissolved, up to $40 million in liabilities for lawsuits filed against the District and fines by the RWQCB would be transferred to the County as successor agency. LAFCO does not have the ability to shield the County from these liabilities if the District is dissolved. To further complicate matters, the District filed for municipal bankruptcy a few weeks before the LAFCO hearing.

Based on current law, including the conditioning powers in GC Section 56886, the Commission did not have the ability to insulate the County from those liabilities. These obligations could ultimately become the responsibility of countywide tax payers. Having reached this conclusion early in the dissolution process, staff had been working on a legislative fix with our local Assemblyman Sam Blakeslee. The result was AB 2701, which was signed by the Governor the day before the final LAFCO hearing on the dissolution. The legislation will transfer the sewer project to the County on January 1, 2007, with the liabilities remaining with the District. The District will continue to provide other services such as fire protection, water, and solid waste. After construction of the wastewater project by the County, it would then be transferred back to the District for operation. The one huge issue that remains is that the County's obligation to construct the project is contingent on the passage of a Proposition 218 vote. If the vote fails, the County has no obligation to proceed with the project and the State may then step in to finish the job.

In the meantime, a sub-committee of the CALAFCO Legislative Committee is working on revisions to the district dissolution statutes contained in the CKH Act. It is clear from the Los Osos situation that changes are needed to make a distinction between the dissolution of "inactive" and "active" districts, particularly those districts that do not necessarily wish to be dissolved. One of the challenges is how to limit the liability of successor agencies.

Hopefully this is the final episode of "As the Sewer Turns." There is still a lot of work to be done to resolve the environmental and financial issues in Los Osos relating to the waste water project. Therefore, I am not ruling out the possibility that LAFCo may be asked to revisit the dissolution issue some time in the future. If this happens, I will definitely report on the continuing saga.



LAFCO AND SBE ENSURE BOUNDARIES ARE CORRECT

By Bob Braitman, Santa Barbara LAFCo

Janette Blanchard in the Data Sourcing Department of Tele Atlas North America recently contacted us. I was intrigued because the call came from Lebanon, NH, more than 2,500 away.

She was calling to confirm that one of our completed proposals, the Lengsfelder Reorganization, actually included a detachment from the City of Santa Barbara but did not list an annexation to the County of Santa Barbara.

I discovered that her company Tele Atlas North America, Inc. (TANA) provides worldwide digital maps and dynamic data for a wide range of personal and in-car navigation systems, plus mobile and Internet Map applications. TANA supplies map data to more Emergency 911 services than any other provider.

It obtains information about boundary changes in California from the Board of Equalization (SBE). And as all LAFCo staffers know, the SBE depends upon LAFCos to provide with correct information about these geographical changes.

Janette's query was resolved when we confirmed the change and advised her that in California lands annexed to or detached from cities remain part of the county, as compared to some states where cities and counties or townships exist side by side but do not overlap.

This call served as an important reminder that LAFCO filings with the SBE are essential to maintaining clear and accurate records of jurisdictional boundaries, upon which depend many public and private interests. The information is used not only locally but globally.

For more information contact Bob Braitman, Executive Officer, Santa Barbara LAFCo.

Search the Web and Earn Funds for CALAFCO

GoodSearch.com is a new Yahoo-powered search engine, with a unique social mission ... every time you use GoodSearch, money is generated for not-for-profit organizations. *And now CALAFCO has been approved as a GoodSearch recipient!*

GoodSearch donates half its revenue – about a penny per search – to the organizations selected by its users. The pennies quickly add up. For example, if 100 CALAFCO supporters searched just twice a day, we would receive an estimated $730 per year to help fund our educational mission and programs.

It's simple. Use GoodSearch like any other search engine — the site is powered by Yahoo! — but each time you do, money is generated for CALAFCO.

GoodSearch

Just go to www.goodsearch.com and enter **California Association of Local Agency Formation Commissions** as the organization you want to support. You can even download the handy GoodSearch toolbar on your home page. Then CALAFCO earns every time you search.

The more people who search with this site, the more money we'll earn ... so please help spread the word!

