



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

Commissioners
Rich Constantine
Susan Ellenberg
Sergio Jimenez
Yoriko Kishimoto
Linda J. LeZotte
Mike Wasserman
Susan Vicklund Wilson

Alternate Commissioners
Helen Chapman
Cindy Chavez
Matt Mahan
Russ Melton
Terry Trumbull
Executive Officer
Neelima Palacherla

LAFCO MEETING MINUTES WEDNESDAY, FEBRUARY 2, 2022

CALL TO ORDER

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

Pursuant to the provisions of California Governor's Executive Order N-29-20 issued on March 17, 2020, this meeting was held by teleconference only.

1. ROLL CALL

The following commissioners were present:

- Chairperson Rich Constantine
- Commissioner Ellenberg (left at 2:13 p.m.)
- Commissioner Sergio Jimenez
- Commissioner Yoriko Kishimoto (arrived at 1:22 p.m.)
- Commissioner Gary Kremen
- Commissioner Mike Wasserman
- Commissioner Susan Vicklund Wilson
- Alternate Commissioner Helen Chapman
- Alternate Commissioner Terry Trumbull

The following commissioners were absent:

- Alternate Commissioner Cindy Chavez
- Alternate Commissioner Matt Mahan
- Alternate Commissioner Russ Melton

The following staff members were present:

- Neelima Palacherla, LAFCO Executive Officer
- Dunia Noel, LAFCO Assistant Executive Officer
- Emmanuel Abello, LAFCO Clerk
- Mala Subramanian, LAFCO Counsel

2. PUBLIC COMMENTS

There were none.

3. APPROVE CONSENT CALENDAR

Commissioner Wasserman proposed to add Agenda Item #6 on the consent calendar if there is no objection.

Chairperson Constantine determined that there are no members of the public who would like to speak on the item.

The Commission approved agenda items 4, 5 and 6 on consent.

Motion: Constantine

Second: Wasserman

AYES: Constantine, Ellenberg, Jimenez, Kremen, Kishimoto, Wasserman, Vicklund
Wilson

NOES: None

ABSTAIN: None

ABSENT: None

MOTION PASSED

***4. CONSENT ITEM: APPROVE MINUTES OF DECEMBER 1, 2021 LAFCO MEETING**

The Commission approved the minutes of December 1, 2021 meeting.

***5. CONSENT ITEM: RESOLUTION 2022-01 ALLOWING FOR VIDEO AND TELECONFERENCE MEETINGS DURING COVID-19 STATE OF EMERGENCY UNDER AB 361**

The Commission adopted Resolution No. 2022-01 allowing for video and teleconferencing meetings during COVID-19 State of Emergency under AB 361.

***6. CONSENT ITEM: INITIATE DISSOLUTION OF INACTIVE SPECIAL DISTRICT – COUNTY SERVICE AREA FOR LIBRARY SERVICES (CSA-1)**

The Commission:

CEQA Action

1. As Lead Agency under CEQA, determined that the proposed dissolution of County Service Area for Library Services (CSA-1) is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3).

Project Action

2. Adopted Resolution No. 2022-02 initiating dissolution of County Service Area for Library Services (CSA-1).

7. LAFCO BYLAWS CHANGES & NEW LEGISLATIVE POLICIES

Dunia Noel, LAFCO Analyst, presented the staff report.

Commissioner Ellenberg moved for approval of the staff recommendation and clarified that the policy requires letters to be consistent with the legislative policies

that the Commission adopts, otherwise staff must seek Commission approval. In response to an inquiry from **Commissioner Ellenberg**, Ms. Noel noted that the comment time frames vary from 30 to 45 days and that because LAFCO meets every other month, letters are brought to the Commission after submittal. **Commissioner Ellenberg** indicated that those letters must be consistent with CALAFCO legislative policies. Ms. Noel clarified that letters taking a position on legislation would be consistent with the legislative policies, and other letters such as CEQA letters would be consistent with locally adopted policies and the CKH Act.

Chairperson Constantine determined that there are no members of the public who would like to speak on the item.

Commissioner Kremen noted that the CEQA letters are very technical; however, he stated that the Commission should have a discussion on letters such as those on the Regional Housing Needs Allocation (RHNA).

Commissioner Vicklund Wilson expressed support for using the CALAFCO legislative policies. She stated that in her experience on the Legislative Committee, some very knowledgeable and experienced individuals prepare and review those policies on the Committee.

Commissioner Kremen indicated he would have liked LAFCO to have a discussion on the RHNA letter as LAFCO may have had a different vote on the matter, and he proposed that LAFCO Chair or Vice Chair sign such letters.

