

**LOCAL AGENCY FORMATION COMMISSION OF
SANTA CLARA COUNTY
MINUTES
WEDNESDAY, FEBRUARY 14, 2007**

1. ROLL CALL

The Local Agency Formation Commission (LAFCO) of Santa Clara County convenes this 14th day of February 2007 at 1:15 p.m. in the Isaac Newton Senter Auditorium, County Government Center, 70 West Hedding Street, San Jose, California, with the following members present: Chairperson Blanca Alvarado, Commissioners Pete Constant, Don Gage, John Howe and Susan Vicklund-Wilson. Alternate Commissioners Terry Trumbull and Roland Velasco are also present.

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

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

2. WELCOME NEW COMMISSIONER CONSTANT AND ALTERNATE COMMISSIONER SAM LICCARDO

Chairperson Alvarado introduces herself and other members of the Commission. She announces the appointment of San Jose Councilmember Pete Constant as Commissioner and Councilmember Sam Liccardo as Alternate Commissioner, both representing the City of San Jose. She likewise introduces the staff.

3. RESOLUTION OF COMMENDATION FOR FORMER COMMISSIONER LINDA J. LEZOTTE

On Commission consensus, there being no objection, it is unanimously ordered that the Resolution of Commendation for former Commissioner LeZotte be adopted.

Chairperson Alvarado acknowledges LAFCO Commissioner Linda J. LeZotte. Commissioner Wilson expresses appreciation for former Commissioner LeZotte's service to LAFCO, stating that while representing the City of San Jose, she was very clear about her role as a LAFCO Commissioner.

Chairperson Alvarado invites Commissioner Wilson and former Commissioner LeZotte to the podium, reads the Resolution and presents it former Commissioner LeZotte. Former Commissioner LeZotte accepts the Resolution, expressing appreciation to the Commission for taking the time to recognize her service to LAFCO.

4. PUBLIC PRESENTATIONS

There are no public presentations.

5. APPROVE MINUTES OF DECEMBER 13, 2006 MEETING

On motion of Commissioner Howe, seconded by Commissioner Wilson, it is ordered on a 3-0 vote, with Chairperson Alvarado and Commissioner Constant abstaining, that the minutes of December 13, 2006 meeting be approved, as submitted.

At this point, Chairperson Alvarado, indicating that she has to attend the Board of Supervisors' Health and Hospital Committee meeting at 2:30 p.m., inquires which items on the agenda could be deferred to April 4, 2007. Ms. Palacherla requests the Commission to act on agenda item numbers 7, 8, 10, 11, 12.1, 12.2 and 12.3. Chairperson Alvarado then requests Vice-Chairperson Constant to preside when she leaves and Mr. Constant expresses agreement.

**6. REVISED DRAFT AGRICULTURAL MITIGATION POLICIES
(CONTINUED FROM DECEMBER 13, 2006)**

This being the time and place set to consider LAFCO's Revised Draft Agricultural Mitigation Policies, Chairperson Alvarado declares the public hearing open. Chairperson Alvarado requests the staff report and announces that Commissioners Gage and Wilson, as members of the Subcommittee, may also give their reports if they wish.

Ms. Palacherla directs attention to her staff report, dated February 14, 2007, stating that staff is seeking direction from the Commission to revise the draft policy to make it clear that the provisions in the policies are not requirements or conditions, and to include changes proposed at the Subcommittee meeting relating to the "plan for mitigation" and the "timing and fulfillment of mitigation." She informs the Commission that on December 13, 2006, the Commission formed a Subcommittee composed of

Commissioners Gage and Wilson to discuss and recommend to the full Commission, policies relating to the two sections, namely, the plan for mitigation, and timing and fulfillment of mitigation. On January 24, the Subcommittee met in Morgan Hill, discussed the two sections, took public comment, and directed staff to bring the revisions to the full Commission, including a summary of all the issues raised at that meeting. Ms. Palacherla requests Ms. Noel to discuss the proposed changes to the draft policies and the issues raised at the Subcommittee meeting.

