



August 16, 2017

Honorable Patricia M. Lucas  
Judge of the Superior Court  
Hall of Justice  
191 North First Street  
San Jose, CA 95113

**RE: Response to 2016-2017 Santa Clara County Civil Grand Jury Report Entitled  
“LAFCO Denials: A High School Caught in the Middle”**

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Dear Judge Lucas and Members of the 2016-2017 Civil Grand Jury:

The Local Agency Formation Commission of Santa Clara County (LAFCO) reviewed the 2016-2017 Santa Clara County Civil Grand Jury Report and at its meeting on August 2, 2017, approved this letter in response to the report and the findings and recommendations contained within it.

LAFCO is disappointed in the Civil Grand Jury Report entitled “LAFCO Denials: A High School Caught in the Middle” because the report is filled with numerous factual errors and many allegations and findings in the report are not appropriately substantiated by facts or details. Additionally it appears that there is a lack of understanding of how LAFCO operates, the roles and responsibilities of LAFCO staff versus that of commissioners and some fundamental tenets of LAFCO law and policies. Therefore, in addition to responding directly to the findings and recommendations contained in the report, this letter includes some background information on LAFCO and its processing of the recent Morgan Hill Urban Service Area Amendment application in order to more fully inform the Civil Grand Jury and the public of the facts surrounding this matter.

Additionally, LAFCO is concerned about the appearance of a conflict of interest on the part of the Civil Grand Jury’s Foreperson. The Foreperson is a long-standing appointed member of the City of Morgan Hill Planning Commission, and in this capacity has voted in support of the Morgan Hill Urban Service Area Amendment proposal and related plans and programs, which are now the subject of the Civil Grand Jury Report. This specific concern regarding the appearance of Foreperson’s conflict of interest was also

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COMMISSIONERS: Sequoia Hall, Sergio Jimenez, Rob Rennie, John L. Varela, Mike Wasserman, Susan Vicklund Wilson, Ken Yeager

ALTERNATE COMMISSIONERS: Sylvia Arenas, Cindy Chavez, Yoriko Kishimoto, Russ Melton, Terry Trumbull

EXECUTIVE OFFICER: Neelima Palacherla

raised by several local and regional conservation organizations in their July 17, 2017 joint letter to LAFCO. Please see **Attachment A** for Joint Letter from eight local and regional organizations expressing major concerns with the content of the Civil Grand Jury Report.

## **A PRIMER ON LAFCO OF SANTA CLARA COUNTY**

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### **LAFCO's Mandate**

LAFCO is an independent local agency created by the State legislature in 1963 to encourage orderly growth and development of local agencies. LAFCO's mission is to promote sustainable growth and good governance in Santa Clara County by preserving agricultural and open space lands, preventing urban sprawl, and encouraging efficient delivery of services.

The Cortese-Knox-Hertzberg Local Government Reorganization Act 2000 (CKH Act) governs LAFCO and includes provisions which define the general composition of LAFCO and the process for the seating of commissioners on LAFCO, among other things.

### **Commission Composition & Staffing**

LAFCO of Santa Clara County is composed of seven commissioners, as follows:

- Two County Supervisors appointed by the Board of Supervisors
- One Council Member from the City of San Jose appointed by the City Council
- One Council Member from any of the other cities appointed by the Cities Selection Committee
- Two Board Members from independent special districts:
  - One appointed by the Santa Clara Valley Water District
  - One appointed by the Independent Special District Selection Committee
- One Public Member appointed by the other members of the Commission

Alternate members are appointed for each of the categories.

In recognition of the unique structure of LAFCOs – where its commissioners are not elected directly as LAFCO commissioners, but are appointed by different appointing entities – the CKH Act contains a special provision (Government Code §56325.1) which requires all LAFCO commissioners to exercise their independent judgement and represent the interests of the public as a whole in furthering the goals of LAFCO and not solely the interests of the appointing authority.

State law requires LAFCO to hire its own staff including an Executive Officer and Legal Counsel and to provide all necessary support services including equipment, facilities and supplies; or alternately, it allows LAFCO to contract with a private or public agency

for its staffing, services or facilities. Santa Clara LAFCO has a Memorandum of Understanding with the County of Santa Clara under which the County provides staffing and services to LAFCO. LAFCO has four staff (i.e. executive officer, analyst, clerk, and a vacant analyst position). Although LAFCO staff are County employees; they take policy direction solely from the Commission and only report to the County on administrative matters. LAFCO contracts with a private firm for legal counsel.

### **Roles and Responsibilities of Commissioners versus Staff**

State law requires LAFCO to establish local written policies and procedures and exercise its powers in a manner consistent with those policies and procedures that “encourages and provides planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space and agricultural lands within those patterns.” The Commission has adopted various sets of policies that are based on State law, and the long-standing countywide growth management policy framework jointly adopted by the County, cities and LAFCO; and in concurrence with the County General Plan Policies.

When LAFCO considers a boundary change proposal, LAFCO staff first prepares a report analyzing the proposal’s consistency with State law and with LAFCO’s goals and policies. The staff report includes a staff recommendation and the reasons for the recommendation; as well as other options or alternative possible actions for commission consideration. The staff report is provided to the Commission and posted on the LAFCO website for public review and is also presented orally to the Commission for their consideration at the LAFCO meeting. However, the Commission, as the ultimate decision maker, is free to reject or modify staff’s recommendation. Therefore, LAFCO decisions on a proposal are made ultimately by majority vote of the commissioners, who are guided by State law, LAFCO’s policies, staff analysis, testimony of both the applicant and the public, and by their own independent judgement as LAFCO commissioners.

### **MORGAN HILL URBAN SERVICE AREA AMENDMENT 2015 APPLICATION: LAFCO STAFF ANALYSIS / RECOMMENDATION AND COMMISSION ACTION**

The following is a brief overview of LAFCO’s process and actions related to the Morgan Hill Urban Service Area Amendment application. In 2015, the City of Morgan Hill submitted an application to LAFCO for an USA amendment. The proposal involved the conversion of 229 acres of prime farmland to urban uses, including a school, sports complex, recreational facilities, retail and commercial uses. This is the largest request for urban development that LAFCO has considered in nearly two decades.

Staff had been following this project for more than 5 years, and had provided several comment letters and extensive feedback to the City on the project and its associated EIR, prior to the City submitting the proposal to LAFCO.

LAFCO, the County and the Santa Clara Valley Open Space Authority (OSA) jointly and separately provided comment letters to the City identifying numerous concerns about

the proposal, the overall effectiveness of the agricultural lands preservation program that the City was developing and the adequacy of the City's associated CEQA documentation. Please see **Attachment B** for the agencies' joint letter to the City.

LAFCO staff also spent a considerable amount of time working with the City, the County and OSA in hopes of jointly developing an alternative plan that would be more in alignment with local policies and plans. That collaborative effort was discontinued when the City informed the group of its intention to proceed with its own plans and move forward with City Council action.

Because this was a complex and controversial proposal of great local and regional significance, LAFCO staff prepared a rigorous analysis of the proposal in a 500 plus-page Staff Report. Please see **Attachment C** for the LAFCO Staff Report and March 11, 2016 meeting materials for this item.

Among other things, the staff report included a detailed analysis of vacant lands availability based on information provided by the City (Appendix X and pages 1 – 3 of Attachment A in the Staff Report); a detailed analysis of the City's agricultural mitigation program (Appendix Y and pages 6 – 11 of Attachment A in the Staff Report); and an analysis of the City's plan for services (pages 12 – 17 of Attachment A in the Staff Report).

The Staff Report included a staff recommendation to deny the project along with detailed reasons for the recommendation. The report also identified various other possible options for the commission's consideration/action. The Staff Report was published 25 days prior to the LAFCO hearing and posted on the LAFCO website in order to allow the commissioners, the City, the public and various stakeholders sufficient review time.

The Commission received over 500 comment letters and emails, many in favor of and the majority opposed to the proposal. The Commission held a public hearing on March 11, 2016 on the proposal, and took extensive public testimony at the 6-hour meeting. After careful consideration, the Commission voted (6 – 1) to deny the proposal. The Commission also considered whether to approve a smaller portion of the proposal which included the private high school, and on a 5 - 2 vote denied that option as well.