CALAFCO MEETS WITH PUC

Improved Communications on Private Water Companies

A long-anticipated meeting with the Public Utilities Commission happened at their San Francisco headquarters in October. The goal was to open discussions and build better communications with LAFCos on the boundaries, ownership and operational data of private water companies.

The level of involvement and interest from the PUC was evident in their participants. In addition to their policy staff, the Executive Director, both deputy directors, several department heads and three judges all participated in the meeting. CALAFCO was represented by Boardmember **Susan Wilson**, along with **Bill Chiat**, **Kathy McDonald** (San Bernardino), **Bob Aldrich** and **Carolyn Emery** (Orange), **Pat McCormick** (Santa Cruz), **Steve Lucas** (Butte), **Neelima Palacherla** (Santa Clara), **Gloria Young** (San Francisco), and **Carole Cooper** (Sonoma).

Pat McCormick summarized the meeting:

- PUC staff will consider revising their rules to require companies to notify LAFCo when a sale is going to be proposed.
- PUC staff told us that they don't regulate utility company extensions less than 2000 feet from their previous service area.
- PUC staff said they don't have the authority to deny utility company filings for a larger service area as long as they don't impinge on another investor-owned utility's turf. The PUC merely processes after-the-fact revised service area maps.
- PUC staff will consider revising rules to require investor-owned utilities to respond to LAFCo requests for information gathered as part of LAFCos' Municipal Service Reviews.
- The PUC is working to require investor-owned companies to file more modern and accurate service area maps.
- We discussed possible future efforts to cooperate in order to promote more efficient public services—at least to reduce the most egregious conflicts that occur due to each group working under different laws to regulate utility service areas.

Since the meeting, PUC staff has initiated work on their rule rewrites. They are drafting language to require utilities to respond to LAFCo data requests for MSRs. They are also looking at options for requiring LAFCo notification of sale and service extensions. As new rules are promulgated, we will inform CALAFCO members.

CALAFCO Board Sets Strategic Workshop

The CALAFCO Board of Directors will hold a strategic workshop on **12 January 2007** in Sacramento to discuss and revise the Association's strategic plan.

The workshop is particularly critical as the Board will be responding to member input resulting from the dues increase, and exploring the what and hows of enhancing and expanding member services and communications.

Members are encouraged to share their thoughts on services, strategic priorities, member communications, and future issues for CALAFCO. Comments and suggestions may be sent to the Board through Executive Director Bill Chiat. The current Strategic Plan (June, 2005) is available on the CALAFCO website at:
www.calafco.org/members/calafco_business.

FONTANA: A CITY OF *ACTION*

By Cecilia Lopez-Henderson, Annexation Program Coordinator, City of Fontana

Background

The City of Fontana is located in the southwestern portion of San Bernardino County and serves as the hub of the growing Inland Empire. The Inland Empire has earned its name as an economic area that is creating jobs, housing opportunities and new business enterprises along the eastern edge of the Los Angeles Basin. The City and its sphere of influence are positioned to take advantage of major north-south (Interstate 15) and east-west (Interstate 10) transportation corridors and are centrally located in the heart of the Inland Empire. In addition, the City is also traversed by the State Route 210-Freeway that is presently being extended into adjacent eastern valley cities. This new roadway brings ever increasing demands for housing and commercial development opportunities.

The community of Fontana is a combination of the City's corporate boundaries and the unincorporated County area that lies within its Sphere of Influence. It is a community of two governments but its residents have one identity; they are all "Fontanans." This area comprises about 52.4 square miles that begins at the foothills of the San Bernardino Mountains and descends on to the valley floor following the path of an ancient alluvial fan. An older city core, recent extensive residential and commercial development, and large tracts of vacant land generally characterize the area both within and outside the City's corporate boundaries. These tracts of relatively inexpensive land, and the current demand for affordable housing and jobs, have served to focus attention on the area's potential for growth.

