



**NOTICE AND AGENDA FOR REGULAR MEETING - AMENDED**

DATE/TIME: Wednesday, November 9, 2016, 1:30 PM

PLACE: Board of Supervisors Chambers  
651 Pine Street, Martinez, CA 94553

**NOTICE IS HEREBY GIVEN** that the Commission will hear and consider oral or written testimony presented by any affected agency or any interested person who wishes to appear. Proponents and opponents, or their representatives, are expected to attend the hearings. From time to time, the Chair may announce time limits and direct the focus of public comment for any given proposal.

Any disclosable public records related to an open session item on a regular meeting agenda and distributed by LAFCO to a majority of the members of the Commission less than 72 hours prior to that meeting will be available for public inspection in the office at 651 Pine Street, Six Floor, Martinez, CA, during normal business hours as well as at the LAFCO meeting.

All matters listed under CONSENT ITEMS are considered by the Commission to be routine and will be enacted by one motion. There will be no separate discussion of these items unless requested by a member of the Commission or a member of the public prior to the time the Commission votes on the motion to adopt.

For agenda items not requiring a formal public hearing, the Chair will ask for public comments. For formal public hearings the Chair will announce the opening and closing of the public hearing.

If you wish to speak, please complete a speaker's card and approach the podium; speak clearly into the microphone, start by stating your name and address for the record.

**Campaign Contribution Disclosure**

If you are an applicant or an agent of an applicant on a matter to be heard by the Commission, and if you have made campaign contributions totaling \$250 or more to any Commissioner in the past 12 months, Government Code Section 84308 requires that you disclose the fact, either orally or in writing, for the official record of the proceedings.

**Notice of Intent to Waive Protest Proceedings**

In the case of a change of organization consisting of an annexation or detachment, or a reorganization consisting solely of annexations or detachments, or both, or the formation of a county service area, it is the intent of the Commission to waive subsequent protest and election proceedings provided that appropriate mailed notice has been given to landowners and registered voters within the affected territory pursuant to Gov. Code sections 56157 and 56663, and no written opposition from affected landowner or voters to the proposal is received before the conclusion of the commission proceedings on the proposal.

**American Disabilities Act Compliance**

LAFCO will provide reasonable accommodations for persons with disabilities planning to attend meetings who contact the LAFCO office at least 24 hours before the meeting, at 925-335-1094. An assistive listening device is available upon advance request.

**As a courtesy, please silence your cell phones during the meeting.**

## **NOVEMBER 9, 2016 CONTRA COSTA LAFCO AGENDA- AMENDED**

1. Call to Order and Pledge of Allegiance
2. Roll Call
3. Adoption of Agenda
4. Public Comment Period (please observe a three-minute time limit):  
Members of the public are invited to address the Commission regarding any item that is not scheduled for discussion as part of this Agenda. No action will be taken by the Commission at this meeting as a result of items presented at this time.
5. Approval of Minutes for the October 12, 2016 regular LAFCO meeting

### **SPHERE OF INFLUENCE (SOI)/BOUNDARY CHANGES**

6. ***LAFCO 13-08 – Northeast Antioch Reorganization (Area 2A): Annexations to the City of Antioch and Delta Diablo and Detachment from County Service Area P-6*** – On September 14, 2016, the Commission approved this reorganization comprised of 116± acres (19 parcels) located immediately west of State Route 160 and the Antioch Bridge. The Commission’s approval is subject to a protest hearing. On November 9, the Commission will receive the results of the October 31<sup>st</sup> protest hearing.
7. ***LAFCO 16-05 – Montreux Residential Subdivision Boundary Reorganization: Annexations to the City of Pittsburg, Contra Costa Water District (CCWD), and Delta Diablo Zone 2 (DD) and Detachment from County Service Area P-6*** – consider reorganization proposal of 161± acres (four parcels) located on the west and east sides of Kirker Pass Road in conjunction with the proposed development of 351 single-family homes; and consider related actions under the California Environmental Quality Act (CEQA) ***Public Hearing - Continued from September 14, 2016 Meeting***
8. ***LAFCO 16-08 – West County Wastewater District (WCWD) Annexation 315*** – consider a proposed annexation to WCWD of 1.0± acre (APN 433-020-022) located at 6200 Hillside Drive in unincorporated El Sobrante; and consider related actions under the CEQA ***Public Hearing – Continued from October 12, 2016 Meeting***

### **BUSINESS ITEMS**

9. ***Agricultural & Open Space Preservation Policy (AOSPP)*** - receive a report from the Policies & Procedures Committee; consider adopting an AOSPP; and consider related actions under the CEQA
10. ***Proposed Amendments to LAFCO Employee Benefit Plan*** - consider approving amendments to the Employee Benefit Plan to add a new vision plan (employee paid) and a Health Savings Account

### **CORRESPONDENCE**

11. Correspondence from Contra Costa County Employees’ Retirement Association (CCCERA)

### **INFORMATIONAL ITEMS**

12. Commissioner Comments and Announcements
13. Staff Announcements
  - CALAFCO Updates
    - Legislative Update and 2016 Conference Highlights
  - Pending Projects
  - Newspaper Articles

### **ADJOURNMENT**

*Next regular LAFCO meeting – December 14, 2016 at 1:30 p.m.*

LAFCO STAFF REPORTS AVAILABLE AT [http://www.contracostalafco.org/meeting\\_archive.htm](http://www.contracostalafco.org/meeting_archive.htm)

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
MINUTES OF MEETING

October 12, 2016

November 9, 2016  
Agenda Item 5

Board of Supervisors Chambers  
Martinez, CA

1. Chair Mary Piepho called the meeting to order at 1:30 p.m.
2. The Pledge of Allegiance was recited.
3. Roll was called. A quorum was present of the following Commissioners:

County Members Mary Piepho and Alternate Candace Andersen.  
Special District Members Mike McGill and Igor Skaredoff.  
City Members Rob Schroder and Don Tatzin.  
Public Members Don Blubaugh and Alternate Sharon Burke.

Present were Executive Officer Lou Ann Texeira, Legal Counsel Sharon Anderson, and Clerk Kate Sibley.

4. Approval of the Agenda

Upon motion of Blubaugh, second by Tatzin, Commissioners, by a vote of 7-0, adopted the agenda.

AYES: Andersen (A), Blubaugh, McGill, Piepho, Schroder, Skaredoff, Tatzin  
NOES: none  
ABSENT: Glover (M)  
ABSTAIN: none

5. Public Comments

There were no public comments.

6. Approval of September 14, 2016 Meeting Minutes

Upon motion of Tatzin, second by McGill, the minutes were unanimously approved by a vote of 7-0.

AYES: Andersen (A), Blubaugh, McGill, Piepho, Schroder, Skaredoff, Tatzin  
NOES: none  
ABSENT: Glover (M)  
ABSTAIN: none

7. LAFCO 16-02 - Reorganization: Detachments from the Byron Bethany Irrigation District (BBID) and Town of Discovery Bay Community Services District

The Executive Officer provided brief background on this proposal to detach 480± acres from BBID and two parcels equaling approximately 1.5± acres from TODBCSD to correct a boundary overlap, which was approved by the Commission at the August 2016 meeting. Because it was inhabited and two objections to the action were received prior to the August meeting, the reorganization was subject to a protest hearing.

Staff held the protest hearing on September 23, and no protests were filed; consequently, the reorganization is ordered.

Upon motion of Skaredoff, second by Andersen, Commissioners, by a 7-0 vote, received the report, ordered the reorganization, and directed staff to execute the determination.

AYES: Andersen (A), Blubaugh, McGill, Piepho, Schroder, Skaredoff, Tatzin  
NOES: none  
ABSENT: Glover (M)  
ABSTAIN: none

**DRAFT**

8. LAFCO 16-08 – West County Wastewater District (WCWD) Annexation 315

The Executive Officer provided some background on this proposal for the annexation of a single parcel in the unincorporated El Sobrante area. Annexation of the parcel, which is located in an island surrounded by the District, will divide the current island into two smaller islands. This parcel is not in a septic moratorium area, and there is no public health issue. LAFCO staff recommended continuing the matter to allow the District time to contact the surrounding property owners regarding possible annexation and revisit the island issue with the WCWD Board.

The Chair opened the public hearing.

**Juan Ortega, property owner**, stressed that he has paid all of his fees but cannot move forward on his house construction until this issue is resolved. He has waited a long time for a decision.

**Ken Deibert, WCWD**, provided a brief history of the proposal, noting that Mr. Ortega started the process in December of 2015. He added that the WCWD Board discussed the options of annexing only Mr. Ortega's property or reaching out to the other landowners in the island, but decided against annexing the entire territory.

For clarification, the Chair asked if WCWD was asking LAFCO to approve the project as submitted. Mr. Deibert confirmed that.

Commissioners expressed their concern in that WCWD had not made an effort to contact the other landowners in the island area, and that this annexation would create two new islands, which is contrary to LAFCO law. Mr. Deibert responded that WCWD Board policy is to not annex properties before the landowners request such an action.

Commissioner McGill reminded Mr. Deibert that the most recent Water/Wastewater Municipal Services Review, approved in 2014, encouraged WCWD to clean up its islands, and that the District should use this annexation application as an opportunity to do that with one of its islands.

The Chair noted the staff recommendation to continue the matter and asked the property owner if such a delay would impact his project. Mr. Ortega stated that a 30-day delay is not a problem, but to continue to 2017 may mean that he'll have to start all over with his permit fees.

Following further discussion, upon motion by Blubaugh, second by McGill, Commissioners, by a 7-0 vote, continued this proposal to the regular LAFCO meeting on November 9, 2016, and asked WCWD staff to contact the other landowners in the island area to determine their willingness to annex, and work with the WCWD Board to develop a comprehensive plan for cleaning up its islands beginning with this area.

AYES: Andersen (A), Blubaugh, McGill, Piepho, Schroder, Skaredoff, Tatzin  
NOES: none  
ABSENT: Glover (M)  
ABSTAIN: none

*The Chair reversed the order of Agenda Items 8 (LAFCO 16-10) and 9 (Fire and EMS MSR/SOI Updates) due to the number of people awaiting discussion on Agenda Item 9.*

9. Fire and Emergency Medical Services (EMS) MSR/SOI Updates (2<sup>nd</sup> Round)

The Executive Officer reported that this is the final step in the 2<sup>nd</sup> Round Fire and EMS MSR/SOI Updates. In August, the Commission accepted the Final Fire/EMS MSR report and adopted the required determinations for the 8 districts and 3 cities covered in the report. This final step updates the SOIs and recommends governance options.

In conjunction with this MSR, staff recommends retaining the existing coterminous SOIs for CSA EM-1, Moraga Orinda Fire District (MOFD) and San Ramon Valley FPD (SRVFPD); adopting provisional SOIs with conditions for East Contra Costa FPD (ECCFPD) and Rodeo-Hercules FPD (RHFPD); and deferring SOI updates for the West County agencies, pending the formation of a West County Task Force, including cities and districts, to address the recommendations contained in the 2016 MSR,

including undertaking a regional Standards of Coverage study, and a plan for future collaboration on grant opportunities, services and programs.

There were no public comments.

The Chair asked that the reporting period for ECCFPD be shortened from six months to a period immediately following the reporting of final November election results.

Upon motion of Tatzin, second by Blubaugh, Commissioners unanimously, by a 7-0 vote, determined that the SOI updates are exempt under the CEQA General Rule exemption §15061(b)(3); updated the SOIs as recommended for CSA EM-1, MOFD, RHFPD, and SRVFPD; updated the ECCFPD SOI as recommended but with an earlier reporting period; and deferred SOI updates for Contra Costa County FPD, Crockett Carquinez FPD, and Kensington FPD pending an update on collaborative efforts in West County.

AYES: Andersen (A), Blubaugh, McGill, Piepho, Schroder, Skaredoff, Tatzin  
NOES: none  
ABSENT: Glover (M)  
ABSTAIN: none

10. LAFCO 16-10 - Dougherty Valley Annexation # 17 to the City of San Ramon and Detachment from County Service Area (CSA) P-6

The Executive Officer provided an overview of the proposal, noting that this is the 17<sup>th</sup> in a series of planned annexations to the City of San Ramon. This annexation also includes the detachment of the area from CSA P-6. The subject area comprises 43.97± acres located directly south of Ivy Leaf Springs Road in the Dougherty Valley Specific Plan (DVSP) Area.

Commissioner Burke questioned the ongoing arrangement whereby the DVSP area remains in CSA M-29, and expressed concern regarding the financial arrangement between the City and the County and the timely transfer of money to fund City services. She offered to help staff research this.

Upon motion by Andersen, second by Blubaugh, Commissioners unanimously, by a 7-0 vote, certified that it reviewed and considered the information contained in the EIR and CEQA documentation; approved the proposal known as Dougherty Valley Reorganization # 17: Annexation to City of San Ramon and Detachment from CSA P-6, with specified conditions; allowed the overlap of the City and CSA M-29; determined that the territory being annexed is liable for the continuation of taxes, assessments and charges; found that the subject territory is inhabited, received no objections; waived the protest proceeding, and directed staff to complete the proceeding.

AYES: Andersen (A), Blubaugh, McGill, Piepho, Schroder, Skaredoff, Tatzin  
NOES: none  
ABSENT: Glover (M)  
ABSTAIN: none

*Commissioner McGill departed at 2:32.*

11. Request to Transfer Jurisdiction from Alameda LAFCO to Contra Costa LAFCO

The Executive Officer reported that Contra Costa LAFCO recently received an application from CCCSD to annex property to both EBMUD and CCCSD in conjunction with the Faria Preserve West Reorganization. The project site is located in the City of San Ramon and was part of a previous proposal to this LAFCO. In 2009, LAFCO approved the annexation of what was then the entire parcel, including the subject property, to the City of San Ramon. The entire parcel, including this portion of the parcel, is within the City's voter approved UGB. However, in 2009, the Commission voted to exclude the subject area from the annexations to CCCSD and EBMUD given the area is outside the County's ULL, was designated open space and intended to house an EBMUD water tank, and there was no need for municipal water/sewer services to the area.

Recent project design revisions have resulted in the need to relocate approximately 17 townhouse units to a portion of the subject parcel, and municipal water and sewer services are now needed to serve these units.

Staff noted that in addition to State laws that govern boundary changes and the transfer of jurisdiction, Alameda and Contra Costa LAFCOs have adopted *Procedures for Processing Multi-County Changes of Organization or Reorganization - Alameda and Contra Costa LAFCOs*. Alameda and Contra Costa LAFCOs have a history of transferring jurisdiction. These procedures provide for an initial review and consultation by the LAFCO Executive Officers, which has occurred.

Upon motion of Tatzin, second by Andersen, Commissioners, by a 6-0 vote, agreed to assume exclusive jurisdiction for this proposal, and authorized LAFCO staff to send a letter to Alameda LAFCO requesting a transfer of jurisdiction.

AYES: Andersen (A), Blubaugh, Piepho, Schroder, Skaredoff, Tatzin  
NOES: none  
ABSENT: Glover (M), McGill (M)  
ABSTAIN: none

12. FY 2016-17 First Quarter Budget Report

The Executive Officer reported that total revenues are at approximately 98% of projected revenues; expenditures at this time are at 14% of projected expenses. New applications are on par with FY 2015-16. Further, that no budget adjustments are needed at this time, and staff will continue to keep the Commission apprised of any budget issues.

Upon motion of Andersen, second by Tatzin, Commissioners, by a 6-0 vote, received the report.

AYES: Andersen (A), Blubaugh, Piepho, Schroder, Skaredoff, Tatzin  
NOES: none  
ABSENT: Glover (M), McGill (M)  
ABSTAIN: none

13. 2016 GASB 45 Alternative Measurement Method (AMM) Report

The Executive Officer reported that in order to fund post-employment health benefits for its retirees and minimize future fiscal impacts to LAFCO, the Commission initiated a plan which includes: 1) funding future costs, 2) participating in a trust to hold the funds, and 3) conducting an actuarial valuation (every 2-3 years) to calculate the future liability for retiree healthcare and other post-employment benefits and the employer's annual contribution rate. It is recommended that LAFCO prepare an actuarial report to estimate future liability and annual contribution rates every 2-3 years. Given LAFCO's size, we prepare an AMM report in lieu of an actuarial valuation. Through LAFCO's participation in a consortium with CSDA and the California School Boards Association, Demsey Filliger & Associates LLC prepared LAFCO's AMM. LAFCO completed its first AMM report in 2014; this is the second AMM.

The report shows an Employer-Paid Accrued Liability of \$546,116, an unfunded accrued liability of \$463,815, and an annual required contribution of \$52,505. LAFCO has set aside funds for this liability starting in FY 2011-12. To date, LAFCO has accrued \$82,301 (including interest earned), which is held in the PARS trust account and reflected in the 2016 AMM report.

Upon motion of Tatzin, second by Blubaugh, Commissioners, by a 6-0 vote, received the report.

AYES: Andersen (A), Blubaugh, Piepho, Schroder, Skaredoff, Tatzin  
NOES: none  
ABSENT: Glover (M), McGill (M)  
ABSTAIN: none

14. 2017 LAFCO Meeting Schedule

The Executive Director presented the 2017 meeting schedule, noting that no modifications were necessary and that all meetings will take place on the second Wednesday of each month.

Upon motion of Andersen, second by Skaredoff, Commissioners, by a 6-0 vote, received the report.

AYES: Andersen (A), Blubaugh, Piepho, Schroder, Skaredoff, Tatzin  
NOES: none  
ABSENT: Glover (M), McGill (M)  
ABSTAIN: none

15. Correspondence from CCCERA

There were no comments on this item.

16. SDRMA Special Acknowledgment Awards 2015-16

Commissioners acknowledged the awards.

17. Commissioner Comments and Announcements

Commissioner Tatzin announced that because Commissioners' preferences for Versions 1 and 2 of the AOSPP were pretty evenly split, the committee is planning to present a Version 3 at the November meeting.

Commissioner Skaredoff noted that there was to be a forum titled "Living Creeks" at the Lafayette Veterans Hall that evening.

18. Staff Announcements

The Executive Officer reminded Commissioners that the Contra Costa Special Districts Association will hold its quarterly meeting on Monday, October 17.

There will be a protest hearing for LAFCO 13-08: Northeast Antioch Reorganization (Area 2A) on Monday, October 31.

The meeting adjourned at 2:43 p.m.

Final Minutes Approved by the Commission November 9, 2016.

