

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

## **MINUTES**

**WEDNESDAY, FEBRUARY 9, 2005**

### **1. ROLL CALL**

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes the 9<sup>th</sup> day of February 2005 at 1:20 p.m. in the Chambers of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California, with the following members present: Chairperson John Howe, Commissioners Donald Gage, Susan Vicklund-Wilson, Linda J. LeZotte and Blanca Alvarado.

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

Chairperson Howe calls the meeting to order and the following proceedings are had, to wit:

### **2. PUBLIC PRESENTATIONS**

There are no public presentations.

### **3. APPROVE MINUTES OF DECEMBER 8, 2004 MEETING**

On motion of Commissioner Wilson, seconded by Commissioner LeZotte, it is unanimously ordered that the minutes of December 8, 2004 be approved, as submitted.

### **4. LAFCO'S ISLAND ANNEXATION POLICIES**

This being the time and place regularly fixed for public hearing to consider LAFCO's Island Annexation Policies, the Chairperson declares the hearing open. Proof of Publication on file with the LAFCO Executive Officer establishes that due notice has been given as required by law.

Neelima Palacherla, Executive Officer, reports that the concept of urban unincorporated island annexations is not new in Santa Clara County. She points out that in 1973, the Urban Development and Open Space Plan, jointly adopted by LAFCO, the cities, and the County, requires that urban development only occur within a city's Urban Service Area (USA). The Plan states that the County must not allow urban uses outside of the USAs. It further states that cities must pre-zone and actively pursue annexation of urban unincorporated areas within a city's

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USA. For more than 30 years, these policies have formed the foundation of land use policy for Santa Clara County and the cities.

Ms. Palacherla comments on the benefits received by the cities when annexing islands. She states that island annexations would enable the unincorporated island residents to receive services and allow the cities to regulate land use, complete city plans for the entire community, address neighborhood issues, and levy taxes on all residents who use city facilities such as streets and parks. She adds that another way to address annexing islands is on a case-by-case basis and points out that due to the number of pockets or islands in existence, the streamlined process would be the most efficient way to provide a long-term solution to this issue.

Commissioner Alvarado expresses agreement with the comments by Ms. Palacherla and adds that another important reason to annex islands is that it will enable residents in those areas to participate in the electoral process to elect mayors and city council members. Ms. Palacherla notes that in 2001, the State Legislature allowed for urban islands less than 75 acres to be annexed without requiring protest proceedings or elections. She advises that none of the cities in Santa Clara County have utilized the streamlined process yet and that approximately 180 unincorporated pockets remain in 14 cities. She further advises that the Legislature expanded the streamlined island annexation process to apply to islands that are 150 acres and less, and the provision will expire at the end of 2006.

She summarizes that in December 2004, LAFCO directed staff to develop policies for island annexations in Santa Clara County. LAFCO staff drafted the policies and maps for each city and forwarded the draft policies and maps to the cities for review and comment. The draft policies were posted on the LAFCO website, and a workshop was held on January 24, 2005 to discuss the policies and process. Several city representatives attended the workshop, and LAFCO staff received feedback from four agencies. Staff revised the draft policies to address concerns raised at the workshop and in the letters, and information was posted on the website regarding the revisions. This week, comments were received from the Cities of San Jose, Morgan Hill, and Gilroy. As a result, the policies were further revised, and a staff report was prepared addressing this feedback, and copies of the revised policies and staff report are available at the meeting this date. She continues by informing the Commission that feedback has been received during the past two days from the County Planning Office and the City of Cupertino, and the City of Morgan Hill forwarded comments this date, which are available for review.

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Ms. Palacherla continues by discussing the State laws enacted to encourage annexation of developed urban islands. She notes that the legislation indicates that a city council may approve annexations without protest or elections at a public hearing with notice if that annexation proposal meets certain criteria, and she provides an overview of the criteria, noting that certain provisions of the law expire in 2007. She informs the Commission that the first step of the streamlined island annexation process is for a city council to adopt a resolution for initiation of annexation at a public hearing with a public notice. There are no requirements for protest proceedings or elections as part of this process. After the city council approves the annexation, the city would forward the resolution to LAFCO. She notes that there are certain criteria for streamlined island annexations. As per the Government Code such streamlined island annexations must be initiated or proposed by city council resolution, the island must not exceed 150 acres, the area should constitute the entire island, the annexation territory should be surrounded or substantially surrounded by the annexing city and County boundary, or annexing city and adjacent cities. Additionally, the island should not be a gated community served by a community services district, and the island should be substantially developed or developing based on availability of public utility services, presence of public improvements, and presence of physical improvements; the territory must not be prime agricultural land; and the territory will benefit from annexing, or is already receiving benefits from the city; and the island was not created after January 1, 2000. The Government Code gives LAFCO the authority to adopt written procedures, policies, and standards consistent with the State law.

She notes that the Commission has the third draft of island policies, dated February 9, 2005. She continues by outlining the following policies:

Policy Number 1: In order to fulfill the intent of the State Legislature and implement the joint urban development policies of the cities, County, and LAFCO, and in the interests of efficient service provision and orderly growth development, the cities should annex urban unincorporated islands.

Policy Number 2: That LAFCO will collaborate with the cities and the County in facilitating annexation of unincorporated urban islands.