Ms. Noel directs attention to Attachment C in the staff report, stating that the first flow chart illustrates the development process and the roles of LAFCO and the cities. The developer first requests the city council for USA expansion; the city council pre-zones the land and requests LAFCO to expand the USA. If LAFCO approves the USA expansion, the city will annex the land. LAFCO then records the city annexation and it becomes effective. She indicates that beyond this, citing a perforated line on the flow chart, LAFCO has no control over the rest of the development processes. She continues her report by directing attention to another chart (Attachment C) comparing the timing and fulfillment of mitigation being proposed in the current revision to that in the December 13, 2006 revision. Ms. Noel states that the previous version of policies required mitigation within four years of LAFCO approval, however, under the proposed system, the timeframe for the mitigation will be unknown and mitigation would only be fulfilled when the tentative map is approved, or when the grading permit or building permit is issued, whichever comes first.

Ms. Noel advises that since LAFCO has no jurisdiction over the development process, it is proposed that a city council ordinance or resolution be adopted to assure the Commission that the city would enforce the plan for mitigation at the specified time and provide annual status reports until the mitigation is fulfilled. The plan for mitigation would include an agreement among the property owner, the city and the conservation entity that commits the property owner to mitigate, specify the type of mitigation, indicate the agricultural conservation entity, if there is one, state how the land or in-lieu fees will be held; and, specify the acreage and location of the area to be preserved or the methodology for calculating the in-lieu fees; and, discuss the measures

to mitigate the impacts on adjacent lands. Upon approval of the USA application, the mitigation agreement would be recorded with the County Recorder's Office against the property to be developed. She informs that these potential elements of the draft policies are intended to be advisory and indicates that the language of the draft policies will be revised to reflect this intent.

Ms. Noel discusses the issues raised at the Subcommittee meeting and staff's response. On how LAFCO will ensure that agreed mitigation is enforced and whether audits would be conducted, she notes that under the draft policies the city would report annually to LAFCO until the mitigation requirements are fulfilled. On the choice between an ordinance or resolution to enforce the agreed mitigation, she advises that a city ordinance would be preferred, explaining that many cities currently have ordinances stipulating the timing of mitigation and impact fees for development approvals and permits. On whether or not LAFCO will be party to the agreement, Ms. Noel recommends that LAFCO, as the agency reviewing and approving the proposals, should not be a party to the agreement. On fulfillment of mitigation, she advises that mitigation should be fulfilled prior to the approval of the final map, or at the time of issuance of the building permit or grading permit, whichever comes first. On when mitigation should be required for projects involving multiple building permits, Ms. Noel advises that since USA approval is an expansion to an entire territory and not individual parcels, mitigation should be fulfilled prior to the approval of the final map, or at the issuance of the first building permit or the first grading permit, whichever occurs first. On how to ensure that in-lieu fees will be adequate even if mitigation occurs many years into the future, she advises that it is the intention of LAFCO that an equivalent amount and quality of farmland must be preserved regardless of whether it is preserved at the time the project was approved or in the future, and indicates that the revised policies would reflect this intent. She notes that the in-lieu fee calculation methodology should account for the changing land values. On how to ensure that future property owners provide the agreed mitigation, she advises that the mitigation agreement would be recorded against the property. On whether new USA applications would be discouraged because mitigation is pending for prior USA amendments, Ms.

Noel advises that the draft policies no longer stipulate that, however, the Commission would consider various factors as part of the review process, including the status of mitigation for the previous USA approvals.

Ms. Noel continues to report on issues raised at the Subcommittee meeting that were previously discussed and addressed. She requests Ms. Kretchmer to discuss the issue relating to LAFCO's authority to establish the draft policies. Ms. Kretchmer advises that the intent of the draft policies is not to regulate land use nor to impose land use conditions or mandatory requirements. Instead, the draft policies guide applicants in demonstrating how the loss of, or impact to, agricultural lands will be mitigated and provide a standard to the applicants and the Commission on how proposals will be evaluated. She advises that staff will issue a complete set of the draft policies to clearly indicate this. Chairperson Alvarado comments that the draft policies rely on the goodwill of the cities to enforce the agreed mitigation. Ms. Kretchmer explains that the draft policies encourage cities to adopt ordinances and resolutions to assure LAFCO that they will enforce the mitigation. She explains that when an application is received, the Commission should look for assurances by the cities that agricultural lands will be protected. Chairperson Alvarado comments that the policies would now be open-ended. Ms. Noel continues her report by stating that the use of Land Evaluation and Site Assessment (LESA) Model was again suggested. She advises that in the beginning of the process, staff indicated that LESA is an optional model which favors traditional, large-scale agriculture and is unlikely to protect smaller, urban-edge agriculture in Santa Clara County. She indicates that there are 200 different versions of LESA throughout the United States. Ms. Noel reports that the third issue discussed at the Subcommittee meeting is whether or not the draft policies would induce urban development in the unincorporated County. She advises that it is unlikely to happen because of the current lot sizes in the unincorporated areas and because LAFCO, the County and the cities have a long-standing policy to allow urban development and services only within the cities. She reports that it was again suggested to increase the mitigation ratio higher than 1:1. Ms. Noel advises that the draft policies provide for a minimum 1:1 ratio and would allow variations to be considered on a case-by-case basis.

