

SANTA CLARA COUNTY
Local Agency Formation Commission

MINUTES
WEDNESDAY, OCTOBER 9, 2002

1. ROLL CALL

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 9th day of October 2002 at 1:19 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 Linda J. LeZotte, and Commissioners Blanca Alvarado, Donald Gage, Suzanne Jackson and Susan Vicklund-Wilson. Commissioner Patricia Figueroa is also present for the Gilroy 1999 Urban Service Area (USA) Amendment (Gilroy Sports Park) hearing. Commissioner Wilson stated at the August 14, 2002 meeting that she had a conflict of interest on this item and that Commissioner Figueroa would fill the position as her alternate. The LAFCO staff in attendance include 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 Chairperson LeZotte and the following proceedings are had, to wit:

2. PUBLIC PRESENTATIONS

There are no public presentations.

3. APPROVE MINUTES OF AUGUST 14, 2002 MEETING

On motion of Commissioner Gage, seconded by Commissioner Wilson, it is ordered on a vote of 4-0, with Commissioner Alvarado abstaining, that the minutes of August 14, 2002 meeting be approved, as submitted.

4. CITY OF SAN JOSE 2002 URBAN SERVICE AREA (USA) AMENDMENT

Chairperson LeZotte informs the Commission that the City of San Jose has requested continuation to December 11, 2002 in order to complete the filing

requirements.

On motion of Commissioner Gage, seconded by Commissioner Alvarado, it is unanimously ordered that this hearing be continued to the December 11, 2002 meeting.

PUBLIC HEARINGS

5. GILROY 1999 USA AMENDMENT: GILROY SPORTS PARK

This being the time and place set for public hearing to consider the Gilroy 1999 USA Amendment continued from the October 9, 2002 LAFCO meeting, the Chairperson declares the public hearing open.

Chairperson LeZotte announces that although Commissioner Figueroa, who is Commissioner Wilson's alternate for this item, has not yet arrived, this item will be taken up because there is a quorum and Commissioner Alvarado needs to attend another meeting at 2:45 PM. Commissioner Alvarado informs the Commission that she is fully apprised on this item, having listened to the proceedings of the August 13, 2002 meeting on audiotape.

Ms. Palacherla reports that this application was first taken up by LAFCO in June 2002, however, it was continued to August 14, 2002 at the request of the City of Gilroy. The item was again continued to this meeting to enable the City to: (a) submit information on the mitigation measures; and, (b) finalize the pre-zoning of the Gilroy Sports Park parcels. Citing a letter from the City dated September 27, 2002, she states that Gilroy has completed the pre-zoning of the Sports Park parcels and is developing the mitigation policy. However, at this time, the city does not have a work plan or a schedule for completion or implementation. The letter also states that the City does not want the item to be continued to a further date. She clarifies three major issues: (1) the Sports Park could be developed in the unincorporated county without LAFCO approval because the City is exempt from land use authority on lands that it owns; (2) the annexation of only the three Sports Park parcels will not create an island as defined in the Cortese-Knox-Hertzberg Local Government Reorganization Act, as shown on the

WEDNESDAY, OCTOBER 9, 2002

map, and as discussed on page 8 of the May 31, 2002 staff report; and, (3) LAFCO is required to impose all feasible mitigation measures before the project is approved. The Environmental Impact Review (EIR) identified significant environmental impacts, and the primary means of mitigation identified in the EIR was the agricultural preserve, which after the General Plan amendment was no longer available to mitigate the project's impact. To make the finding that all feasible mitigation measures have been imposed, LAFCO is substituting the agricultural lands mitigation measures that are included in the City's revised General Plan.

