

4. **REQUEST FOR RECONSIDERATION OF OCTOBER 2, 2013 LAFCO ACTION TO DENY CITY OF MORGAN HILL URBAN SERVICE AREA (USA) AMENDMENT 2012**

Neelima Palacherla, Executive Officer, presented the staff report.

Commissioner LeZotte noted that information on agricultural mitigation was available at the October 2, 2013 hearing. In response to an inquiry by **Commissioner LeZotte**, Ms. Subramanian advised that if the Commission chooses to reconsider its October action, the Commission may discuss the USA extension in its entirety, adopt a new resolution or amend any portion of the resolution. **Commissioner LeZotte** expressed concern that by approving the applicant's request for reconsideration the Commission will reopen discussion on the entire USA application even though a full discussion took place at the last meeting. Upon the advice of Ms. Subramanian, all commissioners indicated that they were either present at the October 2, 2013 meeting or have listened to the item's full audio transcript. In response to an inquiry by **Commissioner Chavez**, Ms. Subramanian informed that any person or affected agency may request reconsideration within 30 days of the Commission's action.

This being the time and place for the public hearing, **Chairperson Wasserman** declared the public hearing open.

Andrew Crabtree, Community Development Director, City of Morgan Hill, expressed support for the reconsideration request and informed that Morgan Hill is working on a draft agricultural mitigation program which may be considered by the City Council next year. He directed attention to a letter from the City indicating that the Royal Oaks Mushroom parcels will be subject to the City's future mitigation program.

In response to an inquiry by **Commissioner Wilson**, Mr. Crabtree indicated that a draft agricultural mitigation program is yet to be released for public comment. **Commissioner Wilson** informed that LAFCO has requested Morgan Hill to adopt a mitigation program and is following its progress.

Julie Hutcheson, Committee for Green Foothills, directed attention to her letter dated December 4, 2013, and advised the Commission to deny the request for reconsideration since there is no new information to consider. She noted that the property owner's intent to provide mitigation was known at the October public hearing. She stated that if the Commission chooses to reconsider the application, then it should deny the application since its decision should not be based solely on mitigation but on consistency with the LAFCO policies.

Don Hordness, Royal Oaks Mushrooms, observed that his intention to provide agricultural mitigation was not very clear to the Commission at the public hearing in October; hence, he requested reconsideration. He informed that Morgan Hill staff had indicated to him prior to the October hearing that mitigation would not be an issue since mitigation is between the property owner and the City. He directed attention to his letter clarifying his intention to provide mitigation under LAFCO policies and the mitigation program that the City would adopt.

Gloria Ballard, MH Engineering, stated that the application was filed with Morgan Hill six years ago and that the applicant has spent a substantial amount of money. She explained that the applicant's intent is to follow LAFCO policy for agricultural mitigation.

Chairperson Wasserman determined that there are no members of the public who wished to speak on the item and ordered the public hearing closed.

Commissioner Chavez moved to approve the request for reconsideration and **Alternate Commissioner Khamis** seconded the motion.

Commissioner Wilson expressed her opposition to the motion since Morgan Hill has had sufficient time to address the mitigation requirement as the public hearing was continued twice since April 2013, and noted that the City has been working on mitigation policies for many years. She warned that approving the request for reconsideration would set a precedent. She noted that the information was available at the October meeting and that the offer for mitigation should have been more specific. She stated that there is no need for the USA expansion given Morgan Hill's supply of vacant land. She informed that as the public member and a resident of Morgan Hill, she interacts with the local residents and knows how they love open space, agricultural lands and local produce. She directed attention to a map of Morgan Hill and discussed how this application could trigger future leap-frog USA expansions. She noted that a UC Davis study recommended that two to four acres are necessary to mitigate the loss of each acre. **Commissioner LeZotte** expressed opposition to the motion and informed that regardless of agricultural mitigation, the inclusion of Royal Oaks Mushrooms parcels in the City's USA was originally denied because it is a premature expansion. She informed that a flood control project will begin in 2014 on the parcel owned by the Santa Clara Valley Water District (SCVWD). She also noted that the October public hearing was well-attended and the action taken by the Commission was fair. **Commissioner Hall** announced his opposition to the motion since the intent to provide mitigation does not include any specifics. **Commissioner Abe-Koga** expressed agreement with Commissioner Hall and observed that there is no new information to consider.

Chairperson Wasserman expressed support for the motion and stated that Morgan Hill's work on its agricultural mitigation program and the applicant's letter stating that he is willing to provide mitigation are new information. **Commissioner Chavez** indicated that LAFCO should have meaningful relationships with other local agencies. In response to an inquiry by **Commissioner Chavez**, Ms. Palacherla informed that notices were sent to the SCVWD regarding the application for USA expansion, and **Commissioner LeZotte** confirmed that SCVWD was contacted.