Policy Number 3: LAFCO will provide a two-year LAFCO fee waiver for annexations that result in the elimination of entire unincorporated islands; the current LAFCO fee is \$670.00 for each annexation area, and the LAFCO fee waiver will expire on January 1, 2007.

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Policy Number 4: Where feasible and in furtherance of goals to support orderly growth and development, cities are encouraged to annex entire islands rather than conducting single parcel annexations.

Policy Number 5: In the interest of orderly growth and development, cities should annex urban unincorporated islands existing within their current urban service areas before seeking to add new lands to their urban service areas.

Policy Number 6: Prior to seeking any urban service area amendment, except if the urban service area amendment is to resolve a significant demonstrable public health and safety issue or the urban service area amendment is a minor corrective action, the city must initiate and complete annexation proceedings pursuant to Government Code Section 56375.3(a)(1) for all unincorporated islands that meet the provisions of Government Code Section 56375.3 unless the island constitutes publicly owned land, and for any city that has unincorporated islands larger than 150 acres, the city must adopt an annexation plan for the islands after holding community meetings, applying a pre-zoning designation, and adopting resolutions to initiate annexation.

Policy No. 7: LAFCO encourages the County to remove incentives for property owners in the unincorporated islands to remain in the County by making development standards in the unincorporated islands comparable to development standards in the surrounding city.

Policy No. 8: LAFCO will provide information on the island annexation procedures to each of the cities. LAFCO will develop process flow charts and public hearing notice and resolution templates for the cities to use. LAFCO staff will conduct workshops on island annexation processes for cities' staff.

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

Policy Number 10: LAFCO staff will report to the Commission at each LAFCO meeting on the status of each city's island annexation efforts.

Commissioner Gage comments that local policies for Santa Clara LAFCO seem to contain more restrictions than the State policies. He notes that State policies include words such as "encourage" or "should" where the proposed local policies indicate "must" and "shall." He suggests that the words "must" and "shall" in Policies Number 4, 5, 6, and 7 be changed to "encourage" and "suggest." He additionally expresses concern that use of the wording "must"

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and “shall” may result in cities annexing lands based on this policy instead of concentrating on their priorities for annexation.

Commissioner Alvarado expresses the opinion that the word “must” should be used, because some areas in East San Jose and Burbank have been left unattended, although other areas which were considered to be more desirable have already been annexed. She further states that the window of opportunity is limited and that the proposed policies address the issue of annexation costs by allowing for fee waivers. She emphasizes that it is in the interests of the residents in these pockets to have the lands annexed. She expresses the opinion that unincorporated area residents are living as “second class” citizens and that the annexations should proceed for moral and ethical reasons as well as for orderly growth and development and that the process should be expedited. In addition, she directs attention to the City of San Jose’s letter in terms of the issues regarding Proposition Prop. 218, and states County staff and County Counsel have concluded that Proposition 218 is not applicable. Commission Alvarado recommends that LAFCO adopt the policies as proposed.

Commissioner Gage states that the residents in unincorporated communities have the ability to vote for annexation if they desire to have the lands annexed into the surrounding cities. Commissioner LeZotte expresses agreement with the comment that the residents can vote for annexation as a choice. She continues by commenting on the results of recent voting on the issue of annexations in 2002 for the Burbank area, noting that the annexation effort lost by a close vote. She further notes that the Planning Director for the City of San Jose is present to discuss the matter.

Chairperson Howe initiates a brief discussion with Ms. Palacherla relating to the annexation costs, and Ms. Palacherla clarifies that the fee of \$500 or more for preparing the legal description and map is paid by the city or a private developer who wants the property annexed; the County surveyor fee of \$2000 is a set fee; and the cost of community outreach varies based on the number of mailings and the type of outreach. In addition, she notes that the cost of pre-zoning and staff analysis can vary, as well, and are paid by the city or the developer. Furthermore, she clarifies that the filing fees for the State Board of Equalization is based on acreage and is paid by the city or the developer or proponent of annexation.

Chairperson Howe requests public comment. Carol Gruetzner, resident in an unincorporated area of Los Gatos, speaks to the commissioners encouraging island annexations,

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citing concerns that the area residents cannot vote in City elections and cannot serve on City commissions. She emphasizes that there is a limited time to complete annexation under this process. She states that County Counsel, the City of Los Gatos Planning Director, the City Attorney, and the Los Gatos City Council support annexation. Commissioner Gage comments that the streamlined process only relates to properties that are 150 acres or less.

Stephen Haase, Planning Director, City of San Jose, extends his gratitude to LAFCO staff for their efforts in preparing the draft policies and for including the City's comments in the staff report. He expresses concern regarding Policy Number 6 because it limits the ability of the City of San Jose to implement planning in the Coyote Valley area until the city annexes all of its unincorporated pockets. He further notes that issues regarding Proposition 218 have not been resolved. He states that the City is pro-annexation and states that annexation costs are more than the fees that are charged by LAFCO.

In response to an inquiry by Commissioner Howe relating to an estimate of annexation costs for the City of San Jose, Mr. Haase states that an annexation can range between \$1,000 to approximately \$10,000, depending on the circumstance. Commissioner Wilson notes that the new legislation provides a cost savings to the cities during the two-year period, and this will not be available after the period ends. Mr. Haase responds that there are jurisdiction, pre-zoning, outreach, and other costs for processing annexations. Ms. Palacherla adds that there is a savings if the City chooses to use the streamlined process that does not require holding protest hearings or elections, which are costly to the cities. Mr. Haase responds that from his point of view, which may not represent the point of view of the City Attorney, the streamlined annexation process does not allow the unincorporated area residents to vote on whether taxes will be imposed on their properties.