Ms. Palacherla informs the Commission that staff has identified four alternative options, namely, Option 1, continue the item to a future hearing, with the City's consent, to allow enough time for the City to provide more information on the City's mitigation plan; Option 2, conditionally approve the annexation of only the three Sports Park parcels, conditioned on the City's implementation within six months of an appropriate mitigation plan consistent with the City General Plan; Option 3, conditionally approve the USA expansion to include the Sports Park and the adjacent parcels, contingent on the City implementing the appropriate mitigation plan within six months; and, Option 4, deny the project. She continues by stating that if the City declines to comply with the mitigation measure in its General Plan, LAFCO could still approve the project in two ways: (a) prepare a supplemental EIR identifying all the feasible mitigation measures; or (b) refer the application back to the City Council to provide substantial information or evidence, including specific data to support the finding that the General Plan mitigation measures are infeasible for this project.

Commissioner Figueroa arrives at 1:38 p.m.

William Faus, Planning Division Manager, City of Gilroy, reports that following the August 14, 2002 meeting, the City has pre-zoned the Sports Park parcels, and the pre-zoning for adjacent properties will be taken up by the City Council on October 21, 2002; the City has determined that the land-swap proposed was infeasible because the owners of the two flag-shaped areas identified for the swap do not want their properties to be de-annexed from the City; and, the City has created a special

agricultural task force to develop a comprehensive agricultural mitigation program. He states that the City recommends Option 3, which is to approve the USA amendment for the Sports Park and the adjacent parcels without any conditions or agricultural mitigation. He continues by stating that the requirement for conditions and agricultural mitigations: replace local control because it makes LAFCO an oversight authority to the City's adopted EIR mitigation measure; it removes local control from City to implement its General Plan; and, interprets the City's General Plan policy; and, the USA application was complete prior to the adoption of the General Plan so the EIR mitigation not apply. He indicates that the City's new mitigation measures will apply only to the adjacent lands. He adds that agricultural mitigation measures have not yet been developed by the City Council, and that the measures will be applied in the future (e.g., building permits).

Lee Wieder, representing the property owners on the north side of the Sports Park, states that Option 3 admits that the benefits of including the adjacent properties outweigh the need to preserve prime agricultural lands. However, he states that Option 3 should not have any condition, and requests that LAFCO approve the USA amendment based on goodwill and faith. He states that he will participate in the task force that will be operational in two months, and that he met with key stakeholders, such as Nancy Richardson of the Land Trust of Santa Clara County.

Mel Sornberger, a property owner north of Luchessa, states that he originally proposed that his neighborhood be included in this project, however, it was not included by the City. He advises that the USA amendment be denied because more commercial properties will result in more traffic congestion.

Guadalupe Arellano, former Gilroy City Council member, informs the Commission that she opposes the annexation of the lands adjacent to the Sports Park because these are not needed at this time. She recalls that, in acquiring the Sports Park parcels, an agreement was reach between the City and the landowners that the adjacent areas will be brought into the City. At that time, she had proposed a land swap so that the Sports Park could be built on the adjacent properties to avoid creating an island,

however, she was told that those properties were too valuable. She also recalled suggesting to stop the pesticides, however, she was told that if the pesticides continue, LAFCO will be forced to approve the USA amendment.

David Collier, a member of Gilroy Planning Commission, recalls that the City Planning Commission about five to six years ago intended to allow the City to develop agricultural lands at certain times and under certain conditions, within the context of a citywide land use inventory. He notes, however, that the City ignored this principle because it presently has about 20 to 25 years of residential and commercial land under the new General Plan. He also notes that the Sports Park Master Plan and the City's General Plan were adopted simultaneously, so the new agricultural mitigation should apply and that the newly created task force may not need 12 to 18 months to develop an implementation plan.

Connie Rogers, Save Open Space-Gilroy, proposes that only the Sports Park parcels be annexed because more than half of the lands within the City limits are vacant. She reports that the original EIR for the Sports Park cited that the loss of 78 acres of prime agricultural land is insignificant because there is a 15,000-acre County Agricultural Preserve east of U.S. Highway 101. However, since that preserve no longer exists, she expresses an opinion that the City has only paid lip service to agricultural preservation and does not have a track record for preserving agricultural land. She recommends that the City Council should plan and implement the new mitigation measures.