Since the passage of Senate Bill 1266 (the "island annexation" bill), the City of Fontana had embarked on a quest to annex as many island areas that would qualify under the revised island annexation provisions. In working with the San Bernardino Local Agency Formation Commission staff, the City identified 32-islands of unincorporated territory. The island areas were located in the City's central, eastern and southern portions of its Sphere of Influence. To provide a better perspective on the magnitude of this undertaking, the island areas collectively comprised 2,932 acres equating to 4.58 square miles, contained over 13,000 residents and 4,299 registered voters, and included over 4,000 individual parcels. In comparison, the smallest city in San Bernardino County is 3.5 square miles with about 13,000 residents. So, Fontana, a City of Action, appears to have done the impossible—annex an area—the size of a small city. In the words of Mark Nuaimi, Mayor of Fontana, "From the beginning, our message was very clear—we want to 'keep Fontana revenues in Fontana.' I believe that this message resonated well with the community and it is now our challenge to show how that revenue is invested to benefit the annexed areas."

The Island Annexation Provisions

On January 1, 2005, a bill authored by Senator Tom Torlakson (SB 1266) which ammended and expanded island annexations, became law. SB 1266 built on the previous island annexation legislation passed in 1999 (AB 1555). The legislation revised the language in Government Code Section 56375 pertaining to annexation of existing islands of territory. The special provisions permit cities throughout the State of California to annex islands of unincorporated territory that are substantially or totally surrounded by a city's corporate boundaries that meet the following criteria:

- The area must be 150 acres or less in size and that area constitutes the entire island;
- The area constitutes an entire unincorporated island located within the limits of a city, or constitutes a reorganization containing a number of individual unincorporated islands;
- The area must be substantially or totally surrounded by the annexing city;
- The area must be developed or developing;
- The area does not contain prime agricultural land;
- The area will benefit from the annexation or is receiving benefits from the annexing city.

The island annexation provisions outlined in SB 1266 was to sunset on January 1, 2007; therefore, any city desiring to take advantage of these special provisions must have done so prior to this date. However, the sunset clause for island annexations has been extended to January 1, 2014, as a result of AB 2223 having been signed by the Governor.

In light of the legislative changes, the San Bernardino LAFCo revised its annexation policy on March 31, 2005 pertaining to unincorporated islands of territory. The revised policy reads as follows:

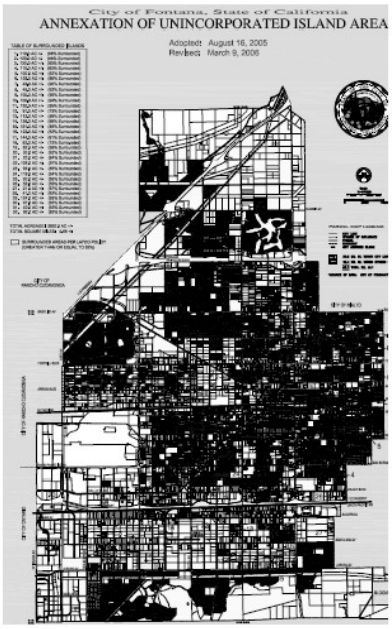
1. For the purpose of applying the provisions of Government Code Section 56375.3, the territory of an annexation proposal shall be deemed "substantially surrounded" if 52% of its boundary, as set forth in a boundary description accepted by the Executive Officer, is surrounded by (a) the affected City or (b) the

affected City and adjacent Cities, or (c) the affected City and a service impediment boundary as defined by the Commission to include, but not be limited to, a freeway, a flood control channel or forest service land.

2. The Commission determines that no territory within an established County Redevelopment Area shall be included within an island annexation proposal, unless written consent has been received from the County Board of Supervisors and County Redevelopment Agency.

3. The Commission directs that a City proposing to initiate an island annexation proposal shall have conducted a public relations effort within the area prior to the adoption of its resolution of initiation. Such efforts shall include, but not be limited to, providing information on the grand-fathering of existing legal County uses into the City, costs to the resident/taxpayer associated with annexation, and land use determinations. Documentation of these efforts shall be a part of the application submitted for consideration by the Commission.

In response to the legislative changes, Fontana City staff prepared and filed with San Bernardino LAFCo a single application that covered all the areas defined as "islands." According to San Bernardino LAFCo's policy, an island consists of unincorporated county area that is surrounded by 52 percent or more of incorporated city boundaries. All parcels within the islands were identified; a survey of the residents was conducted; and a plan for service of those areas was developed. In addition, based on the outcome of the survey, City staff developed an outreach program as defined in LAFCo's annexation policy. It was a goal of Fontana's Development Services Organization to have the annexation application on file with LAFCo by December 2005. The application was submitted on December 27, 2005. Below is the map outlining the various island areas that the City requested through the use of the special island annexation provisions. (As of September 19, 2006, out of the 32 island annexation areas, 27 were annexed to the City of Fontana. One island area was deferred for further review and approved at a subsequent hearing, and four island areas have been continued to May, 2007 for LAFCo review.)