In response to **Commissioner Jimenez**, Ms. Noel indicated that the RHNA letter is non-legislative and falls in another category, but that the comments made were consistent with LAFCO policies and mandate. **Commissioner Jimenez** indicated that RHNA is a hot topic in many cities, including San Jose, and he expressed support to include the language recommended by **Commissioner Kremen** within the proposed policy where warranted. **Commissioner Kishimoto** proposed a subcommittee with a LAFCO commissioner to work on the language of the proposed policy.

Commissioner Ellenberg amended her motion to include Commissioner Kremen's recommendation that the letter must be signed by either the Chair or Vice Chair. **Commissioner Vicklund Wilson** seconded.

In response to **Commissioner Kremen**, Ms. Noel advised that the RHNA comment letter is non-legislative and relates to LAFCO policies. **Commissioner Kremen** noted that more work may be necessary to come up with the right wording for the policy.

Commissioner Vicklund Wilson indicated that CALAFCO looks through its policies annually so LAFCO can weigh in on those policies once a year. She indicated that for topics like RHNA, LAFCO can take a position in a meeting or when there is no meeting the Chair may sign the letter. She also proposed that since this item is not time sensitive, staff bring the proposed policy with the new language at next meeting, and those members who are interested may provide input to staff.

In response to **Chairperson Constantine**, **Commissioner Vicklund Wilson** clarified that the report back is only a suggestion and not an alternate motion. **Commissioner Ellenberg** withdrew the motion. **Commissioner Wilson** moved to direct staff to

9. UPDATE ON LAFCO'S COUNTYWIDE FIRE SERVICE REVIEW

Ms. Palacherla informed that the contract between LAFCO and the Center for Public Safety Management, LLC (CPSM) for the Countywide Fire Service Review was terminated without cause on January 26, 2022, and that staff will prepare a plan of action for how to proceed with the Service Review for the April 6th LAFCO meeting.

In response to an inquiry from **Commissioner Wasserman** as to why the contract was terminated, Ms. Subramanian informed that the contract was terminated following the January 26 letter from CPSM and requested Ms. Palacherla to read the letter. **Commissioner Wasserman** expressed concern that there was not much notice or information in the staff report about the contract termination. He inquired if the information can be disclosed in an open meeting or requires a closed session.

Commissioner Ellenberg expressed similar concerns and indicated that there is a significant transparency concern on this matter as the Commission and the public need to understand the direction staff intends to take and the lessons learned from the situation. She expressed her dissatisfaction with the report and questioned whether the information is merely sensitive or legally confidential.

Ms. Subramanian stated that the reason for termination is more sensitive than confidential, and she suggested that Ms. Palacherla provide the details. Ms. Palacherla explained that the consultant did not fully understand the scope of work, was confused about the service review criteria and the required determinations, and that there were issues about skipping steps like preparing recommendations and findings without fully gathering or verifying data. She further noted that the work product was full of errors and inaccuracies, was incomplete, and did not reflect the information that was provided by the agencies. In response to **Commissioner Ellenberg**, Ms. Palacherla agreed that these issues occurred for quite some time, and that staff tried to work with the consultant and provide them with multiple opportunities to rectify their work. She indicated that the Fire Chiefs Association also raised concerns about the quality of work. She noted that the Countywide Fire Service Review Technical Advisory Committee (TAC) members and LAFCO Chair were apprised of the issues and efforts were made to resolve them, but as time progressed it became apparent that there would be no improvement. Ms. Noel informed that Ms. Palacherla was meeting with the consultants on a weekly basis to turn the project around because of the investment that everybody had made in the process. She noted the challenge of the two fire studies going after a small pool of consultants and indicated that our consultant came well recommended.

Commissioner Ellenberg stated that a detailed written report about this item is necessary.

Commissioner Kishimoto indicated that as Chairperson of the TAC she was well-informed about the situation, and she is aware that the LAFCO Executive Officer worked very hard to bring the consultant back on track. She indicated that the issues with the consultant started sometime in December so there was no opportunity to report to LAFCO. She expressed hope that some of consultant's work could be usable.

Allan Epstein, a member of the public, inquired if there is a single data collection process for both the LAFCO and the County's studies, if that data is available and usable, and if the community outreach conducted by LAFCO would need to be repeated. He expressed interest on the schedule going forward since the delay would impact how the fire studies could advise the Board of Supervisors and the public on wildfire protection in the County.

Chairperson Constantine determined that there are no other members of the public who would like to speak on the item.