Jim Blocher, a property owner, requests the inclusion of the adjacent lands because of a special circumstance, stating that his family is now unable to farm such a small property after most of it was taken away for government projects such as flood mitigation. He states that it would be cost-effective for the City to master plan the area and to mitigate the neighborhood concerns (e.g., traffic congestion) with the support of land developers.

Janet Espinosa, a resident in a nearby unincorporated area, urges the Commission to approve all of the parcels in exchange for denying the 660 acres. She

adds that the new commercial area will serve South County, the Sports Park will not be in an island, and farmers will no longer farm close to homes.

Peter Arellano, Gilroy City Council member, states that contrary to the statements of the landowners that their properties can no longer be farmed, the area is presently being farmed. Relative to the issue of safety of the children, he reports that there is a school in San Benito County that is in the middle of farmlands. He also notes that pre-zoning can be temporary because the City can change it easily. On the island issue, he states that the City wants to create an island. He states that in order to build trust, the City and the stakeholders must now come up with agricultural mitigation measures and master plan the area before these can be brought into the City's USA. He expresses support for Option 2.

Richard Barberi, one of the landowners, advises that their property is presently being farmed, however, the lands are being leased since the death of his brother who farmed the property. He states that there is a levy near the property where children can ride in bicycles and get into the farm. He also notes that if a buffer zone is established for spraying, it could take away six acres from the land.

Craig Breon, Executive Director of the Santa Clara Audobon Society, notes that while the island issue is a reason for annexing the other lands, however, LAFCO's policies for agricultural land preservation and premature conversion of agricultural lands prevents that. Moreover, he states that the City's policies dictates that annexation should be made in terms of need, however, the land inventory of Gilroy shows no need. He notes that in five or ten years, the City may review its General Plan, and in a context of a larger land use plan and new land inventories based on the levels of development at that time, the City may decide to annex the adjoining properties. The City may also decide to enlarge the Sports Park, so it is prudent to leave the adjoining properties as they are now rather than developing them now. He notes that the land will still be there in five or ten years and the owners will still get good value at that time. On the mitigation issue, he states that the agricultural preserve intended as mitigation under the old rule has already been eliminated, so that these properties should fall under the

current General Plan. He indicates that he believes that Gilroy will be able to come up with an agricultural mitigation plan since that city has produced a General Plan that calls for mitigation. Finally he states that he agrees with the California Environmental Quality Act (CEQA) analysis by LAFCO staff, and expresses hope that the Commission will make the right decision.

Michael McDermott, a landowner, requests that Option 3 be approved because bringing just the Sports Park parcels may not be in line with policies for orderly and efficient growth; the option would have no growth inducing impact since the City limits growth in the area; and the property owners are willing to participate in the agricultural mitigation program.

Tom Springer, Mayor, City of Gilroy, requests approval of Option 3 without any conditions. He states that if the Commission denies the project the City could develop the Sports Park in the unincorporated area. However, the City has to pay property tax to the County, there would be no mitigation and pesticide use would continue. He states that Options 1 and 2 would prolong the discussions. He adds that the 660 acres mentioned by other speakers will not be developed until the Commission decides that it will be developed. In response to an inquiry by Commissioner Alvarado, Mayor Springer explains that the Sports Park would cost \$23 million and will be built over the next 25 years. The road, water and sewer connections will be established first.

Ms. Palacherla explains to Commissioner Figueroa, who was not present during the staff presentation, the two options which may be taken if the City is not willing to comply with the mitigation measures in its General Plan. Ms. Kretchmer explains that the project cannot be approved without conditions, because CEQA requires that feasible mitigation measure be applied, and, in this instance, the mitigation measure is from the City's General Plan. If the City does not accept this, then the two alternatives will apply, otherwise, any approval will be conditioned on the City's implementation of a mitigation plan. In response to an inquiry by Commissioner Jackson, Mayor Springer states that the mitigation policy exists as part of the General Plan; however, the implementation plan, which is time consuming, will be formulated by the stakeholders.