Ms. Palacherla continues the report by discussing the new issues raised and the staff responses. On the issue that the draft policy would drive up housing prices, she advises that any mitigation, such as park fees and school fees among others, would negatively affect pricing; however, the effect of mitigation on housing prices is very difficult to calculate. She adds that there are studies indicating that homebuyers are willing to pay more for homes near preserved areas, and therefore, housing prices and mitigation could offset each other. On the inquiry of whether these draft policies are mandatory or advisory, she indicates that the draft policies are advisory and reiterates that the purpose of these policies is to clarify LAFCO's expectations for mitigation to enable property owners and cities to address them. Ms. Palacherla advises that these policies would serve as a framework for processing LAFCO applications involving agricultural lands. It would be an important factor, in the context of all the other factors that LAFCO has to consider, such as, the efficient service delivery, availability of vacant lands, water availability, regional housing needs, growth inducement, impacts to other agencies and environmental considerations, among others.

Ms. Palacherla then outlines the next steps in the process. She indicates that staff will revise the draft policies to include the elements of the proposed changes. Staff will post the revised draft policies and the CEQA analysis on the LAFCO website for public review and comment, and will notify the affected agencies and stakeholders when it becomes available. A second Subcommittee meeting will be held to discuss the revised draft policies and obtain stakeholders' input. A public hearing will be held on April 4, 2007 to consider the adoption of the draft policies.

In response to an inquiry by Commissioner Howe, Commissioner Gage notes that the revisions may be acceptable to stakeholders in the South County. In response to the inquiry by the Chairperson, Commissioner Gage notes that the staff report reflects his input at the Subcommittee meeting, stating that the most important issue on LAFCO's authority has been resolved by making the draft policies advisory. He expresses the opinion that most issues would be known and addressed before the April 4, 2007 hearing. Commissioner Wilson, expresses concurrence with Commissioner Gage, stating that the Subcommittee meeting was productive and dynamic even if some

comments raised had been discussed before. She notes that the fact that everybody agrees that agricultural lands must be preserved provides a starting point, and everyone should work together to enable the adoption of the policies at the April 2007 meeting. She commends the staff for their efforts in formulating and revising these policies, meeting with stakeholders, and keeping the Commission very aware of all comments, both verbal and written. She assures the stakeholders that the staff acted and performed with the utmost integrity and neutrality, and in accordance with the Commission's direction.

Chairperson Alvarado directs attention to Attachment C of the staff report, a diagram illustrating the process for timing and fulfillment of mitigation. She expresses concern that there is no assurance that cities would fulfill the mitigation and indicates that the Commission will look at this again very closely at the April 4, 2007 hearing. In response to this, Commissioner Howe comments that because the agreement will be recorded against the land, the mitigation would have to be fulfilled. Commissioner Alvarado notes that mitigation becomes a requirement if it is recorded with the land. In response to an inquiry by Commissioner Howe, Ms. Kretchmer advises that when LAFCO receives an application from the city, the Commission evaluates the application as outlined in the draft policies to determine whether the agricultural lands are adequately protected. Chairperson Alvarado notes that there will be further discussion on this matter at the Subcommittee meeting and at the April 4, 2007 hearing.

Commissioner Gage recommends that LAFCO encourage each of the cities to adopt their own agricultural mitigation policies based on the draft policies because County-level policies may not be applicable to them. Chairperson Alvarado notes that LAFCO's mandate comes from the State and recalls the difficulties in the establishment of the County's Habitat Conservation Plan (HCP) because one jurisdiction wanted to formulate its own HCP. Chairperson Alvarado notes that there is a long way to get everyone to recognize the importance of preserving agricultural land, not only because it is a State mandate, but because it is important to the viability and the quality of life in the County.