The Commission received nearly a hundred letters of appreciation from various entities and community members for its action on the proposal and its commitment to LAFCO's mandate.

LAFCO then received a request to reconsider its action on the smaller portion of the proposal which included the private high school. At its June 1, 2016 meeting, on a 6 – 1 vote, LAFCO rejected the reconsideration request. However, LAFCO waived over \$7,000 in fees that were incurred in processing the reconsideration request, finding "that the full payment of LAFCO fees in this specific case would be detrimental to the public interest, in that the San Jose Diocese, the non-profit entity paying for the application, does serve a

better community good; and that requiring the full payment of LAFCO fees would not promote the applicant finding a suitable school site in Santa Clara County.” Please see **Attachment D** for the LAFCO Staff Report and the June 1, 2016 LAFCO meeting materials for this item.

The Commission encouraged the San Jose Diocese/South County Catholic High School to locate the proposed school within the City limits and similarly encouraged the Morgan Hill Unified School District (MHUSD) to plan to locate future school sites and facilities within the City limits. Please see **Attachment E** for LAFCO’s letters to the MHUSD. LAFCO’s letter noted that locating schools within the existing urban core will help curb sprawl, preserve agricultural lands, and reduce greenhouse gas emissions. Similarly, the County also contacted MHUSD to communicate similar concerns regarding MHUSD’s potential plans for school sites outside city limits and encouraged the MHUSD to consult with the County on future school siting plans as required by State law.

### **LAFCO Approved City’s 2002 USA Amendment for the Proposed South County Catholic High School, but High School was Never Built**

The Grand Jury Report implies that the ownership of the property by the Diocese was deliberately or negligently misreported, in the staff report. This is not the case. All LAFCO staff reports were consistent with the information that was believed at the time and were based on the information provided to LAFCO back in 2002, when LAFCO approved the City’s urban service area amendment proposal to facilitate a private high school. And LAFCO did not receive any correction on this information until 2016.

The South County Catholic High School (SCCHS) representative provided testimony at the public hearing on March 11, 2016 about the inaccuracy of the ownership information, which was heard by the Commission prior to the vote being taken, and was documented subsequently in LAFCO’s minutes for the public hearing. The letters sent by the SCCHS subsequent to the public hearing containing corrections were appended to the Staff Report discussed on June 1, 2016. The so-called “erroneous statement” quoted in the first paragraph of page 7 of the Civil Grand Jury Report is, in fact, not erroneous, and makes no statement about the ownership of the land. It is factual that the original plan to build a private high school on the land was never realized. To summarize, the Commission made its final decisions in March and June of 2016 with the corrected information as presented by the SCCHS.

### **No Interjurisdictional Miscommunications and No LAFCO Staff Bias**

The Civil Grand Jury Report seems to imply that the numbers of application rejections are evidence of a bias against Morgan Hill. **Attachment F** is a listing of all the Urban Service Area amendment proposals that LAFCO has considered since 2000. This information was compiled and submitted on March 2, 2017 to the Civil Grand Jury at their request. **Attachment F** documents that over the years, staff has recommended in

favor of many Morgan Hill Urban Service Area amendment proposals and LAFCO has approved many Morgan Hill Urban Service Area amendment proposals.

As discussed previously, LAFCO staff evaluates each proposal against LAFCO goals and policies and provides a recommendation and the reasons for the recommendation; as well as other possible actions for commission consideration. The commission as the ultimate decision maker, takes final action on a proposal based on its merits.

For an understanding of the LAFCO staff's analysis and recommendation for a proposal and for the Commission deliberations and action / votes on a proposal, we refer the Civil Grand Jury to the complete LAFCO public records relating to each of those decisions.

## **RESPONSE TO THE FINDINGS AND RECOMMENDATIONS**

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### **FINDING 1**

The Local Agency Formation Commission staff developed criteria to evaluate the Morgan Hill 2016 Urban Service Area amendment, including the South County Catholic High School, that were not specified in the agency's adopted Urban Service Area Policies. These staff-written criteria include the definition of "vacant land," "premature conversion of agricultural lands," and "adequacy of urban services."

#### **LAFCO Response**

LAFCO disagrees wholly with the finding. The MH USA Amendment 2015 application was analyzed by LAFCO staff using the same criteria that LAFCO staff has used to analyze previous applications from the City of Morgan Hill and applications from other cities, as documented in the various staff reports for those applications.

### **RECOMMENDATION 1A**

The Local Agency Formation Commission should amend its Urban Service Area Policies to define "vacant land," "premature conversion of agricultural lands," and "adequacy of urban services." The amendment process should provide the opportunity for all affected stakeholders to participate.

#### **LAFCO Response**

This recommendation requires further analysis and will be considered during LAFCO's comprehensive review of its policies which is anticipated to begin within the next six months. LAFCO's current work plan calls for a comprehensive review and update of its policies with the intent of strengthening them to enable LAFCO to better meet its legislative mandate; and to further clarify alignment and consistency of the policies with state law, long-standing countywide growth management policy framework, and regional plans and goals.

## **RECOMMENDATION 1B**

The Local Agency Formation Commission should consider a project's specific requirements, such as the size of the parcel needed and proximity to incompatible uses, in determining whether parcels in the Urban Service Area are "vacant land."

### **LAFCO Response**

This recommendation requires further analysis and will be considered during LAFCO's comprehensive review of its policies which is anticipated to begin within the next six months. LAFCO's current work plan calls for a comprehensive review and update of its policies with the intent of strengthening them to enable LAFCO to better meet its legislative mandate; and to further clarify alignment and consistency of the policies with state law, long-standing countywide growth management policy framework, and regional plans and goals.

## **FINDING 2**

The Local Agency Formation Commission staff interpreted the Commission's Island Annexation Policies to be mandatory rather than advisory in the staff's evaluation of the Morgan Hill 2016 Urban Service Area Amendment that includes the South County Catholic High School.

### **LAFCO Response**

LAFCO disagrees wholly with the finding. Staff provided an analysis of the proposal's consistency with State law and the Commission's policies and goals in its Staff Report. As explained below, staff described the special circumstances pertaining to Morgan Hill's remaining unincorporated islands.

On page 11 of the Staff Report for MH USA Amendment 2015, staff notes that the City has not annexed all of its unincorporated islands within its urban service area prior to seeking the urban service area expansion. On page 19 of Attachment A of the Staff Report, staff also notes that "the City is open to annexation of Holiday Lake Estates provided sufficient resident support for the sewer infrastructure assessment" and that the City is "unable to annex the Llagas Road island because portions of properties are located outside the USA." As shown on pages 12 through 17 of the Staff Report, the fact that the City has not annexed all of its islands is not one of the reasons that staff provided for its recommendation that the Commission deny approval of the MH USA Amendment 2015.

## **RECOMMENDATION 2**

The Local Agency Formation Commission should amend its Island Annexation Policies to clarify whether the annexation of all unincorporated urban islands is a prerequisite for Urban Service Area amendments. The amendment process should provide the opportunity for all affected stakeholders to participate.

### **LAFCO Response**

This recommendation requires further analysis and will be considered during LAFCO's comprehensive review of its policies which is anticipated to begin within the next six months. LAFCO's current work plan calls for a comprehensive review and update of its policies with the intent of strengthening them to enable LAFCO to better meet its legislative mandate; and to further clarify alignment and consistency of the policies with state law, long-standing countywide growth management policy framework, and regional plans and goals.

### **FINDING 3**

The Local Agency Formation Commission staff deviated from the Commission's Agricultural Mitigation Policies in the staff's evaluation of the Morgan Hill 2016 Urban Service Area Amendment that includes the South County Catholic High School. The staff interpreted the policies to be mandatory rather than advisory and established its own criteria for a satisfactory agriculture mitigation program.