A motion to grant the request for reconsideration of the October 2, 2013 LAFCO action.

Motion: Chavez

Second: Khamis

AYES: Chavez, Khamis, Wasserman

NOES: Hall, Abe-Koga, LeZotte, Wilson

ABSTAIN: None

ABSENT: None

MOTION FAILED

5. *OUT OF ORDER**
6. **SPECIAL DISTRICTS SERVICE REVIEW DRAFT REPORT: PHASE 2**

Dunia Noel, LAFCO Analyst, presented the staff report.

Commissioner Chavez proposed that issues relating to transparency and governance be resolved quickly. Ms. Noel informed that after the approval of the Report, staff will work with the agencies to review the recommendations, create a timeline, implement the recommendations, and follow-up on the status of implementation. She informed that more specific deadlines will be set for agencies with serious transparency and governance issues. **Commissioner Chavez** requested periodic reports on these issues. In response to a follow up inquiry by **Commissioner Chavez**, Ms. Noel advised that the Report recommends that Midpeninsula Regional Open Space District (MROSD), as a courtesy, provide copies of its FPPC Form-700 filings to each of the counties in which it has territory even though it is not legally required to do so.

In response to an inquiry by **Alternate Commissioner Khamis**, Ms. Noel advised that tributary agencies have raised concerns about the master agreement between them and the City of San Jose. She further stated that staff has encouraged the tributary agencies and San Jose to resolve the issue. **Commissioner Khamis** requested the tributary agencies to discuss the issue with Kerrie Romanow, Director of Environmental Services Department, City of San Jose. He proposed that the Report include a statement indicating that while existing agreements have not expired, tributary agencies may explore renegotiating their existing contract with the City of San Jose.

This being the time and place for the public hearing, **Chairperson Wasserman** declared the public hearing open.

John Newby, General Manager, West Valley Sanitation District, informed that tributary agencies regularly meet with Ms. Romanow and have repeatedly raised the need to update the 30-year old master agreement since many of its provisions are no longer applicable. He stated that letters listing the items that need to be updated have been sent to Ms. Romanow and San Jose Mayor Chuck Reed. He further stated that the master agreement must also reflect the changes made to the master plan and indicate how to finance the plan's implementation.

Chairperson Wasserman determined that there are no members of the public who wished to speak on the item and ordered the public hearing closed.

Alternate Commissioner Tucker inquired about LAFCO's role in regulating MROSD's boundaries. Ms. Palacherla informed that Santa Clara LAFCO, the principal LAFCO for MROSD, has jurisdiction over its boundary expansions. **Alternate Commissioner Tucker** noted that it was unclear if any agency had jurisdiction over whether or not MROSD was following the intent of the voter initiative.

Commissioner Hall requested a spelling correction to Santa Clara County Open Space Authority board member's name. **Alternate Commissioner Kishimoto** expressed willingness to meet with Alternate Commissioner Tucker to discuss her concerns on MROSD. She informed that MROSD is willing to make its FPPC Form-700 filings

available to each of the counties in which it has territory. She also recommended that LAFCO, in the next round, conduct a countywide service review on wastewater services.

At the request of **Chairperson Wasserman**, Ms. Noel summarized the staff recommended actions. In response to an inquiry by **Alternate Commissioner Khamis**, Ms. Subramanian advised that a statement relating to the master agreement between San Jose and the tributary agencies will be included in the Report's determinations section.

The Commission adopted Resolution No 2013-06 adopting the Special Districts Service Review: Phase 2 Report, adopting service review determinations, and adopting Sphere of Influence updates and determinations for Burbank Sanitary District, County Sanitation District 2-3, Lake Canyon Community Services District, Lion's Gate Community Services District, Midpeninsula Regional Open Space District, Santa Clara County Open Space Authority, Cupertino Sanitary District, and West Valley Sanitation District.

The Commission directed staff to (1) prepare the Final Report for the Special Districts Service Review: Phase 2 and to distribute the Final Report to all the affected agencies; (2) contact each affected agency and request a written response on how and when the agency plans to address the findings and/or implement the recommendations presented in the Final Report and to provide an explanation if the agency disagrees with a finding or does not plan to implement a recommendation; and, (3) include in the Report's determinations a statement that the tributary agencies may wish to renegotiate the existing master agreement.

Motion: Chavez

Second: Abe-Koga

AYES: Chavez, Hall, Abe-Koga, Khamis, LeZotte, Wasserman, Wilson NOES: None

ABSTAIN: None

ABSENT: None

MOTION PASSED

***5. TAKEN OUT OF ORDER – MONTE SERENO URBAN SERVICE AREA (USA) AMENDMENT AND SPHERE OF INFLUENCE (SOI) AMENDMENT 2013 (LUCKY ROAD)**

Ms. Palacherla presented the staff report.