William Faus, Planning Division Manager, City of Gilroy, refers to a letter forwarded to LAFCO from the City of Gilroy and notes that the letter outlines a number of issues focusing on the text prepared by the LAFCO Executive Officer. He states that four of the five parcels being addressed in Gilroy are not true islands in the sense of the word; rather, they are properties at the far edge of the perimeter of the City's jurisdiction. He comments that the City is in support of most of the policy amendments, although he notes objection to the use of the word "must" in Policy Number 6. He states that prior to LAFCO considering any additions to the Urban Service Area (USA), the City would be required to take into its jurisdictional boundary all existing

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properties that have not been annexed by the City and that the three main land use categories of residential, commercial, and industrial are grouped together. He further expresses concerns relating to annexation costs and property which has a federally listed endangered species and a property within a habitat conservation plan. He additionally states that Policy Number 5 is redundant and unnecessary.

Mr. Faus continues by directing attention to Policy Number 3, stating that within the Urban Service Areas, LAFCO does not review city annexations as noted on the LAFCO website, and he states that the proposed policies are in conflict with this information. Commissioner Alvarado states that LAFCO should consider annexation without designating the islands. In response to an inquiry by Chairperson Howe regarding designation of islands, Ms. Palacherla refers to the maps distributed to the cities and points out that the islands are “any” unincorporated lands within a city’s USA; however, she notes that it does not mean that all islands qualify for the streamlined process. She continues by stating that if the cities decide that those lands are not intended for development, she recommends that the issue be reviewed by the city and discussed with LAFCO.

Mr. Faus responds that he further objects to the requirement that all islands be annexed before LAFCO considers any additional USA expansions. Discussion ensues among the Commissioners and staff regarding the islands, noting that some are encompassed within the city limits and some are within the USA although not in the city limits and are not surrounded on four sides by the city.

Commissioner Gage reminds commissioners that the Cities of Gilroy and Morgan Hill took in a substantial amount of land in order to attract jobs to the cities and comments on safety issues relating to the need for widening of roads. Commissioner Gage states that Gilroy has not exceeded 10 percent per year in developing available land for industrial and commercial use. He expresses concerns that forcing the City to annex lands would make it difficult for the City to implement some important projects. He continues by commenting on issues relating to a hospital in Gilroy and road safety issues. Ms. Palacherla states that the existing LAFCO policy states that if cities have more than five years worth of land within the USA, not within the city limit, the city must provide LAFCO with an explanation for why it is requesting additional land. She states that whether or not the proposed policies are adopted, there is an existing LAFCO policy that cities should not be adding lands beyond what they require for five years. Commissioner

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Gage and Ms. Palacherla continue by discussing issues relating to the five years' supply of vacant land within the Urban Service Area. Supervisor Gage expresses a desire that the policies allow for smaller cities to have the flexibility to plan for their land use, and he states that cities might be penalized because they have already incorporated large amounts of land that will not be developed within a few years.

Commissioner LeZotte comments on the proposed requirement that a city must initiate and complete annexation unless the island constitutes publicly owned land. Ms. Kretchmer clarifies that if there is publicly owned land, it is not a mandate that it be annexed, it is an option and LAFCO will not look for the annexation to take place prior to approving an urban service area amendment.

Commissioner LeZotte continues by referencing Item B which states that relative to annexation of parcels that are larger than 150 acres will require that a city must adopt an annexation plan, hold community meetings, apply pre-zoning designations, and adopt resolutions to initiate annexation. She inquires why Item B is needed and suggests that only Item A is necessary and that a change can be made so it is more flexible and not use the word "must" in an effort to support the goal of orderly growth and suggests wording that "LAFCO should encourage the city to initiate annexation proceedings pursuant to Government Code section for all unincorporated islands that meet the provisions of . . ." She further states that the City of San Jose has quite a few parcels that are larger than 150 acres and the proposed policy would be restrictive. She suggests that the policy be that LAFCO should encourage cities to comply with the Government Code Sections. Ms. Palacherla responds that Item A reflects that the city would be asked to initiate and complete annexation proceedings using the streamlined annexation process for islands that meet the streamlined annexation criteria. She further indicates that the city is assured of annexation success because there would be no protest and election in those instances where the islands would be less than 150 acres. She further advises that in instances where the islands are larger than 150 acres, the city does not have that assurance when it initiates the annexation process, performs outreach, and holds public hearings, which may be followed with protest proceedings and the elections and that would determine the outcome of the election.

Commissioner LeZotte notes that this is the current process, and the streamlined process only applies to islands smaller than 150 acres. The proposed policy would require a city to initiate and complete annexation processes rather than allowing the city to decide on the property



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to annex. Ms. Palacherla states that even for those islands less than 150 acres, the city is not mandated or required to go through those annexations, even for those islands less than 150 acres. She states that the proposed policies apply to islands beyond 150 acres, and the cities and LAFCO have to address the islands that are smaller than 150 acres as well as those that are larger than 150 acres. Ms. Kretchmer informs the Commission that Item B was included so that LAFCO has assurance that the city is moving forward on the annexation of islands greater than 150 acres. She further states that LAFCO cannot require a city to guarantee the result because it has to go to protest and election; however, LAFCO can at least ask for a plan from the city to ensure that the city is moving forward with an attempt to annex those properties.