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

By \_\_\_\_\_  
Executive Officer



Lou Ann Teixeira  
*Executive Officer*

**MEMBERS**

Donald A. Blubaugh <i>Public Member</i>	Mary N. Piepho <i>County Member</i>
Federal Glover <i>County Member</i>	Rob Schroder <i>City Member</i>
Michael R. McGill <i>Special District Member</i>	Igor Skaredoff <i>Special District Member</i>
Don Tatzin <i>City Member</i>	

**ALTERNATE MEMBERS**

Candace Andersen  
*County Member*  
 Sharon Burke  
*Public Member*  
 Tom Butt  
*City Member*  
 Stanley Caldwell  
*Special District Member*

November 9, 2016  
 Agenda Item 6

November 9, 2016 (Agenda)

Contra Costa Local Agency Formation Commission  
 651 Pine Street, Sixth Floor  
 Martinez, CA 94553

**Results of Protest Hearing**

**Northeast Antioch Reorganization (Area 2A): Annexations to the City of Antioch and Delta Diablo and Detachment from County Service Area P-6**

Dear Commissioners:

At a public hearing on September 14, 2016, the Commission approved the Northeast Antioch Reorganization (Area 2A) including annexations to the City of Antioch and Delta Diablo and a corresponding detachment from County Service Area P-6. The subject area is comprised of 116± acres (19 parcels) and is located immediately west of State Route 160 and the Antioch Bridge.

In accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, LAFCO is the agency to conduct the protest hearing. The purpose of the protest hearing is to receive written protests from affected landowners/registered voters regarding the proposal and determine whether a majority protest exists. With regard to this reorganization, which is inhabited (i.e., contains 12 or more registered voters), the Commission shall take one of the following actions:

- **Order the reorganization** if written protests have been filed by less than 25% of registered voters or landowners owning less than 25% of the assessed value of land within the subject area; or
- **Order the reorganization subject to an election** if at least 25% but less than 50% of voters, or at least 25% of landowners owning 25% or more of the assessed value of land protest; or
- **Terminate the proceedings** if written protests have been filed by a majority of voters in the subject area.

The protest hearing was properly noticed and held on Monday, October 31, 2016, at 10:00 am in the LAFCO office located at 651 Pine Street, 6<sup>th</sup> Floor in Martinez. The hearing was conducted by the LAFCO Executive Officer, who is delegated the authority to conduct the protest hearing on behalf of the Commission. There were four attendees at the protest hearing, including two



registered voters from the area, Forrest Ebbs, Community Development Director, City of Antioch, Sharon Burke (attending as a member of the public), and LAFCO staff. Both landowners and registered voters filed protests. Landowner protests exceed the 25% threshold and registered voter protests exceed the 50% threshold; thus the reorganization is terminated.

Pursuant to Government Code section 52020.7, LAFCO must issue a Certificate of Termination.

**RECOMMENDATION:** Receive the results of the protest hearing, terminate the reorganization, and direct staff to execute the determination (attached).

Sincerely,

Lou Ann Texeira  
Executive Officer

c: Distribution List

Attached – LAFCO Certificate of Determination

**CONTRA COSTA LOCAL AGENCY FORMATION  
CERTIFICATE OF TERMINATION OF PROCEEDINGS**

The following proposal entitled:

**Northeast Antioch Reorganization (Area 2A): Annexations to the City of Antioch and Delta Diablo and Detachment from County Service Area P-6 (LAFCO 13-08):** proposed boundary reorganization of 116± acres (19 parcels) located immediately west of State Route 160 and the Antioch Bridge.

Has been terminated due to

- MAJORITY WRITTEN PROTEST PURSUANT TO GOVERNMENT CODE SECTION 57078
  
- REJECTION BY VOTERS IN AN ELECTION PURSUANT TO GOVERNMENT CODE SECTION 57179

I hereby certify that as Executive Officer for the Contra Costa Local Agency Formation Commission, the above listed proposal is terminated pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

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LOU ANN TEXEIRA  
EXECUTIVE OFFICER

November 9, 2016

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
EXECUTIVE OFFICER'S REPORT

November 9, 2016 (Agenda)

November 9, 2016  
Agenda Item 7

LAFCO 16-05 Montreux Residential Subdivision Boundary Reorganization: Annexations to the City of Pittsburg ("City"), Contra Costa Water District (CCWD) and Delta Diablo Zone 2 (DD) and Detachment from County Service Area (CSA) P-6

PROPONENT City of Pittsburg by Resolution No. 15-13128 adopted November 2, 2015

SYNOPSIS The applicant proposes to annex 161± acres including four parcels (APNs 089-020-009/011/014/015) located on the east and west sides of Kirker Pass Road, south of the Pittsburg city limits (Attachment 1). Annexation will bring the properties within City of Pittsburg city limits and within the service boundaries of CCWD and DD. A corresponding detachment of the same area from CSA P-6 is also proposed.

This item was continued from the September 14, 2016 LAFCO meeting to allow for further work with the developer, City of Pittsburg, Contra Costa County Fire Protection District (CCCFPD) and other parties on the LAFCO conditions as presented at the end of this report under *Alternatives for Commission Action*. LAFCO staff believes that the conditions, as proposed, are acceptable to the parties.

DISCUSSION

The reorganization proposal encompasses a 161± acre site, including a 148.3± acre main project site, a 5.45± acre portion of Kirker Pass Road, and a 7.19± acre parcel located east of Kirker Pass Road. (outside the City limits). In addition, the project includes a 16.8± acre off-site area which is already within the boundaries of the City, CCWD and DD.

The site is currently vacant and utilized as grazing land. There are no buildings on the site, only high-tension overhead power lines and associated towers. The proposed changes in land use include development of 351 single-family homes on 77± acres with lots averaging 7,668 sq. ft.; the remaining 71± acres and the 7.19± acre parcel on the east side of Kirker Pass Road will be set aside for open space. The proposed project would also include a partially buried water tank at the top of the hill (northern boundary), along with a greenwall (southern boundary), two storm water retention basins (eastern boundary), and a small open space area (northeastern corner). In addition, an offsite storm water retention basin will be constructed to serve the project (northwest of the project site). This area is already within the City.

Government Code §56668 sets forth factors that the Commission must consider in evaluating a proposed boundary change as discussed below. In the Commission's review, no single factor is determinative. In reaching a decision, each is to be evaluated within the context of the overall proposal.

**1. Consistency with the Sphere of Influence (SOI) of Any Local Agency:**

The area proposed for annexation is within the SOIs of the City of Pittsburg, CCWD and DD, as approved by LAFCO in 2009. The subject area is within the City of Pittsburg's 2005 voter approved Urban Limit Line (ULL) - Measure P, and inside the County's ULL.

## 2. Land Use, Planning and Zoning - Present and Future:

Contra Costa County's General Plan and zoning designations for the main project site are AL (Agricultural Land), and A-4 (Agricultural Preserve), respectively. The City of Pittsburg's General Plan designations for the area include Low Density Residential and Open Space. The Land Use element of the City's General Plan includes the proposal site in the Woodlands Subarea. In November 2015, the Pittsburg City Council amended the rezoning of the main site from HPD (Hillside Planned Development) to RS-6 (Single Family Residential, 6,000 sq. ft. minimum lot size). The 71± acres and the 7.19± acre parcel are zoned OS (Open Space). Measure P rezoned the main project site for HPD and OS. Measure P provided that the rezoning could be changed by either a subsequent vote of the voters or by a majority vote of the Pittsburg City Council. The proposed uses conform to existing City of Pittsburg land use designations, as amended.

No subsequent change may be made to the general plan or zoning for the annexed territory that is not in conformance to the rezoning designations for a period of two years after the completion of the annexation, unless the legislative body for the city makes a finding at a public hearing that a substantial change has occurred in circumstances that necessitate a departure from the rezoning in the application to the Commission [Government Code §56375(e)];

The City's application includes a consistency analysis relating to ridgelines, wetlands, creek channels, valley oaks, rock outcrop, view shed, storm water detention basins, and street grades. Consistent with the Woodland Subarea policies, the project includes 43.4± acres along the southern portion of the site that will remain undeveloped and provide the required greenbelt. This feature also eliminates the potential for development on any designated "Minor" or "Major" ridgelines and preserves a seasonal wetland swale in this portion of the main project site. The City's analysis concludes that the project is consistent with the City's General Plan Goals and Policies.

The project site is within the bounds of the City's ULL; and the proposed southern greenwall is also within the bounds of the City's ULL and includes open space as a buffer between the proposed residential development and the undeveloped open space lands to the south of the ULL, further ensuring that no service would be extended beyond the ULL.

The project site is bounded on the west by undeveloped hillside grazing that includes a PG&E transmission line and natural gas pipeline corridor; bounded on the east by Kirker Pass Road, with undeveloped hillside grazing land; bounded on the south by hillside grazing land; and to the north is a grassy ridgeline with older residential subdivisions beyond.

## 3. The Effect on Maintaining the Physical and Economic Integrity of Agricultural Lands and Open Space Lands:

The project site is currently used for grazing. A Land Conservation Agreement (Williamson Act Contract) previously existed on the site, and expired in January 2016.

The City concludes in its Final EIR that due to the grazing activity, the project site meets the definition of "Prime Agricultural Land" as defined in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH) - Government Code §56064. Consequently, the project will result in the conversion of prime agricultural land to an urban use. *There are no*

*measures contained in the City's Mitigation Monitoring and Reporting Program (MMRP) to address the impacts to Prime Agricultural Land.*

Regarding open space, there were numerous comments and concerns submitted by agencies (i.e., Contra Costa Water District, San Francisco Bay Regional Water Quality Control Board, East Bay Regional Park District), organizations (Save Mount Diablo) and individuals in response to the City's EIR. Many of these concerns focus on impacts to wetlands, hillsides, view shed, wildlife, and open space. Additional concerns were raised relating to hydrology, traffic, bike and pedestrian access, cumulative impacts, and consistency with the City's General Plan.

In response to some of these comment and concerns, the City recirculated its Draft EIR to respond to new information relating to biological resources on the project site. The EIR found that there were significant and unavoidable impacts relating to aesthetics, air quality, and public services (fire), as well as significant and unavoidable cumulative impacts relating to air quality. Ultimately, the City adopted a Statement of Overriding Considerations, and an MMRP for the project.

Included in the MMRP are measures to address scenic views, visual character, biological resources, wildlife, historic resources, cultural resources, and other impacts.

In conjunction with adoption of a new ULL for the City of Pittsburg (November 2005), the City and Altec Homes, Inc., Albert D. Seeno III and Albert D. Seeno Jr. entered into an MOU that includes the following provisions:

- The parties desired a permanent new City ULL, beyond which no development can occur in the future and to provide maximum public benefit for the residents of the City of Pittsburg for its housing, transportation, open space and park needs.
- Following passage of the City's ULL in 2005, the City will commence a General Plan study which, among other things, will 1) prevent the ability of urban utilities and services to extend beyond the ULL, and 2) establish guidelines for the development of permanent green belt areas between new development and areas outside the ULL, including a green belt area generally encompassing the southerly 1/5 (approximately) of the Montreux area.
- Developer and Albert D. Seeno III agree to a mitigation plan of their own providing at no cost to the parties hereto three acres of mitigation land replacement for one acre of land of development that is affected by resource agency required mitigations – such mitigations can be provided on the development site if possible, and if not, off site.
- Developer and Albert D. Seeno III agree to pay \$2,000 per dwelling unit to the East Bay Regional Park District (EBRPD) for additional public open space acquisition or for the maintenance of public open space. Payment of these fees will in no way affect any legal obligation to fund park improvement or to pay park-related fees to the City.
- The City shall study and enact, if supportable, a fee ordinance for EBRPD to acquire and maintain public open space in conjunction with the \$2,000 fee described above. The City will require that EBRPD, in spending the fees, give priority to spending such fees

in and around the City of Pittsburg open space south of the City and within the City's planning area.

- Albert Dr. Seeno Jr. agrees to protect the 800± acre property commonly known as Southport in accordance with specified terms and conditions.
- Developer, Albert D. Seeno Jr., and Albert D. Seeno III shall dedicate a green wall within their properties being brought inside the City's new ULL on the same properties as the development, including the Montreux property. Green wall is defined as a buffer or greenbelt through which no urban services (water, sewer) may penetrate.

Regarding the project, the City has zoned 71± acres and the 7.19± acre parcel on the east side of Kirker Pass Road as Open Space, and will require that these areas be set aside for open space. In accordance with the City's project EIR and MMRP, and pursuant to the 2006 MOU, the City will require the developer to permanently preserve 43.4± acres in the southern portion of the site, as a greenbelt buffer through a recordation of deed restriction or some other appropriate mechanism, prior to acceptance of the Final Map. Although the City has designated 71± acres plus the 7.19± acre parcel as "open space," City staff indicates that the permanent preservation of the 43.4± acres is consistent with the City's General Plan and with a Memorandum of Understanding (MOU) between the City and the developer. In addition to land dedication, the project applicant will pay a development fee and wetland fee in accordance with the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (ECCCHCP/NCCP). The City's conditional approval of the Vesting Tentative Map and MMRP provide for the following:

- In order to receive coverage under the ECCCHCP/NCCP, the project applicant shall pay a Development Fee and a Wetland Mitigation Fee, as described below:
- Development Fee: This fee will cover the development of 123± acres of upland habitat that primarily includes annual grassland. Included within this area are 2.8± acres of exposed rock area, approximately 0.5± acre stand of valley oaks, and 1.3± acres of coastal scrub.
- Wetland Mitigation Fee: This fee shall be paid for the filling of the Waters of the US and any Waters of the State. This fee will cover the filling of 0.003± acres of the Waters of the US, as delineated on the Approved Jurisdictional Determination. If any waters on the project site are determined by the RWQCB to be Waters of the State (currently estimated at approximately 0.119± acres), then the project applicant shall also pay this fee as may be required by the HCP/NCCP, for the filling of the Waters of the State.
- Payment of the Development Fee would address the loss of potential habitat of special-status plant species (e.g., big tarplant, round-leaved filaree) associated with grasslands, while payment of the Wetland Mitigation Fee would specifically address the loss of up to 0.016± acres of potentially suitable seasonal wetland habitat for adobe navarettia. The fees would be used in part to protect these affected special status plant species by bringing existing populations of the species under protection.
- Alternately, the project applicant may, in accordance with the terms of PMC Chapter 15.108, offer to dedicate land or create and restore wetlands in lieu of some or all of the mitigation fees.
- All applicable mitigation fees shall be paid, or an "in-lieu-of fee" agreement executed, prior to the issuance of a grading permit for the project.

*Given the proposed project impacts prime agricultural land and open space lands, the LAFCO staff recommendation includes a condition to address the impacts of the proposed development on these resources. LAFCO staff has worked with the City and developer on this condition.*

#### **4. Topography, Natural Features and Drainage Basins:**

Both the main project site and the offsite parcel are characterized as undeveloped hilly terrain. The main project site includes several natural hills and ridges that frame a broad Y-shaped valley in the center that is open to the eastern project frontage along Kirker Pass Road. The lowest existing valley elevation is 250± feet above mean sea level (MSL). The existing ridgeline on the southern portion of the site reaches an elevation of 780+ feet above MSL, and the ridgeline along the northern boundary reaches an elevation of 655 feet above MSL.

The proposed project will involve extensive grading and excavation and reconfiguration of the northern ridgeline, which is not designated as a Major or Minor ridgeline. The City indicates that although the northern ridgeline will be excavated and reduced in its elevation by 75± feet to accommodate the water tank, the grading will mimic the existing character of the ridge and will maintain the natural appearance of the hillside. Even with the proposed grading, there will be significant and unavoidable impacts to the view shed.

The project proposes a greenbelt along the southern ridgeline; however, the project also calls for grading the eastern portion of this ridgeline, which is designated a Major Ridgeline.

Surrounding the site, there is undeveloped hillside grazing land (which includes a PG&E transmission line and natural gas corridor) to the west, and the Keller Canyon open space beyond; Kirker Pass Road with undeveloped hillside grazing land beyond to the east; and undeveloped hillside grazing land along with protected open space areas to the south. North of the site, there is undeveloped grassy ridgeland with older residential development beyond.

#### **5. Population:**

Development of 351 single family homes is planned for the annexation area. The estimated population increase for the annexation area is approximately 1,225 based on the 2014 American Community Survey data which estimates an average of 3.49 persons per household for the City of Pittsburg.

#### **6. Fair Share of Regional Housing:**

In its review of a proposal, LAFCO must consider the extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the regional council of governments. Regional housing needs are determined by the State Department of Housing and Community Development; the councils of government throughout the State allocate to each jurisdiction a “fair share” of the regional housing needs (Gov. Code §65584).

In Contra Costa County, the Association of Bay Area Governments (ABAG) determines each city's fair share of regional housing needs. Each jurisdiction is required, in turn, to incorporate its fair share of the regional housing needs into the housing element of its General Plan. In July 2013, ABAG adopted the 2014-2022 Regional Housing Needs Allocation (RHNA) Plan for the San Francisco Bay Area. The RHNA Plan includes the following allocations for the City of Pittsburg: total RHNA is calculated at 2,025 units, including 1,063 above moderate, 316

moderate, 254 low and 392 very low income units. The proposed annexation includes a total of 351 residential units which would help the City meet its current regional housing obligation for moderate or above moderate units.

To satisfy the City's Inclusionary Housing requirements, the developer will construct secondary dwelling units on 35 residential lots in the project, and will require purchasers to enter into regulatory agreements restricting rental charges for the secondary dwelling units to ensure affordability. The City reports that the income restricted accessory dwelling units will allow extended families to live near each other, increase the City's affordable housing stock, and provide opportunities for homeowners to generate additional income.

**7. Governmental Services and Controls - Need, Cost, Adequacy and Availability:**

Whenever a local agency submits a resolution of application for a change of organization or reorganization, the local agency shall also submit a plan for providing services within the affected territory (Gov. Code §56653). The plan shall include all of the following information and any additional information required by the Commission or the Executive Officer:

- (1) An enumeration and description of the services to be extended to the affected territory.
- (2) The level and range of those services.
- (3) An indication of when those services can feasibly be extended to the affected territory.
- (4) An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.
- (5) Information with respect to how those services will be financed.

The proposal before the Commission is to annex the property to the City of Pittsburg, CCWD and DD for the provision of municipal services, including water and sanitary sewer services. The level and range of services will be comparable to those services currently provided within the City. Municipal services are needed to support future development in the area. As part of the reorganization proposal, the City and County will rely on the master tax sharing agreement. The annexation area is currently served by various local agencies including, but not limited to, Contra Costa County and CCCFPD.

Following annexation, the City will provide a range of municipal services to subject territory, including drainage, streets and roads, police, parks & recreation, street lighting, sanitary sewer, water and other services. Fire services will continue to be provided by the CCCFPD.

Following annexation, the City will provide sewer collection, and DD will provide sewer treatment and disposal. The City will provide retail water, and Contra Costa Water District (CCWD) will provide wholesale water as summarized below.

***Drainage Services*** – The City will provide drainage services to the subject area. Three storm drains are included in the preliminary grading plan for the project, with two large basins located on the east side of the main project site along Kirker Pass Road, and a third small basin located on the off-site parcel to the northwest of the main project site. The two large basins will serve 90 percent of the main project site, and the small basin will serve the western 10 percent of the project site. The cost associated with the drainage infrastructure will be borne by the developer; ongoing maintenance will be funded by the City, homeowners through a Community Facilities District (CFD) or other funding mechanism, and through local taxes.