Chairperson Alvarado opens the public comment period for this item.

Melissa Hippard, Director, Sierra Club-Loma Prieta Chapter, commends the Commission and staff for all their hard work to establish the agricultural mitigation policies, stating that staff have been very responsive to stakeholders' input. She expresses opposition to the use of LESA model and suggests bringing back the Department of Conservation's Important Farmland map. She proposes a moratorium on all USA expansions until three to four months after adoption of the draft policies. She expresses support for the 1:1 minimum ratio because special lands require higher mitigation. She expresses concern on the "advisory" nature of the draft policies, stating that the County's estimated 39,000 acres of remaining agricultural lands must be preserved. Finally, she enjoins the Commissioners to be strong in their commitment to preserve agricultural lands and resolve all issues to enable the adoption of the policies at the April 4, 2007 hearing.

Michelle Beasley, Greenbelt Alliance, commends the Commission for pursuing the draft policies and requests them to be vigilant in protecting the remaining farmlands because these are irreplaceable resources that their loss will have enormous impact to the County and the nation. She expresses support for a minimum of 1:1 mitigation ratio and even higher ratio for unique lands. She adds that the LESA model should not be used because it repeatedly failed to protect farmlands in the South County and advises the Commission to require cities to adopt ordinances to assure LAFCO that mitigation will be fulfilled, and suggests that the mitigation requirements be recorded against the property. She proposes placing new USA amendments on hold until mitigation for previous approvals has been fulfilled, and recommends that a moratorium on USA expansions be put in place, including Morgan Hill's USA amendment for 2006, until the draft policies have been adopted. She advises that cities should use lands more efficiently by encouraging infill and revitalizing their downtowns and transit hubs.

Brian Schmidt, Committee for Green Foothills, expresses agreement with the two previous speakers. He states that there has been no mention on the "advisory" nature of the draft policies in the previous meetings, and suggests that these policies should be made mandatory and provide exemptions when necessary. He talks about the

importance of the 1:1 minimum ratio and requests that LAFCO should be a party to the mitigation agreement in order to solve the enforcement problem.

Bill Faus, Planning Division Manager, City of Gilroy, recommends that the draft policies should be consistent with Gilroy's mitigation policies, particularly regarding the use of the LESA model to define agricultural lands and in allowing certain exemptions from mitigation. He disagrees with the staff report, stating that LESA is the premier land valuation model established by the State Department of Conservation based on CEQA.

Daniel Erhler, Chief Executive Officer and President, Morgan Hill Chamber of Commerce, compliments staff for being responsive to input from stakeholders. He expresses appreciation to the Commission for making the draft policies advisory and states support for the February 12, 2007 letter to the Commission from the City of Morgan Hill.

Kathy Molloy-Previsich, Community Development Director, City of Morgan Hill, expresses appreciation to the Commission for making the draft policies advisory and requests that the policies recognize the development processes timelines, local policies, programs and regulations. She notes that there are tools other than ordinances to implement the mitigation agreement and informs that Morgan Hill is developing financing strategies and implementation mechanisms to preserve greenbelts and open space. She expresses concern that the draft policies, which may be adopted in April, may not benefit from Morgan Hill's strategies and mechanisms because discussions may extend through the Summer.

Jenny Nusbaum, Planning Division staff, City of San Jose, states support for making the policies advisory and requests for the CEQA document to enable her to complete her analysis. She indicates that one of the unintended consequences of the draft policies would be inducing urban sprawl on five-acre lots in the unincorporated County which could challenge the viability of the remaining agricultural lands. She also calls the Commission to allow for exemptions from mitigation.

Annie Mudge, Coyote Housing Group and the Homebuilders Association of Northern California (HBANC), expresses support for making the draft policies

advisory. She informs that agricultural mitigation policies of Sacramento and Ventura LAFCOs avoided debates on their authority to impose mandatory conditions and resolved many CEQA obligations by making their policies advisory. She proposes that instead of recording the mitigation agreement with the land, cities could include the agreed mitigation as part of the Mitigation Monitoring and Reporting Program (MMRP) on the CEQA document which would be enforceable condition for approving the development projects. She agrees with the proposal to require mitigation at the approval of the final map, or at the issuance of building permit or grading permit, whichever comes first. She likewise requests that there be flexibility on the mitigation ratio because the minimum 1:1 ratio may not be appropriate for large-scale projects.