Fontana Family Growing

Fontana was reported by the U. S. Census Bureau as the 23rd fastest growing city in the United States in 2004-05, for cities with a population above 100,000. With the annexation of 27 island areas and the inclusion of additional residents into the City, the population of Fontana now stands at 177,352. This ranking is sure to change with the recent annexation of miles of county areas or "islands," adding over 13,000 new residents almost overnight.

How will annexed residents be affected? Sales tax revenues will remain local, instead of being diverted to other areas of the county. The City will be able to utilize that revenue to make needed improvements to roads, parks and services in the annexed areas. In fact, plans have been underway since July 2005 to prepare for the increase in population as well as corresponding service needs.

In anticipation of annexing such a large number of previously unincorporated island areas, the City has beefed up many departments with the 2005/06 and 2006/07 budget adoptions. Those areas include the Police Department, Public Works Department, Community Improvement Division and the Community Services Department.

So where does Fontana go from here? The City's remaining Sphere of Influence stands at 10.9 square miles and primarily comprises its western and central sphere area. Three annexation areas are in the works, one is pending LAFCo's review. Since the year 2000, the City has maintained an Annexation Program and has consistently committed its resources, staff and time to its outreach efforts to outline the benefits of annexing to the City. It seems for the time being, anyway, that the City will continue with its efforts to annex its remaining Sphere of Influence—a mere 10.9 square miles.

Editor's Note: *The City of Fontana is a CALAFCO Associate Member.*

Reflections on LAFCo

Continued from Page 2

agencies is important business. LAFCos have increased their sophistication in reviewing proposals to make sure they are viable, both fiscally and in practical performance. This accountability has added to the transparency and public oversight of local agencies in the community. LAFCos are instrumental in asking difficult questions and facilitating action to address issues facing service providers, such as review of fire agencies that find themselves struggling to meet new requirements on limited budgets.

The new Community Services District law requires LAFCo to assure viability before creating a CSD or adding services. With the passage of AB 1602, LAFCos around the state will face a backlog of proposed incorporations. LAFCo will be in the key role to review these proposals to assure that the newly created and expanded governments will be viable and able to provide services in the long term.

This oversight and accountability that are commensurate with LAFCo review of applications, sphere changes, and MSRs plays a critical role in assuring effective agencies and municipal services for all Californians.

Growing Recognition and Respect for Your Work

Obscure agency. Little known. Unknown until now. Enigmatic. Those are just a few of the phrases the media uses to describe LAFCo. But that is changing. Those of you who subscribe to Google News Alerts (www.google.com/alerts) typically see three or four articles a day appearing in California newspapers about LAFCo (and in blogs too). That recognition is not only growing within local communities, but also with the local and regional agencies which interact with LAFCo on decisions.

Commissions bring together the perspectives of city, county, public—and in over half the counties—special districts to independently evaluate and decide on agencies, boundaries and services. There is no other regional body that develops policies, educates itself, and takes action to assure orderly growth, resource preservation, and service effectiveness. And for special districts (with the greatest number of independent governments in California), this is one of the only regional bodies where they can have a seat at the table and a voice in decisions.

As regional planning, such as Blueprint Plans, and multi-county agencies grow LAFCos can play a critical role in aligning regional plans with local policies. By collaborating with neighbor LAFCos and the COGs, Commissions can help hold local agencies accountable to boundary and service decisions that are consistent with regional plans, and provide regional agencies with an objective view on orderly growth, local services and resource preservation. The challenges for us are to engage in the discussions and develop processes to address decisions involving multi-county agencies (such as spheres in non-principal counties) and multi-county Blueprint Plans.