***Streets and Roads*** – The existing roadway network includes State Route 4, Kirker Pass Road, Railroad Avenue, Buchanan Road, Harbor Street, Loveridge Road, East Leland Road, Somersville Road, and James Donlon Boulevard. The most significant roadway improvements associated with the proposal include the proposed James Donlon Boulevard Extension, along with construction of interior roads and streets to serve the project and provide access to the local road network. The proposed project would add approximately 2.5 miles of public streets to the City's existing road inventory following annexation.

***Police Services*** – Law enforcement services are currently provided to subject area by the Contra Costa County Sheriff's Department. Upon annexation, police services will be provided by the City, and the area will be detached from the County's police services district (CSA P-6).

The Pittsburg Police Department (PPD) operates from its headquarters located at 65 Civic Avenue, approximately 2.5 miles north of the project site. The PPD has an authorized staffing level of 81 sworn officers and 19 non-sworn employees. The City's General Plan policy establishes a goal of 1.8 sworn officers per 1,000 residents. Based on the City's current population, the current service ratio is 1.18 sworn officers per 1,000 residents. The City is divided into six beats. The beat system is designed to assure rapid response to emergency calls within each beat. The City's goal is to maintain an 8-10 minute response time for Priority 1 calls, and under 30 minutes for priority non-emergency calls. Police response times are dependent on the agency's staffing level and size of the jurisdiction served. The PPD reports that the average response times in 2015 were 12 minutes (Priority 1 calls) and 25 minutes (non-emergency calls). The estimated population increase for the annexation area is approximately 1,225. The City's CEQA document indicates that while no new police facilities will be required to serve the annexation area, additional sworn police officers will be needed to serve the subject area. The City's standard conditions of approval require that the developer annex into the City's CFD for Public Safety Services. The CFD collected fees are intended to provide funding for police services in the annexation area.

***Parks & Recreation*** – Pittsburg has 24 City parks ranging from half-acre mini-parks to the 190-acre Stoneman Park. In addition, Pittsburg residents have access to trails and regional parks near the project site, including the Black Diamond Mines Regional Preserve. The City's General Plan Performance Standards provide a ratio of five acres of community and neighborhood parkland per 1,000 residents, and ensure that residential developers dedicate parkland in accordance with this standard.

The City operates a comprehensive recreation and leisure time program including aquatics, sports, leisure time activities, community events, Small World Park, Senior Center, youth activities, and excursions. The City also sponsors cultural events, festivals, concerts and art shows centered in Old Town.

The proposed development does not involve construction or expansion of neighborhood parks. The development agreement provides for partial fee credit for certain trails and trail improvements constructed by the developer, along with City park in lieu fees; payment to the EBRPD for the purpose of acquiring additional public open space and/or the maintenance of open space areas; and annexation into the City Park Maintenance CFD for ongoing landscape and related maintenance.

**Street Lighting** – The developer will use decorative street lighting within the subdivision, which will be designed to City standards. Ongoing maintenance will be the responsibility of the City and funded by homeowners through collection of local taxes and a Lighting and landscape District.

**Other Services** – The City provides a multitude of other services, including code enforcement, landscape maintenance, library, refuse collection and special services which will be extended to subject area following annexation.

**Fire Protection** – Fire and emergency medical services are, and will continue to be, provided by CCCFPD following annexation. Within the Pittsburg area, there are four fire stations: Station 84 located at 1903 Railroad Avenue and approximately 2.2 miles from the project site; Station 85 located at 2331 Loveridge Road and approximately 1.75 miles from the project site; and Station 86 located at 3000 Willow Pass Road and approximately 3.7 miles from the project site. Station 87 located at 800 West Leland Road, serving western Pittsburg and parts of Bay Point, is currently closed and scheduled to reopen in early 2017.

The City's EIR finds that the proposed project would be located outside the 1.5-mile response radius of an existing or planned fire station, and would not meet the National Fire Protection Association response time guideline of 5 to 6 minutes 90 percent of the time. The City's EIR includes a number of mitigation measures to address the concerns regarding fire service to the project site, including the following:

- required fire facility impact fee of \$591 per single-family unit (We understand that the CCCFPD receives nearly the full \$591, less a small City administrative fee; and that this is one-time – and not ongoing – funding)
- submittal of a fire protection plan that includes details for a fuel modification zone around the subdivision
- required use of fire resistant exterior building materials
- required fire-rated roof assembly of not less than a Class "A"
- minimum fire flow of 1,500 gallons per minute
- restrictions regarding flammable or combustible liquid storage tanks
- deed disclosures notifying all property owners/buyers of proximity of the subdivision to the closest fire station

Nonetheless, the EIR concludes that even with implementation of these mitigation measures, inadequate fire protection service is identified as a significant and unavoidable impact. The City adopted a Statement of Overriding Considerations, in which it concludes that specific economic, legal, social, technological, and other anticipated benefits of the project outweigh the unavoidable adverse impacts, and therefore justify the approval of the Montreux Residential Subdivision. Further, the City finds that the project will result in substantial benefits, which justify approval of the project, as summarized below:

1. The project would further Pittsburg General Plan goals and policies relating to Low Density Residential and new high-end single family residential neighborhoods in the southern hills;
2. The project would further Pittsburg Housing Element goals and policies;

3. The project would assist in meeting the City's current regional fair share housing obligations for the development of moderate and above moderate-income residents, including 35 income restricted accessory dwelling units;
4. The project would further orderly growth, in that the project site is adjacent to the existing City limits, within the City's SOI and ULL, and will result in a logical extension of urban development consistent with good zoning practice, while also limiting future development beyond the project's southern boundary; and
5. The project would provide short term and long term economic benefits. Short-term benefits include providing construction and other related interim jobs and services during the anticipated four-year construction period. Long-term economic benefits include providing executive level housing that may attract new employers to Pittsburg. The project will also generate new revenues for the city in the form of fees, exactions and other fiscal benefits.

*Fire service to the project site remains a concern for LAFCO.* In August 2016, Contra Costa LAFCO completed its 2<sup>nd</sup> round Municipal Service Review (MSR) covering Fire and Emergency Medical Services. The MSR report noted that fire service providers continue to face challenges, including the following:

- Many fire service providers are unable to meet “best practices” for response times and staffing.
- In 2009, when LAFCO completed its 1<sup>st</sup> round MSR, and still today, fire agencies are unable to meet national and state guidelines for fire response times 90% of the time.
- Nearly half of the fire stations in the County are over 40 years old and a significant number are in poor condition, needing repair or replacement.
- Continued population growth, job creation, and changes in health care services affect the volume and location of service calls, creating the need for new facilities and staff resources in order to sustain services. While recovery in real estate and development has benefits, it also has costs in terms of increases in service demands.

Regarding financing, the 2016 MSR notes the following:

- Fire service providers rely primarily on property tax to fund services
- Fire districts face limited sources of revenue, including inability to charge for most services, low property tax shares as many agencies evolved from volunteer agencies, high insurance costs due to the risky nature of the profession, and significant pension liabilities from past underfunding
- The lack of requirements for special taxes from new development increases the burden on fire agencies to obtain a two-thirds special tax voter approval once an area is populated

Included in the Development Agreement (DA) between the City of Pittsburg and Altec Homes, Inc. (Montreux Property), there is a provision (Section 5.08) which provides that “In the event the City forms a CFD to provide for fire services in the City for the CCCFPD and acquisition or replacement of equipment primarily situated in the fire stations located in the City, Developer agrees to take all necessary steps necessary to include the Project Site into the district.” The DA specifies that the levy to be assessed on each legal residential lot in the project area shall be no greater than \$75, and increased annually by the CPI for the San Francisco-Oakland area.

CCCFPD indicates that the District, the developer and the Pittsburg City Manager have reached agreement on supplemental funding for fire service in conjunction with this annexation.

*In support of these efforts, the LAFCO staff recommendation includes a condition to address the impact of the proposed development on the CCCFPD. LAFCO staff has worked with the City and developer on this condition, and has consulted with CCCFPD.*

**Sewer Services** – The City provides wastewater collection services, while DD provides conveyance, treatment and disposal services to the City. DD serves the cities of Antioch and Pittsburg and the unincorporated Bay Point community. DD serves 190,567 residents in a service area of 49± square miles. DD has over 49 miles of sewer main and five pump stations.

The DD treatment plant has an average dry weather flow capacity of 19.5 million gallons per day (mgd). During the reporting period (2010), the average dry weather flow was 13.4 mgd. In 2012, 2013, and 2014, the average dry weather flows at the plant were 13.2, 13.1 and 12.5 mgd, respectively.

The subject area is located in Zone 2 of DD's service area. DD estimates that the proposed 351-unit residential subdivision will generate approximately 77,000 gpd of wastewater discharge. The City's Plan for Service includes details regarding the City's wastewater system, the infrastructure needed to serve the proposed project, and the method to finance wastewater service to the subject area. DD has provided a "will serve" letter agreeing to serve the project area.

#### 8. **Timely Availability of Water and Related Issues:**

Pursuant to the CKH, LAFCO must consider the timely and available supply of water in conjunction with a boundary change proposal. Contra Costa LAFCO policies state that any proposal for a change of organization that includes the provision of water service shall include information relating to water supply, storage, treatment, distribution, and waste recovery; as well as adequacy of services, facilities, and improvements to be provided and financed by the agency responsible for the provision of such services, facilities and improvements.

The City of Pittsburg is a retail water purveyor that obtains the majority of its potable water supply under a wholesale contract with CCWD. This water is diverted as raw water from CCWD's Contra Costa Canal. The remainder of the potable water supply is obtained from the City's two groundwater wells. In 2015, 87% of the City's potable supply was provided by CCWD and 13% was from local groundwater wells.

Raw water from the canal and the groundwater wells is treated at the Pittsburg Water Treatment Plant before distribution throughout the City's service area. The service area is bounded by the City limits, which is currently 15.49± square miles.

Service area population has shown steady growth over the last 20 years, but its future growth rate will be limited by available open and developable land. The City's 2015 population was estimated at 67,628 (DOF, 2015) and is projected to grow to 91,600 by 2040 (Pittsburg, City of Pittsburg 2015-2023 Housing Element, 2015).

According to the City's 2015 Urban Water Management Plan (UWMP), the City's potable water use for 2015 was 8,772 acre-feet per year (AFY), more than 7% lower than the projected water use from the 2010 UWMP. It is anticipated that the City's initiatives in decreasing water

use to meet urban water use targets, as well as the State-mandated drought restrictions, have been the biggest factors leading to this lower than previously anticipated water use.

CCWD's boundary encompasses 220+ square miles in central and eastern Contra Costa County. CCWD's untreated water service area includes Antioch, Bay Point, Oakley, Pittsburg, and portions of Brentwood and Martinez. The District's treated water service area includes Clayton, Clyde, Concord, Pacheco, Port Costa, and parts of Martinez, Pleasant Hill, and Walnut Creek. CCWD also treats and delivers water to the City of Brentwood, Golden State Water Company (Bay Point), Diablo Water District (Oakley), and the City of Antioch. CCWD serves approximately 500,000 (61,085 water connections). The primary sources of water are the U.S. Bureau of Reclamation (USBR) Central Valley Water Project and delta diversions. One of CCWD's prerequisites for service, including annexation, is inclusion in the Central Valley Project (CVP) Service Area. The CVP inclusion review is a separate process, and requires specific environmental documents. The City, the developer and CCWD will work together to complete the CVP process.

The City's Plan for Services provides details regarding the City's water system, the water supply infrastructure needed to serve the proposed project, the water sources, and the method to finance water service to the subject area. CCWD estimates that the Montreux development, once fully developed, will utilize up to 175 AFY of treated water. CCWD indicates that based on the District's most recent Future Water Supply Study and UWMP, CCWD has sufficient supplies to serve the proposed project.

#### **9. Assessed Value, Tax Rates and Indebtedness:**

The annexation area is within tax rate area 86010. The assessed value for the annexation area is \$946,217 (2015-16 roll). The territory being annexed shall be liable for all authorized or existing taxes and bonded debt comparable to properties presently within the annexing agencies.

The City and the County have agreed to use the Master Property Tax Transfer Agreement for the proposed reorganization.

#### **10. Environmental Impact of the Proposal:**

In November 2013, the City of Pittsburg, as Lead Agency, released the Draft Environmental Impact Report (EIR) for the Montreux Residential Subdivision. In December 2014, the City released Recirculated sections of the 2013 Draft EIR (i.e., relating to impacts on biological resources that the City determined were deficient in the original Draft EIR). On August 17, 2015, the City of Pittsburg, as Lead Agency, certified the EIR for the project; and on November 2, 2015, the City approved CEQA Findings, adopted a Statement of Overriding Considerations, and adopted a MMRP for the project. The EIR found that there were significant and unavoidable impacts relating to Aesthetics, Air Quality and Public Services (fire). Further, the EIR found that while there is no impact to agricultural land based on the Farmland Mapping and Monitoring Program, there is an impact to Prime Agricultural Land as defined in the CKH. Copies of the City's environmental documents were previously provided to the Commissioners and are available for review in the LAFCO office.

LAFCO staff provided comment letters to the City in response to the various CEQA documents. In our letters, we provided questions and comments covering various issues, including impacts

to agricultural land (based on LAFCO's definition) and to fire service, noting that the provision of fire service to the proposed development remains a concern to LAFCO. The recommended option to approve the proposed reorganization includes LAFCO terms and conditions to address these issues.

**11. Landowner Consent and Consent by Annexing Agency:**

According to County Elections, there are fewer than 12 registered voters in the area proposed for annexation; thus, the area proposed for annexation is considered uninhabited. The City indicates that 100% of the affected landowners have provided written consent to the annexation. Thus, if the Commission approves the annexation, the Commission may waive the protest hearing (Gov. Code §56662). All landowners and registered voters within the proposal area(s) and within 300 feet of the exterior boundaries of the area(s) have received notice of the LAFCO hearing.

**12. Boundaries and Lines of Assessment:**

The annexation area is within the SOIs of the City of Pittsburg, CCWD and DD and is contiguous to the city and district service boundaries. A corresponding detachment from CSA P-6 of the same area is also proposed. A map and legal description to implement the proposed boundary changes have been received and are subject to final approval by the County Surveyor.

**13. Environmental Justice:**

LAFCO is required to consider the extent to which proposals for changes of organization or reorganization will promote environmental justice. As defined by statute, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services. The proposed annexation is not expected to promote or discourage the fair treatment of minority or economically disadvantaged groups.

**14. Disadvantaged Communities:**

In accordance with recent legislation (SB 244), local agencies and LAFCOs are required to plan for disadvantaged unincorporated communities (DUCs). Many of these communities lack basic infrastructure, including streets, sidewalks, storm drainage, clean drinking water, and adequate sewer service. LAFCO actions relating to Municipal Service Reviews, SOI reviews/amendments, and annexations must take into consideration DUCs, and specifically the adequacy of public services, including sewer, water, and fire protection needs or deficiencies, to these communities. According to the County's Department of Conservation and Development, the annexation area does not meet the criteria of a DUC.

**15. Comments from Affected Agencies/Other Interested Parties:**

On September 7, 2016, Contra Costa LAFCO received a letter from Save Mount Diablo (SMD) (Attachment 2) stating their opposition to the Montreux Residential Subdivision Project, and asking that LAFCO deny the proposal for reasons numerous outlined in their comment letters (available on the LAFCO website), including that the project violates California planning and zoning law and the Subdivision Map Act, and that the project EIR is inadequate under CEQA. Further, SMD notes an inconsistency in the project EIR as it concludes that there is an impact to prime agricultural land based on LAFCO's definition; however, the Final EIR contains no section on Agriculture and no agriculture impact analysis.

SMD also indicates that if LAFCO is inclined to approve the proposal, it should defer recording the annexation until there is assurance that the full 78.2± acres of open space are permanently protected.

## **16. Regional Transportation and Regional Growth Plans:**

In its review of a proposal, LAFCO shall consider a regional transportation plan adopted pursuant to Section 65080 [Gov. Code section 56668(g)]. Further, the commission may consider the regional growth goals and policies established by a collaboration of elected officials only, formally representing their local jurisdictions in an official capacity on a regional or subregional basis (Gov. Code section 56668.5).

Regarding these sections, LAFCO looks at consistency of the proposal with the regional transportation and other regional plans affecting the Bay Area.

SB 375, a landmark state law, requires California's regions to adopt plans and policies to reduce the generation of greenhouse gases (GHG), primarily from transportation. To implement SB 375, in July 2013, ABAG and the Metropolitan Transportation Commission (MTC) adopted Plan Bay Area as the "Regional Transportation Plan and Sustainable Communities Strategy" for the San Francisco Bay Area. Plan Bay Area focuses on where the region is expected to grow and how development patterns and the transportation network can work together to reduce GHG emissions. The Plan's key goals are to reduce GHG emissions by specified amounts; and to plan sufficient housing for the region's projected population over the next 25 years.

The Plan Bay Area directs future development to infill areas within the existing urban footprint and focuses the majority of growth in self-identified Priority Development Areas (PDAs). PDAs include infill areas that are served by transit and are located close to other amenities, allowing for improved transit, bicycle and pedestrian access thereby reducing the amount of transportation related GHG generated. Plan Bay Area supports infill development in established communities and protects agricultural and open space lands. The Plan assumes that all urban growth boundaries are held fixed through the year 2040 and no sprawl-style development is expected to occur on the regions' open space or agricultural lands.

Plan Bay Area includes projections for the region's population, housing and job growth and indicates that the region has the capacity to accommodate expected growth over the next 25 years without sprawling further into undeveloped land on the urban fringe.

ABAG and MTC are in the process of updating the Plan Bay Area. The new plan - "Plan Bay Area 2040" - is currently underway. Following public meetings to consider various "Alternative Scenarios" which show different options for how the Bay Area can grow based on local land use development patterns and transportation investment strategies, a draft preferred scenario was released, which represents a hybrid of strategies previously considered. The draft preferred scenario is being reviewed and refined. Ultimately, ABAG and MTC will be asked to adopt the final preferred scenario at a joint meeting. All of this work, in turn, will form the foundation for Plan Bay Area 2040, to be adopted in summer 2017.

*The 2013 Plan Bay Area "aims to protect open space and agricultural land by directing 100 percent of the region's growth inside the year 2010 urban footprint, which means that all growth occurs as infill development or within established urban growth boundaries or urban limit lines. As the plan assumes that all urban growth boundaries/urban limit lines are held*

*fixed through the year 2040, no sprawl-style development is expected to occur on the region's scenic or agricultural lands."*

As noted above, a Land Conservation Agreement (Williamson Act Contract) previously existed on the site, and expired in January 2016. The project site is currently used for grazing, and qualifies as "Prime Agricultural Land" as defined in the CKH. Consequently, the project will result in the conversion of prime agricultural land to an urban use, with no specific mitigations measures to address the impacts to Prime Agricultural Land.