Beverly Bryant, Executive Director, HBANC Southern Division, informs that staff have been receptive and willing to talk to stakeholders throughout the process. She recommends the final policies continue to be advisory. She advises that like the school fees, it is easier to administer mitigation at the issuance of the grading or building permits, and requests that there be no moratorium imposed on USA expansions while the policies are being developed.

Chairperson Alvarado determines that there are no other members of the public who wish to speak on the item and orders that the public hearing be closed.

Chairperson Alvarado informs that she is encouraged to hear about the other ways to mitigate even if the draft policies would be advisory and expresses hope that cities would come forward with ideas or mechanisms to implement mitigation. She maintains that the draft policies may not be ready for adoption in April 2007 because of issues like the use of LESA model and calculation of in-lieu fees that have been repeatedly raised. Commissioner Wilson comments that under the CKH Act, LAFCO has the authority to consider the loss of, and impact on prime agricultural lands in USA applications, in addition to the other factors it is required to consider. The draft policies are, in part, response to requests by some applicants to be informed on what LAFCO is going to look for in the USA applications. She notes that throughout this process, the Commission has granted stakeholder requests. She states because the process has come a long way, it is now time for the Commission to make a decision on the issues that

have repeatedly been raised and addressed. Rather than continuing discussions on these issues, she proposes that the Commission adopt the final policies in April 2007 and continue to review and revise these policies as they are implemented over the years.

Commissioner Wilson moves to direct staff to revise the draft policies to include changes as set forth in the staff report; circulate and make the revised policies available on the LAFCO website for public review, together with the CEQA analysis; hold a second Subcommittee meeting to discuss the revised policies and to obtain input from stakeholders; and, hold a public hearing on April 4, 2007 to consider adoption of the draft policies.

Commissioner Howe offers to amend the motion with direction to staff to provide Commissioners and Alternate Commissioners with a hardcopy of the draft revised policies. Commissioner Gage requests an amendment to the motion to state that the second Subcommittee meeting will be held in the South County. Commissioners Wilson accepts the amendments. Commissioner Howe seconds the motion.

It is unanimously ordered on 5-0 vote that the motion, as amended, be approved.

Alternate Commissioner Velasco leaves at 2:32 p.m.

**7. PUBLIC AND ALTERNATE PUBLIC MEMBER APPOINTMENT PROCESS
(ITEM TAKEN OUT OF ORDER)**

On the request of Commissioner Howe, there being no objection, it is unanimously ordered on Commission consensus that this item be taken out of order. Chairperson Alvarado requests the staff report.

Ms. Palacherla requests direction from the Commission to determine the process for appointing the public and alternate public member because the terms of these positions will expire in May 2007. She indicates that both the incumbent public member and alternate public member have expressed interest to serve another four-year term, from May 2007 to May 2011.

On motion of Commissioner Howe, seconded by Commissioner Gage, it is unanimously ordered on 4-0 vote, with Commissioner Wilson abstaining, that the April 4, 2007 agenda include the reappointment of Susan Vicklund-Wilson as Public Member

and Terry Trumbull as Alternate Public Member for a four-year term, from May 2007 to May 2011.

Chairperson Alvarado leaves at 2:34 p.m. Vice-Chairperson Constant presides at the meeting.

**8. MORGAN HILL URBAN SERVICE AREA (USA) AMENDMENT 2006
(BLACK ROCK)**

This being the time and place set to consider Morgan Hill's application for a USA expansion in 2006, Acting Chairperson Constant declares the public hearing open and requests the staff report.

Ms. Palacherla reports that the City of Morgan Hill proposes to expand its USA boundary to include an 18-acre parcel located at the intersection of Watsonville Road and Santa Teresa Boulevard and directs attention to the map shown on the screen. She informs that the proposed expansion of the USA is to eventually annex and develop residential uses of the property. She advises that the project is currently unincorporated and designated in the County General Plan as Agriculture-Medium Scale. After annexation, the City will change the designation to Residential Estate for 15 homes. The property is surrounded on three sides by unincorporated rural-residential lands and on one side by a residential subdivision within Morgan Hill. Morgan Hill's own policies restrict USA expansion if the City has a five-year supply of residential lands, except when it is a "desirable infill." The City Council Resolution requesting LAFCO approval states that this area meets all the criteria for "desirable infill" and proposed expansion is located within the City's amended Urban Growth Boundary (UBG).