Commissioner LeZotte expresses concern that the policy might require the City of San Jose to initiate annexation for properties where the attempts to annex would not succeed or that annexations may not result in orderly growth for the City of San Jose.

Ms. Palacherla states that islands, whether less than or more than 150 acres, are within the city's urban service area and that for all of the areas, the city has promised to annex and provide services. The only difference is that for islands less than 150 acres, the cities and LAFCO can be assured they will be annexed once the annexation proceedings have been started. She continues by stating that for islands larger than 150 acres, all LAFCO can ask is for the cities to demonstrate to LAFCO that they have tried to annex. The policies are not intended to make the cities follow a certain path towards annexation of islands that are more than 150 acres. The steps that would be required before an annexation can take place, pre-zoning, providing outreach, holding community meetings, preparing a plan with a timeline for annexation, would not be required if the city can demonstrate to LAFCO some other way that they are going to annex the islands that are larger 150 acres.

Commissioner LeZotte expresses concern that the proposed requirements would place a burden on the City of San Jose due to the large number of islands. Ms. Kretchmer states that LAFCO wants to make a point that the cities need to move forward on the island annexations before they start providing services outside their current boundaries, which is LAFCO's mandate by state law in terms of what is considered orderly growth.

Bill Shoe, Principal Planner, Santa Clara County Planning Office, reminds the commissioners that the current policies reflect valuable history and have been the foundation for LAFCO. He states that these policies are in support of island annexations, and he encourages

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LAFCO to consider the importance of these policies in light of State law and in the context of the joint urban development policies adopted by the cities and County 30 years ago. Mr. Shoe provides an overview of the history of the policies in context of the County General Plan, noting that the County has agreed to defer to the cities' general plans. He urges LAFCO to continue to support the policies in order to continue growth management efforts.

Joe Carpenter, unincorporated area homeowner, Director of the Burbank Sanitation District, and President of the Buena Vista neighborhood Association, notes that the election that failed recently was in the Buena Vista area, not the Burbank area, and it lost because Proposition 218 requires two-thirds of the voters to support. He highlights that in unincorporated areas of the County, the standards are not as high as in the surrounding cities and some businesses of questionable reputation are located just outside of the city boundaries. He expresses agreement with Commissioner Alvarado that the word "must" should remain as part of the text in the policies.

Kathy Molloy Previsich, Community Development Director, City of Morgan Hill, states that annexation applications have been submitted for the City of Morgan Hill. She further states that she is uncertain whether the recent change in State law is realistic to adjust activities of the cities to accommodate completion of island annexations within the two-year period. She adds that it would be unfortunate for the cities not to have the option to amend the USA during that time. She continues by noting that although she appreciates LAFCO informing the cities of the streamlined process, she objects to the inflexible approach requiring annexation of unincorporated islands before any amendments to the USA are considered. In addition, she states that the City does not have sufficient resources to complete the annexations within the two-year period.

Brian Schmidt, Committee for Green Foothills, states that he supports the draft island policies, specifically Policy Number 6. He comments that LAFCO can continue with the status quo or adopt the draft policies, and he expresses the opinion that Policy Number 6 is a key element for attaining the goal of annexation. He speaks of the need for flexibility with limits and states that eliminating the word "must" in Policy Number 6 would result in unlimited flexibility and that Policy Number 6B should be reinforced. He expresses agreement with Commissioner Alvarado regarding residents' rights to vote in local elections if islands are annexed.

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Michael McDermott, Gilroy resident, notes that the word “must” in Policy Number 5 was amended to reflect the word “should” and expresses a preference that the word “should” be included in Policy Number 6, as well. He further speaks of the costs of annexation, including California Environmental Quality Act review timelines and other issues. Mr. McDermott concludes by stating that if Policies Number 5 and 6 are approved, the word “must” should not apply to Year 2000-2003 applications that are actively in the planning process for Urban Service Area amendment annexations deemed completed by LAFCO prior to December 2006.

Lee Wieder, Access Land Development Services, Palo Alto, informs the Commission that he attended the island annexation workshop held on January 24, 2005. He distributes and refers to a list of questions for the Commissioners noting that Policy Number 5 now reflects the word “should” instead of “must” and that Policy Number 6 should be consistent with this wording. He notes concerns relating to timelines and costs for annexations and possible protections for the cities in cases of legal challenges. He references Policy Number 9 and comments on the need to do what is right and not only consider cost issues. Commissioner LeZotte inquires regarding Policy Number 9, and Ms. Kretchmer responds that LAFCO staff provides an analysis whenever an application for annexation is received.

Forrest Furth, resident of Blossom Hill Manner, inquires as to how many of the 180 unincorporated islands are 150 acres or greater, and the Chairperson responds that 20 are larger than 150 acres. Mr. Furth comments on Policy Number 7 regarding removing incentives for opposition to annexation, noting that there is opposition on the part of residents in the unincorporated area of Los Gatos due to disparities between County and City building regulations.