The proposed Montreux residential subdivision is within the City's ULL, and is not designated as a "Priority Conservation Area" or a "PDA." This proposal does not focus growth within the urbanized area of the City. To the contrary, it extends the urban footprint into an undeveloped area, predominately used for grazing. Further, the project area has minimal access to the local or regional transit network. As such, this proposal would not appear to minimize GHG emissions. The goals and strategies contained in Plan Bay Area encourage compact development in existing downtowns, main streets and neighborhoods with transit access, and discourage urban edge development in open space and/or agricultural lands. *It is debatable whether the Montreux project is consistent with Plan Bay Area.*

#### ALTERNATIVES FOR COMMISSION ACTION

After consideration of this report and any testimony or additional materials that are submitted the Commission should consider taking one of the following actions:

##### **Option 1**      Approve the reorganization as proposed.

- A. Find that, as a Responsible Agency under CEQA, the Commission has reviewed and considered the information contained in the Montreux Residential Subdivision EIR as certified by the City of Pittsburg on August 17, 2015 (Resolution No. 15-13097), and in the City's CEQA Findings, Statement of Overriding Considerations, and MMRP for the Montreux Residential Subdivision as certified by the City of Pittsburg on November 2, 2015 (Resolution No. 15-13123).
- B. Adopt this report, approve LAFCO Resolution No. 16-05 (Attachment 3), and approve the proposal, to be known as the Montreux Residential Subdivision Boundary Reorganization: Annexations to the City of Pittsburg, Contra Costa Water District and Delta Diablo Zone 2 and Detachment from County Service Area P-6 subject to the following terms and conditions:
  1. The territory being annexed shall be liable for the continuation of any authorized or existing special taxes, assessments and charges comparable to properties presently within the annexing agencies.
  2. The City of Pittsburg has delivered an executed indemnification agreement providing for the City to indemnify LAFCO against any expenses arising from any legal actions challenging the annexation.
  3. Water service is conditional upon CCWD receiving acceptance for inclusion of the annexed area from the USBR, pursuant to the requirements in CCWD's contract with USBR for supplemental water supply from the CVP.



4. Prior to LAFCO issuing a Certificate of Completion, the City of Pittsburg shall enter into a joint community facilities agreement with CCCFPD with the purpose of the City forming a CFD to fund supplemental fire protection and emergency medical services in various areas within the City including the area proposed for annexation.
  5. The recordation of LAFCO's Certificate of Completion is conditioned on the City providing LAFCO with a certified copy of a recorded grant deed of development rights, from the developer to the City, that restricts development on the 43.4± acres designated as Open Space, and remains in effect until the 43.4± acres are permanently preserved as a greenbelt buffer, in accordance with the City of Pittsburg's General Plan Policy 2-P-73 and Mitigation Measure LUP-1, through the recordation of an easement, a deed restriction, or other instrument or mechanism approved by the City.
- C. Find that the subject territory is uninhabited, the proposal has 100% landowner consent, and the conducting authority (protest) proceedings are hereby waived.

**Option 2** Accept this report and DENY the proposal.

**Option 3** If the Commission needs more information, CONTINUE this matter to a future meeting.

**RECOMMENDED ACTION:**

**Approve Option 1.**

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LOU ANN TEXEIRA, EXECUTIVE OFFICER  
CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION

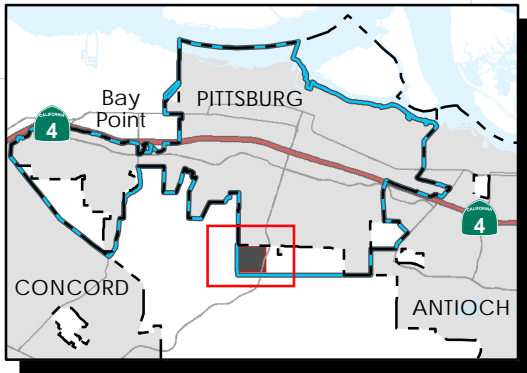
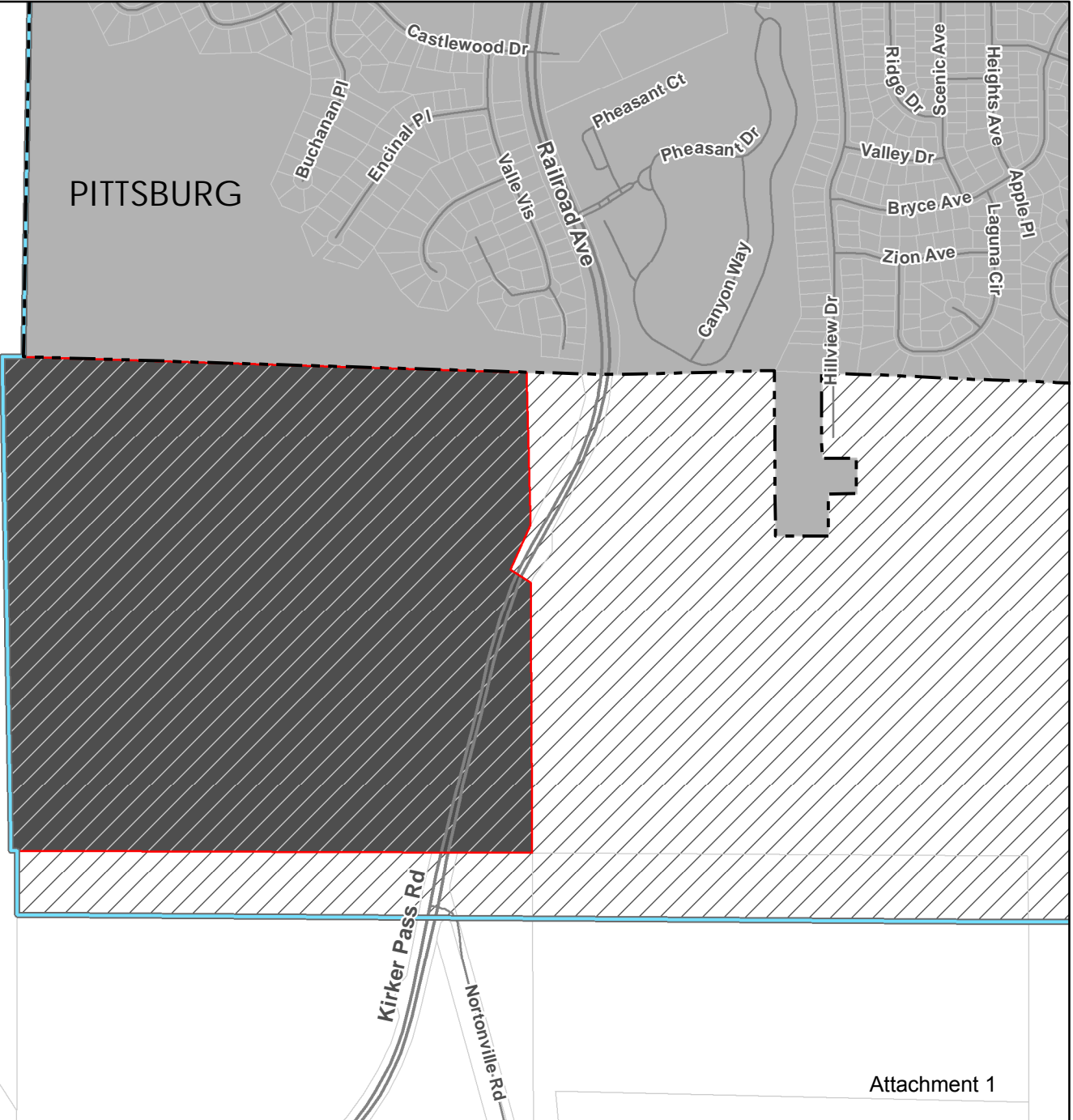
Attachments

- 1 – Montreux Residential Subdivision Boundary Reorganization Map
- 2 – Letter dated September 7, 2016 from Save Mount Diablo
- 3 - Draft LAFCO Resolution 16-05

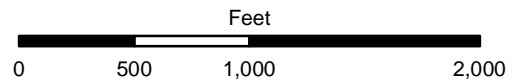
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# LAFCO No.16-05 - Montreux Reorganization: Annexations to City of Pittsburg, Contra Costa Water District (CCWD) and Delta Diablo (DD) Zone 2; Detachment from CSA P-6

-  LAFCO 16-05
-  CCWD & DD District Boundary
-  Pittsburg City Boundary
-  SOI (Pittsburg, CCWD, DD)
-  Pittsburg Urban Growth Boundary
-  Parcels



Attachment 1





September 7<sup>th</sup>, 2016

Attachment 2

**Board of Directors**

Scott Hein  
*President*  
Amara Morrison  
*Secretary*  
Burt Bassler  
*Treasurer*  
Heath Bartosh  
Joe Canciamilla  
John Gallagher  
Liz Harvey  
Claudia Hein  
Bob Marx  
Sue Ohanian  
Malcolm Sproul  
Jeff Stone  
*Directors*

Supervisory Mary Piepho  
LAFCO Chair  
651 Pine St., 6<sup>th</sup> Floor  
Martinez, CA

**RE: Comments on the Contra Costa Local Agency Formation Commission (LAFCO) Annexation Request for the Proposed Montreux Residential Subdivision**

Dear Supervisor Piepho,

Save Mount Diablo (SMD) is a non-profit conservation organization founded in 1971 which acquires land for addition to parks on and around Mount Diablo and monitors land use planning which might affect protected lands. We build trails, restore habitat, and are involved in environmental education. In 1971 there was just one park on Mount Diablo totaling 6,778 acres; today there are almost 50 parks and preserves around Mount Diablo totaling 110,000 acres. We include more than 8,000 donors and supporters.

**Staff Directors**

Edward Sortwell Clement Jr.  
*Executive Director*  
Seth Adams  
*Land Conservation Director*  
Meredith Hendricks  
*Land Programs Director*

We are writing this letter to state our opposition to the Montreux Residential Subdivision (Project) annexation request. We believe that LAFCO should deny this application request due to the numerous reasons that we and our legal representation have cited in previous comment letters (attached here as appendices). These letters show in great detail that the Project violates California planning and zoning law as well as the Subdivision Map Act, and that the Project Environmental Impact Report (EIR) is inadequate under the California Environmental Quality Act.

Monica E. Oei  
*Finance & Administration Director*

However, if LAFCO does decide to approve the Project annexation, it should, at the least, withhold recordation of the annexation until after mitigation for Project impacts has been secured in the form of a binding easement that will permanently protect the 78.2 acres of open space detailed in the annexation application. The applicant currently proposes the permanent protection via deed restriction of only the 42 acre so-called “greenwall” portion of the Project site. Given that 77 acres of agricultural land used to graze cattle will be lost to development if this annexation request is approved, a larger mitigation requirement is appropriate.

Deborah Toll White  
*Development Director*

**Founders**

Arthur Bonwell  
Mary L. Bowerman

There is an important inconsistency with regard to agricultural impacts between the Project EIR documents and the annexation application materials. The Project’s final EIR states in the last sentence of the first paragraph on page 2.0-4 that, “As the project site is currently used for grazing, it does meet the definition of prime agricultural land under this definition.” [Gov. Code section 56064]. However, there is no agricultural impact section in the EIR and the Project annexation application materials repeatedly state that there are no impacts to agricultural land.

**Proud Member of**

Land Trust Alliance  
California Council of Land Trusts  
Bay Area Open Space Council



Since both the EIR and annexation application materials recognize that the area proposed for annexation is currently grazed by cattle, and until very recently was protected under Williamson Act contract, we submit that this area qualifies as agricultural land and is worthy of mitigation from Project impacts.

The annexation application for the Project states that 351 single-family houses will be constructed on approximately 77 acres and that an additional 78.2 acres will be set aside for open space. However, no easement is proposed to protect these 78.2 acres. The only proposed protection is a recordation of a deed restriction over 42 acres of proposed open space on the southern side of the property, the proposed “greenwall.” If 77 acres will be developed, the proposed protection of 42 acres on the south side of the main Project site is both weak and inadequate.

The Project proponent has proposed to protect areas as open space several times in the past, only to come back some time in the future and seek to develop these same areas. A clear example of this is the Pointe project in Antioch, since renamed Black Diamond Ranch Unit 4.

Given the proponent’s record of developing areas formerly identified as protected or as “open space”, the significant disparity between the acreage of the Project to be developed and the area currently proposed for protection, and the stated intention that 78.2 acres of the Project site serve as open space, it is appropriate and fully within LAFCO’s power to require a binding conservation easement be placed over the entire 78.2 acres that would not be developed as part of the Project before recordation of the annexation, in order to ensure the permanent protection of this land.

We encourage LAFCO to deny this annexation request, but if LAFCO decides to approve, we strongly encourage it to withhold recordation of the annexation until after binding mitigation for Project impacts has been secured in the form of a permanent conservation easement over the 78.2 acres of the Project area that would not be developed.

Appendices:

Appendix A – SMD Comments on Montreux final EIR; August 14<sup>th</sup> 2015

Appendix B – Shute, Mihaly and Weinberger Comments on Montreux recirculated draft EIR; February 6<sup>th</sup> 2015

Appendix C – Shute, Mihaly and Weinberger Comments on Montreux draft EIR; January 10<sup>th</sup> 2014

Appendix D – SMD Comments on Montreux draft EIR; January 9<sup>th</sup> 2015

Appendix E – SMD Comments on Montreux Notice of Preparation; April 29<sup>th</sup> 2013

Sincerely,

Juan Pablo Galván  
Save Mount Diablo

CC:

Meredith Hendricks, Save Mount Diablo

Seth Adams, Save Mount Diablo

Ted Clement, Save Mount Diablo

Joel Devalcourt, Greenbelt Alliance

Brian Holt, East Bay Regional Park District

**RESOLUTION NO. 16-05**

**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
MAKING DETERMINATIONS AND APPROVING  
MONTREUX RESIDENTIAL SUBDIVISION REORGANIZATION: ANNEXATIONS TO THE  
CITY OF PITTSBURG, CONTRA COSTA WATER DISTRICT AND DELTA DIABLO ZONE 2,  
AND DETACHMENT FROM COUNTY SERVICE AREA P-6**

WHEREAS, the Montreux Residential Subdivision Boundary Reorganization proposal has been filed with the Executive Officer of the Contra Costa Local Agency Formation Commission pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act (Government Code §56000 et seq.); and

WHEREAS, at the time and in the manner required by law the Executive Officer has given notice of the Commission's consideration of the Montreux Residential Subdivision Boundary Reorganization proposal; and

WHEREAS, the Commission held a public hearing on September 14, 2016, which was continued to November 9, 2016, on the Montreux Residential Subdivision Boundary Reorganization proposal; and

WHEREAS, the Commission heard, discussed and considered all oral and written testimony related to this proposal including, but not limited to, the Executive Officer's report and recommendation, the environmental documents and determinations, Spheres of Influence and applicable General and Specific Plans; and

WHEREAS, no subsequent change may be made to the general plan or zoning for the annexed territory that is not in conformance to the rezoning designations for a period of two years after the completion of the annexation, unless the legislative body for the city makes a finding at a public hearing that a substantial change has occurred in circumstances that necessitate a departure from the rezoning in the application to the Commission [Government Code §56375(e)];

NOW, THEREFORE, the Contra Costa Local Agency Formation Commission DOES HEREBY RESOLVE, DETERMINE AND ORDER as follows:

1. Find that, as a Responsible Agency under CEQA, the Commission has reviewed and considered the information contained in the Montreux Residential Subdivision EIR as certified by the City of Pittsburg on August 17, 2015 (Resolution No. 15-13097), and in the City's CEQA Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program for the Montreux Residential Subdivision as certified by the City of Pittsburg on November 2, 2015 (Resolution No. 15-13123).
2. Said reorganization is hereby approved.
3. The subject proposal is assigned the distinctive short-form designation:  
**MONTREUX RESIDENTIAL SUBDIVISION BOUNDARY REORGANIZATION:  
ANNEXATIONS TO THE CITY OF PITTSBURG, CONTRA COSTA WATER DISTRICT AND  
DELTA DIABLO ZONE 2, AND DETACHMENT FROM COUNTY SERVICE AREA P-6**
4. The boundaries of the affected territory are found to be definite and certain as approved and set forth in Exhibit A, attached hereto and made a part hereof.
5. Approval of the Montreux Residential Subdivision Boundary Reorganization - Annexations to the City of Pittsburg, Contra Costa Water District and Delta Diablo Zone 2, and detachment from County Service Area P-6 is subject to the following:

Contra Costa LAFCO  
Resolution No. 16-05

- a. The territory being annexed shall be liable for the continuation of any authorized or existing special taxes, assessments and charges comparable to properties presently within the annexing agency.
  - b. The City of Pittsburg has delivered an executed indemnification agreement between the City and Contra Costa LAFCO providing for the City to indemnify LAFCO against any expenses arising from any legal actions challenging the Montreux Residential Subdivision Reorganization.
  - c. Water service is conditional upon CCWD receiving acceptance for inclusion of the annexed area from the USBR, pursuant to the requirements in CCWD's contract with USBR for supplemental water supply from the CVP.
  - d. Prior to LAFCO issuing a Certificate of Completion, the City of Pittsburg shall enter into a joint community facilities agreement with the Contra Costa County Fire Protection District with the purpose of the City forming a Community Facilities District to fund supplemental fire protection and emergency medical services in various areas within the City including the area proposed for annexation.
  - e. The recordation of LAFCO's Certificate of Completion is conditioned on the City providing LAFCO with a certified copy of a recorded grant deed of development rights, from the developer to the City, that restricts development on the 43.4± acres designated as Open Space, and remains in effect until the 43.4± acres are permanently preserved as a greenbelt buffer, in accordance with the City of Pittsburg's General Plan Policy 2-P-73 and Mitigation Measure LUP-1, through the recordation of an easement, a deed restriction, or other instrument or mechanism approved by the City.
6. The territory proposed for reorganization is uninhabited, the proposal has 100% landowner consent, and the conducting authority (protest) proceedings are hereby waived.
7. All subsequent proceedings in connection with the Montreux Residential Subdivision Boundary Reorganization shall be conducted only in compliance with the approved boundaries set forth in the attachments and any terms and conditions specified in this resolution.

\*\*\*\*\*

PASSED AND ADOPTED THIS 9<sup>th</sup> day of November 2016, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

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MARY N. PIEPHO, CHAIR, CONTRA COSTA LAFCO

*I hereby certify that this is a correct copy of a resolution passed and adopted by this Commission on the date stated.*

Dated: November 9, 2016

---

Lou Ann Texeira, Executive Officer

CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
EXECUTIVE OFFICER'S REPORT

November 9, 2016 (Agenda)

November 9, 2016  
Agenda Item 8

LAFCO 16-08 West County Wastewater District (WCWD) Annexation 315

PROPONENT WCWD by Resolution No. 16-016 adopted April 6, 2016

SYNOPSIS The WCWD proposes to annex 1.0± acre (APN 433-020-022) located at 6200 Hillside Drive in unincorporated El Sobrante as shown on Attachment 1. The property proposed for annexation is currently vacant. Previously, the parcel contained one single family home that was demolished after burning down. The landowner plans to build a new single family home and prefers to connect to municipal sewer.