Ms. Palacherla advises that, in terms of consistency with LAFCO policies, the project site, which was a Christmas tree farm until 2001, has Class 1 soil and is prime agricultural land as per the definition of the CKH Act. Since the proposed expansion will result in the conversion of prime agricultural land, LAFCO's policies require explanation from the City why it is necessary to annex prime agricultural land and how the loss will be mitigated. However, the City using the LESA model, has determined that the loss of agricultural land is less than significant.

With regard to LAFCO criteria on logical, orderly and efficient boundary, Ms. Palacherla advises that the proposed expansion is on the extreme southwest of the

current City boundary and adjacent to the rural lands in the County on three sides. Therefore, it is not consistent with compact, concentric urban growth and would result in inefficient delivery of services. She adds that provision of sewer and water lines and potential road improvements to the proposed expansion would put development pressures and induce premature growth on adjacent unincorporated agricultural and rural residential lands.

She advises that the City has indicated that there are vacant residential lands within Morgan Hill's boundaries worth over nine years. However, the recently completed Service Review indicates the availability of over 32 years of vacant residential lands. LAFCO policies require an explanation from the City as to why the expansion is required. The City explained that the site meets the "desirable infill" criteria and expansion will benefit the City because of the well site on the property and asphalt-paving of a portion of Watsonville Road fronting the property. The City has stated that it is able to provide fire protection, police and sewer services without the need for additional facilities or staffing. Based on the fiscal impact analysis there will be a very small impact on both the City and the County. She reports that the issue of adequate school facilities is still unresolved as of the writing of the staff report.

In conclusion, Ms. Palacherla recommends that the project be denied at this time because the City has at least nine years worth of vacant residential lands; and the site consists of prime agricultural lands, surrounded on three sides by unincorporated agricultural and rural-residential lands, which would result in inefficient provision of services, premature conversion of agricultural lands, and induce development of adjacent agricultural and rural residential lands.

In response to an inquiry by Commissioner Howe, Ms. Kretchmer advises that staff will bring back the item with the CEQA analysis at the April 4, 2007 meeting.

Acting Chairperson Constant opens the public hearing period for this item.

David Bishoff, City of Morgan Hill, states that the City is requesting approval of this application because it is "desirable infill" and because soil tests indicates that only 7 acres of the 18-acre property is prime agricultural land. He adds that the 32 years supply of vacant agricultural lands within the City boundary may have either predated

the GIS maps or have been confused with the UGB data. Citing a letter opposed to the expansion, he notes that the environmental analysis includes mitigation for potential impacts on blue herons and a possible native American occupation site.

Rocke Garcia, landowner, directing attention to the map displayed onscreen, states that the project is “desirable infill” because the lands on the west and south of the project site have already been developed, and the project is a transition between the projects in the County area along Watsonville Road and those within Morgan Hill on Santa Teresa Boulevard. He adds that based on LESA Model, there is no need to mitigate for this property because it is under-utilized and is not suitable for farming. The high-end housing that will be built would balance the need for high-income houses in the area. Regarding whether the school district is able to absorb 11 new students to be generated by the proposed development, he notes that \$240,000 in construction fees will be paid to the school district.

Brian Schmidt, Committee for Green Foothills, expresses support for the staff recommendation to deny this project because of the amount of infill residential lands available within the City. Approval of the application should be deferred until the dispute over the amount of available vacant residential lands within the City is resolved. He notes that this proposal is the recipe for urban sprawl because every time there is a development on agricultural edge, the adjoining property would always want to subdivide next. He adds that building high-end, low-density housing should be discouraged because there are other ways to create high-income, high-value housing. He likewise requests that this project be put on hold until the draft agricultural mitigation policies have been put in place. He notes that since staff has already advised the Commission relating to the use of LESA Model, the Commission should review this project using the CKH Act definition of agricultural lands and the draft policies.

Acting Chairperson Constant determines that there no other members of the public who wish to speak on the item and orders that the public hearing be closed. He discloses for public record that he has met with the property owners.