On the query of Commissioner Gage, Ms. Palacherla states that Option No. 3 will bring in all the lands into the USA, conditioned on the City implementing the mitigation plan within six months. She reports that the Sports Park properties can be developed at this time without LAFCO approval, and the mitigation plan would apply to all the lands, including the Sports Park parcels. Ms. Kretchmer adds that the City can now develop the Sports Park in the unincorporated area; however, conditions should be imposed for the Sports Park to be brought into the City's USA, and that approval will take effect when the City complies with the conditions.

Commissioner Alvarado expresses the opinion that it is important that the mitigation plan should first be defined and implemented before the USA amendment is approved, even if approval is conditional. Ms. Palacherla advises that the City has a mitigation policy, however, it does not have an implementation plan; she further notes that staff recommends Option 2. In response to a question by Commissioner Gage, Ms. Palacherla indicates that the City's General Plan states that mitigation measure shall be implemented prior to land use approval resulting in conversion of prime farm lands to urban uses, and therefore, this USA amendment triggers the application of mitigation policies.

Commissioner Gage expresses concern about the agricultural viability of the small land size even if it is prime agricultural land. He states that these lands, surrounded by development, will be condemned. Ms. Kretchmer responds that Option 3 can be used, with no time limit on the condition to comply with CEQA so the whole area can be included into the City's USA as soon as mitigation is complied with. Commissioner Gage states agreement to change the timeframe.

Commissioner Alvarado notes that the County spent many years to define agricultural preserve and open space and those lands are becoming scarce. She states that while the economic interests of property owners and issues on local control are very important, they must not overshadow LAFCO policies and the joint land use principles of the County and cities. She continues by stating that the City must first demonstrate efforts to complete and implement agricultural mitigation, or the very

important land use principles in this County will be undermined. She indicates that while she sympathizes with the landowners she must first take the role of a state-mandated LAFCO Commissioner. Thus, she proposes that only the Sports Park parcels should be annexed and that the surrounding parcels be referred back to the City to be brought back to the Commission when the implementation plan is completed. She indicates that the City must first come up with an implementation plan before the Commission can approve the annexation conditionally. Ms. Kretchmer advises that the Sports Park parcels should also comply with the mitigation plan under CEQA before it can be included into the City's USA.

In response to an inquiry from Commissioner Figueroa, Commissioner Gage states that under Option 3, the City can implement mitigation without the need to come back to LAFCO, while Option 2 requires otherwise. Ms. Palacherla states that both options require mitigation and that, in addition, both Options 2 and 3 would require overriding considerations. Chairperson LeZotte states that she agrees with Commissioner Alvarado's proposal to require the completed mitigation measures, not just a policy, before approval. She notes that the City earlier proposed to de-annex certain parcels as a mitigation measure; however, the landowners did not agree; she states that rather than speculate that the City would do something, she prefers Option 2 because it will make the City take action first before LAFCO proceeds with the annexation.

In response to an inquiry by Commissioner Gage, Ms. Kretchmer states that the Commission, depending on how much input is desired, has a right to review the mitigation measures prior to approval. She adds that with Option 2, the development of the Sports Park can proceed and it also gives the City time to decide what to do with the surrounding lands. Commissioner Jackson expresses an opinion that Option 3 allows the City to do what is best for its constituency, while Option 2 poses unnecessary obstacles. Chairperson LeZotte notes that she does not consider it as another obstacle because the three parcels will be approved after the mitigation measure is completed. Ms. Palacherla advises that the statement of overriding

consideration is in the LAFCO Analyst's report dated August 6, 2002 on the recommended CEQA actions. Commissioner Gage calls for the question.

On motion of Commissioner Alvarado, seconded by Chairperson LeZotte, it is ordered on a vote of 3-2, with Commissioners Gage and Jackson voting against, that Resolution No. 02-11, denying the request of the City of Gilroy for the 1999 expansion, and conditionally approving the annexation of the three Sports Park parcels pursuant to Government Code Section 56742, based on City of Gilroy adopting and implementing the appropriate mitigation plan consistent with the City's General Plan policy, be approved.