UPDATE This item was continued from the October 12, 2016 LAFCO meeting at which time the Commission expressed concern that this annexation would result in the creation of two islands, which is contrary to LAFCO law; and that WCWD had not reached out to the four surrounding landowners in the island area regarding possible annexation. The Commission continued the matter to allow the District additional time to contact the other four property owners.

District staff recently reported that they sent letters to the four property owners, and that one has responded with some interest in possibly annexing in the future. Also, the WCWD Board further discussed the potential for addressing islands within the District's boundary (see Attachment 2), including the subject area; and while there was not much interest by the Board, they agreed to discuss the matter again at a future WCWD meeting.

At this time, WCWD does not wish to defer the proposed annexation and cause further delay to the property owner needing municipal sewer service at this time. The District requests that the Commission approve the annexation as proposed.

DISCUSSION

The District filed an application with LAFCO to annex the properties to WCWD. The proposed annexation will facilitate the development of one single family residential unit.

Government Code §56668 sets forth factors that the Commission must consider in evaluating a proposed boundary change as discussed below. In the Commission's review, no single factor is determinative. In reaching a decision, each is to be evaluated within the context of the overall proposal.

**1. Consistency with the Sphere of Influence (SOI) of Any Local Agency:**

The area proposed for annexation is within WCWD's SOI, and within the County Urban Limit Line; the parcel is located in the unincorporated community of El Sobrante.

**2. Land Use, Planning and Zoning - Present and Future:**

The County General Plan designation for APN 433-020-022 is primarily SM (Single Family Residential Medium) with a small portion of the property designated as OS (Open Space). The parcel is zoned by the County as R-10 (Single Family Residential, lot size 10,000 square feet minimum). As noted above, the parcel is vacant. No changes are proposed to the General Plan or zoning designations as part of this proposal. Surrounding land uses include single family residential development to the east, north and south, and single family residential development and open space to the west. The Richmond city boundary is just west of the property.

**3. The Effect on Maintaining the Physical and Economic Integrity of Agricultural and Open Space Lands:**

The subject property contains no prime farmland or land covered under Williamson Act Land Conservation agreements; there are no agricultural uses on the property proposed for annexation. A portion of the property is designated Open Space due to proximity to San Pablo Creek.

**4. Topography, Natural Features and Drainage Basins:**

The topography of the site is generally flat. The surrounding areas are generally flat, with the San Pablo Creek located on the east side of the property.

**5. Population:**

Development of one single family home is planned for the annexation area. The estimated population increase for the annexation area is approximately three, based on 2015 California Department of Finance estimates for households in the El Sobrante area.

**6. Fair Share of Regional Housing:**

In its review of a proposal, LAFCO must consider the extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the regional council of governments. The proposed annexation will have minimal effect on regional housing needs.

**7. Governmental Services and Controls - Need, Cost, Adequacy and Availability:**

Whenever a local agency submits a resolution of application for a change of organization or reorganization, the local agency shall also submit a plan for providing services within the affected territory (Gov. Code §56653). The plan shall include all of the following information and any additional information required by the Commission or the Executive Officer:

- (1) An enumeration and description of the services to be extended to the affected territory.
- (2) The level and range of those services.
- (3) An indication of when those services can feasibly be extended to the affected territory.
- (4) An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.
- (5) Information with respect to how those services will be financed.

The District's Plan for Providing Services is on file in the LAFCO office. The annexation area is served by various local agencies including, but not limited to, Contra Costa County, Contra Costa County Fire Protection District, and East Bay Municipal Utility District (EBMUD).

The proposal before the Commission is to annex one parcel to WCWD for the provision of sanitary sewer service.

WCWD provides wastewater collection, treatment and disposal services for a 16.9± square mile service area within the City of Richmond (40% of District), the City of San Pablo (15% of District), the City of Pinole (2% of the District) and other unincorporated areas within Contra Costa County (43% of the District). WCWD serves approximately 93,000 customers. The District's facilities include a water pollution control plant, 249 miles of sewer pipeline, and 17 pump stations. WCWD's wastewater treatment plant has capacity of 12.5 million gallons per day (mgd) dry weather capacity and 21 mgd wet weather treatment capacity.



Based on the maximum number of dwelling units (one single family residential) planned for the annexation area, the maximum demand for service is approximately 270 gallons of wastewater per day. WCWD has infrastructure in the area and serves a number of surrounding properties. The District indicates there is an 8-inch main running in the street about 70 feet east of the subject property. Revenue generated to serve the property includes a one-time sewer connection fee and an annual sewer use charge paid by the property owner. WCWD has the capacity to serve the property proposed for annexation.

**8. Timely Availability of Water and Related Issues:**

The properties are currently served by EBMUD, which has a service area of 331± square miles (Contra Costa and Alameda counties). EBMUD provides potable water to approximately 1.3 million people within the two-county service area. Within Contra Costa County, EBMUD provides water service to a 146± square mile service area, serving an estimated 477,212 residents.

EBMUD's water supply is distributed through a collection system consisting of aqueducts, reservoirs, and other components. The primary source of water supply for EBMUD is the Mokelumne River; this watershed accounts for 90 percent of EBMUD's water supply. EBMUD's existing water rights allow the delivery of up to 325 mgd or approximately 364,046 acre-feet per year of water from the Mokelumne River. The proposal is not expected to increase water usage.

**9. Assessed Value, Tax Rates and Indebtedness:**

The annexation area is within tax rate area 85038. The total assessed value, including land and improvements, for the annexation area is \$109,839 (2015-16 roll). The territory being annexed shall be liable for all authorized or existing taxes comparable to properties presently within the annexing agencies. The County and WCWD have agreed to use the master tax transfer agreement for this annexation.

**10. Environmental Impact of the Proposal:**

The District, as Lead Agency, found the project to be exempt from CEQA pursuant to §§ 15061(b)(3), 15319, and 15303. The LAFCO environmental coordinator concurs with the District's finding.

**11. Landowner Consent and Consent by Annexing Agency:**

According to County Elections, there are zero registered voters in the area proposed for annexation; thus, the area proposed for annexation is considered uninhabited.

The property owner petitioned WCWD for service and consents to the annexation. Thus, if the Commission approves the annexation, the Commission may waive the protest hearing (Gov. Code §56662). All landowners and registered voters within the proposal area(s) and within 300 feet of the exterior boundaries of the area(s) have received notice of the LAFCO hearing.

**12. Boundaries and Lines of Assessment:**

The annexation area is within WCWD's SOI and contiguous to the District's service boundary. A map and legal description to implement the proposed boundary changes have been submitted and are subject to approval by the County Surveyor. The subject property is within an island and the proposed annexation will divide the existing island. While LAFCO encourages logical and orderly boundaries, it is sometimes not unusual for sewer and water districts to have islands and pockets within their service boundaries; as historically, annexations to these types of districts have occurred as the need for service arises.

The island area is comprised of five parcels, including the parcel proposed for annexation. The County General Plan designations for the other parcels in the island are comparable to the parcel proposed for annexation, which include a County General Plan designation of SM and a zoning designation of R-10. Of the five "island" parcels, there are residential dwelling units on all except the parcel proposed for annexation, which is currently vacant. These residential units currently rely on septic systems. According to County Planning, there are currently no pending development applications in the island area other than the one single family home proposed with the annexation. A summary of development potential by parcel is presented below:

- 433-020-022 (parcel proposed for annexation) – currently vacant; could subdivide (2-3 lots)
- 433-020-025 – contains one single family residential unit; could not subdivide
- 433-020-026 - contains one single family residential unit; could subdivide (4-6 lots)
- 433-020-040– contains one single family residential unit; could not subdivide
- 433-020-041– contains one single family residential unit; could not subdivide

According to County Environmental Health (EH), the island area is not located in a septic tank moratorium area; and topography and soil conditions would not appear to preclude on-site septic systems, although municipal sewer is preferred.

In the past year, the Commission approved two WCWD annexation proposals that have either created or exacerbated islands and irregular boundaries. While there were extenuating circumstances in both situations, the Commission advised District staff to work with surrounding property owners in the future to avoid irregular boundaries and islands.

In July 2016, District staff discussed with the WCWD board the estimated costs associated with annexing the five parcels, versus annexing only the subject parcel. Previously, in June 2016, District staff had a similar discussion with its Plans and Programs Committee. Staff noted that the cost associated with annexing all five parcels together is estimated at \$16,425, versus \$10,525 per parcel if annexed individually. District staff reported that benefits of annexing all five parcels at once include efficiency, cost savings, and encouraging property owners to connect to municipal sewer in the future should their septic system fail. The disadvantages of annexing all five parcels include impacts to the WCWD's operating budget and staff resources, as well as expending funds to benefit only a few parcels. The District believes that it is not fiscally responsible to fund the annexation of parcels when there is no assurance that these properties will connect to the sewer system in the future. Further, WCWD does not wish to set a precedent of paying the annexation cost in advance, and believes this would be unfair to residents such as the subject property owner, who has already paid the annexation fee. The District prefers to annex parcels as the need for sewer service arises. The WCWD Board accepted its staff recommendation and voted to proceed with annexation of only the subject parcel and not the adjacent parcels.

At the October 12, 2016 LAFCO meeting, the Commission heard the item and expressed concern that this annexation would result in the creation of two islands, which is contrary to LAFCO law; and that WCWD had not reached out to the four surrounding landowners in the island area regarding possible annexation. The Commission continued the matter to allow the District additional time to contact the other four property owners.

At the Commission's request, WCWD contacted the other four property owners regarding potential annexation. District staff indicates that, to date, one property responded and expressed some interest in possibly annexing in the future. Also, the WCWD Board further discussed the potential for addressing islands within the District's boundary, including the subject area; and while there was not much interest by the Board, they agreed to discuss the matter again at a future WCWD meeting.

At this time, WCWD does not wish to defer the proposed annexation and cause further delay to the property owner needing municipal sewer service at this time. The District requests that the Commission approve the annexation as proposed.

**13. Environmental Justice:**

LAFCO is required to consider the extent to which proposals for a change of organization or reorganization will promote environmental justice. As defined by statute, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services. The proposed annexation is not expected to promote or discourage the fair treatment of minority or economically disadvantaged groups.

**14. Disadvantaged Communities:**

In accordance with recent legislation (SB 244), local agencies and LAFCOs are required to plan for disadvantaged unincorporated communities (DUCs). Many of these communities lack basic infrastructure, including streets, sidewalks, storm drainage, clean drinking water, and adequate sewer service. LAFCO actions relating to Municipal Service Reviews, SOI reviews/ amendments, and annexations must take into consideration DUCs, and specifically the adequacy of public services, including sewer, water, and fire protection needs or deficiencies, to these communities. According to the County Department of Conservation and Department, the annexation area does not meet the criteria of a DUC.

**15. Comments from Affected Agencies/Other Interested Parties**

No comments were received from other affected agencies or parties.

**16. Regional Transportation and Regional Growth Plans:**

In its review of a proposal, LAFCO shall consider a regional transportation plan [Gov. Code § 56668(g)]. Further, the commission may consider the regional growth goals and policies established by a collaboration of elected officials only, formally representing their local jurisdictions in an official capacity on a regional or subregional basis (Gov. Code §56668.5). Regarding these sections, LAFCO looks at consistency of the proposal with the regional transportation and other regional plans affecting the Bay Area.

SB 375, a landmark state law, requires California's regions to adopt plans and policies to reduce the generation of greenhouse gases (GHG), primarily from transportation. To implement SB 375, in July 2013, the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) adopted Plan Bay Area as the "Regional Transportation Plan and Sustainable Communities Strategy" for the San Francisco Bay Area. Plan Bay Area focuses on where the region is expected to grow and how development patterns and the transportation network can work together to reduce GHG emissions. The Plan's key goals are to reduce GHG emissions by specified amounts; and to plan sufficient housing for the region's projected population over the next 25 years.

ABAG and MTC are in the process of updating the Plan Bay Area. The new plan - "Plan Bay Area 2040" - is currently underway and is expected to be adopted in summer 2017.

The proposed annexation is within the District's SOI, within the County's Urban Limit Line, and primarily surrounded by residential development. The area is not designated as a "Priority Conservation Area" or a "Priority Development Area", and does not appear to conflict with the regional transportation or growth plans.

#### ALTERNATIVES FOR COMMISSION ACTION

After consideration of this report and any testimony or additional materials that are submitted the Commission should consider taking one of the following actions:

**Option 1** Approve the annexation as proposed.

- A. Determine that the project is exempt pursuant to CEQA Guidelines, §15061(b)(3).
- B. Adopt this report, approve LAFCO Resolution No. 16-08 (Attachment 3), and approve the proposal, to be known as West County Wastewater District Annexation 315 subject to the following terms and conditions:
  - 1. The territory being annexed shall be liable for the continuation of any authorized or existing special taxes, assessments and charges comparable to properties presently within the annexing agency.
  - 2. That WCWD has delivered an executed indemnification agreement providing for WCWD to indemnify LAFCO against any expenses arising from any legal actions challenging the annexation.
- C. Find that the subject territory is uninhabited, the proposal has 100% landowner consent, and the conducting authority (protest) proceedings are hereby waived.

**Option 2** Approve the annexation conditioned on annexation of the entire 5-parcel island. Prior to LAFCO issuing a Certificate of Completion for WCWD Annexation 315, the District shall submit to LAFCO an application to annex the remaining four parcels (APNs 433-020-025/026,040/041).

**Option 3** Adopt this report and DENY the proposal.

**Option 4** If the Commission needs more information, CONTINUE this matter to a future meeting.

#### RECOMMENDED ACTION:

**Option 1**

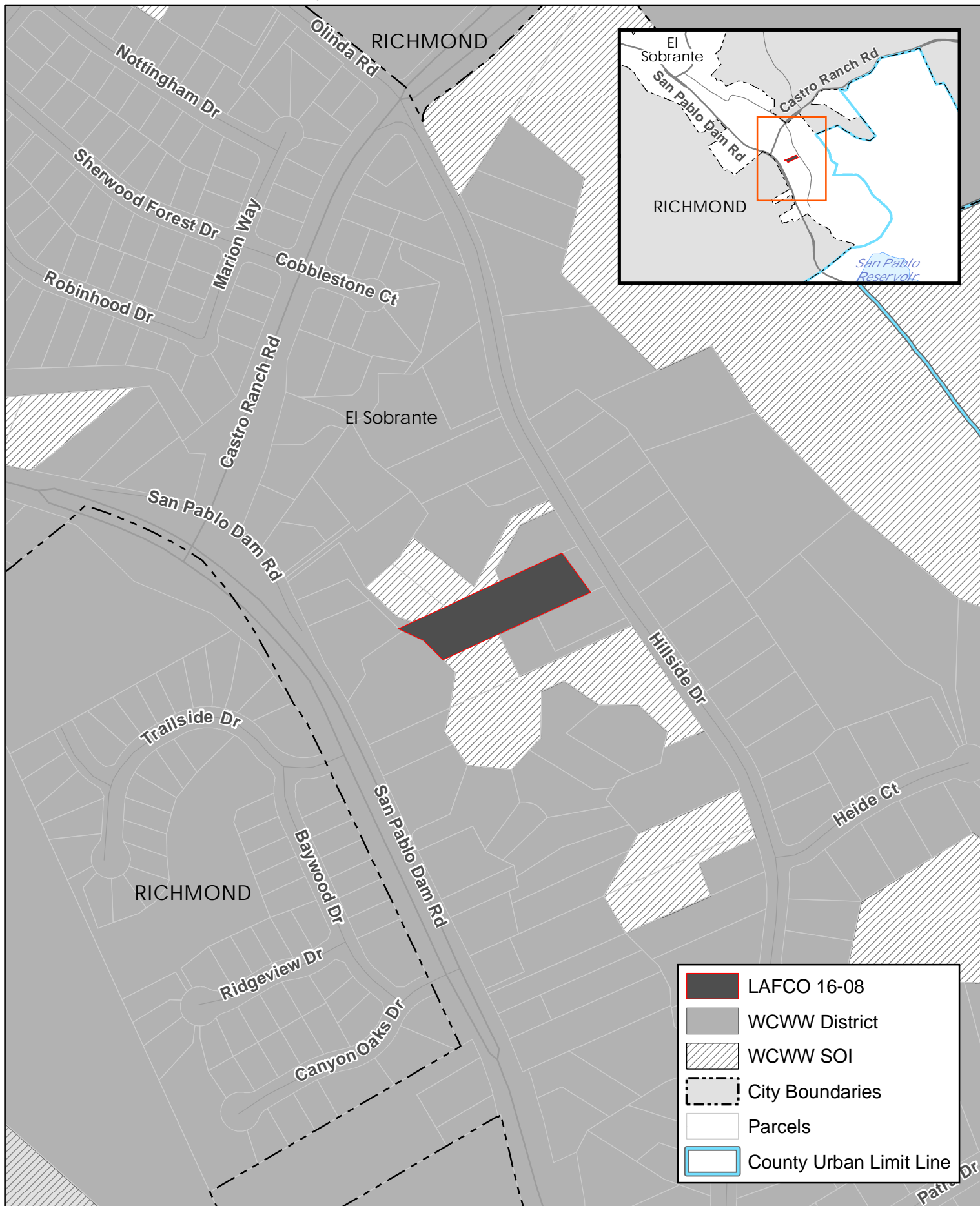
\_\_\_\_\_  
LOU ANN TEXEIRA, EXECUTIVE OFFICER  
CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION

#### Attachments

- 1 – WCWD Annexation Map
- 2 – WCWD Island Map
- 3 - Draft LAFCO Resolution 16-08

c: Distribution

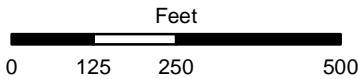
# LAFCO 16-08 West County Wastewater District Annexation 315 (6200 Hillside, E.S.)