### **LAFCO Response**

LAFCO disagrees wholly with the finding. Staff provided an analysis (See pages 6 through 11 of Attachment A of the MH USA Amendment 2015 Staff Report; and Appendix Y of the MH USA Amendment 2015 Staff Report) of the proposal's consistency with LAFCO's Agricultural Mitigation Policies using the criteria included in the Policies. The Commission makes the final decision in regards to any proposal.

Since 2010, LAFCO staff has provided comments and submitted various letters to the City requesting the City to consider policies and programs that are consistent with LAFCO's Urban Service area and Agricultural Mitigation policies.

### **RECOMMENDATION 3A**

The Local Agency Formation Commission should amend its Agricultural Mitigation Policies to clarify whether the policies are advisory or mandatory. The amendment process should provide the opportunity for all affected stakeholders to participate.

### **LAFCO Response**

The recommendation will not be implemented because it is not warranted. This aspect of the LAFCO's Agricultural Mitigation Policies is very clear and is addressed in the subsection of the Policies entitled "Purpose of the Policies", which already went through a lengthy public participation process.

### **RECOMMENDATION 3B**

The Local Agency Formation Commission should amend its Agricultural Mitigation Policies to define a satisfactory agricultural mitigation program. The amendment process should provide the opportunity for all affected stakeholders to participate.



### **LAFCO Response**

The recommendation will not be implemented because it is not warranted. LAFCO's Agricultural Mitigation Policies already provide guidance on how to address agricultural mitigation for LAFCO proposals, which already went through a lengthy public participation process.

### **RECOMMENDATION 3C**

The Local Agency Formation Commission should amend its Agricultural Mitigation Policies to describe the relationship of a city's agricultural mitigation program to Santa Clara County's agricultural mitigation programs. The amendment process should provide the opportunity for all affected stakeholders to participate.

### **LAFCO Response**

The recommendation will not be implemented because it is not warranted and is not reasonable. The County of Santa Clara does not have an agricultural mitigation program.

### **FINDING 4**

The Morgan Hill Agricultural Preservation Program requires more funding for the purchase of agricultural easements than is generated from the mitigation fees collected through new development.

### **LAFCO Response**

LAFCO agrees with the finding.

### **RECOMMENDATION 4**

The County of Santa Clara, the City of Morgan Hill, and the Local Agency Formation Commission should work together to develop a funding mechanism to cover the acquisition and on-going cost of agricultural easements in the Morgan Hill area.

### **LAFCO Response**

The recommendation will not be implemented because it is not warranted and is not reasonable. Before a funding mechanism to acquire agricultural easements is developed, there first needs to be a comprehensive agricultural lands preservation program that is consistent with LAFCO's mandate and regional plans and goals. An effective agricultural lands preservation program must include measures to steer growth away from agricultural lands and avoid premature conversion of agricultural lands. Unfortunately, such a comprehensive program does not exist at this time.

LAFCO has encouraged and supported the development of programs for preserving agricultural lands. In September 2014, LAFCO, in partnership with the American Farmland Trust and the Committee for Green Foothills, hosted a summit on the ["Importance of Local Farmland to Santa Clara Valley's Future Health and Well-being"](#) which generated a lot of interest in preserving the remaining agricultural land in this county. Attendees included elected officials and staff from state and local agencies,

agricultural and open space preservation organizations, and local farmers/ranchers. They noted the lack of a shared vision for preserving agricultural land and identified the development of a comprehensive plan as a logical next step.

In March 2015, LAFCO also provided a letter of support on behalf of the County's and the Santa Clara Valley Open Space Authority's (OSA) joint application for a Sustainable Agricultural Land Strategy Grant. Subsequently, the County and OSA received a \$100,000 grant to prepare a program to sustain agricultural lands and the County's farming industry. The two agencies are currently in the process of developing the program. While LAFCO staff has received periodic updates in the background, LAFCO is not formally engaged in any of the discussions amongst the affected public agencies. However, LAFCO is cautiously optimistic that the program will result in an effective agricultural preservation plan that is consistent with the existing County General Plan and LAFCO policies to prevent urban sprawl; and promote orderly growth and development in the county.

#### **FINDING 5**

Erroneous information provided through reports and comments by the Local Agency Formation Commission staff cast the Catholic Diocese of San Jose as untrustworthy. Although the erroneous information was corrected through media and other sources, the report to the commissioners was not changed, resulting in the appearance of bias.

#### **LAFCO Response**

LAFCO disagrees wholly with the finding. The Grand Jury Report implies that the ownership of the property by the Diocese was deliberately or negligently misreported, in the staff report. This is not the case. All LAFCO staff reports were consistent with the information that was believed at the time and were based on the information provided to LAFCO back in 2002, when LAFCO approved the City's urban service area amendment proposal to facilitate a private high school. And LAFCO did not receive any correction on this information until 2016.

The South County Catholic High School (SCCHS) representative provided testimony at the public hearing on March 11, 2016 about the inaccuracy of the ownership information, which was heard by the Commission prior to the vote being taken, and was documented subsequently in LAFCO's minutes for the public hearing. The letters sent by the SCCHS subsequent to the public hearing containing corrections were appended to the Staff Report discussed on June 1, 2016. The so-called "erroneous statement" quoted in the first paragraph of page 7 of the Civil Grand Jury Report is, in fact, not erroneous, and makes no statement about the ownership of the land. It is factual that the original plan to build a private high school on the land was never realized. To summarize, the Commission made its final decisions in March and June of 2016 with the corrected information as presented by the SCCHS.

## **RECOMMENDATION 5**

The Local Agency Formation Commission should investigate and take appropriate action to address the potential of bias by LAFCO staff.

### **LAFCO Response**

The recommendation will not be implemented because it is not warranted or reasonable. As discussed under LAFCO's response to Finding #5, there is no bias by LAFCO staff.

The Civil Grand Jury Report seems to imply that the numbers of application rejections are evidence of a bias against Morgan Hill. **Attachment F** is a listing of all the Urban Service Area amendment proposals that LAFCO has considered since 2000. This information was compiled and submitted to the Civil Grand Jury at their request on March 2, 2017. **Attachment F** documents that over the years, staff has recommended in favor of many Morgan Hill Urban Service Area amendment proposals and LAFCO has approved many Morgan Hill Urban Service Area amendment proposals, including the private high school noted above in the response to Finding 5.

As discussed previously, LAFCO staff evaluates each proposal against LAFCO goals and policies and provides a recommendation and the reasons for the recommendation; as well as other possible actions for commission consideration. The commission as the ultimate decision maker, takes final action on a proposal.

For an understanding of the LAFCO staff's analysis and recommendation for a proposal and for the Commission deliberations and action / votes on a proposal, we refer the Civil Grand Jury to the complete LAFCO public records relating to each of those decisions.

## **FINDING 6**

Individuals are concerned about retribution by Local Agency Commission staff if they complain about the treatment they receive.

### **LAFCO Response**

LAFCO disagrees wholly with the finding. The Civil Grand Jury Report does not cite any evidence to support this finding and LAFCO has never received any information to support this finding.

## **RECOMMENDATION 6**

The Local Agency Formation Commission should develop procedures to investigate complaints confidentially and ensure complainants do not face retaliation.

### **LAFCO Response**

This recommendation will not be implemented because it is not warranted or reasonable. The Civil Grand Jury Report does not cite any evidence to support this

finding and LAFCO has never received any information to support this finding. Members of the public may contact any of the LAFCO Commissioners if they have a complaint against staff. Commissioner contact information is available on the LAFCO website.

#### **FINDING 7**

The relationship between the staff of the Local Agency Formation Commission and the staff of the City of Morgan Hill appears to be strained.

#### **LAFCO Response**

LAFCO disagrees wholly with the finding. The Civil Grand Jury Report does not cite any evidence to support this finding and LAFCO has not received any information to support this finding.

LAFCO staff has a professional working relationship with the City of Morgan Hill staff and has worked with City staff on a variety of matters during the City's preparation of the MH USA Amendment 2015 application and following LAFCO's denial of the proposal. For example, in August 2016, LAFCO authorized initiation of litigation against the City of Morgan Hill regarding their General Plan EIR and directed staff to first pursue a settlement. LAFCO staff and City staff then had many discussions, both in person and by phone, and successfully negotiated a settlement which avoided litigation between the two parties.