Commissioner Gage proposes that the six-month time frame, within which the City must complete the implementation plan for the mitigation measures, be eliminated. Ms. Palacherla advises that the annexation will become effective after recordation. On an inquiry of Commissioner Gage, Ms. Kretchmer states that in order to record the annexation, the City should provide the Commission, through the Executive Officer, with proof of implementation of the mitigation measures. On an inquiry by Commissioner Figueroa, Ms. Kretchmer states any question on the mitigation plan will be brought to the Commission. Commissioner Alvarado commends Commissioner Gage for his participation in the Habitat Conservation Plan meeting stating that habitat conservation and open space preservation are all interrelated and that mitigation should take place when development occurs in the habitat of endangered species.

On motion of Commissioner Gage, seconded by Commissioner Alvarado, it is unanimously ordered that the six-month time frame to complete the implementation plan is removed.

6. COMMENTS ON THE COUNTY'S ANALYSIS OF POSSIBILITY OF ALLOWING URBAN SCALE LARGE GROUP ASSEMBLY FACILITIES (LGAF) IN RURAL UNINCORPORATED AREAS

Ms. Palacherla reports that the proponents of LGAF requested the County to consider amendment of the County General Plan to allow large scale, urban facilities in

the rural areas. The Board of Supervisors (BOS) directed the County Planning Office to provide information and policy options on this proposal. The report of the Planning Office has been distributed to other departments and agencies, including LAFCO, for review and comment, and will be taken up at the Board's Housing, Land Use, Transportation and Environment (HLUET) Committee meeting on October 24, 2002.

She continues by saying that since this change will affect the development policies adopted by LAFCO, the cities and the County, LAFCO should send a comment letter informing the County of the Commission's concerns. She indicates that LAFCO's state mandate is reflected in the joint urban policies adopted by LAFCO, the County and the cities. These policies dictate that urban development and services should take place only within the city limits and USA boundaries. She states that allowing urban-scale structures in unincorporated areas is contrary to LAFCO policies and the Cities-County joint urban development plan. She also indicates that on-site water and sewer services in these areas may not be sustainable over a period of time and may require extensions of service from nearby jurisdictions. Hence, she states that LGAFs may result in inefficient provision of services, premature conversion of agricultural open space lands, inducement of growth and creation of illogical boundaries. She indicates that staff, at this point, is seeking authority from the Commission to submit a letter communicating these concerns to the County.

Commissioner Alvarado advises that the County has been under a lot of pressure over the last several years to allow LGAFs because some organizations are unable to find sites within the cities. She notes that it is appropriate that the Commission send its comments to the Planning Commission, HLUET and Board of Supervisors because this is an example of a difficult and sensitive decision that the BOS is going to make. Commissioner Jackson states that in formulating the policies for LGAF, the cities should be informed that these are recommendations which they can appeal to the Board. Commissioner Gage notes that some cities may not want these facilities so they have no place to go. In this regard, he requests all stakeholders to send in comments so they can

be discussed by the Board. Commissioner LeZotte expresses agreement for the staff to send a comment letter and indicates that the City of San Jose is also going to send its comments because this also involves issues like cost and availability of lands.

On motion of Commissioner Wilson, seconded by Commissioner Alvarado, it is unanimously ordered that the staff recommendation to send a comment letter on LGAF be approved.

7. REPORT ON WEST LOYOLA ANNEXATION & SEWER PROJECT

Ms. Palacherla advises that staff contacted the Town of Los Altos Hills and the City of Los Altos. Los Altos Hills has indicated a general interest to annex the West Loyola area. However, the decision will be made after a comprehensive analysis of infrastructure within its SOI is completed and a master sewer plan is developed.

On motion of Commissioner Gage, seconded by Commissioner Wilson, it is unanimously ordered that the staff report on the West Loyola Annexation and Sewer Project be accepted.