John Milner, resident of Holiday Lake Estates and Architectural Director of the Holiday Lake Estates Maintenance Association, informs the Commission that some homes in the Estates are in the City of Morgan Hill, while others are in unincorporated areas. He notes that homes in the unincorporated areas require septic tanks and are on hillside locations, and he speaks of health issues relating to failing septic systems and concerns relating to maintenance of roads. Mr. Milner expresses support for the proposed annexation policies.

Collin Jung, representative of the City of Cupertino, expresses appreciation to LAFCO staff for addressing the City’s concerns in the latest revision of the proposed policies. He provides background information on City support for the urban pockets program and LAFCO

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policies for orderly growth and development, noting that the City has annexed 39 islands over the past seven years. Mr. Jung states that the City Attorney continues to believe that Proposition 218 prohibits the City from legally extending city taxes to annexed territory without allowing for some form of protest, and he advises that the city taxes are needed to defray the costs of servicing the annexed areas. He further expresses the opinion that if the legal problem could be eliminated, cities would be more inclined to use the island annexation proceedings. He directs attention to Policy Number 7 which encourage the County to remove development incentives for property owners to remain in the County, and he states that help from the County is critical to the success of Cupertino annexations. He concludes by recommending that the County development standards be made even more restrictive than the standards in the surrounding City.

Trish Duarte, Town of Los Gatos Public Works Department, states that some of the unincorporated area residents mistakenly believe that Proposition 13 taxes will increase as a result of incorporation. She further expresses concerns regarding Policy Number 6, Item B, regarding the costs to the City to incorporate very small pockets of one to five houses only, stating that it will take the City years to recover the costs for small annexations. She requests that the policy be revised so that a different fee is established for annexation of such small areas. In response to inquires by Commissioner Alvarado and Chairperson Howe regarding the request, Ms. Palacherla states that staff will review the annexations on a case-by-case basis and that this could include parcels that are not contiguous.

The Chairperson determines that there are no additional members of the public who desire to address the Commission on this matter. On order of the Chairperson, there being no objection, it is ordered that the hearing be closed.

Commissioner Alvarado expresses the opinion that the members of the Board of Supervisors have a sense of urgency to review the land use policies and make revisions. She notes that her comments reflect her opinion and that she is not speaking on behalf of the Board. She further states that the differences between the County standards and city standards should be recognized and notes that the lack of County resources is a reason for some of the disparity between the County infrastructure and that of surrounding cities. Commissioner LeZotte expresses appreciation for the comments by Commissioner Alvarado and briefly mentions issues relating to code enforcement, police services, and traffic concerns.

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Commissioner Wilson notes that orderly growth is a mandate, and she speaks of the need for annexation of islands which are totally encompassed by cities. She states that providing services to the islands is not an efficient use of government service and that islands promote out-of-agency services being extended, which is against LAFCO policy. She further expresses the opinion that LAFCO, the County, and the cities have a responsibility to take advantage of this opportunity and that this Commission and CALAFCO should approach the Legislature to suggest that the timeline for the streamlined annexation process be extended beyond the current two-year period. She further comments that Santa Clara County LAFCO is unique within the State, because once a property comes into the USA of a local city, LAFCO is obligated to allow annexation.

Commissioner Wilson continues by expressing support for the revised proposed policies and recommends that the term islands refer only to properties that are surrounded on four sides by city land; and that Policy Number 6B be modified to reflect “shall encourage” instead of “must” for properties larger than 150 acres and the word “must” be used for properties under 150 acres.

Chairperson Howe states that the proposed policies impose an unfunded mandate on cities. He indicates that the City of Sunnyvale would be negatively impacted by the cost of annexation of its two small, unincorporated areas and that the City is not looking to expand its USA. He requests that efforts be pursued to share the costs between the County and the City.

Commissioner Gage comments that LAFCO is going beyond what the State requires and expresses the opinion that the word “must” should be changed to “should” in Policy Number 6. He moves that the policies be approved and that the word “must” be changed to “should” in Policy Number 6. Chairperson Howe seconds the motion and speaks in support of providing some financial assistance for the cities, waiving the LAFCO fee, and removing the word “must” in Policy Number 6. He additionally requests that the \$60,000 reserve from LAFCO resources be used to assist in lowering the costs and that financial assistance be included in the budget for next year. Commissioner Gage requests that staff return to the Commission with information on whether these costs have been lowered, and he states that this issue will be reviewed in the Budget Committee meetings. Commissioner Gage and Chairperson Howe agree to amend the motion to reflect that staff be directed to consider waiving some of the annexation fees, consider utilization of LAFCO reserve funds to lower annexation costs to the cities, reserve financial

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assistance in the budget for next year, and report to the Commission regarding methods to respond to concerns regarding the financial impact on the cities in terms of the LAFCO budget.

Commissioners Wilson states that her understanding of the policies is that cities would only be required to annex islands under 150 acres which are completely surrounded by city lands prior to requesting an increase in their USAs. She further speaks of the need to take advantage of the opportunity provided by the legislation and states that she does not support the motion.

Commissioner Alvarado states that she does not support the motion and comments on the historic lack of political support for cities to annex certain areas and for residents to vote to support annexation.