In response to Mr. Epstein, **Chairperson Constantine** informed that the consultant has provided the data they collected, and it is available for use by LAFCO. Ms. Palacherla indicated that the community survey responses and the input received at the three community meetings have been compiled and would be usable.

Commissioner Kremen expressed agreement with Commissioners Ellenberg and Wasserman that reasons for the termination of the consultant should be reported to the public even if it is sensitive.

Commissioner Vicklund Wilson indicated that LAFCO has data from the community meetings. She recalled the discussion that LAFCO had when it initiated the Countywide Fire Service Review and how LAFCO is required by State law to make certain findings which may be different from the focus of the County's study. She indicated that the data gathered for the two studies can be shared. She informed that the Fire Chiefs Association and the TAC were aware of the difficulties in working with the consultant in December, and it later became necessary to terminate the contract to protect the integrity of the service review product. She indicated that staff is doing their best so it would not be necessary for the fire service providers to provide data that were previously provided. She stated that staff would come back with a report and recommendations at the April meeting.

Chairperson Constantine indicated that it is the consensus of the Commission to direct staff to bring back a report at the April 2022 meeting either in an open meeting or closed session.

10. **FINANCE COMMITTEE FOR FISCAL YEAR 2022-2023**

Ms. Palacherla presented the staff report.

Chairperson Constantine determined that there are no members of the public who would like to speak on the item.

The Commission reappointed the members of the FY 2022 Finance Committee composed of Commissioner Gary Kremen, Commissioner Sergio Jimenez and Alternate Commissioner Russ Melton to work with staff to develop and recommend the proposed FY 2022-2023 LAFCO work plan and budget for consideration by the full Commission.

Motion: Wasserman

Second: Kremen

AYES: Constantine, Jimenez, Kremen, Kishimoto, Wasserman, Vicklund Wilson

NOES: None ABSTAIN: None ABSENT: Ellenberg

MOTION PASSED

11. PROPOSED USA AMENDMENT (GILROY) FOR KERLEY RANCH DEVELOPMENT

Ms. Palacherla presented the staff report.

Evan Knapp, Partner at Integral Communities, a Kerley Ranch developer, provided information on the proposal.

Marie Blankley, Mayor, City of Gilroy, inquired if staff has received all the filing requirements for the proposal.

Danny Camacho, a resident of Gilroy, expressed support for the proposal.

Brian Schmidt, Legislative Advocacy Director, Green Foothills, expressed concern on the proposal.

Zach Hilton, City of Gilroy Councilmember, expressed support for the proposal.

Cindy McCormick, Senior Planner, City of Gilroy, offered to answer questions on the proposal.

Chairperson Constantine determined that there are no other members of the public who would like to speak on the item.

In response to an inquiry from **Commissioner Kremen**, Ms. Palacherla informed that a USA boundary amendment application must be submitted by the city through a City Council Resolution along with specific application requirements, including CEQA. She stated that the city takes the first action on the USA amendment and is the lead agency on CEQA, and must conduct CEQA analysis and prepare CEQA documentation. She noted that LAFCO is a responsible agency.

Commissioner Kremen noted that the process is problematic and a barrier for affordable housing since no one will spend money on CEQA if approval of the project is uncertain and suggested a change in procedure. Ms. Palacherla indicated that LAFCO cannot change the process because State law requires that CEQA be conducted. Ms. Subramanian indicated that there is no guarantee that LAFCO will approve the proposal at the public hearing even if commissioners have expressed their support at a pre-discussion and it is not binding on the commission.

Commissioner Kremen stated that a pre-discussion would give a sense if it is worth doing the CEQA or not. Ms. Subramanian advised that holding a pre-discussion would be at the pleasure of the Commission.

Commissioner Wilson expressed concern with such pre-discussion since there are other agencies, organizations and stakeholders that may want to weigh in. She noted that while housing is good, she would not be ready to express her opinion on the project and before the public hearing. She informed that when an application is received, staff look at many things like infill, vacant land inventory and if the CEQA

documents are satisfactory and stated that she is uncomfortable taking a position on a project ahead of that.

Commissioner Kremen indicated that there is no reason why a publicly noticed, non-binding pre-discussion cannot be held so the developer will have a sense if it is worth their time to go through the CEQA process.