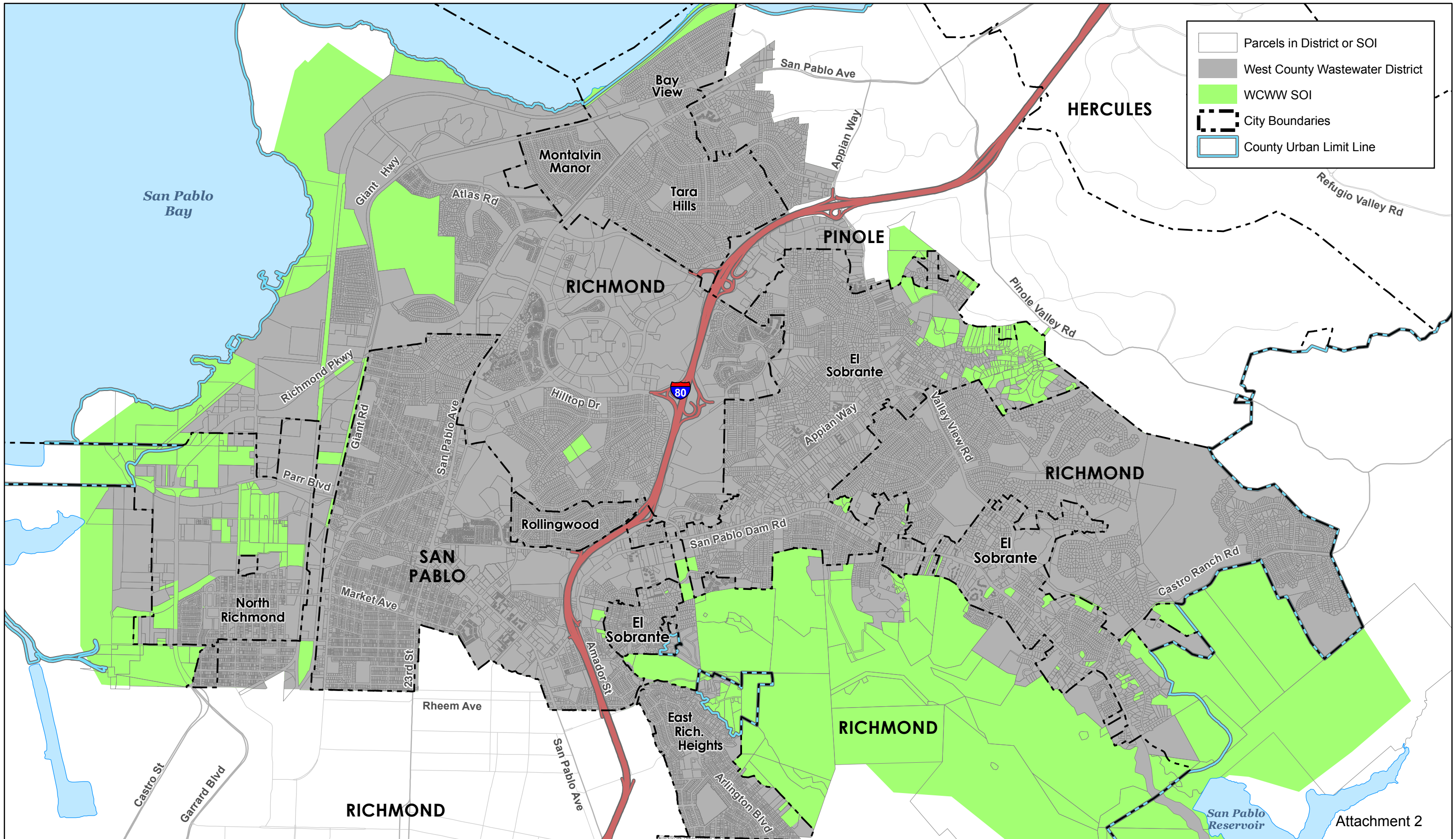
	LAFCO 16-08
	WCWW District
	WCWW SOI
	City Boundaries
	Parcels
	County Urban Limit Line

Map created 09/19/2016  
 by Contra Costa County Department of  
 Conservation and Development, GIS Group  
 30 Muir Road, Martinez, CA 94553  
 37:59:41.791N 122:07:03.756W

This map or dataset was created by the Contra Costa County Department of Conservation and Development with data from the Contra Costa County GIS Program. Some base data, primarily City Limits, is derived from the CA State Board of Equalization's tax rate areas. While obligated to use this data the County assumes no responsibility for its accuracy. This map contains copyrighted information and may not be altered. It may be reproduced in its current state if the source is cited. Users of this map agree to read and accept the County of Contra Costa disclaimer of liability for geographic information.



# West County Wastewater District Boundary and SOI



	Parcels in District or SOI
	West County Wastewater District
	WCWW SOI
	City Boundaries
	County Urban Limit Line

Map created 10/18/2016  
 by Contra Costa County Department of  
 Conservation and Development, GIS Group  
 30 Muir Road, Martinez, CA 94553  
 37:59:41.791N 122:07:03.756W

This map or dataset was created by the Contra Costa County Department of Conservation and Development with data from the Contra Costa County GIS Program. Some base data, primarily City Limits, is derived from the CA State Board of Equalization's tax rate areas. While obligated to use this data the County assumes no responsibility for its accuracy. This map contains copyrighted information and may not be altered. It may be reproduced in its current state if the source is cited. Users of this map agree to read and accept the County of Contra Costa disclaimer of liability for geographic information.



**RESOLUTION NO. 16-08**

**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
MAKING DETERMINATIONS AND APPROVING  
WEST COUNTY WASTEWATER DISTRICT ANNEXATION 315**

WHEREAS, the above-referenced proposal has been filed with the Executive Officer of the Contra Costa Local Agency Formation Commission pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act (Section 56000 et seq. of the Government Code); and

WHEREAS, the Executive Officer has examined the application and executed her certification in accordance with law, determining and certifying that the filing is sufficient; and

WHEREAS, at the time and in the manner required by law the Executive Officer has given notice of the Commission's consideration of the proposal; and

WHEREAS, the Executive Officer has reviewed available information and prepared a report including her recommendations therein, and the report and related information have been presented to and considered by the Commission; and

WHEREAS, at a public hearing held on October 12, 2016, and continued to November 9, 2016, the Commission heard, discussed and considered all oral and written testimony related to the proposal including, but not limited to, the Executive Officer's report and recommendation, the environmental document or determination, applicable General and Specific Plans, consistency with the sphere of influence, contiguity with the districts' boundaries, and related factors and information including those contained in Gov. Code §56668; and

WHEREAS, information satisfactory to the Commission has been presented that no affected landowners/registered voters within the annexation area object to the proposal; and

WHEREAS, the Local Agency Formation Commission determines the proposal to be in the best interests of the affected area and the organization of local governmental agencies within Contra Costa County;

NOW, THEREFORE, the Contra Costa Local Agency Formation Commission DOES HEREBY RESOLVE, DETERMINE AND ORDER as follows:

1. The project is categorically exempt pursuant to CEQA Guidelines, Section 15061(b)(3).
2. The annexation is hereby approved.
3. The subject proposal is assigned the distinctive short-form designation:  
**WEST COUNTY WASTEWATER DISTRICT ANNEXATION 315**
4. The boundaries of the affected territory are found to be definite and certain as approved and set forth in Attachment 1, attached hereto and made a part hereof.
5. The subject territory shall be liable for any authorized or existing taxes, charges and assessments comparable to properties within the annexing agency.
6. That West County Wastewater District (WCWD) delivered an executed indemnification agreement between the WCWD and Contra Costa LAFCO providing for WCWD to

Contra Costa LAFCO  
Resolution No. 16-08

indemnify LAFCO against any expenses arising from any legal actions challenging the annexation.

7. The territory proposed for annexation is uninhabited.
8. The proposal has 100% landowner consent, and the conducting authority (protest) proceedings are hereby waived.
9. All subsequent proceedings in connection with this annexation shall be conducted only in compliance with the approved boundaries set forth in the attachments and any terms and conditions specified in this resolution.

\* \* \* \* \*

PASSED AND ADOPTED THIS 9<sup>th</sup> day of November 2016, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

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MARY N. PIEPHO, CHAIR, CONTRA COSTA LAFCO

*I hereby certify that this is a correct copy of a resolution passed and adopted by this Commission on the date stated.*

Dated: November 9, 2016

---

Lou Ann Teixeira, Executive Officer





Lou Ann Teixeira  
 Executive Officer

**MEMBERS**

Donald A. Blubaugh <i>Public Member</i>	Mary N. Piepho <i>County Member</i>
Federal Glover <i>County Member</i>	Rob Schroder <i>City Member</i>
Michael R. McGill <i>Special District Member</i>	Igor Skaredoff <i>Special District Member</i>
Don Tatzin <i>City Member</i>	

**ALTERNATE MEMBERS**

Candace Andersen  
*County Member*  
 Sharon Burke  
*Public Member*  
 Tom Butt  
*City Member*  
 Stanley Caldwell  
*Special District Member*

November 9, 2016  
 Agenda Item 9

November 9, 2016 (Agenda)

Contra Costa Local Agency Formation Commission  
 651 Pine Street, Sixth Floor  
 Martinez, CA 94553

**LAFCO Agricultural & Open Space Preservation Policy**

Dear Commissioners:

**BACKGROUND:** Development of a LAFCO AOSPP was identified years ago as part of the Commission’s ongoing efforts to update its Policies & Procedures. The discussion was elevated in March 2015, in conjunction with a report from LAFCO’s Policies & Procedures Committee (“Committee”).

Following a LAFCO hosted Agriculture & Open Space Preservation Workshop (July 2015), and extensive stakeholder outreach and engagement, the Committee presented a draft Agricultural & Open Space Preservation Policy (AOSPP) to the Commission in March 2016; and subsequently, a revised draft policy to the Commission in July 2016.

As directed by the Commission, the Committee returned to the Commission in September 2016 with two versions of the draft AOSPP - *Version 1* (applicant proposed mitigation) and *Version 2* (required mitigation), which reflects the Commission’s prior comments, along with feedback received from interested parties.

Throughout the development of the AOSPP, LAFCO has received valuable input from agriculture, building, environmental, legal, ranching, local government and other interest groups, along with members of the general public (for a chronology of the AOSPP progression, please refer to the July 13, 2016 Committee report).

**DISCUSSION:** This report from the Committee transmits an updated version of the draft AOSPP titled “Version 3” along with a legal opinion regarding whether or not the LAFCO AOSPP is considered a “project” under the California Environmental Quality Act (CEQA).

At the September 14, 2016 meeting, LAFCO discussed two versions of the AOSPP. These versions differ primarily in the following ways (as shown on the table below):

Version 1	Version 2
<ul style="list-style-type: none"> <li>• Applicant proposes mitigations when an application converts prime ag, ag, and/or open space lands to other uses.</li> <li>• Applicant provides an analysis of the effectiveness of the proposed mitigations in preserving prime ag, ag, and open space lands and sustaining ag related businesses.</li> </ul>	<ul style="list-style-type: none"> <li>• LAFCO describes conditions that an applicant should fulfill when an application converts prime ag, ag, and/or open space lands to other uses. A goal is to mitigate impacts to ag, prime ag and open space lands to at least the degree specific in the policy.</li> <li>• Applicant may suggest mitigations that meet the conditions outlined by LAFCO or may suggest alternative mitigations.</li> <li>• Applicant assesses the effectiveness of the proposed mitigations in preserving prime ag, ag, and open space lands and sustaining ag related businesses.</li> <li>• Applicants are encouraged to provide mitigations that are at least as effective as those outlined by LAFCO.</li> </ul>

During the Commission’s discussion in September, the Commission received valuable public input regarding the two versions. Commissioners appeared to be almost equally split between preferring Version 1 and Version 2. The Commission continued the matter to the November 9<sup>th</sup> LAFCO meeting to allow the Policy Committee to make further refinements based on comments provided in September, and to allow LAFCO staff to further analyze any potential CEQA implications associated with the policy.

Based on the feedback, the Committee created a new version of the AOSPP – *Version 3* – that blends what the public and Commission said were the best features of *Versions 1 and 2*, while addressing other concerns.

A summary of the *Version 3* approach to the same considerations outlined in *Versions 1 and 2* appears below. Compared with earlier versions, *Version 3* is intended to provide applicants with more flexibility to propose conditions while outlining an example set of conditions that LAFCO will generally find to be sufficient for the purposes of preserving prime agricultural, agricultural, and open space lands.

Version 3
<ul style="list-style-type: none"> <li>• The AOSPP includes an example set of mitigations which are the same as those outlined in Version 2. Version 3 does not require applicants to meet these examples.</li> <li>• Applicant proposes mitigations when an application converts prime ag, ag, and/or open space lands to other uses.</li> <li>• Applicant provides an analysis of the effectiveness of the proposed mitigations in preserving prime ag, ag, and open space lands and sustaining ag related businesses, and compares this effectiveness to what would be achieved if the example conditions were implemented. If the effectiveness of the proposed mitigations is less than that of the example, the applicant can explain why the proposed mitigations are sufficient.</li> </ul>

The Committee believes that Version 3 provides the applicant and local land use authorities with more flexibility than Version 2. Version 3 is clearer about the expectations that LAFCO has for the effectiveness of mitigations than is Version 1, which reduces uncertainty for applicants. Version 3 also provides the Commission with greater flexibility to modify conditions from one application to another based on the local situation.

There are three other key changes: 1) Version 3 incorporates suggestions from the Building Industry Association presented in September that are consistent with CKH law; 2) the example mitigation for conversion of open space land is amended to be more sensitive to the nature of the open space land being converted; and 3) as requested by the Commission, Version 3 also includes a provision that LAFCO shall review the policy one year after adoption. These modifications can be added to Version 1 or 2 should the Commission prefer one of these versions.

In addition, there are several minor changes that the Committee believes will not be controversial. See attached tracked (Attachment 1a) and clean (Attachment 1b) copies of Version 3. The tracked copy of Version 3 (attached) uses Version 1 as a basis for comparison. For copies of Versions 1 and 2, please refer to the September 14, 2016 LAFCO meeting agenda packet online at [http://www.contracostalafco.org/view\\_agenda/09142016](http://www.contracostalafco.org/view_agenda/09142016).

All three versions provide that the Commission will consider the application and all relevant information, and make its decision regarding the application and appropriate conditions.

The LAFCO Executive Officer has worked closely with the Committee on these matters and concurs with the Committee's recommendations.

### ***CEQA and LAFCO's Proposed AOSPP***

LAFCO's legal staff has prepared a CEQA analysis of LAFCO's proposed AOSPP (Attachment 2). The analysis applies primarily to Version 3, but is also relevant to Versions 1 and 2. The legal analysis concludes that Version 3 is not a project under CEQA because the policy only provides a framework for satisfying LAFCO's existing obligations under state law. The policy does not commit to, influence, determine, or promote any proposal in a way that could result in a direct, or reasonably foreseeable indirect, physical change in the environment. The policy does not portend any particular future actions affecting the environment.

The legal analysis also notes that if the policy is revised to require specific mitigation for impacts to agricultural and open space lands, additional CEQA environmental review may be needed before the policy is adopted. The legal analysis additionally notes that although adoption of the recommended policy is not a project, the Commission may still choose to direct LAFCO staff to file a CEQA Notice of Exemption resulting in a reduced (35-day) statute of limitations for challenging the adoption of the policy on CEQA grounds.

**RECOMMENDATIONS:**

The Committee and LAFCO staff recommend that the Commission:

1. Adopt Version 3 as presented and direct LAFCO staff to file a Notice of Exemption; or
2. Adopt Version 3 with changes as desired; or
3. Adopt either Version 1 or 2, with changes as desired, and take the appropriate CEQA action.

Respectfully submitted,

*Sharon Burke and Don Tatzin*

c: Distribution

Attachment 1a – Version 3 - Tracked Draft LAFCO AOSPP

Attachment 1b – Version 3 – Clean Draft LAFCO AOSPP

Attachment 2 – CEQA Analysis

Attachment 3 – Frequently Asked Questions

Attachment 4 - Comments Received Since September 15, 2016 to Draft LAFCO Agricultural & Open Space Preservation Policy

#### 4.1 DRAFT AGRICULTURAL AND OPEN SPACE PRESERVATION POLICY – VERSION 31

##### **PREFACE**

LAFCO’s enabling and guiding legislation, the Cortese Knox Hertzberg (CKH) Act, begins with the following statement.

“The Legislature finds and declares that it is the policy of the state to encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state. The Legislature recognizes that the logical formation and determination of local agency boundaries is an important factor in promoting orderly development and in balancing that development with sometimes competing state interests of discouraging urban sprawl, preserving open-space and prime agricultural lands, and efficiently extending government services.” (§56001)

Beginning in the late 1800s, farmers and ranchers made Contra Costa County an important source of agricultural products. Much of the County has good soils, a mild climate, and adequate water. Western and central Contra Costa were used for agriculture well into the twentieth century. John Muir farmed and ranched approximately 2,600 acres in what is now Martinez, Concord, and the Alhambra Valley. While the County’s population was increasing, by current standards, the County’s population was small. The 1910 census recorded 31,764 residents, less than the 2015 population of Pleasant Hill.

Development, which began in earnest after World War II, transformed Contra Costa County. As urban and suburban development occurred, Contra Costa County experienced significant reduction in the amount and [relative](#) economic importance of agricultural lands. Simultaneously, critical open space habitat for sensitive species declined. By 2010, the Census reported that Contra Costa had 1,049,025 people, representing 3,300% growth since 1910. Contra Costa County’s 2040 population is forecast to be 1,338,400.

As a result of population and job growth, agricultural land was converted to houses, schools, commercial centers, job centers, and transportation corridors. In 2015, there were about 30,000 acres of active agricultural land in Contra Costa County, excluding rangeland and pastureland, most of it located in the eastern portion of the County. There are approximately 175,000 acres of rangeland and pastureland in the County.<sup>1</sup>

Agriculture in Contra Costa County is worth approximately \$128.5 million (farm production [value](#)) in 2015 and is an important economic sector. The value of agricultural production has risen in recent years.<sup>2</sup> However, some worry that Contra Costa’s agricultural industry may approach a tipping point beyond which agriculture becomes less viable due to a lack of labor, suppliers, and processors located nearby.<sup>3</sup>

The pressure on agricultural land also extends to wildlife and riparian areas. In some cases, conversion of these lands through development disrupts an ecosystem that used to depend on the now developed land as a travel route, or a seasonal or permanent source of food and water.

The County and some cities are active in efforts to preserve agricultural and open space lands. For example, in the 1970s, the County created a County Agricultural Core to the east and south of Brentwood.

<sup>1</sup> 2015 Crop and Livestock Report, Contra Costa County Agricultural Commissioner

<sup>2</sup> 2008-2015 Crop and Livestock Reports, Contra Costa County Agricultural Commissioner

<sup>3</sup> Sustaining our Agricultural Bounty: An Assessment of the Current State of Farming and Ranching in the San Francisco Bay Area – A white paper by the American Farmland Trust, Greenbelt Alliance and Sustainable Agriculture Education (SAGE), January 2011

The City of Brentwood has an agricultural mitigation program that collected more than \$12 million in mitigation fees; and through conservation organizations, ~~and~~ acquired the development rights over approximately 1,000 acres of agricultural lands. In 2006, the voters adopted Urban Limit Lines (ULLs) for the County and each municipality, and these actions helped protect undeveloped land outside the ULLs. Furthermore, the County adopted the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (ECCCHCP/NCCP) that protects sensitive habitat for plants and animals in East Contra Costa.

LAFCO embraces its objectives of encouraging orderly growth and development while discouraging urban sprawl, efficiently extending government services, and preserving open space and prime agricultural lands. Through the review and approval or denial process of boundary changes and other applications, LAFCO has considerable authority to provide for the preservation of open space and agricultural land, and impose terms and conditions. (§§56885 -56890).

While LAFCO has authority to achieve the objectives of the CKH Act, there are things that LAFCO cannot do, for example, directly regulate land use.<sup>4</sup> [LAFCO defers to agencies that have land use planning authority.](#) Therefore, successful preservation of prime agricultural, agricultural and open space lands and of agriculture as a business requires that both applicants and other agencies also lead. At the end of this policy are observations about other opportunities facing residents, advocacy organizations, and governmental agencies that could also strengthen and preserve agriculture and open space lands.