Commissioner LeZotte requests clarification regarding the motion, and Commissioner Gage states that the words “must” included in Policy Number 6 should be revised to reflect “should encourage” to allow for flexibility. He further states that he would like for cities to annex some of the unincorporated areas and does not want to have policies that are detrimental to cities when they want to incorporate certain areas before considering annexation of other areas. In addition, he cites concerns that the policies, as proposed, exceed State requirements.

Commissioner LeZotte speaks in support of providing financial incentives to the cities. She notes that she will support the motion and expresses a desire that cities will begin annexing properties if the financial burden is reduced and comments that the issue is balance relative to the need to provide services to the areas. She raises a question relating to the word “should” and how LAFCO will respond in interpreting whether cities are adhering to the intent of the language, and Ms. Palacherla states that the language may cause cities to be uncertain about whether they have done what they need to do before coming to LAFCO. She further states that the Commission will decide on that matter.

Commissioner Wilson comments on the financial constraints of the County and cities and expresses the opinion that if land use is tied to finances, the County will have no open space or green hills. Commissioner Alvarado expresses the opinion that the word “should” is too ambiguous and will allow the cities to continue with the status quo and the opportunity provided by the current legislation will be lost.

It is ordered on a vote of three to two, with Commissioners Wilson and Alvarado voting no, that the policies be approved and that Policy Number 6 be amended to reflect “should encourage” instead of “must,” that some financial assistance be provided to the cities, and that

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staff be directed to consider waiving some of the annexation fees, utilization of LAFCO reserve funds to lower annexation costs to the cities, inclusion of financial assistance in the budget for next year, and to report to the Commission regarding methods to respond to concerns regarding the financial impact on the cities in terms of the LAFCO budget.

In response to an inquiry by Ms. Palacherla, Commissioner Gage affirms that Policy Number 6 will reflect that prior to seeking any urban service area amendment, except if the urban service area amendment is to resolve a significant demonstrable public health and safety issue or the urban service area amendment is a minor corrective action, the city should . . .” In response to a further inquiry by Ms. Palacherla regarding the wording in Policy Number 6, Item B, Commissioner Gage affirms that the Policy will reflect that “for any city that has any unincorporated areas larger than 150 acres, the city is strongly encouraged to adopt an annexation plan . . .”

Ms. Kretchmer comments that the motion included consideration of financial incentives in the budget process.

(Commissioner Alvarado leaves at 3:45 p.m.)

On motion of Commissioner Wilson, seconded by Commissioner Gage, it is unanimously ordered on a vote of four to zero, Commissioner Alvarado being absent, that Commissioner Wilson, who is also CALAFCO Board Member, be authorized to approach the CALAFCO Legislative Committee to suggest that the two-year deadline provision in the Island Annexation Streamlined Process be extended.

(Commissioner LeZotte leaves at 3:55 p.m.)

**5. OUT OF AGENCY EXTENSION OF SEWER SERVICE TO 17360 HOLIDAY DRIVE BY THE CITY OF MORGAN HILL**

Ms. Kretchmer informs the Commission that she will not participate in this item because she has been working with the Environmental Health Department. She advises that Lizanne Reynolds, Deputy County Counsel, Office of the County Counsel, will represent the Commission on this matter.

Ms. Palacherla provides an overview of the staff report. She states that the City of Morgan Hill is seeking to provide sewer service to a property in the unincorporated area of Holiday Lake Estates. The parcel is surrounded by the City of Morgan Hill and the Lake

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Anderson Reservoir and is outside of the USA; however, the City provides sewer and water service to several parcels in the area. Ms. Palacherla states that over the years, LAFCO has received several requests for sewer service in this area. Due to the age, size, and terrain, the area septic systems will fail and this issue will continue to be an ongoing problem in this area resulting in more requests for sewer service from property owners and a threat to the health and safety of area residents. She points out that the Water District has expressed concern relating to the potential impact of the failing septic systems on the quality of water in Lake Anderson Reservoir, which is a drinking water source. Additionally, she notes that LAFCO policy regarding service extension favors annexation over allowing a city to extend sewer services outside its boundaries. If annexation is not immediately feasible, then extension of service may be approved in anticipation of a future annexation if the agency is able to provide to LAFCO a Resolution of Intent to annex and to provide other appropriate assurances. Until now, Measure P prevented the City from including this area in its USA; however with the revision of Measure P, the City is able to include this area within its USA and not have it count towards its population cap.

She continues by advising that LAFCO received a request for extension of sewer service from another property in the area, and the request was approved with the understanding that the City would include it in its USA after the revision of Measure P and would pursue annexation of the entire Holiday Lakes Estate area. The City's application for the property under consideration this date does not indicate that the City will annex or that it will include this area within its USA. Ms. Palacherla states that staff recommends approval of the request, because Holiday Lake Estates is a developed area surrounded by the City and Anderson Lake Reservoir, the property is facing septic system failure which is a health and threat, and the problem can only be resolved by connection to the City's sewer service. She further notes that including the area within the City's USA would allow the City to annex individual parcels if they are contiguous to the City and if they face failing septic systems if sewer service is available. Additionally, she states that inclusion of the properties in the USA does not mean that the City immediately has to annex or provide sewer service to all of the properties in the area. Further, she notes her understanding that some of the properties can only be provided sewer service through extension of new sewer infrastructure, which would require planning and development of a financial mechanism to fund the infrastructure.