This being the time and place for the public hearing, **Chairperson Wasserman** declared the public hearing open.

Erin Ventura, Associate Planner, City of Monte Sereno, informed that the proposed USA expansion is not growth inducing and has no negative impact to City services. In response to an inquiry by **Commissioner LeZotte**, Ms. Ventura informed that lot line adjustment and sewer connection are required in order to develop the property.

Alex Rubashevski, property owner, provided copies of a map, briefly described the USA amendment area, indicated that he wanted to develop his property and preserve an old house. He stated that there will be more usable land if the property is connected to a sewer system.

Nick Petridis, Petridis Law Offices, informed that island annexation is an issue that is separate from this application. He described the property as adjacent to the city boundary and services. He stated that approval of the project will also benefit other neighbors who are planning to tap into the property's sewer line. He informed that USA amendment will make Monte Sereno's boundary more orderly.

Burton Craig, Mayor, Monte Sereno, requested the Commission to approve the request for USA expansion. He stated that he visited the property and met with the property owners and their neighbors, and observed that the residents are excited to connect to sewer and improve their roads.

Omar Billawala, resident of Monte Sereno, stated that adding the parcels into Monte Sereno's USA is an example of orderly growth since Monte Sereno surrounds 80 percent of the subject area. He noted that it is a good policy to connect these parcels to a sewer line since leach fields could contaminate the soil for a long time.

Chairperson Wasserman determined that there are no members of the public who wished to speak on the item and ordered the public hearing closed.

In response to an inquiry by **Alternate Commissioner Khamis**, Mr. Craig informed that residents in the islands previously opposed annexation; however, the City still intends to annex these islands if at least half of the residents favor annexation. He noted that informing the public about the benefits of living in a city increases public support for annexation. In response to a follow-up inquiry by **Commissioner Khamis**, Mr. Craig informed that the residents think that it is easier to develop their property in the county and therefore oppose annexation. In response to an inquiry by **Commissioner Wilson**, Mr. Craig indicated that the area for the USA expansion is outside Monte Sereno's sphere of influence. In response to an inquiry by **Chairperson Wasserman**, Mr. Craig indicated that Monte Sereno will not annex islands if the residents are opposed. In response to the inquiry by **Commissioner Wilson**, Mr. Craig informed that prior city councils have not taken advantage of the streamlined annexation process and that his administration is yet to address the issue. **Chairperson Wasserman** suggested that residents be informed that similar rules apply to adjacent incorporated and unincorporated areas.

In response to an inquiry by **Commissioner Abe-Koga**, Ms. Palacherla advised that annexation of the islands could be a condition of approval for the USA expansion; however, Monte Sereno City Council would have to decide whether or not to annex the islands. **Commissioner Abe-Koga** noted that this application could be an impetus to annex the remaining Monte Sereno islands. Ms. Palacherla informed that these islands are less than 150 acres and qualify for streamlined annexation process which will not require the consent of property owners. In response to an inquiry by **Commissioner Wilson**, **Commissioner Abe-Koga** recommended that the approval be conditioned on completion of island annexations. In response to an inquiry by **Commissioner Hall**, Ms. Palacherla clarified that the condition for the recent Saratoga USA expansion was to complete the annexation of the islands that are smaller than 150 acres and to provide a timeline and plan for annexation of the island that is larger than 150 acres. She informed that this was consistent with LAFCO policies. In response to a further inquiry by

Commissioner Hall, Ms. Palacherla informed that she recalled that the approval was conditioned on completion of the island annexations.

In response to an inquiry by **Commissioner Wilson**, Ms. Palacherla informed that the SOI boundaries were established in 1983. **Commissioner Wilson** observed that conditional approval of the USA expansion request is in line with the Commission's advocacy for island annexations as a way to promote orderly growth. She also noted that LAFCO loses control once territory is included in the city's USA boundary.

Commissioner Wilson made a motion to approve Monte Sereno's USA expansion conditioned upon the annexation of its three islands. **Commissioner Abe-Koga** seconded. Upon the advice of Ms. Subramanian, **Commissioners Wilson** and **Abe-Koga** amended the motion to state that the annexation of the three islands must be completed within one year.

Commissioner Chavez informed that the application will make the jagged boundary more orderly. In response to an inquiry by **Commissioner Chavez**, Ms. Palacherla advised that much of the surrounding area is developed with single family homes. **Commissioner Chavez** indicated her support for the concept of encouraging the City to annex islands because it is more efficient; however, she expressed her opposition to the motion since the one-year time frame is unrealistic given the amount of time required for public outreach.