#### **RECOMMENDATION 7**

The Local Agency Formation Commission and the City of Morgan Hill should take steps to improve the working relationships of the staff of the two agencies.

#### **LAFCO Response**

This recommendation will not be implemented because it is not warranted, as we do not believe there is a strained relationship between the staff of the two agencies. LAFCO staff has a professional working relationship with the City of Morgan Hill staff and has worked with City staff on a variety of matters during the City's preparation of the MH USA Amendment 2015 application and following LAFCO's denial of the proposal. For example, in August 2016, LAFCO authorized initiation of litigation against the City of Morgan Hill regarding their General Plan EIR and directed staff to first pursue a settlement. LAFCO staff and City staff then had many discussions, both in person and by phone, and successfully negotiated a settlement which avoided litigation between the two parties.

As we have expressed often, LAFCO staff is willing to meet with the City of Morgan Hill, should they wish to discuss LAFCO related matters.

## **FINDING 8**

The same individual has held a seat on the Local Agency Formation Commission for 20 consecutive years.

### **LAFCO Response**

LAFCO agrees with the finding. Prior to expiration of the public member's 4-year term, the Commission considers whether or not to reappoint the public member to another term. Over the years, the Commission has voted unanimously to reappoint the public member to another 4-year term rather than recruit for a new member to fill the position. Due to the complexity of LAFCO and the extensive learning curve involved in LAFCO matters, serving on LAFCO for some length of time is beneficial.

## **RECOMMENDATION 8**

The Local Agency Formation Commission should establish by policy that a commissioner can serve in a specified position for a set number of years.

### **LAFCO Response**

This recommendation will not be implemented because it is not warranted. Appointments to LAFCO are made consistent with State law (Government Code §56327). Six of the seven commissioners on LAFCO are appointed by legislative bodies or selection committees, as specified under State law. These six LAFCO commissioners appoint a public member to serve on LAFCO for a 4-year term. While State law does not limit the number of terms a commissioner may serve, LAFCO and other appointing bodies have the ability to either reappoint or select a new member to serve on LAFCO at the end of a commissioner's 4-year term. Due to the complexity of LAFCO and the extensive learning curve involved in LAFCO matters, serving on LAFCO for some length of time is beneficial.

## **FINDING 9**

The Local Agency Formation Commission's goal of protecting agricultural land directly impacts only three cities – Gilroy, San Jose and Morgan Hill – which have all of the agricultural land in the urban areas of Santa Clara County. Currently only two LAFCO commissioners, the representative for San Jose and the County Supervisor for District 1, out of seven commission positions represent these cities.

### **LAFCO Response**

LAFCO disagrees wholly with the finding. Agricultural lands in Santa Clara County are for the most part located within the unincorporated area of the county, outside of city limits and city urban service areas. Protecting agricultural lands is an issue of countywide interest and significance. Five of the seven current commissioners on LAFCO reside in the three abovementioned cities. Furthermore, five of the seven current commissioners also sit on legislative bodies that represent these cities and/or areas of the county.

Importantly, State law explicitly requires all commissioners to represent the interests of the public as a whole in furthering the purposes of LAFCO and not the interests of their appointing body.

**RECOMMENDATION 9**

The Local Agency Formation Commission should ensure that cities with agricultural land are represented fairly on the commission.

**LAFCO Response**

The recommendation will not be implemented because it is not warranted or reasonable. LAFCO does not appoint its commissioners other than its public member.

We appreciate the Grand Jury’s interest in LAFCO of Santa Clara County. Thank you for the opportunity to respond to the findings/recommendations presented in the report.

Sincerely,



Ken Yeager, Vice-Chairperson  
LAFCO of Santa Clara County

CC:

City of Morgan Hill

County of Santa Clara

**ATTACHMENTS**

Attachment A: Joint Letter dated July 17, 2017 from Committee for Green Foothills, American Farmland Trust, Santa Clara Valley Audubon Society, Greenbelt Alliance, San Martin Neighborhood Alliance, Thrive! Morgan Hill, Save Open Space – Gilroy, and Sierra Club Re: Santa Clara County Civil Grand Jury Report

Attachment B: County, LAFCO, and Santa Clara Valley Open Space Authority Joint Letter dated November 5, 2014 to Morgan Hill City Council re: SEQ Land Use Plan and Citywide Agricultural Lands Preservation Program

- Attachment C: LAFCO Staff Report dated February 15, 2016 for Morgan Hill Urban Service Area (USA) Amendment 2015 & March 11, 2016 Meeting Materials  
<http://www.santaclaralafco.org/file/Agenda%20%20Minutes/StaffReportsandMaterials1.pdf>
- Attachment D: LAFCO Staff Report dated June 1, 2016 for Request for Reconsideration of March 11, 2016 LAFCO Action to Deny City of Morgan Hill Urban Service Area Amendment 2015 & June 1, 2016 Meeting Materials  
<http://www.santaclaralafco.org/file/Agenda%20%20Minutes/StaffReportsandMaterials1.pdf>
- Attachment E: LAFCO Letters dated February 2, 2016 and January 18, 2017 to Morgan Hill Unified School District
- Attachment F: Urban Service Area Amendment Proposals (2000 – Present)





## Attachment A



COMMITTEE FOR  
GREEN FOOTHILLS



American Farmland Trust



Santa Clara Valley  
Audubon Society



GREENBELT ALLIANCE  
Open Spaces & Vibrant Places



San Martin  
Neighborhood  
Alliance



morgan hill



Save Open Space — Gilroy



SIERRA  
CLUB  
FOUNDED 1892

July 17, 2017

Chairperson Sequoia Hall and Commissioners  
LAFCO of Santa Clara County  
777 North First Street, Suite 410  
San Jose, CA 95110

### RE: SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

Dear Chairperson Hall and Commissioners,

We, the undersigned, would like to express our grave concerns with the Santa Clara County Civil Grand Jury Report *LAFCO Denials: A high school caught in the middle*. The report was initiated by a complaint charging that the Catholic High School, which was part of the Morgan Hill Urban Service Area (USA) Amendment 2015 request for Area 1: Tennant-Murphy, was not evaluated fairly by LAFCO. Area 1: Tennant-Murphy is more commonly referred to as the Southeast Quadrant (SEQ) and the report refers to it as such.

Our organizations have all provided comment on the City of Morgan Hill's proposal for the SEQ, which includes the Catholic High School, either to the City of Morgan Hill or LAFCO or both. In some cases, our organizations have been providing input since the City of Morgan Hill first considered planning for urban development in the SEQ over a decade ago. Some of our

organizations also commented specifically on the Catholic High School's request for Reconsideration heard before the LAFCO Commission at its June 1, 2016 meeting.

Our organizations are also familiar with LAFCO's history, mission, purpose, and the manner in which Staff and Commissioners evaluate proposals and receive input from all stakeholders.

It is with this background and perspective that we felt compelled to comment on some of the inaccuracies and erroneous findings and recommendations.

### **MAJOR CONCERNS WITH CONTENT OF REPORT**

Overall, we have 4 main areas of concern with the Civil Grand Jury report:

1. the appearance of Foreperson's conflict of interest
2. misleading statements
3. exclusion of pertinent information and factual errors
4. omission of relevant sections of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act)

While there are numerous instances for each area of concern, for the sake of brevity we will limit ourselves to an example apiece.

***Appearance of Foreperson's Conflict of Interest.*** The Foreperson of the Civil Grand Jury, Mr. Wayne Tanda, has been a Morgan Hill Planning Commissioner since April 2007. He recently served as the 2016-17 Chair of the Planning Commission.

Mr. Tanda was present for the Planning Commission hearings on the SEQ (and Catholic High School) inclusive of the June 23, 2015 hearing when the Commission voted to recommend amending the City's USA in the SEQ to allow for the annexation of properties into the city (Mr. Tanda made the motion to approve the item).