[Contra Costa LAFCO adopted this policy on \[November 9, 2016\] and agreed to review the policy in one year.](#)

#### **AUTHORITY OF LAFCO**

LAFCO's authority derives from the CKH Act. Among the purposes of LAFCO are to encourage planned, orderly, and efficient urban development while at the same time giving appropriate consideration to the preservation of prime agricultural, agricultural and open space lands (§56300). The CKH Act includes provisions that grant LAFCO the authority to consider and provide for the preservation of open space and agricultural lands. Among these provisions is §56377 which describes the intent of the legislation with regard to agricultural lands:

“**56377.** In reviewing and approving or disapproving proposals which could reasonably be expected to induce, facilitate, or lead to the conversion of existing open space lands to uses other than open space uses, the commission shall consider all of the following policies and priorities:  
(a) Development or use of land for other than open space uses shall be guided away from existing prime agricultural lands in open space use toward areas containing non-prime agricultural lands, unless that action would not promote the planned, orderly, efficient development of an area.  
(b) Development of existing vacant or non-prime agricultural lands for urban uses within the existing jurisdiction of a local agency or within the SOI of a local agency should be encouraged before any proposal is approved that would allow for or lead to the development of existing open space lands for non-open space uses that are outside of the existing jurisdiction of the local agency or outside of the existing SOI of the local agency.”

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<sup>4</sup>“A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements” [§§56375(6), 56886].

LAFCO is specifically charged in some instances with protecting open space and agricultural land. For example, an island annexation may not be approved if the island consists of prime agricultural land [§56375.3(b)(5)]. LAFCO may not approve a change to an SOI where the affected territory is subject to a Williamson Act contract or farmland security zone unless certain conditions exist (§§56426 and 56426.5).

When making a decision, LAFCO must consider whether an application and its effects conform to both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities in Sections 56377 and 56668(d). Finally, LAFCO must consider the effect of an application on maintaining the physical and economic integrity of agricultural lands [§56668 (e)].

An application for a change of organization, reorganization, the establishment of or change to a sphere of influence (SOI), the extension of extraterritorial services, and other LAFCO actions as contained in the CKH Act will be evaluated in accordance with LAFCO's adopted Agricultural and Open Space Preservation Policy.

### **PURPOSE OF THE POLICY**

The purpose of this policy is threefold: 1) to provide guidance to the applicant on how to assess the impacts on prime agricultural, agricultural and open space lands of applications submitted to LAFCO, and enable the applicant to explain how the applicant intends to mitigate those impacts [and how the effectiveness of the measures proposed in the application compares to the mitigation example outlined in this policy](#); 2) to provide a framework for LAFCO to evaluate and process in a consistent manner, applications before LAFCO that involve or impact prime agricultural, agricultural and/or open space lands; and 3) to explain to the public how LAFCO will evaluate and assess applications that affect prime agricultural, agricultural and/or open space lands.

### **DEFINITIONS**

Several terms are important in understanding LAFCO's responsibility and authority to preserve prime agricultural, agricultural and open space lands. These terms and definitions are found below and are applicable throughout these policies. The CKH Act contains the following definitions for agricultural land, prime agricultural land and open space:

**56016. "Agricultural lands"** means land currently used for the purpose of producing an agricultural commodity for commercial purposes, land left fallow under a crop rotational program, or land enrolled in an agricultural subsidy or set-aside program.

**56064. "Prime agricultural land"** means an area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than an agricultural use and that meets any of the following qualifications:

- (a) Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.
- (b) Land that qualifies for rating 80 through 100 Storie Index Rating.
- (c) Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Range and Pasture Handbook, Revision 1, December 2003.
- (d) Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre.

(e) Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred dollars (\$400) per acre for three of the previous five calendar years.

**56059. "Open space"** means any parcel or area of land or water which is substantially unimproved and devoted to an open-space use, as defined in Section 65560.

**65560.** (a) "Local open-space plan" is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

(b) "Open-space land" is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional, or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays, and estuaries; and coastal beaches, lakeshores, banks of rivers and streams, greenways, as defined in Section 816.52 of the Civil Code, and watershed lands.

(2) Open space used for the managed production of resources, including, but not limited to, forest lands, rangeland, agricultural lands, and areas of economic importance for the production of food or fiber; areas required for recharge of groundwater basins; bays, estuaries, marshes, rivers, and streams that are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including, but not limited to, areas of outstanding scenic, historic, and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas that serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, greenways, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas that require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs, and areas required for the protection and enhancement of air quality.

(5) Open space in support of the mission of military installations that comprises areas adjacent to military installations, military training routes, and underlying restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands.

(6) Open space for the protection of places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code (i.e., Native American Historical, Cultural and Sacred Sites).

## **GOALS, POLICIES AND GUIDELINES**

The following Goals, Policies, and Guidelines are consistent with the legislative direction provided in the CKH Act. The Goals are intended to be the outcome LAFCO wants to achieve. The Policies provide direction with regard to how those Goals should be achieved by providing specific guidance for decision makers and proponents. Guidelines give stakeholders procedures and practical tips regarding what information LAFCO commissioners and staff need to evaluate an application that affects prime agricultural, agricultural and/or open space lands.

### **GOALS**

Agriculture and open space are vital and essential to Contra Costa County's economy and environment. Accordingly, boundary changes for urban development should be proposed, evaluated, and approved in a manner that is consistent with the continuing growth and vitality of agriculture within the county. Open space lands provide the region with invaluable public benefits for all who visit, live and work in Contra



Costa County. The following goals will help guide LAFCO's decisions regarding prime agricultural, agricultural and open space lands.

**Goal 1.** Minimize the conversion of prime agricultural land and open space land to other land uses while balancing the need to ensure orderly growth and development and the efficient provision of services. <sup>5</sup>

**Goal 2.** Encourage cities, the county, special districts, property owners and other stakeholders to work together to preserve prime agricultural, agricultural and open space lands.

**Goal 3.** Incorporate agricultural and open space land preservation into long range planning consistent with principles of smart growth at the state, county, and municipal levels.

**Goal 4.** Strengthen and support the agricultural sector of the economy.

**Goal 5.** Fully consider the impacts an application will have on existing prime agricultural, agricultural and open space lands.

**Goal 6.** Preserve areas that sustain agriculture in Contra Costa County.

**Goal 7.** Mitigate the impacts that will result from a LAFCO approval that will lead to the conversion of prime agricultural, agricultural, and open space lands using the Policies and Guidelines included in this to at least the degree specified in the Agricultural and Open Space Preservation Policy as an input to defining and assessing mitigations.

## **POLICIES**

It is the policy of Contra Costa LAFCO that, consistent with the CKH Act, an application for a change in organization, reorganization, for the establishment of or change to an SOI, the extension of extraterritorial services, and other LAFCO actions as contained in the CKH Act ("applications"), shall provide for planned, well-ordered, efficient urban development patterns with appropriate consideration to preserving open space, agricultural and prime agricultural lands within those patterns. LAFCO's Agricultural and Open Space Preservation Policy provides for a mitigation hierarchy which 1) encourages avoidance of impacts to prime agricultural, agricultural and open space lands, 2) minimizes impacts to these lands, and 3) mitigates impacts that cannot be avoided while pursuing orderly growth and development.

The following policies support the goals stated above and will be used by Contra Costa LAFCO when considering an application that involves prime agricultural, agricultural and/or open space lands:

**Policy 1.** The Commission encourages local agencies to adopt policies that result in efficient, coterminous and logical growth patterns within their General Plan, Specific Plans and SOI areas, and that encourage preservation of prime agricultural, agricultural and open space lands in a manner that is consistent with LAFCO's policy.

**Policy 2.** Vacant land within urban areas should be developed before prime agricultural, agricultural and/or open space land is annexed for non-agricultural and non-open space purposes. <sup>6</sup>

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<sup>5</sup> In minimizing the conversion of open space land, the Commission may give lower priority to rangeland as defined per Public Resources Code per 65560.b.24789.2(i).

**Policy 3.** Land substantially surrounded by existing jurisdictional boundaries (e.g., islands) should be annexed before other lands.

**Policy 4.** Where feasible, and consistent with LAFCO policies, non-prime agricultural land should be annexed before prime agricultural land.

**Policy 5.** While annexation of prime agricultural lands, agricultural lands and open space lands is not prohibited, ~~annexation of these areas for urban development is not encouraged if there are in general, urban development should be discouraged in these areas. For example, agricultural land should not be annexed for non-agricultural or non-open space purposes when~~ feasible alternatives exist that allow for orderly and efficient growth. Large lot rural development that places pressure on a jurisdiction to provide services, and causes agricultural areas to be infeasible for farming or agricultural business, is discouraged.

**Policy 6.** The continued productivity and sustainability of agricultural land surrounding existing communities should be promoted by preventing the premature conversion of agricultural land to other uses and, to the extent feasible, minimizing conflicts between agricultural and other land uses. Buffers and/or local right to farm ordinances should be established to promote this policy. Contra Costa County has a Right to Farm ordinance which requires notification of ~~purchases-purchasers~~ and users of property adjacent to or near agricultural operations of the inherent potential problems ~~associates-associated~~ with such purchase or residential use.

**Policy 7.** Development near agricultural land should minimize adverse impacts -to agricultural operations.

**Policy 8.** Development near open space should minimize adverse impacts to open space uses.

**Policy 9.** The Commission will consider feasible mitigation (found in the following guidelines) if an application would result in the loss of prime agricultural, agricultural and/or open space lands.

**Policy 10.** Any mitigations that are conditions of LAFCO's approval of an application should occur close to the location of the impact and within Contra Costa County.

## **GUIDELINES**

These Guidelines are intended to provide further direction regarding the application of LAFCO's Goals and Policies; to advise and assist the public, agencies, property owners, farmers, ranchers and other stakeholders with regard to LAFCO's expectations in reviewing an application that involves prime agricultural, agricultural and/or open space lands; and to provide sample mitigation measures.

**Guideline 1.** Applications submitted to LAFCO involving prime agricultural, agricultural and/or open space lands shall include an Agricultural and Open Space Impact Assessment. At a minimum the following shall be addressed as part of the assessment:

- a. An application must discuss how it balances the State's interest in preserving prime agricultural and/or open space lands against the need for orderly development (§56001).

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<sup>6</sup> The Commission recognizes there may be instances in which vacant land is planned to be used in a manner that is important to the orderly and efficient long-term development of the county and land use agency and that differs from the proposed use of the area in an application to LAFCO. LAFCO will consider such situations on a case-by-case basis.

- b. An application must discuss its effect on maintaining the physical and economic integrity of agricultural lands [§56668 (e)].
- c. An application must discuss whether it could reasonably be expected to induce, facilitate, or lead to the conversion of existing open space land to uses other than open space uses (§56377).
- d. An application must describe whether, and if so, how it guides development away from prime agricultural, agricultural and/or open space lands.
- e. An application must describe whether, and if so, how it facilitates development of existing vacant or non-agricultural and/or non-open space lands for urban uses within the existing boundary or SOI of a local agency.
- f. An application ~~must~~ should discuss what measures it contains that will mitigate the loss of prime agricultural, agricultural, and/or open space lands and agricultural business and ~~to~~ preserve the physical and economic integrity of adjacent prime agricultural, agricultural and/or open space land uses. Applicants may consider but are not required to use the measures described in Guideline 4.
- g. An application should reference and include a land use inventory that indicates the amount of available land within the subject jurisdiction for the proposed land use. The land use inventory may be one that has been prepared by the applicable land use agency.
- f.h. An application should compare the effectiveness of the measures proposed by the applicant in Guideline 1, Section (f) with the example described in Guideline 3. If the applicant concludes that the proposed measures are less effective than the example, then the applicant should explain why the proposed measures are sufficient and/or describe other benefits they provide.

**Guideline 2.** If an application involves a loss of prime agricultural, agricultural and/or open space lands, property owners, cities and towns, the county, special districts, and other agricultural and open space conservation agencies should work together as early in the process as possible to either modify the application to avoid impacts or to adequately mitigate the impacts.

**Guideline 3.** ~~The following factors should be considered for an annexation of prime agricultural, agricultural and/or open space lands.~~ LAFCO expects each application that involves conversion of prime agricultural, agricultural and/or open space lands to other uses will include mitigations for such conversion. LAFCO's request for mitigations shall generally be satisfied if the proposed measures are consistent with the following:

- a. ~~The applicant should reference and include a land use inventory that indicates the amount of available land within the subject jurisdiction for the proposed land use. The land use inventory may be one that has been prepared by the applicable land use agency.~~
- a. The applicant should provide an evaluation of the effectiveness of measures proposed by the applicant to mitigate the loss of prime agricultural, agricultural and/or open space lands, and to preserve adjoining lands for prime agricultural, agricultural and/or open space use to prevent their premature conversion to other uses. Applications that would convert prime agricultural, agricultural, and open space land to another use, should protect land within Contra Costa County of reasonably equivalent quality and character, as defined by comparable ecological setting, topographic features, habitat quality, being unfragmented and having compatible surrounding land use activities, in the following ratios.
  1. Prime agricultural land – [three] acres protected for every acre converted
  2. Non-prime agricultural land – [two] acres protected for every acre converted

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3. Open space land – the ratio of acres protected for every acre converted shall be set by appropriate California State and federal agencies utilizing science-based impact analysis re: biological resources

b. Land may be protected through acquisition for permanent use as agricultural or open space uses, acquiring development rights that permanently preclude other uses, open space and agricultural conservation easements to permanently protect adjacent or other prime agricultural, agricultural and/or open space lands within the county. Any land previously protected should not be used as the mitigation for any other project.

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c. Land may be protected directly by the applicant or a fee may be paid to local government agencies and/or, ~~recognized and~~ where appropriate, to ~~recognized and~~ accredited non-profit organizations working in Contra Costa County for the purpose of preserving prime agricultural, agricultural and/or open space lands; payment must be sufficient to fully fund the acquisition, dedication, restoration and maintenance of land which is of equal or better quality.

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d. Applications that propose to convert prime agricultural and agricultural lands to other uses should include provisions to maintain at least a 300' buffer between the new uses and any adjacent prime agricultural and agricultural lands. Such buffers take many forms (e.g., easements, dedications, [appropriate general plan and zoning designations,] streets, parks, etc.).

e. Applications that propose to convert prime agricultural and agricultural lands to other uses and are adjacent to prime agricultural and agricultural lands should adopt a "Right to Farm" agreement that shall be included in the title of the land and in any subdivision thereof. Contra Costa County has a Right to Farm ordinance which requires notification of purchasers and users of property adjacent to or near agricultural operations of the inherent potential problems associated with such purchase or residential use.

b. Guideline 4. The following are measures an application may include to address the effects of an application on the conversion of prime agricultural, agricultural, and/or open space lands to other uses. An applicant is not limited to these measures and is not required to use any of them. Examples of such measures include, but are not limited to:

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a. Acquisition or dedication of prime agricultural and agricultural land (e.g., substitution ratio of at least 1:1 for the prime agricultural land annexed), development rights, bringing qualified land into an open space plan, open space and agricultural conservation easements to permanently protect adjacent or other prime agricultural, agricultural and/or open space lands within the county. Any land previously protected should not be used as the mitigation for any other project.

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b. Establishing buffers between new uses and any adjacent prime agricultural and agricultural lands.

~~1.c.~~ Including a "Right to Farm" agreement in the title of the land and subdivision thereof.

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~~2.d.~~ Participation in other local development programs that direct development towards urban areas in the county (such as transfer or purchase of development credits).

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~~3.e.~~ Payment to local government agencies and/or recognized non-profit organizations working in Contra Costa County for the purpose of preserving prime agricultural, agricultural and/or open space lands; payment should be sufficient to fully fund the acquisition, dedication, restoration and maintenance of land which is of equal or better quality.

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~~4.f.~~ Establishment of buffers of at least 300 feet to protect adjacent prime agricultural, agricultural and/or open space lands from the effects of development. Such buffers may be permanent, temporary, or

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rolling, and may take many forms (e.g., easements, dedications, appropriate zoning, streets, parks, etc.).

5-g. Where applicable, compliance with the provisions of the ECCCHCP/NCCP or a similar plan enacted by the County, cities or another regional, state or federal permitting agency.

6-h. Other measures agreed to by the applicant and the land use jurisdiction that meet the intent of replacing prime agricultural and agricultural lands at a minimum 1:1 ratio.

7-i. Participation in an advanced mitigation plan for prime agricultural, agricultural and/or open space lands.

8-j. Participation in measures to promote and/or enhance the viability of prime agricultural and agricultural lands and the agricultural industry in Contra Costa County.

**Guideline 54.** Detachment of prime agricultural, agricultural and/or open space lands should be encouraged if consistent with the SOI for that agency.

**Guideline 65.** Annexation for land uses in conflict with an existing agricultural preserve contract shall be prohibited, unless the Commission finds that it meets all the following criteria:

- a. The area is within the annexing agency's SOI.
- b. The Commission makes findings required by Gov. Code Section 56856.5.
- c. The parcel is included in an approved city specific plan.
- d. The soil is not categorized as prime agricultural land.
- e. Mitigation for the loss of agricultural land has been secured in the form of agricultural easements to the satisfaction of the annexing agency and the county.
- f. There is a pending, or approved, cancellation for the property that has been reviewed by the local jurisdictions and the Department of Conservation.
- g. The Williamson Act contract on the property has been non-renewed and final approval of the non-renewal has been granted.

**Guideline 76.** Property owners of prime agricultural and agricultural lands adjacent to land that is the subject of a LAFCO application shall be notified when an application is submitted to LAFCO.

**Guideline 87.** Regarding the timing and fulfillment of mitigation, if the mitigation measure is not in place prior to LAFCO's approval, the responsible entity (e.g., government agency, recognized non-profit organization) should provide LAFCO with information as to how the entity will ensure that the mitigation is provided at the appropriate time. Following LAFCO's approval, the responsible entity should provide LAFCO with an annual update on the status of agricultural mitigation fulfillment until the mitigation commitment is fulfilled.

### **OBSERVATIONS**

LAFCO identified other actions that are not within its purview but that if followed could reduce the impacts of new development on prime agricultural, agricultural, and open space lands. These are provided here so that applicants, other governmental agencies, advocacy organizations, and the public might consider them.

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**Observation 1.** LAFCO will evaluate all applications that are submitted and complete. However, LAFCO notes that over a period the impact of new applications is likely to be reduced if applicants adopt a hierarchy that gives preference to those projects that have no impacts on prime agricultural, agricultural and/or open space lands, followed by those that minimize impacts, and lastly those that require mitigation of their impacts.

**Observation 2.** Undeveloped prime agricultural, agricultural and open space lands exist primarily in east Contra Costa County, as does much of the remaining open space; however, most of the historical conversion of this land occurred elsewhere in the county. In order to preserve the remaining land, a countywide effort involving funding may be appropriate.