Commissioner Howe moves that this item, along with its CEQA documents, be brought back to the Commission on April 4, 2007. Commissioner Gage seconds the motion.

Commissioner Wilson expresses concern on the motion, stating she would support bringing back the item at that time only if there is new information about the application and if it would be reviewed under the draft policies. In this regard, Commissioner Howe amends the motion to allow Commissioners Gage and Wilson, members of the Subcommittee on the draft agricultural mitigation policies, to include a letter or a written supplement relating to this proposal's agricultural mitigation. Commissioner Wilson indicates that she continues to be concerned that this application defines agricultural lands using LESA Model instead of the CHK Act. Commissioner Gage accepts the amendment.

In response to the inquiry of Acting Chairperson Constant, Ms. Palacherla explains that economic viability is not a factor that LAFCO considers in a USA expansion. Commissioner Wilson advises that Commissioners should refrain from fiscalizing land use because prime agricultural lands are being left fallow for many years with the intention of eventually developing them. She notes that under the CKH Act, LAFCO's mandate, the fact that the property is left to fallow and not economically viable is not a factor that the Commission takes into account when evaluating proposals.

It is unanimously ordered on 4-0 vote, with Chairperson Alvarado absent, that the motion, as amended, be approved.

At this point, in response to the inquiry of Acting Chairperson Constant, Ms. Palacherla requests the Commission to act on agenda items 8, 10, 12.1, 12.2, 12.3 and 16, and to defer the other items to April 4, 2007.

8. ISLAND ANNEXATIONS: EXTENSION OF LAFCO FEE WAIVER

Acting Chairperson Constant requests the staff report.

Ms. Noel reports that the adoption of island annexation policies included a two-year LAFCO fee waiver for annexations eliminating entire unincorporated islands. The

fee waiver expired on January 1, 2007, the sunset date for island annexation law. However, since the island annexation law was extended to January 1, 2014 the Commission has discussed at its December 13, 2006 meeting the extension of the fee waiver. Ms. Noel estimates that the number of island annexations in 2007 would be no more than those completed in 2006 and advises that a one-year fee waiver extension would not significantly affect the LAFCO budget.

Commissioner Gage moves to accept the staff report and to extend the fee waiver for island annexations for one year, direct staff to notify the cities that the fee waiver has been extended, and remove the fee waiver provision from the Island Annexation Policies. Commissioner Howe seconds the motion.

In response to an inquiry by Commissioner Howe, Ms. Kretchmer advises that the Commission may implement the fee waiver retroactive to January 1, 2007. In response to an inquiry by Commissioner Wilson, Ms. Kretchmer advises that the Commission can act on the item at this meeting. In response to an inquiry by Ms. Kretchmer, Mr. Gage indicates that the extension will be for one year and be reviewed annually based on the LAFCO budget. Commissioner Howe proposes to amend the motion to extend the fee waiver for one year and be implemented retroactive to January 1, 2007. Commissioner Gage accepts amendment to the motion.

It is unanimously ordered on 4-0 vote, with Chairperson Alvarado absent, that the motion, as amended, be approved.

9. UPDATE ON NORTH AND WEST VALLEY AREA SERVICE REVIEW AND SPHERE OF INFLUENCE STUDY

On Commission consensus, there being no objection, it is unanimously ordered that this item be deferred to April 4, 2007.

10. LAFCO BUDGET SUBCOMMITTEE FOR FISCAL YEAR (FY) 2007-2008

Acting Chairperson Constant requests the staff report. Ms. Palacherla recommends that a Budget Subcommittee, composed of two commissioners, be established to provide direction to staff and recommend to full Commission the LAFCO budget for FY 2007-2008.

On motion of Commissioner Wilson, seconded by Commissioner Gage, it is unanimously ordered on 4-0 vote, with Chairperson Alvarado absent, that the Budget Subcommittee be established composed of Commissioners Gage and Howe.

12. EXECUTIVE OFFICER'S REPORT

12.1 CALAFCO ANNUAL STAFF WORKSHOP ON APRIL 11-13, 2007 IN NEWPORT BEACH

Acting-Chairperson Constant requests the staff report. Ms. Palacherla requests Commission approval for staff to attend the 2007 CALAFCO Staff Workshop from April 11 to 13, 2007 and to authorize expenses from the LAFCO budget.