Meeting the Challenge

Serving LAFCo—as a commissioner, staff, or consultant—is a tough assignment. I am impressed with the dedication which is evident around the state. LAFCos show by their actions that a state law can be interpreted locally to meet local needs while at the same time striving towards the state goals of orderly growth, perseveration of agricultural and natural resources, preventing sprawl, and helping to ensure the efficient delivery of municipal service

Legal Updates Available in Free E-News and Blogs

Two new resources are available for those who want to keep up on LAFCo and public law.

Free emailed updates on legal issues facing LAFCos and other local agencies are available by a subscription to Scott Porter's "Land Use & Public Law E-letter."

Mr. Porter, an attorney with Burke, Williams & Sorensen, issues the E-letter twice a month. He summarizes relevant and recent legal developments affecting local government including court cases, AG opinions, and recently enacted statutes. Mr. Porter shares commentaries provided by other legal scholars as well as his own insights.

To order a free subscription email your request to: sporter@bwslaw.com. Include your: (1) name; (2) title; and (3) email address.

Meyers/Nave has announced the launch of a new blog: The Public BLAWG. The blog covers a wide range of public law topics. To learn more about the blog and what's happening in public law visit: www.publiclawnews.com.

Both resources are great ways to make sure that you are up to date.

Burke, Williams & Sorensen and Meyers/Nave are CALAFCO Associate Member.

Down With Upland!

An Ontario resident wants smaller stepchild suburbs to merge with their larger, older neighbors

By Mark Kendall

OUT IN THE suburbs east of L.A., I live a divided municipal life, and it's all because of a silly, century-old civic schism.

My home is in Ontario, not far from the border with Upland, where I do my grocery shopping, play at the parks on weekends and barbecue at the in-laws' pad. Truth is, I wanted to live in Upland for its bigger homes and greener lawns, but average-Joe Ontario was a better fit for my budget.

I never should have had to choose between the two. In the beginning, Ontario and Upland were one "model colony," carefully laid out in the 1880s by industrious Canadian transplant George Chaffey. One of Southern California's grandest thoroughfares, the eight-mile-long Euclid Avenue, united this citrus-growing paradise, with a "gravity mule car" whisking residents along the avenue's wide center median.

But bickering soon broke out between settlements on opposite ends of the colony, and in 1906, residents of northern Ontario formed their own city — Upland. So today I'm living east of Euclid and far from Eden, constantly crossing the invisible but powerful dividing line between Ontario and the renegade province to the north.

This civic split is repeated in the lives of so many other SoCal suburbanites who are hemmed in and subtly shaped by city borders born of long-ago fear, rivalry and snobbery as much as by intelligent planning.

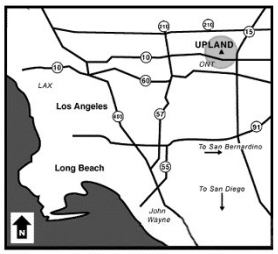
Back in 1916, the rural residents of what became Monterey Park were forced to form a city to thwart a scheme by Alhambra, Pasadena and South Pasadena to dispose of their sewage on its turf. Monterey Park's three foes put up quite a fight. "Triple Alliance Seeks to Kill the Baby City," read one Times headline. A few years later, West Covina incorporated for the same reason: Folks wanted to keep out Covina's doo-doo.

Whether legitimate, imagined or whipped up by cityhood boosters, annexation anxieties were rife during SoCal's postwar boom years. Rosemead turned to cityhood in 1959 for fear of being swallowed up by El Monte and San Gabriel. Cerritos' city website offers a lengthy account of how dairy farmers there cleverly hatched a cityhood plan, passed in 1956, to avoid being absorbed into the menace of "greater Artesia."

The results of all these ancient squabbles? Once you move east of the 710, the suburbs are splintered into countless — and often pointless — little cities, all competing for sales tax revenue and respect, all trying to lure one more big-box retailer or pull off one more spiffy redevelopment project.

This is the dark side of community pride. Everyone's trying to do it alone, and no one's willing to even consider throwing in the towel. Sheltered from the free-market forces that push businesses to merge and consolidate, our municipal mishmash is something akin to a shopping center where Woolworth's, Gemco and Montgomery Ward are still grinding it out against Target, Wal-Mart and Kohl's.