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Commissioner Gage states that the problem has been an issue for many years and that all of the Holiday Lake Estates residents receive water from the City already, and many have sewer service. In response to an inquiry by Commissioner Gage, Ms. Palacherla clarifies that 80 out of 200 homeowners have City sewer services. Commissioner Gage expresses a desire that LAFCO receive a firm commitment from the City that they will accept the properties into its USA and assist LAFCO in handling the matter properly. He further cites concerns regarding the failing septic systems and the potential impact on the drinking water source.

Ms. Reynolds suggests that LAFCO may choose to approve the staff recommendation conditioned on the City submitting a Resolution to LAFCO and also taking a position that LAFCO will approve the request for extension of sewer service after the City submit information indicating that the City will include the entire area within its USA. She advises that after the extension is granted, if the City does not include the area within its USA, LAFCO would not be able to rescind the extension of service to this particular parcel. In response to an inquiry by Commissioner Gage, Ms. Reynolds confirms that LAFCO has the legal ability to take this action and the failing septic systems have been a problem for some time.

Commissioner LeZotte raises a question regarding the actions being taken by the County to prevent similar problems from happening. Commissioner Gage states that the County has implemented stricter controls and that these types of issues will be resolved prior to the County issuing building permits.

The Chairperson requests public comment. Scott Plambaeck, Planning Department, City of Morgan Hill, reports that the City only considered this particular request for extension of sewer services and did not consider the issue of including the entire Holiday Lake Estates within the USA. He further notes that the City has the intention to collaborate with LAFCO to address this issue; however, he expresses the opinion that it is premature to amend the USA. He additionally states that the situation of the property owner needs to be addressed quickly; however, the City does not have the resources currently to address all of the issues regarding annexation of the entire area.

Commissioner Wilson inquires about the steps taken by the city relating to inclusion of Holiday Lake Estates in the USA. Mr. Plambaeck responds that in November 2004 the City adopted Measure C relating to growth control which allows areas such as Holiday Lake Estates to be included in the City's USA without meeting the desired infill criteria/ standards.

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Commissioner Gage inquires how long this issue has been in existence, and Ms. Palacherla responds that this issue has been ongoing for several years. Commissioner Gage recommends that the City Council recognize the time spent on this issue and take action.

John Milner, Holiday Lake Estates resident, states that he supports the statement that this issue has been ongoing for too many years. He comments that for the past several years, 80 of the 200 homes in Holiday Lake Estates that are approximately 30 years old have received sewer service. He emphasizes the need for the City of Morgan Hill to create an agreement to go forward with the expansion of the USA.

Kathleen Molloy Previsich, Community Development Director, City of Morgan Hill, extends her willingness to work with LAFCO, the water treatment provider and property owners. She reports that the City of Morgan Hill has been directed to take the lead regarding the existing septic systems issue. She further reports that surveys have been circulated to address this issue; however, the results are not yet known. As of this date, there is not sufficient information available in order to formulate a solution. She comments that in the interim, the City will continue with the existing septic systems and agrees that a collaboration effort with the property owners should begin. She recommends that LAFCO approve extension of sewer service for the subject property and focus on number three of the LAFCO staff report dated February 2, 2005, "to continue to facilitate the City, County and the Santa Clara Valley Water District working together." She adds that property owners should be included in that condition.

William Corbin, Property Owner, Holiday Lake Estates, informs the Commissioners that when he purchased his home, documentation on the home stated that it was on sewer service. He states that due to the septic system problem, he has been involved in a lawsuit for three years and that it has become very expensive. He expresses concern that the result of what happens in the public hearing today will negatively impact the result of his lawsuit if LAFCO does not approve the extension of sewer service to his property. Chairperson Howe closes the public hearing.

Commissioner Gage directs a question to Richard Fuchs, Director, Consumer Protection Division, regarding whether the extension of sewer service is the best solution because the septic system cannot be corrected due to the land issue and because the system is failing and is a public health hazard. Mr. Fuchs responds affirmatively.

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Chairperson Howe inquires how long it would take to implement sewer service if approval were to be granted this date. Mr. Fuchs states that LAFCO would have to obtain the information from Department of Public Works. Ms. Palacherla announces that the property is surrounded by the City of Morgan Hill on three sides and the other side is bounded by Lake Anderson.

Commissioner Wilson inquires how long it would take for LAFCO to receive a resolution from the City and comply with the California Environmental Quality Act (CEQA) so that this property can be included in the USA. Ms. Reynolds states that CEQA should not be an issue and that it would take approximately six months. Commissioner Wilson announces that the approval should be on condition that the City include the remaining Holiday Lake Estate homes into the USA; otherwise, additional requests will be denied. Ms. Reynolds responds that the condition would be feasible.

Commissioner Wilson moves that the staff recommendation to extend sewer service to 17360 Holiday Drive be approved to include that LAFCO will not approve additional requests to extend service until the City includes the entire Holiday Lake Estates in its USA, and Commissioner Gage seconds the motion. Ms. Palacherla confirms that the City would have to return to LAFCO with a City resolution requesting LAFCO to amend the USA to include Holiday Lake Estates.