Given Mr. Tanda's status as a long-standing appointed member of the City of Morgan Hill Planning Commission, his direct input in the SEQ and Agricultural Mitigation Program proposals, and his involvement in the SEQ decision-making process throughout the years, it is difficult not to perceive an inherent bias in the content and conclusions of this report.

***Misleading statements.*** The report refers to an unidentified County official supportive of:

- the Catholic high school (at p. 3) as it was ‘an opportunity for a win for the students, for the community, and for the environment’, and
- the City’s Agricultural Mitigation Program (at p. 5) ‘as fundamentally sound, but inadequately funded.’

This would lead one to surmise that the County of Santa Clara did not have any serious concerns with the City’s SEQ (and Catholic High School) and Agricultural Mitigation Program proposals. Yet, for many years the County’s Department of Planning and Development expressed its numerous concerns with the SEQ and the Agricultural Program proposals to the City of Morgan Hill. In its letter to LAFCO dated March 8, 2016, the County stated that the SEQ project remained inconsistent with the County’s growth management and resource conservation policies and the South County Joint Area Plan. It concluded by recommending LAFCO *deny* Morgan Hill’s USA Amendment request based on the inconsistencies of the proposal with *County* policies (and not any of the LAFCO Staff report components mentioned in the Civil Grand Jury report).

Also notable is that the County Executive Office, LAFCO, and the Santa Clara Valley Open Space Authority submitted a joint letter to the Morgan Hill City Council in November 2014 urging them not to adopt the SEQ and Agricultural Mitigation Program proposals nor the accompanying Environmental Impact Report (EIR) as they had serious concerns with the proposals and EIR. The three agencies also urged the City to return to discussions with them for the purpose of creating “a SEQ proposal that better aligns with local and regional policies/goals.” Clearly, the agencies were willing to work collaboratively with the City to find a reasonable alternative to the City’s proposals.

The City Council instead chose to certify the EIR, adopt the Agricultural Mitigation Program, and amend the General Plan to establish the Agriculture and Sports/Recreation/Leisure General Plan designations at their November 4, 2014 meeting. They approved other components of the SEQ and Agricultural Mitigation Program proposals in February and July of 2015. Their actions nullified any attempt on the part of the agencies to develop a suitable alternative to the City’s SEQ proposal.

The Council’s actions would lead one to conclude that the City was unconcerned with LAFCO, County, or other agency staff’s opinions, requests, or actions. This raises the question as to the validity of the claim that City staff feared some unidentified form of retribution by LAFCO staff if they complained openly about LAFCO.

***Omission of pertinent information and factual errors.*** The section entitled *Special-Interest Suspicions in Morgan Hill* mentions that several Morgan Hill residents based their opposition to the SEQ proposal (inclusive of the High School) on the fact that the City's planning process did not allow for the participation of all city residents. The report concludes that the decision to separate the General Plan update process from the SEQ planning process created concerns about the objectivity which "gave the appearance of special consideration for the property owners."

In fact, in the City's USA Amendment 2015 Letter of Request to LAFCO, the City noted that their application was 'determined to be consistent with the desire of respective property owners to be incorporated into Morgan Hill.' It was wholly devoid of a community effort reflecting best planning practices and the community's needs and desires for its future. The lack of community outreach hindered the community's ability to be informed of the City's plans for the SEQ. From December 2007 to July 2015, no effort was made to gather community-wide input on the City's plan. There were some exclusive stakeholder meetings on the SEQ throughout the years, and admittedly there were numerous public hearings. Unfortunately, these hearings segmented discussions and decision-making to the point that it made it extremely difficult for even the most civic-minded and tenacious resident to effectively participate and understand.

Furthermore, the public agencies and local, regional, and national organizations requested that the City include the planning for the SEQ (and thus the High School) within the General Plan update process. This advice went unheeded as did much of the expert advice it received from these agencies and organizations.

This brings into question the claim on p. 8 of the Civil Grand Jury's report that LAFCO alone insists the High School be built within the city's USA.

***Omission of relevant sections of CKH Act.*** The report (at p. 7) points out correctly that Morgan Hill City Council members have been ineligible for appointment to LAFCO via the Cities Association seat for 20 years due to the Public Member being a Morgan Hill resident. However, it also states that since the Public Member is not an elected official, the Commissioner 'is not accountable to the residents of Morgan Hill and does not represent the Morgan Hill City Council's policies.' Here the report fails to take into consideration § 56325.1 of the CKH Act which asserts that elected officials serving as LAFCO Commissioners must 'represent the interests of the public as a whole and not solely the interests of the appointing authority' while 'furthering the purposes of this division.' In other words, a Morgan Hill City Council member would be bound by LAFCO law to represent *all constituents within LAFCO's jurisdiction* not

solely the residents of Morgan Hill, and must do so through the lens of the *LAFCO's mission, law, and policies*, not those of the jurisdiction in which they were elected.

The report also does not recognize that per § 56327 (c) of the CKH Act, the Cities Association is 'encouraged to appoint members to fairly represent the diversity of the cities in the county, with respect to population and geography.' Thus, there is no guarantee of a Morgan Hill City Council Member's appointment to LAFCO via the Cities Association.

## **CONCLUSION**

We are deeply concerned with some of the content and findings of the Civil Grand Jury's report.

While it is for LAFCO to address the content, conclusion, and Findings and Recommendations in the report pertaining to its policies and procedures, we find the report to be overall disquieting in its apparent attempt to be selective with the facts.

The Catholic High School was part and parcel of a larger wholly inadequate proposal that failed to align with best planning practices, existing City, County, and LAFCO policies, and adequate environmental review. Time and again over the years, this message was made clear to the City of Morgan Hill by agencies and organizations. They refused to work collaboratively with the agencies, organizations, or community at large to come to a better solution.

From our perspective this is what led to the LAFCO Commission voting as it did - not any nefarious, unfair, or biased actions on the part of LAFCO or lack of representation from the City of Morgan Hill on the Commission.

Sincerely,



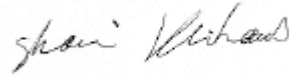
Alice Kaufman, Legislative Advocacy Director  
Committee for Green Foothills



Virginia Jameson, Deputy California Director  
American Farmland Trust



Kiyomi Yamamoto, South Bay Regional  
Representative, Greenbelt Alliance



Shani Kleinhaus, Environmental Advocate  
Santa Clara Valley Audubon Society



Trina Hineser, President  
San Martin Neighborhood Alliance



Jimmy Quenelle  
Thrive! Morgan Hill



Carolyn Tognetti  
Save Open Space – Gilroy



Mike Ferreira, Chapter Conservation Chair  
Sierra Club Loma Prieta Chapter



VIA E-MAIL

November 5, 2014

Honorable Mayor Tate and City Council Members  
City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, CA 95037

**RE: SOUTHEAST QUADRANT (SEQ) LAND USE PLAN AND CITYWIDE AGRICULTURAL LANDS PRESERVATION PROGRAM**

Honorable Mayor Tate and City Council Members,

The purpose of this joint letter is to express our concerns and to request that the City not approve the proposed SEQ Project and the Agricultural Lands Preservation Program and not approve the Final EIR. Attachment 1 summarizes our concerns. We encourage the City to step back from its current plan to develop agricultural lands, and in partnership with the County of Santa Clara (County), LAFCO of Santa Clara County (LAFCO), and the Santa Clara County Open Space Authority (OSA) develop a SEQ proposal that better aligns with local and regional policies/goals.

**Collaboration Efforts To-Date**

Since July of this year, staff from the County, the OSA, and LAFCO have been meeting with City staff to develop an alternative agricultural preservation program in the SEQ. Staff explored conservation and financing strategies for a viable agricultural lands preservation program while addressing the City's growth needs in a sustainable manner in conformance with longstanding urban development policies.