With all but the outer rings of L.A.'s suburbs pretty much built out — and increasingly worn out — it's time to rethink those arbitrary old lines, shutter some city halls and gain from economies of scale. Does there really need to be a separate city of South El Monte? Must Orange County befuddle visitors with the four "Lagunas" — Beach, Hills, Niguel and Woods? Is Chino Hills so much loftier than plain old Chino?



I see so many potential matchups. La Verne and San Dimas, both solidly conservative, attractive and well-to-do, would make a compatible pair, and besides, they already share a school district. In the opposites-attract department, I could see safe-and-sane Corona, full of soccer moms and tile-roofed tract homes, falling for the rugged cowboy ways of neighboring Norco. If the Berlin Wall can come down, can't the two Covinas mend their fences?

But it is my own Ontario and Upland that would make the most perfect pairing, at least on a practical level. Upland is an attractive bedroom community with mansions in the north but it lacks the sort of mega-malls and auto centers that its neighbor uses to rake in sales tax. Ontario, meanwhile, has its share of rough-around-the-edges neighborhoods with older, smaller homes, but a city hall awash in cash, thanks to the many car dealers, a huge outlet mall and the businesses around the airport.

Ontario has a little more than double Upland's population, but the city expects to take in five times the sales tax revenue for the 2006-07 budget year. Ontario recently opened a new library and a new police headquarters, and it has a community events center on the way.

So Ontario could essentially buy some of Upland's class. We'd even be willing to throw the big wedding shindig on Upland's turf, under the pepper trees shading Euclid's wide, park-like median.

Of course, Ontario would have to spring for the whole thing. Pucker up, Upland!

***Mark Kendall**, is a freelance writer based in Ontario. This article originally appeared in the Los Angeles Times on 18 October 2006. Used with the author's permission.*

The Sphere
CALAFCO Journal

CALIFORNIA ASSOCIATION OF LOCAL AGENCY FORMATION COMMISSIONS

801 12th Street, Suite 611
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www.calafco.org

CALAFCO provides statewide coordination of LAFCo activities, serves as a resource to the Legislature and other bodies, shares information among LAFCos and other governmental agencies, and provides a forum for technical advice to LAFCos.

Sharing Information and Resources

2007 Events Calendar

CALAFCO
California Association of Local Agency Formation Commissions

JANUARY

11-12	**CALAFCO Board of Directors Strategic Workshop and Meeting** (Sacramento)
19	**CALAFCO Legislative Committee** (Sacramento)
17-20	California Association of Sanitation Agencies Conference (Indian Wells)

FEBRUARY

22-23	**CALAFCO U Incorporations Course** (Sacramento)

MARCH

15-18	Local Government Commission (Yosemite)
21	Association of California Water Agencies Legislative Symposium (Sacramento)
28-29	California State Association of Counties Legislative Conference (Sacramento)

APRIL

11-13	**CALAFCO Staff Workshop** (Newport Beach)

MAY

4	**CALAFCO Legislative Committee** (Sacramento)
11	**CALAFCO Board of Directors Meeting** (Burbank)
2-5	California Association of Sanitation Agencies Annual Conference (Napa)
8-11	Association of California Water Agencies Conference (Sacramento)
14-15	CSDA Policy and Advocacy Summit (Sacramento)
16-17	California League of Cities Legislative Action Day (Sacramento)

JUNE

22	**CALAFCO Board of Directors Meeting** (Sacramento)

JULY

AUGUST

15-18	California Association of Sanitation Agencies Conference (San Diego)
28-31	**CALAFCO Annual Conference** (Sacramento)
31	**CALAFCO Board of Directors Meeting** (Sacramento)

SEPTEMBER

5-8	League of California Cities Annual Conference (Sacramento)
19-20	Regional Council of Rural Counties (Napa)

OCTOBER

1-4	California Special Districts Association Annual Conference (Monterey)

NOVEMBER

13-16	California State Association of Counties Annual Meeting (Oakland)
27-30	Association of California Water Agencies Conference (Indian Wells)

DECEMBER

Sharing Information and Resources

CALIFORNIA ASSOCIATION OF LOCAL AGENCY FORMATION COMMISSIONS
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For Up-to-Date Calendar Information and Other CALAFCO Resources, visit
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