Ms. Reynolds suggests revising item 2 of the staff report, "Approve request for extension of sewer service to a single-family residence located at 17360 Holiday Drive in the unincorporated area conditioned on the City submitting a resolution to LAFCO requesting inclusion of the Holiday Lake Estates area within its USA, in anticipation of future annexation. In addition, that LAFCO require the City to report to LAFCO on its plan for annexation of the Holiday Lake Estates area," and that "the resolution be sent to LAFCO by a designated time and that there be no further expansions to the USA." Commissioner Wilson suggests that the motion be amended to reflect that a resolution be sent to LAFCO by a designated time and to add that there be no further extensions of service until then. Commissioners Wilson and Gage express agreement, and the motion is amended accordingly.

It is unanimously ordered on a vote of three to zero, Commissioners LeZotte and Alvarado being absent, that sewer service be extended to 17360 Holiday Drive and that LAFCO not approve additional requests to extend service until the City submits a resolution to LAFCO

within six months to include the entire Holiday Lake Estates in the City's Urban Service Area in anticipation of future annexation and report to LAFCO on its plans for annexation of the Holiday Lake Estates area.

**6. REQUEST FOR PROPOSALS (RFP) FOR PREPARING THE SOUTH CENTRAL COUNTY AND NORTHWEST COUNTY SERVICE REVIEW**

Dunia Noel, LAFCO Analyst, refers to number three of the staff recommendation stating that LAFCO Executive Officer should be delegated authority to enter into an agreement with the most qualified consultant in an amount not to exceed \$140,000 (not to exceed \$70,000 for each Service Review) and to execute any necessary amendment subject to LAFCO Counsel review and approval. She announces that the recommendation should be amended to reflect that the budget for this year allows funding for \$70,000 for the South Central County Service Review in fiscal year 2005 and \$70,000 in 2006 to complete the Northwest County Service Review.

Chairperson Howe suggests appointing a Commissioner to represent the Northwest County and one for the South Central County. He volunteers to represent the Northwest County and Commissioner Gage volunteers for the South Central County.

It is unanimously ordered on a vote of three to zero, Commissioners LeZotte and Alvarado being absent, that staff issue an RFP for preparing the South Central County and Northwest County Service Reviews and authorize LAFCO Executive Officer to enter into an agreement in an amount not to exceed \$140,000 and to execute any amendments subject to LAFCO Counsel review and approval. Also, Commissioner Gage is appointed to the South Central County Service Review Technical Advisory Committee and Commissioner Howe to appointed to serve on the North West County Service Review Technical Advisory Committee.

**7. EXECUTIVE OFFICER'S REPORT**

**7.1 Update on Countywide Water Service Review**

Ms. Noel refers to and reads the update on the Countywide Water Service Review. She reports that the release of the Report has been postponed to mid-February to provide water service agencies additional time to review agency information. She states that the Report will be available online and a hard copy can be obtained in the LAFCO office. The first public hearing will be April 13, 2005. Dudek and Associates,

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consultants for the Review, will provide a presentation and the meeting will be a public hearing to receive comments on the draft report. Once the Report has been revised, another public hearing will be held in June for final adoption of the Water Service Review Report.

### **7.2 LAFCO Budget Sub-Committee for Fiscal Year 05-06**

Ms. Palacherla reports that every year a Budget Sub-Committee is formed to prepare recommendations to the full Commission and that two Commissioners are appointed to serve on the Sub-Committee. Commissioners Gage and Howe volunteer for the Budget Sub-Committee.

On motion of Chairperson Howe, seconded by Commissioner Gage, it is unanimously ordered on a vote of three to zero, Commissioners LeZotte and Alvarado being absent, that Commissioners Gage and LeZotte be appointed to serve on the LAFCO Budget Sub-Committee for Fiscal Year 05-06.

### **7.3 2005 CALAFCO Annual Staff Workshop in Bakersfield (April 20-22, 2005)**

On motion of Commissioner Gage, seconded by Commissioner Wilson, it is unanimously ordered on a vote of three to zero, Commissioners LeZotte and Alvarado being absent, that staff and the Clerk be authorized to attend the 2005 CALAFCO Annual Staff Workshop in Bakersfield and that travel expenses be authorized to be funded by the LAFCO budget.

### **7.4 2005 CALAFCO Annual Conference in Monterey (September 7-9, 2005)**

Ms. Palacherla announces that information on the conference is forthcoming and will be forwarded to the commissioners when it becomes available. Commissioner Wilson announces that the next CALAFCO meeting is scheduled to be held in San Jose on April 29, 2005.

## **8. PENDING APPLICATIONS (Information Only)**

### **8.1 Application for Formation of Redwood Estates Community Services District (RECS)**

Ms. Palacherla states that there is nothing new to report and that RECS is in the process of selecting a consultant to assist in prioritizing issues regarding the formation. Upon completion of this process, RECS will submit a revised application to LAFCO.

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**9. WRITTEN CORRESPONDENCE**

**9.1 CALAFCO Newsletter (Distributed in agenda packets)**

**9.2 Newspaper Articles**

There are no newspaper articles.

**10. ADJOURN**

On motion of the Chairperson, there being no objection, the meeting is adjourned at 4:10 p.m. to the next regular meeting scheduled to be held on Wednesday, April 13, 2005 at 1:15 p.m. in the Chamber of the Board of Supervisors, County Government Center, 70 West Hedding Street, San Jose, California.

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John Howe, Chairperson  
Local Agency Formation Commission

ATTEST:

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Lena Vasquez, LAFCO Clerk