Staff from the four agencies met several times over the course of the three months to discuss a range of potential strategies. In a good faith effort, the OSA arranged for a consultant to help staff prepare a Scope of Work for developing and implementing a viable plan for financing agricultural land preservation in the area. Successful models that the staff were beginning to evaluate would link economic incentives and initiatives (such as TDRs, conservation easements) with complementary growth management strategies (i.e. well-defined growth boundaries). The benefits of such approaches are accommodating growth without significantly impacting agricultural land; limiting development pressure in areas identified as important for continued agricultural production and providing reasonable certainty to landowners and developers.

Unfortunately, the work was cut short as the City indicated its intent to complete City Council action on the project by December 2014.

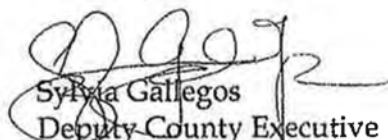
**A More Balanced Approach to Preserving Agricultural Lands in SEQ**


We urge the City Council to not approve the project as proposed, and to consider an alternate vision to achieve a successful outcome – significantly reducing the amount of agricultural land planned for conversion in the SEQ and delineating a meaningful and stable urban growth boundary. Such actions by the City Council would confirm the City’s commitment to long-term agriculture in the SEQ and enable the Group to resume developing and implementing an effective, workable agricultural preservation program in the SEQ that includes specific programs, such as easement acquisitions and TDR programs.

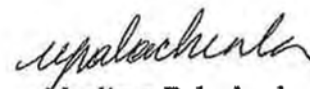
Importantly, this would be more in alignment with statewide and regional goals for building sustainable communities; specifically it would prevent urban sprawl, encourage more compact urban form, and enable the city to focus its budgetary resources on existing neighborhoods. It would allow the partner agencies to jointly support the City in applying for California Strategic Growth Council planning grants and for other potential future grants for developing conservation easement projects and for critical agricultural infrastructure needs planning.

Thank you for considering our request.

Sincerely,

  
Sylvia Gallegos  
Deputy County Executive  
County of Santa Clara

  
Andrea Mackenzie  
General Manager  
Open Space Authority

  
Neelima Palacheria  
Executive Officer  
Santa Clara LAFCO

c: OSA Board Members  
LAFCO Members  
Mike Wasserman, Supervisor District One

**Attachment 1: Partner Agencies' Concerns with the Proposed SEQ Plan, Citywide Agricultural Lands Preservation Plan and Associated CEQA**



**Attachment 1:**

**PARTNER AGENCIES' CONCERNS WITH THE PROPOSED SOUTHEAST QUADRANT (SEQ) PLAN, CITYWIDE AGRICULTURAL LANDS PRESERVATION PLAN AND ASSOCIATED CEQA**

The following summarizes some of the key concerns identified by the County of Santa Clara, LAFCO of Santa Clara County and the Santa Clara County Open Space Authority (OSA) with regard to the City of Morgan Hill's proposed plan for the SEQ and the associated CEQA review and process. Please note that the three agencies have previously raised these and other concerns in their various separate letters to the City and in their discussion with City staff.

**A. INCONSISTENCIES BETWEEN STATED GOAL OF AGRICULTURAL PRESERVATION IN SEQ AND PROPOSED ACTIONS**

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**1. Proposed Project Involves Premature and Unnecessary Conversion of Agricultural Lands in the SEQ**

Even though the City has indicated that it is their goal to have permanent agricultural preservation in the SEQ and declared the SEQ as their Agricultural Priority area, the proposed plans depict that nearly half of the prime agricultural lands in the SEQ will be converted to urban uses. Out of a total of 597 acres of prime farmland, over 251 acres of prime farmland are slated for conversion to Sports Recreational and Leisure (SRL) and public facility uses. The purpose of the conversion is to allow four separate development proposals initiated by private property owners / developers on 106 acres of prime farmland. Since these four development proposals are not contiguous and are spread out in the SEQ, the City is proposing to re-designate the intervening 192 acres of prime farmland for urban use in order to simply establish contiguity. Thus the proposed urban growth (UGB) and urban limit line (ULL) boundaries, (which are proposed to include these lands) seem driven by the desire to facilitate private applicant initiated proposals rather than by the public benefit interest of farmland preservation.

**2. Annexation Not Necessary for Preservation of Agricultural Lands in the SEQ**

Another problematic aspect of the SEQ proposal is that it will require eventual city annexation of unincorporated lands located outside the City's urban service area (USA). First, such an annexation would directly conflict with the joint urban development policies, LAFCO policies and County General Plan which call for urban development and services within USAs; and resource conservation and rural uses outside the USA. Importantly, in keeping with the joint urban development policies, the County has established a long standing record for maintaining rural land uses and not providing public water and sewer services in the unincorporated county whereas the City has established no such record and has provided no assurances for conserving these lands. Further, it seems to be a misunderstanding amongst some people that the area would be better protected for agriculture under City jurisdiction and that annexation of the SEQ would prevent further rural residential development in the SEQ. Given that a single family home may be constructed by right on every legal lot whether it is in the County or City provided it meets the underlying building regulations, it is unclear

how the City would have the ability to somehow prohibit the construction of single family homes on recognized legal lots.

**3. Designating Unincorporated Lands “Agriculture” in City General Plan Provides No Additional Protection for Unincorporated Agricultural Lands in the SEQ**

Further, the City claims that by its proposal to designate unincorporated lands as Agriculture, the City would implement its General Plan policies related to agriculture and communicate its commitment for agricultural preservation within the SEQ. It is misleading and inaccurate to assume that the City’s designation offers any further protection from development for these lands, than their remaining in the County. These lands are currently designated Agriculture Medium Scale under the County General Plan. Since these lands are not proposed for annexation to the City at this time, they will continue to remain unincorporated and be subject to the County General Plan and its land use regulations. Therefore, the City’s General Plan designation would not apply to these lands and it would have no direct land use jurisdiction over these unincorporated lands.

**4. Proposed Funding in the City’s Agricultural Lands Preservation Program Is Insufficient to Achieve 1:1 Mitigation**

As a number of agencies have previously commented, the City’s proposed Agricultural Land Preservation Program designates the SEQ as the Agricultural Priority area within which mitigation should occur, however, it underestimates the land/easement costs and in-lieu fees necessary to preserve land in the SEQ by using lower land values more appropriate in other parts of the County. So therefore, even though the Program calls for a 1:1 mitigation, the funding generated by the proposed mitigation fees would not be sufficient to cover the 1:1 mitigation in the SEQ. It is very unlikely that the City’s program will result in any actual preservation of agriculture in the SEQ.

While the four agencies share a common goal of viable agriculture and agricultural preservation in the SEQ, the City’s project and process continue to directly conflict with these goals and with existing policies.

**5. Proposed Clustering Program within Unincorporated Area is Infeasible**

The City has indicated its interest in continuing to work with the three agencies to establish a Transfer of Development Rights (TDR) and clustering program *in the County only* for a specific landowner (Chialas) located within the SEQ.

With regard to establishing a clustering program within the unincorporated county for existing legal lots, the agencies have had extensive discussions and have identified significant concerns with such a program; these concerns range from inconsistencies of such development with the current County General Plan to potential lack of public benefit value of developing such a program in the County and include issues such as likely conflict between urban densities and rural character of unincorporated lands, environmental and service provision concerns, and the undesirable precedent setting nature of such a proposal on other parts of the unincorporated county. An effective TDR program in balance with other preservation strategies will need to address transferring development rights to receiving sites within the City.

**B. INADEQUATE ENVIRONMENTAL ANALYSIS AND SEGMENTED REVIEW / APPROVAL PROCESS UNACCEPTABLE FOR SUCH A MAJOR LAND USE DECISION**

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**1. City's Environmental Analysis is Deficient and Does Not Meet the Intent or Requirements of CEQA**

As you know, the CEQA process is designed to identify and disclose to decision makers and the public the significant impacts of a proposed project prior to its consideration and approval. LAFCO, the County of Santa Clara, and the Santa Clara County Open Space Authority have each provided previous comments to the City on the City's environmental review process and documentation. In February 2014, these agencies identified significant deficiencies in the Draft EIR, including that the project description is unclear; the Draft EIR segments the environmental analysis; improperly defers environmental analysis by conducting programmatic review of project-level proposals; fails to sufficiently mitigate significant impacts to agricultural resources, air quality, public services and utilities, and utility systems; and also fails to analyze a reasonable range of alternatives. Subsequently, the City prepared a Final EIR which attempted to address the abovementioned comments. Rather than clarifying the issues raised by LAFCO, the County of Santa Clara, the Santa Clara County Open Space Authority, and others, the City's Final EIR neglects to adequately respond to the comments, and in many cases adds to the confusion identified in the comments concerning the scope of the project and the analysis of its environmental impacts.