Commissioner Wasserman expressed agreement with Commissioner Kremen and he informed that the County Planning Department has a pre-application process where applicants meet with staff of County departments for a nominal fee without guarantee for approval so the applicants will have a sense of the process and can decide whether or not to continue. Ms. Palacherla clarified that similar to the County's pre-application process, staff had multiple meetings with the developer and provided feedback on the proposal, and on known issues that came up in the past. She informed that it is unusual for the full Commission to provide feedback to applicants and noted that this has not been a practice at LAFCO and that LAFCO does not have a policy regarding this procedure. She further indicated that the developer has the option to contact commissioners individually to obtain their feedback and noted that the developer has done so. **Commissioner Wasserman** acknowledged that the County's pre application process is also similar to what Ms. Palacherla described and does not include elected officials who will be voting on the proposal. He expressed a change in his position and indicated that the pre-application process is the responsibility of staff who may recommend action to LAFCO commissioners who will then be the final decision makers.

Chairperson Constantine expressed agreement with Commissioner Wilson and indicated that LAFCO's filing requirements are clear, and that staff are available to answer questions. He indicated his agreement with Commissioner Wasserman that the full Commission should not hold a pre-discussion on the proposal.

Commissioner Jimenez indicated that he had met with the proponents who explained that their intent on the pre-discussion is to ensure that their proposal is treated fairly and not prejudged. He had assured them that LAFCO has an excellent staff, and their proposal will be treated objectively, and that state law and policies will be followed. He expressed interest on the project since housing is important to cities, that San Jose faces the brunt of that responsibility, and he welcomed the fact that other cities are considering development of this size. He noted that the proposal costs money and he assured that it will be considered fairly, and it will be the Commission that will decide on the project.

Commissioner Wasserman indicated that the commissioners will ultimately vote on the proposal which may be in favor of or against staff recommendation. He expressed his support for housing and noted that LAFCO decisions in the past on proposals for housing, a high school or a church have varied significantly. He assured that it will be a thorough process and suggested that proponents speak with staff and if they choose, with LAFCO members.

Commissioner Kishimoto stated that the pre-application process similar to that in Palo Alto provides an early indication on the proposal, particularly for new types of

development. She noted that while not particularly driven by this proposal, LAFCO may want to consider the balance between housing and open space and stated that she would not propose a change now.

Commissioner Kremen reiterated his request to agendaize a pre-discussion of this application since proponents could be discouraged to initiate new developments like housing if they think there is a risk for disapproval.

12. EXECUTIVE OFFICER'S REPORT

12.1 County Commendation to LAFCO for the 50th Anniversary of Its "Countywide Urban Development Policies"

Ms. Palacherla expressed appreciation to the County Board of Supervisors for recognizing the 50th Anniversary of the Countywide Urban Development Policies. She stated that the Policies were adopted by the County and 15 cities to ensure that urban development only take place within the cities and for the County to keep rural lands rural for resource conservation, which was a pioneering effort to guide future growth in the County. These Policies helped discourage urban sprawl, preserve farmlands and open space, promote efficient delivery of services and make Santa Clara County a more livable and sustainable place, and were the foundation of today's policies and the County General Plan. She expressed appreciation to Commissioner Ellenberg for drawing attention to this milestone.

Commissioner Wasserman, as President of the County Board of Supervisors, expressed agreement and noted that Santa Clara LAFCO has difficult responsibilities and has faced many issues, but it is respected and rated highly throughout the state.

12.2 Meeting with Proponents Regarding Proposed Incorporation of Almaden Valley Area (San Jose)

Commissioner Wasserman recalled that the San Martin community proposed to incorporate about 11 years ago but support waned when residents found out that that they need to pay for their own streets, fire and police, and will tax themselves more for services that they are already receiving.

The Commission noted the report.

12.3 Presentation on LAFCO to Leadership Sunnyvale

The Commission noted the report.

12.4 Bay Area LAFCOs Meeting

The Commission noted the report.

12.5 Inter-Jurisdictional GIS Working Group Meeting

The Commission noted the report.

12.6 Public Records Act Requests

The Commission noted the report.

13. PENDING APPLICATIONS / UPCOMING PROJECTS

Ms. Palacherla reported that staff is working on Gilroy USA Amendment proposal and is awaiting some information from the City.

14. COMMISSIONER REPORTS

Commissioner Kishimoto announced that Midpeninsula Regional Open Space District is celebrating its 50th Anniversary.

15. NEWSPAPER ARTICLES / NEWSLETTERS

CALAFCO Quarterly – December 2021.

16. WRITTEN CORRESPONDENCE

There were none.

17. ADJOURN

The Commission adjourned at 2:52 p.m., to the next regular LAFCO meeting on April 6, 2022, at 1:15 p.m., in the Board of Supervisors' Chambers, 70 West Hedding Street, San Jose.

Approved on April 6, 2022.

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Rich Constantine
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Rich Constantine, Chairperson
Local Agency Formation Commission of Santa Clara County

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Emmanuel Abello
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By: Emmanuel Abello, LAFCO Clerk