Commissioner Wilson proposes that staff likewise be authorized to attend the CALAFCO Workshop on Incorporations on February 22 to 23, 2007. In response to the inquiry of Commissioner Howe, Ms. Palacherla indicates that there are funds in the LAFCO budget for these expenses.

On motion of Commissioner Gage, seconded by Commissioner Howe, it is unanimously ordered on a 4-0 vote, with Chairperson Alvarado absent, that staff be authorized to attend the CALAFCO Workshop from April 11 to April 13, 2007 in Newport Beach, California, and expenses be authorized from the LAFCO budget.

12.2 CALAFCO WORKSHOP ON INCORPORATIONS ON FEBRUARY 22-23, 2007 IN SACRAMENTO, CALIFORNIA

On motion of Commissioner Gage, seconded by Commissioner Howe, it is unanimously ordered on 4-0 vote, with Chairperson Alvarado absent, that staff be authorized to attend the CALAFCO Workshop on Incorporations in Sacramento and that expenses be authorized from the LAFCO budget.

12.3 REVISIONS TO 2007 SCHEDULE OF LAFCO MEETINGS

Ms. Palacherla recommends that the Commission adopt the revised 2007 schedule of meetings and filing deadlines. The revision of meeting dates will allow the use of the Board of Supervisors' Chambers. In response to an inquiry by Acting Chairperson Constant, Ms. Palacherla indicates that the time for all the 2007 meetings have been changed from 1:15 p.m. to 1:30 p.m.

On motion of Commissioner Gage, seconded by Acting Chairperson Constant, it is unanimously ordered on 4-0 vote, with Chairperson Alvarado absent, that the revised 2007 LAFCO schedule of meetings be approved, as submitted.

12.4 CALAFCO ANNUAL CONFERENCE ON AUGUST 28-31, 2007 IN SACRAMENTO, CALIFORNIA

On Commission consensus, there being no objection, it is unanimously ordered that this item be deferred to April 4, 2007.

12.5 REPORT ON CALAFCO WORKSHOP ON GOVERNMENT CODE §56133: SERVICE EXTENSIONS OUTSIDE JURISDICTIONAL BOUNDARIES

On Commission consensus, there being no objection, it is unanimously ordered that this item be deferred to April 4, 2007.

12.6 UPDATE ON CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) AND PRIVATE WATER COMPANIES

On Commission consensus, there being no objection, it is unanimously ordered that this item be deferred to April 4, 2007.

13. COMMISSIONERS' REPORTS

There is no report by Commissioners.

14. WRITTEN CORRESPONDENCE

There is correspondence.

15. NEWSPAPER ARTICLES

There are no newspaper articles.

16. PENDING APPLICATIONS/UPCOMING PROJECTS

Ms. Palacherla informs that at the December 2006 meeting, staff reported that the San Martin Neighborhood Association (SMNA) submitted a Notice of Intent to Circulate a Petition for the incorporation of San Martin and had started collecting signatures for the petition. She informs that staff has now received the petition, along with the application and the fee deposit. The signed petition is composed of 1,003 signatures. 706 signatures are required for the petition to be valid. Staff will meet with SMNA representatives on February 15, 2007 to discuss issues relating to the application.

SMNA has proposed that they choose the consultant, however, the process for consultant selection should be unbiased to ensure that the results of the studies would be credible and reliable. She informs that staff will submit to the Commission on April 4, 2007 the draft RFP, scope of work and other information relating to consultant selection.

Commissioner Gage proposes that LAFCO choose the consultant and SMNA pay for the cost because that is the practice among cities to ensure that there will be no question on the validity of the consultant reports. Commissioner Wilson requests staff to prepare the draft incorporation policies, taking into consideration the information from the CALAFCO Incorporation Workshop, and in consultation with other LAFCOs experienced in processing incorporations.

17. ADJOURN

On order of Acting Chairperson Constant, there being no objection, the meeting is adjourned at 3:09 p.m.

The next regular LAFCO meeting is scheduled to be held on Wednesday, April 4, 2007 at 1:30 p.m. in the Isaac Newton Senter Auditorium, County Government Center, 70 West Hedding Street, San Jose, California.

Pete Constant, Acting Chairperson
Local Agency Formation Commission

ATTEST:

Emmanuel Abello, LAFCO Clerk