**2. Separation of the SEQ Land Use Plan from the City's General Plan Update Process is a Violation of Rational Planning Practices and CEQA**

The City is currently in the midst of conducting a comprehensive update of its General Plan, which among other things, is considering various land use alternatives, including further outward expansion of city boundaries to accommodate anticipated growth. However, the SEQ project which requires major amendment to the City's General Plan is not part of the Comprehensive General Plan update. This is contrary to City/ County General Plan policies which require that UGB be only amended in conjunction with a comprehensive General Plan review /update. It is our understanding that the City intends to complete decisions on the SEQ by December 2014 in order to establish the SEQ project as a pre-existing condition for the Comprehensive General Plan Update EIR analysis, in clear violation of sound planning principles and CEQA Guidelines.





February 2, 2016

VIA EMAIL [[betandos@mhusd.org](mailto:betandos@mhusd.org)]

Steve Betando, Superintendent  
Morgan Hill Unified School District  
15600 Concord Circle  
Morgan Hill, CA 95037

**RE: FEBRUARY 2, 2016 MHUSD BOARD MEETING AGENDA - CLOSED  
SESSION ITEM A.2.E. "CONFERENCE WITH REAL PROPERTY  
NEGOTIATORS"**

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Dear Mr. Betando,

It has come to our attention that the Morgan Hill Unified School District's (MHUSD) February 2, 2016 Board Meeting Agenda includes a Closed Session Item A.2.e. "Conference with Real Property Negotiators" involving six parcels (APNS 817-18-001 & 002; and APNs 817-16-002, 003, 004, & 005) within an unincorporated area known as the Southeast Quadrant, a predominantly agricultural area. It appears that the District may be considering whether to purchase the properties as potential sites for facilities such as a future middle school and/or a high school.

As you may be aware, the Local Agency Formation Commission of Santa Clara County (LAFCO) is a state mandated independent local agency with countywide jurisdiction. Its primary goals are to discourage urban sprawl, preserve agricultural and open space lands, and encourage efficient delivery of services. LAFCO regulates the boundaries of cities and special districts; and the extension of services outside an agency's boundaries. State law and LAFCO policies encourage the development of vacant lands within existing city limits and require that urban development be steered away from existing agricultural lands. Therefore we encourage the District to explore opportunities within the Morgan Hill city limits for future school sites or other facilities.

The subject properties are also part of a major urban service area amendment application from the City of Morgan Hill that is currently under review by LAFCO staff and which will be considered by LAFCO at its March 11, 2016 Public Hearing. According to the documentation that LAFCO received from the City in support of this request, these parcels are planned for sports, recreation, and leisure type of uses and not for a public facility use. If LAFCO does not approve the City's request, these lands will remain unincorporated.

You may also be aware that Santa Clara County does not allow urban development to occur in the unincorporated area and does not provide urban services such as sewer and water service in the unincorporated area, consistent with the longstanding countywide urban development policies which state that urban development should occur only on lands annexed to cities and not within unincorporated areas; and that the cities should be responsible for planning, annexing and providing services to urban development within their urban service areas in an orderly, planned manner.

Additionally, State law does not allow a city to provide services outside of its boundaries without LAFCO's approval and LAFCO policies discourage such extension of services outside jurisdictional boundaries.

Therefore, we respectfully request that you consider these issues prior to considering siting schools or district facilities in the unincorporated area. Please distribute this letter to the District's Board of Directors for their consideration of Agenda Item A.2.e.

If you have any questions regarding the information presented in this letter, please contact me at (408) 299-5127.

Sincerely,



Neelima Palacherla  
LAFCO Executive Officer

Cc:

LAFCO Members  
Steve Rymer, City Manager, City of Morgan Hill  
Kirk Girard, Director, County Planning and Development Department



January 18, 2017

VIA EMAIL [[betandos@mhusd.org](mailto:betandos@mhusd.org)]

Steve Betando, Superintendent  
Morgan Hill Unified School District  
15600 Concord Circle  
Morgan Hill, CA 95037

**RE: MHUSD'S POTENTIAL PLANS TO PURCHASE LANDS IN SOUTHEAST  
QUADRANT FOR FUTURE SCHOOL SITES AND FACILITIES**

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Dear Mr. Betando,

On February 2, 2016, LAFCO provided the Morgan Hill Unified School District with a letter raising concerns about the District's potential plans to purchase properties (i.e. APNs 817-18-001 & 002; and APNs 817-16-002, 003, 004, & 005) for future school sites and facilities within the unincorporated area known as the Southeast Quadrant, which includes some of the last remaining farmland in Santa Clara County. At the time, the subject properties were part of a major urban service area amendment application from the City of Morgan Hill that was under review by LAFCO staff and was scheduled to be considered by LAFCO in March 2016. As you may know, LAFCO at its March 11, 2016 Public Hearing denied the City's application and these lands remain unincorporated, located outside of the City's Urban Service Area and planned for non-urban, agricultural, and rural uses.

Based on the District's recent Board Meeting Agendas and our phone conversation, we understand that the District continues to have plans to purchase some of these properties and potentially others within the unincorporated area to locate future District facilities such as a middle school or high school. LAFCO would like to reiterate its continued concern about such an approach to planning for future school sites and facilities. Cities, including Morgan Hill, should plan for urban services/facilities, such as schools, to be located within their existing boundaries to serve the city's population. Locating schools within the existing urban core will help curb urban sprawl, preserve agricultural lands, and reduce greenhouse gas emissions.

As you and the District's Board are aware, LAFCO is a state mandated independent local agency with countywide jurisdiction. Its primary goals are to discourage urban sprawl, preserve agricultural and open space lands, and encourage efficient delivery of services. LAFCO regulates the boundaries of cities and special districts; and the extension of

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70 West Hedding Street ▪ 8th Floor, East Wing ▪ San Jose, CA 95110 ▪ (408) 299-5127 ▪ [www.santaclaralafco.org](http://www.santaclaralafco.org)

COMMISSIONERS: Sequoia Hall, Ash Kalra, Linda J. LeZotte, Tara Martin-Milius, Mike Wasserman, Susan Vicklund Wilson, Ken Yeager

ALTERNATE COMMISSIONERS: Cindy Chavez, Yoriko Kishimoto, Raul Peralez, Rob Rennie, Terry Trumbull

EXECUTIVE OFFICER: Neelima Palacherla

services outside an agency's boundaries. State law and LAFCO policies encourage the development of vacant lands within existing city limits and require that urban development be steered away from existing agricultural lands. Therefore we encourage the District to explore opportunities within the Morgan Hill city limits for future school sites or other facilities.

As you and the District's Board are also aware, Santa Clara County does not allow urban development to occur in the unincorporated area and does not provide urban services such as sewer and water service in the unincorporated area, consistent with the longstanding countywide urban development policies which state that urban development should occur only on lands annexed to cities and not within unincorporated areas; and that the cities should be responsible for planning, annexing and providing services to urban development within their urban service areas in an orderly, planned manner. Additionally, State law does not allow a city to provide services outside of its boundaries without LAFCO's approval and LAFCO policies discourage such extension of services outside jurisdictional boundaries.

Furthermore, there is a growing concern at the State level about the use of pesticides near school sites which is very likely to result in greater restrictions on local agricultural operators in the upcoming years. Accordingly, it is prudent to plan for new schools and facilities to be sited away from agricultural areas in order to avoid adversely impacting current or future agricultural operations on surrounding lands.