Commissioner Wasserman expressed opposition to the motion. He stated that the proposal stands on its own merits and must not be tied to island annexations. He noted that annexation of islands makes it more efficient for the County. However, as a former mayor of Los Gatos, he recalled the difficulties in annexing islands and noted how the cities incur more financial burden than savings. **Commissioner LeZotte** expressed support for the motion and stated that the reason for the USA amendment is to be able to develop the property. She noted that San Jose has been progressive in annexing islands that are less than 150 acres. She stressed the importance of public outreach since the opposition to annexation is due to misinformation and lack of understanding. **Commissioner Hall** expressed support for the motion and stated that Saratoga has successfully annexed its islands to satisfy the conditions for its USA amendment. He expressed concern that Monte Sereno no longer considers the Urban Growth Boundary (UGB) in its General Plan.

Alternate Commissioner Khamis called on the Commission not to penalize the applicants since the City is responsible for not annexing its islands. In response to an inquiry by **Alternate Commissioner Khamis**, **Commissioner Wilson** clarified that the motion is for the USA expansion to take effect only after Monte Sereno completes the annexation of its islands within one year. She indicated that the streamlined process allows island annexations to be completed quickly. In response to a follow up inquiry by **Alternate Commissioner Khamis**, Ms. Palacherla informed that there is no urgency for the sewer connection as the existing septic system poses no public health and safety threat, and that the sewer connection is only needed to subdivide the property into smaller lots. **Chairperson Wasserman** observed that the condition is unrealistic and noted the difficulty of pursuing island annexations when voters are against it.

Commissioner Abe-Koga stated that as an elected official, while she understands local control, as a LAFCO member, she is looking to balance LAFCO's mission and the City's interest. Citing the example of Morgan Hill and its tentacles of growth, she noted that the City has grown as landowners come forward and opportunities arise. She noted that as some cities are trying to build density and concentrate growth, it does not make sense for extensions to occur without thought to logical boundaries. She proposed that as a balance, the best approach is to tie the expansion to annexation of the three islands.

Mr. Petridis clarified that the condition for approval of Saratoga USA application was that no further expansions would be approved until the islands are annexed. He suggested that the Commission consider a similar approach for Monte Sereno.

The Commission adopted **Resolution No. 2013-07** approving the expansion of the USA and SOI of the City of Monte Sereno to include APNs: 510-31-023, 065, and 066, conditioned on the City annexing its three unincorporated islands within one year.

Motion: Wilson

Second: Abe-Koga

AYES: Hall, Abe-Koga, LeZotte, Wilson NOES: Chavez, Khamis, Wasserman

ABSTAIN: None

ABSENT: None

MOTION PASSED

7. 2014 SCHEDULE OF LAFCO MEETINGS

The Commission adopted the schedule of LAFCO meetings and application filing deadlines for 2014.

Motion: Hall

Second: Abe-Koga

AYES: Chavez, Hall, Abe-Koga, Khamis, LeZotte, Wasserman, Wilson NOES: None

ABSTAIN: None

ABSENT: None

MOTION PASSED

8. APPOINTMENT OF CHAIRPERSON AND VICE-CHAIRPERSON FOR 2014

The Commission appointed Commissioner Susan Vicklund Wilson as Chairperson for 2014 and Commissioner Linda LeZotte as Vice-Chairperson.

Motion: Abe-Koga

Second: LeZotte

AYES: Chavez, Hall, Abe-Koga, Khamis, LeZotte, Wasserman, Wilson NOES: None

ABSTAIN: None

ABSENT: None

MOTION PASSED

9. PENDING APPLICATIONS

The Commission noted the pending applications.

10. COMMISSIONER REPORTS

Commissioner LeZotte congratulated Commissioner Wilson for receiving the CALAFCO Lifetime Achievement Award.

11. NEWSPAPER ARTICLES / NEWSLETTERS

The Commission noted the CALAFCO Quarterly (November 2013).

12. WRITTEN CORRESPONDENCE

There was none.

13. CONFERENCE WITH THE LEGAL COUNSEL

The Commission adjourned to Closed Session at 3:10 p.m., and reconvened the meeting at 3:16 p.m. **Chairperson Wasserman** announced that the Commission has no report from the Closed Session.

14. ADJOURN

The meeting was adjourned at 3:17 p.m. to the next meeting on Wednesday, February 5, 2014 in the Board Meeting Chambers, County Government Center, 70 West Hedding Street, San Jose, California.

Approved:

Mike Wasserman, Chairperson
Local Agency Formation Commission of Santa Clara County

By: _____
Emmanuel Abello, LAFCO Clerk