8. LAFCO ANNUAL REPORT (FISCAL YEAR 2001-2002)

Ms. Palacherla advises that this item is likewise being considered further from the August 14, 2002 meeting. She states that the annual report includes information on applications and activities in Fiscal Year 2001-2002. During the Fiscal Year, staff processed 28 city-conducted annexation proposals as opposed to 12 in the previous year. There were two requests for USA amendment and two requests for extension of services by the City of Morgan Hill.

In view of the changes in AB 2838, the LAFCO Planner position was replaced by a full-time LAFCO Analyst and a full-time Clerk has been hired. In addition, LAFCO staff (a) produced and distributed the Santa Clara County and Cities Boundaries map in cooperation with the County Planning Office; (b) conducted separate workshops for cities and special districts on annexation processes, changes in law and requirements for service reviews; (c) started work on service reviews activities; (d) started work on mapping of special districts using GIS; (e) started preliminary work on profiles of

special districts and the cities; (f) met with various stakeholder groups to present information on service reviews; (g) developed LAFCO database to track applications, maintain records and produce reports; (h) adopted a new fee schedule; (i) adopted a new LAFCO logo; and, (j) participated in CALAFCO activities, including attending conferences and workshops.

In response to an inquiry by Commissioner Alvarado, Ms. Palacherla informs that LAFCO has a website. Ms. Palacherla responds to an inquiry of Commissioner Alvarado that Proposition 218 was one of the issues brought up at the workshop relating to San Jose annexations. Ms. Kretchmer indicates that there is no legal opinion on the matter at this time.

On motion of Commissioner Jackson, seconded by Commissioner Gage, it is unanimously ordered that the LAFCO annual report be accepted.

9. EXECUTIVE OFFICER'S REPORT

9.1 GREENBELT ALLIANCE'S COYOTE VALLEY VISIONING PROJECT (CVVP)

Ms. Palacherla reports that LAFCO was invited to participate on the Partnership Committee of CVVP, and that staff requests authority to participate in the Committee as an observer, and when necessary, as a technical resource on LAFCO policies and procedures, without prejudice to future LAFCO decisions on Coyote Valley issues. Commissioner Gage expresses agreement with the request to staff to participate in the CVVP as an observer. In response to an inquiry by Commissioner Wilson, Ms. Palacherla advises that LAFCO staff attended the CVVP meeting in August as an observer without any active participation.

On motion of Commissioner Alvarado, seconded by Commissioner Jackson, it is unanimously ordered that staff be authorized to participate as an observer and technical resource to CVVP.

9.2 2002 CALAFCO ANNUAL CONFERENCE (NOVEMBER 13-15, 2002)

Ms. Palacherla requests travel authority from the Commission for staff and

members of the Commission to attend the California Association of LAFCOs (CALAFCO) Annual Conference in Santa Barbara, California, from November 13 to 15, 2002. Commissioners Alvarado and LeZotte express interest in attending the conference. Commissioner Gage announces that he will be represented by Rachael Gibson, his land use aide. Ms. Palacherla announces that the deadline for registration on October 11, 2002.

On motion of Commissioner Jackson, seconded by Commissioner Gage, it is unanimously ordered that travel expenses be authorized for staff and interested Commissioners to attend the CALAFCO Annual Conference.

9.3 CALAFCO EXECUTIVE BOARD NOMINATIONS

Ms. Palacherla announces that CALAFCO is accepting nominations to its Executive Board. She requests that staff be informed if the Commission wishes to nominate one of its members. In response to an inquiry by Commissioner LeZotte, Ms. Palacherla states that she will inform the Commission of the frequency and location of the CALAFCO Executive Board meetings.

10. PENDING APPLICATIONS

There are no pending applications.

11. WRITTEN CORRESPONDENCE

CALAFCO Newsletter

12. ADJOURNMENT

On order of the Chairperson, there being no objection, the meeting is adjourned at 3:11 p.m. to the next regular meeting to be held on Wednesday, December 11, 2002 at 1:15 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California.

WEDNESDAY, OCTOBER 9, 2002

Linda J. LeZotte, Chairperson
Local Agency Formation Commission

ATTEST:

Emmanuel Abello, LAFCO Clerk