Therefore, we respectfully request that the District and the City of Morgan Hill work collaboratively to proactively plan for and site schools within the existing city limits in order to prevent the conversion of valuable farmland, make use of existing services/infrastructure, and help reduce greenhouse gas emissions. Please distribute this letter to the District's Board of Directors for their consideration.

If you have any questions regarding the information presented in this letter, please contact me at (408) 993-4713.

Sincerely,



Neelima Palacherla  
LAFCO Executive Officer

Cc:

LAFCO Members  
Steve Rymer, City Manager, City of Morgan Hill  
Kirk Girard, Director, County Planning and Development Department



**URBAN SERVICE AREA AMENDMENT PROPOSALS (2000 – Present)**

<b>Jurisdiction</b>	<b>Title of Project</b>	<b>Type of USA Amendment</b>	<b>LAFCO Hearing / Action Date</b>	<b>Staff Recommendation</b>	<b>LAFCO Action</b>
1. Morgan Hill	Morgan Hill 2000 USA Amendment				
	• Application Area I	Expansion	06/28/2000	Deny	Approved
	• Application Area II	Expansion	06/28/2000	Deny	Approved
	• City Area I	Expansion	06/28/2000	Approve	Approved
	• City Area III	Expansion	06/28/2000	Approve	Approved
	• City Area IV	Expansion	06/28/2000	Approve	Approved
	• City Area V	Expansion	06/28/2000	Approve	Approved
2. Los Gatos	Los Gatos 2000 Minor USA Amendment (Novitiate No. 3)	Expansion	06/28/2000	Approve	Approved
3. Los Altos	Los Altos 2000 USA Amendment (Vista Grande Avenue 00-01)	Expansion/ Retraction	02/14/2001	Approve	Approved
4. Los Gatos	Los Gatos 2001 USA Amendment (17975 Foster Road)	Expansion	08/03/2001	Approve with conditions	Approved with conditions
5. Morgan Hill	Morgan Hill 2001 USA Amendment				
	• Area 1 - Sunnyside (Stoddard)	Expansion	06/13/2002	Deny	Denied
	• Area 2 - Hale Avenue (Catholic High School)	Expansion	06/13/2002	Approve	Approved
	• Area 3 - Soccerfield	Expansion	06/13/2002	Approve	Approved
6. Gilroy	Gilroy USA Expansion 2002 (Gilroy Sports Park)	Expansion	10/09/2002	Approve a portion with conditions	Approved a portion with conditions

### URBAN SERVICE AREA AMENDMENT PROPOSALS (2000 – Present)

Jurisdiction	Title of Project	Type of USA Amendment	LAFCO Hearing / Action Date	Staff Recommendation	LAFCO Action
7. Morgan Hill	Morgan Hill USA Amendment 2002 <ul style="list-style-type: none"> <li>Area I (Diana-Kubo / Patel)</li> </ul>	Expansion	04/09/2003	Approve a portion	Approved a portion
	<ul style="list-style-type: none"> <li>Area II (Aquatic Center)</li> </ul>	Expansion	04/09/2003	Approve	Approved
8. San Jose	San Jose 2002 USA Amendment <ul style="list-style-type: none"> <li>Area A - Dixon Landing Road</li> </ul>	Expansion	12/11/2002	Approve with condition	Approved with condition
	<ul style="list-style-type: none"> <li>Area B - Murillo Avenue</li> </ul>	Expansion	12/11/2002	Approve	Approved
	<ul style="list-style-type: none"> <li>Area C - Murillo Avenue/North Quimby</li> </ul>	Expansion	12/11/2002	Approve	Approved
9. Morgan Hill	Morgan Hill USA Amendment 2003 <ul style="list-style-type: none"> <li>2003A (Sobrato High School)</li> </ul>	Expansion	02/11/2004	Approve	Approved
	<ul style="list-style-type: none"> <li>2003B (Boys Ranch Water Tank)</li> </ul>	Expansion	10/08/2003	Approve	Approved
10. Saratoga	Saratoga 2004 USA Amendment (Big Basin Way)	Expansion	06/09/2004	Approve	Approved
11. Morgan Hill	Morgan Hill USA Amendment 2005 <ul style="list-style-type: none"> <li>2005A (Holiday Lake Estate)</li> </ul>	Expansion	10/12/2005	Approve	Approved
	<ul style="list-style-type: none"> <li>2005B (Hill Road and Diana Ave)</li> </ul>	Expansion	10/12/2005	Approve	Approved
12. San Jose	San Jose 2005 USA Amendment (Story No. 56)	Expansion	10/12/2005	Approve	Approved
13. Gilroy	Gilroy USA Expansion 2006 (Lands of Barberi)	Expansion	04/12/2006	Deny or approve with conditions	Approved with conditions
14. Milpitas	Milpitas 2006 USA Amendment	Retraction	08/09/2006	Approve	Approved
15. Morgan Hill	Morgan Hill USA Amendment 2006 (Black Rock)	Expansion	04/04/2007	Deny	Approved

### URBAN SERVICE AREA AMENDMENT PROPOSALS (2000 – Present)

Jurisdiction	Title of Project	Type of USA Amendment	LAFCO Hearing / Action Date	Staff Recommendation	LAFCO Action
16. San Jose	San Jose 2007 USA Amendment (Riverside No. 52)	Expansion	02/06/2008	Approve	Approved
17. Campbell	Campbell USA Amendment 2009 (West Parr Avenue)	Expansion	06/03/2009	Approve	Approved
18. Los Gatos	Los Gatos USA Amendment 2010 (Lands of Midpeninsula Regional Open Space District)	Retraction	06/01/2011	Approve	Approved
19. Saratoga	Saratoga 2011 USA Amendment (Lands of Garrod Trust)	Expansion	02/08/2012	Approve with conditions	Approved with conditions
20. Campbell	Campbell USA Expansion 2012 (Central Park Reorganization)	Retraction/ Expansion	04/04/2012	Approve	Approved
21. Morgan Hill	Morgan Hill USA Amendment 2012				
	<ul style="list-style-type: none"> <li>• Area 1 – Watsonville-Royal Oaks Mushrooms</li> </ul>	Expansion	10/02/2013	Deny or approve a portion	Approved a portion
	<ul style="list-style-type: none"> <li>• Area 2 – Monterey-City of Morgan Hill</li> </ul>	Expansion	10/02/2013	Deny	Denied
	<ul style="list-style-type: none"> <li>• Area 3 – Monterey-Morgan Hill Bible Church</li> </ul>	Expansion	10/02/2013	Deny	Denied
22. Saratoga	Saratoga 2013 USA Amendment				
	<ul style="list-style-type: none"> <li>• Congress Springs Quarry</li> </ul>	Expansion	02/06/2013	Approve with conditions	Approved with conditions
	<ul style="list-style-type: none"> <li>• Orbit Drive, Orchard Meadow Drive and West Road Properties</li> </ul>	Retraction	02/06/2013	Approve	Approved
23. Monte Sereno	Monte Sereno USA Amendment 2013 (Lucky Road)	Expansion	12/04/2013	Deny	Approved with condition
24. San Jose	San Jose 2014 USA Amendment (Evergreen No. 202)	Expansion	04/02/2014	Approve	Approved

**URBAN SERVICE AREA AMENDMENT PROPOSALS (2000 – Present)**

<b>Jurisdiction</b>	<b>Title of Project</b>	<b>Type of USA Amendment</b>	<b>LAFCO Hearing / Action Date</b>	<b>Staff Recommendation</b>	<b>LAFCO Action</b>
25. Morgan Hill	Morgan Hill 2015 USA Amendment				
	<ul style="list-style-type: none"> <li>• Area 1 (Tennant-Murphy, Southeast Quadrant)</li> <li>• Area 2 (Monterey-Watsonville)</li> </ul>	Expansion	03/11/2016	Deny	Denied
		Expansion	03/11/2016	Deny	Denied
26. Los Altos	Los Altos Hills USA Amendment 2016 (Jardin Drive Reorganization)	Retraction/ Expansion	02/01/2017	Approve	Approved
27. Monte Sereno	Monte Sereno USA Amendment 2016 (Lucky Road)	Expansion	TBD	Deny	TBD