**Observation 3.** Any jurisdiction that contains prime agricultural, agricultural and/or open space land can periodically review whether its land use and other regulations strike the proper balance between discouraging development and conversion of prime agricultural, agricultural and open space lands with encouraging economically viable agriculture-based businesses that will keep agriculture production high.

October 24, 2016

DRAFT

## 4.1 DRAFT AGRICULTURAL AND OPEN SPACE PRESERVATION POLICY – VERSION 3

### PREFACE

LAFCO’s enabling and guiding legislation, the Cortese Knox Hertzberg (CKH) Act, begins with the following statement.

“The Legislature finds and declares that it is the policy of the state to encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state. The Legislature recognizes that the logical formation and determination of local agency boundaries is an important factor in promoting orderly development and in balancing that development with sometimes competing state interests of discouraging urban sprawl, preserving open-space and prime agricultural lands, and efficiently extending government services.” (§56001)

Beginning in the late 1800s, farmers and ranchers made Contra Costa County an important source of agricultural products. Much of the County has good soils, a mild climate, and adequate water. Western and central Contra Costa were used for agriculture well into the twentieth century. John Muir farmed and ranched approximately 2,600 acres in what is now Martinez, Concord, and the Alhambra Valley. While the County’s population was increasing, by current standards, the County’s population was small. The 1910 census recorded 31,764 residents, less than the 2015 population of Pleasant Hill.

Development, which began in earnest after World War II, transformed Contra Costa County. As urban and suburban development occurred, Contra Costa County experienced significant reduction in the amount and relative economic importance of agricultural lands. Simultaneously, critical open space habitat for sensitive species declined. By 2010, the Census reported that Contra Costa had 1,049,025 people, representing 3,300% growth since 1910. Contra Costa County’s 2040 population is forecast to be 1,338,400.

As a result of population and job growth, agricultural land was converted to houses, schools, commercial centers, job centers, and transportation corridors. In 2015, there were about 30,000 acres of active agricultural land in Contra Costa County, excluding rangeland and pastureland, most of it located in the eastern portion of the County. There are approximately 175,000 acres of rangeland and pastureland in the County.<sup>1</sup>

Agriculture in Contra Costa County is worth approximately \$128.5 million (farm production value) in 2015 and is an important economic sector. The value of agricultural production has risen in recent years.<sup>2</sup> However, some worry that Contra Costa’s agricultural industry may approach a tipping point beyond which agriculture becomes less viable due to a lack of labor, suppliers, and processors located nearby.<sup>3</sup>

The pressure on agricultural land also extends to wildlife and riparian areas. In some cases, conversion of these lands through development disrupts an ecosystem that used to depend on the now developed land as a travel route, or a seasonal or permanent source of food and water.

The County and some cities are active in efforts to preserve agricultural and open space lands. For example, in the 1970s, the County created a County Agricultural Core to the east and south of Brentwood. The City of Brentwood has an agricultural mitigation program that collected more than \$12 million in

<sup>1</sup> 2015 Crop and Livestock Report, Contra Costa County Agricultural Commissioner

<sup>2</sup> 2008-2015 Crop and Livestock Reports, Contra Costa County Agricultural Commissioner

<sup>3</sup> Sustaining our Agricultural Bounty: An Assessment of the Current State of Farming and Ranching in the San Francisco Bay Area – A white paper by the American Farmland Trust, Greenbelt Alliance and Sustainable Agriculture Education (SAGE), January 2011

mitigation fees; and through conservation organizations, acquired the development rights over approximately 1,000 acres of agricultural lands. In 2006, the voters adopted Urban Limit Lines (ULLs) for the County and each municipality, and these actions helped protect undeveloped land outside the ULLs. Furthermore, the County adopted the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (ECCCHCP/NCCP) that protects sensitive habitat for plants and animals in East Contra Costa.

LAFCO embraces its objectives of encouraging orderly growth and development while discouraging urban sprawl, efficiently extending government services, and preserving open space and prime agricultural lands. Through the review and approval or denial process of boundary changes and other applications, LAFCO has considerable authority to provide for the preservation of open space and agricultural land, and impose terms and conditions. (§§56885 -56890).

While LAFCO has authority to achieve the objectives of the CKH Act, there are things that LAFCO cannot do, for example, directly regulate land use.<sup>4</sup> LAFCO defers to agencies that have land use planning authority. Therefore, successful preservation of prime agricultural, agricultural and open space lands and of agriculture as a business requires that both applicants and other agencies also lead. At the end of this policy are observations about other opportunities facing residents, advocacy organizations, and governmental agencies that could also strengthen and preserve agriculture and open space lands.

Contra Costa LAFCO adopted this policy on [November 9, 2016] and agreed to review the policy in one year.

### **AUTHORITY OF LAFCO**

LAFCO's authority derives from the CKH Act. Among the purposes of LAFCO are to encourage planned, orderly, and efficient urban development while at the same time giving appropriate consideration to the preservation of prime agricultural, agricultural and open space lands (§56300). The CKH Act includes provisions that grant LAFCO the authority to consider and provide for the preservation of open space and agricultural lands. Among these provisions is §56377 which describes the intent of the legislation with regard to agricultural lands:

**“56377.** In reviewing and approving or disapproving proposals which could reasonably be expected to induce, facilitate, or lead to the conversion of existing open space lands to uses other than open space uses, the commission shall consider all of the following policies and priorities:

(a) Development or use of land for other than open space uses shall be guided away from existing prime agricultural lands in open space use toward areas containing non-prime agricultural lands, unless that action would not promote the planned, orderly, efficient development of an area.

(b) Development of existing vacant or non-prime agricultural lands for urban uses within the existing jurisdiction of a local agency or within the SOI of a local agency should be encouraged before any proposal is approved that would allow for or lead to the development of existing open space lands for non-open space uses that are outside of the existing jurisdiction of the local agency or outside of the existing SOI of the local agency.”

LAFCO is specifically charged in some instances with protecting open space and agricultural land. For example, an island annexation may not be approved if the island consists of prime agricultural land

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<sup>4</sup> “A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements” [§§56375(6), 56886].



[§56375.3(b)(5)]. LAFCO may not approve a change to an SOI where the affected territory is subject to a Williamson Act contract or farmland security zone unless certain conditions exist (§§56426 and 56426.5).

When making a decision, LAFCO must consider whether an application and its effects conform to both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities in Sections 56377 and 56668(d). Finally, LAFCO must consider the effect of an application on maintaining the physical and economic integrity of agricultural lands [§56668 (e)].

An application for a change of organization, reorganization, the establishment of or change to a sphere of influence (SOI), the extension of extraterritorial services, and other LAFCO actions as contained in the CKH Act will be evaluated in accordance with LAFCO's adopted Agricultural and Open Space Preservation Policy.

### **PURPOSE OF THE POLICY**

The purpose of this policy is threefold: 1) to provide guidance to the applicant on how to assess the impacts on prime agricultural, agricultural and open space lands of applications submitted to LAFCO, and enable the applicant to explain how the applicant intends to mitigate those impacts and how the effectiveness of the measures proposed in the application compares to the mitigation example outlined in this policy; 2) to provide a framework for LAFCO to evaluate and process in a consistent manner, applications before LAFCO that involve or impact prime agricultural, agricultural and/or open space lands; and 3) to explain to the public how LAFCO will evaluate and assess applications that affect prime agricultural, agricultural and/or open space lands.

### **DEFINITIONS**

Several terms are important in understanding LAFCO's responsibility and authority to preserve prime agricultural, agricultural and open space lands. These terms and definitions are found below and are applicable throughout these policies. The CKH Act contains the following definitions for agricultural land, prime agricultural land and open space:

**56016. "Agricultural lands"** means land currently used for the purpose of producing an agricultural commodity for commercial purposes, land left fallow under a crop rotational program, or land enrolled in an agricultural subsidy or set-aside program.

**56064. "Prime agricultural land"** means an area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than an agricultural use and that meets any of the following qualifications:

- (a) Land that qualifies, if irrigated, for rating as class I or class II in the USDA Natural Resources Conservation Service land use capability classification, whether or not land is actually irrigated, provided that irrigation is feasible.
- (b) Land that qualifies for rating 80 through 100 Storie Index Rating.
- (c) Land that supports livestock used for the production of food and fiber and that has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture in the National Range and Pasture Handbook, Revision 1, December 2003.
- (d) Land planted with fruit or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than five years and that will return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than four hundred dollars (\$400) per acre.
- (e) Land that has returned from the production of unprocessed agricultural plant products an annual gross value of not less than four hundred dollars (\$400) per acre for three of the previous five calendar years.

**56059. "Open space"** means any parcel or area of land or water which is substantially unimproved and devoted to an open-space use, as defined in Section 65560.

**65560.** (a) "Local open-space plan" is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.

(b) "Open-space land" is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional, or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays, and estuaries; and coastal beaches, lakeshores, banks of rivers and streams, greenways, as defined in Section 816.52 of the Civil Code, and watershed lands.

(2) Open space used for the managed production of resources, including, but not limited to, forest lands, rangeland, agricultural lands, and areas of economic importance for the production of food or fiber; areas required for recharge of groundwater basins; bays, estuaries, marshes, rivers, and streams that are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open space for outdoor recreation, including, but not limited to, areas of outstanding scenic, historic, and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas that serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, greenways, and scenic highway corridors.

(4) Open space for public health and safety, including, but not limited to, areas that require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs, and areas required for the protection and enhancement of air quality.

(5) Open space in support of the mission of military installations that comprises areas adjacent to military installations, military training routes, and underlying restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands.

(6) Open space for the protection of places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code (i.e., Native American Historical, Cultural and Sacred Sites).

## **GOALS, POLICIES AND GUIDELINES**

The following Goals, Policies, and Guidelines are consistent with the legislative direction provided in the CKH Act. The Goals are intended to be the outcome LAFCO wants to achieve. The Policies provide direction with regard to how those Goals should be achieved by providing specific guidance for decision makers and proponents. Guidelines give stakeholders procedures and practical tips regarding what information LAFCO commissioners and staff need to evaluate an application that affects prime agricultural, agricultural and/or open space lands.

### **GOALS**

Agriculture and open space are vital and essential to Contra Costa County's economy and environment. Accordingly, boundary changes for urban development should be proposed, evaluated, and approved in a manner that is consistent with the continuing growth and vitality of agriculture within the county. Open space lands provide the region with invaluable public benefits for all who visit, live and work in Contra Costa County. The following goals will help guide LAFCO's decisions regarding prime agricultural, agricultural and open space lands.

**Goal 1.** Minimize the conversion of prime agricultural land and open space land to other land uses while balancing the need to ensure orderly growth and development and the efficient provision of services.<sup>5</sup>

**Goal 2.** Encourage cities, the county, special districts, property owners and other stakeholders to work together to preserve prime agricultural, agricultural and open space lands.

**Goal 3.** Incorporate agricultural and open space land preservation into long range planning consistent with principles of smart growth at the state, county, and municipal levels.

**Goal 4.** Strengthen and support the agricultural sector of the economy.

**Goal 5.** Fully consider the impacts an application will have on existing prime agricultural, agricultural and open space lands.

**Goal 6.** Preserve areas that sustain agriculture in Contra Costa County.

**Goal 7.** Mitigate the impacts that will result from a LAFCO approval that will lead to the conversion of prime agricultural, agricultural, and open space lands using the Policies and Guidelines included in this Agricultural and Open Space Preservation Policy as an input to defining and assessing mitigations.

## **POLICIES**

It is the policy of Contra Costa LAFCO that, consistent with the CKH Act, an application for a change in organization, reorganization, for the establishment of or change to an SOI, the extension of extraterritorial services, and other LAFCO actions as contained in the CKH Act (“applications”), shall provide for planned, well-ordered, efficient urban development patterns with appropriate consideration to preserving open space, agricultural and prime agricultural lands within those patterns. LAFCO’s Agricultural and Open Space Preservation Policy provides for a mitigation hierarchy which 1) encourages avoidance of impacts to prime agricultural, agricultural and open space lands, 2) minimizes impacts to these lands, and 3) mitigates impacts that cannot be avoided while pursuing orderly growth and development.

The following policies support the goals stated above and will be used by Contra Costa LAFCO when considering an application that involves prime agricultural, agricultural and/or open space lands:

**Policy 1.** The Commission encourages local agencies to adopt policies that result in efficient, coterminous and logical growth patterns within their General Plan, Specific Plans and SOI areas, and that encourage preservation of prime agricultural, agricultural and open space lands in a manner that is consistent with LAFCO’s policy.

**Policy 2.** Vacant land within urban areas should be developed before prime agricultural, agricultural and/or open space land is annexed for non-agricultural and non-open space purposes.<sup>6</sup>

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<sup>5</sup> *In minimizing the conversion of open space land, the Commission may give lower priority to rangeland as defined per Public Resources Code 4789.2(i).*

<sup>6</sup> *The Commission recognizes there may be instances in which vacant land is planned to be used in a manner that is important to the orderly and efficient long-term development of the county and land use agency and that differs from the proposed use of the area in an application to LAFCO. LAFCO will consider such situations on a case-by-case basis.*

**Policy 3.** Land substantially surrounded by existing jurisdictional boundaries (e.g., islands) should be annexed before other lands.

**Policy 4.** Where feasible, and consistent with LAFCO policies, non-prime agricultural land should be annexed before prime agricultural land.

**Policy 5.** While annexation of prime agricultural lands, agricultural lands and open space lands is not prohibited, annexation of these areas for urban development is not encouraged if there are feasible alternatives that allow for orderly and efficient growth. Large lot rural development that places pressure on a jurisdiction to provide services, and causes agricultural areas to be infeasible for farming or agricultural business, is discouraged.

**Policy 6.** The continued productivity and sustainability of agricultural land surrounding existing communities should be promoted by preventing the premature conversion of agricultural land to other uses and, to the extent feasible, minimizing conflicts between agricultural and other land uses. Buffers and/or local right to farm ordinances should be established to promote this policy. Contra Costa County has a Right to Farm ordinance which requires notification of purchasers and users of property adjacent to or near agricultural operations of the inherent potential problems associated with such purchase or residential use.

**Policy 7.** Development near agricultural land should minimize adverse impacts to agricultural operations.

**Policy 8.** Development near open space should minimize adverse impacts to open space uses.

**Policy 9.** The Commission will consider feasible mitigation (found in the following guidelines) if an application would result in the loss of prime agricultural, agricultural and/or open space lands.

**Policy 10.** Any mitigations that are conditions of LAFCO's approval of an application should occur close to the location of the impact and within Contra Costa County.

## **GUIDELINES**

These Guidelines are intended to provide further direction regarding the application of LAFCO's Goals and Policies; to advise and assist the public, agencies, property owners, farmers, ranchers and other stakeholders with regard to LAFCO's expectations in reviewing an application that involves prime agricultural, agricultural and/or open space lands; and to provide sample mitigation measures.

**Guideline 1.** Applications submitted to LAFCO involving prime agricultural, agricultural and/or open space lands shall include an Agricultural and Open Space Impact Assessment. At a minimum the following shall be addressed as part of the assessment:

- a. An application must discuss how it balances the State's interest in preserving prime agricultural and/or open space lands against the need for orderly development (§56001).
- b. An application must discuss its effect on maintaining the physical and economic integrity of agricultural lands [§56668 (e)].
- c. An application must discuss whether it could reasonably be expected to induce, facilitate, or lead to the conversion of existing open space land to uses other than open space uses (§56377).

- d. An application must describe whether, and if so, how it guides development away from prime agricultural, agricultural and/or open space lands.
- e. An application must describe whether, and if so, how it facilitates development of existing vacant or non-agricultural and/or non-open space lands for urban uses within the existing boundary or SOI of a local agency.
- f. An application should discuss what measures it contains that will mitigate the loss of prime agricultural, agricultural, and/or open space lands and agricultural business and preserve the physical and economic integrity of adjacent prime agricultural, agricultural and/or open space land uses. Applicants may consider but are not required to use the measures described in Guideline 4.
- g. An application should reference and include a land use inventory that indicates the amount of available land within the subject jurisdiction for the proposed land use. The land use inventory may be one that has been prepared by the applicable land use agency.
- h. An application should compare the effectiveness of the measures proposed by the applicant in Guideline 1, Section (f) with the example described in Guideline 3. If the applicant concludes that the proposed measures are less effective than the example, then the applicant should explain why the proposed measures are sufficient and/or describe other benefits they provide.

**Guideline 2.** If an application involves a loss of prime agricultural, agricultural and/or open space lands, property owners, cities and towns, the county, special districts, and other agricultural and open space conservation agencies should work together as early in the process as possible to either modify the application to avoid impacts or to adequately mitigate the impacts.

**Guideline 3.** LAFCO expects each application that involves conversion of prime agricultural, agricultural and/or open space lands to other uses will include mitigations for such conversion. LAFCO's request for mitigations shall generally be satisfied if the proposed measures are consistent with the following:

- a. Applications that would convert prime agricultural, agricultural, and open space land to another use, should protect land within Contra Costa County of reasonably equivalent quality and character, as defined by comparable ecological setting, topographic features, habitat quality, being unfragmented and having compatible surrounding land use activities, in the following ratios.
  1. Prime agricultural land – [three] acres protected for every acre converted
  2. Non-prime agricultural land – [two] acres protected for every acre converted
  3. Open space land – the ratio of acres protected for every acre converted shall be set by appropriate California State and federal agencies utilizing science-based impact analysis re: biological resources
- b. Land may be protected through acquisition for permanent use as agricultural or open space uses, acquiring development rights that permanently preclude other uses, open space and agricultural conservation easements to permanently protect adjacent or other prime agricultural, agricultural and/or open space lands within the county. Any land previously protected should not be used as the mitigation for any other project.
- c. Land may be protected directly by the applicant or a fee may be paid to local government agencies and/or, where appropriate, to recognized and accredited non-profit organizations working in Contra Costa County for the purpose of preserving prime agricultural, agricultural and/or open space lands; payment must be sufficient to fully fund the acquisition, dedication, restoration and maintenance of land which is of equal or better quality.

- d. Applications that propose to convert prime agricultural and agricultural lands to other uses should include provisions to maintain at least a 300' buffer between the new uses and any adjacent prime agricultural and agricultural lands. Such buffers take many forms (e.g., easements, dedications, [appropriate general plan and zoning designations,] streets, parks, etc.).
- e. Applications that propose to convert prime agricultural and agricultural lands to other uses and are adjacent to prime agricultural and agricultural lands should adopt a "Right to Farm" agreement that shall be included in the title of the land and in any subdivision thereof. Contra Costa County has a Right to Farm ordinance which requires notification of purchasers and users of property adjacent to or near agricultural operations of the inherent potential problems associated with such purchase or residential use.

**Guideline 4.** The following are measures an application may include to address the effects of an application on the conversion of prime agricultural, agricultural, and/or open space lands to other uses. An applicant is not limited to these measures and is not required to use any of them.

- a. Acquisition or dedication of prime agricultural and agricultural land development rights, open space and agricultural conservation easements to permanently protect adjacent or other prime agricultural, agricultural and/or open space lands within the county. Any land previously protected should not be used as the mitigation for any other project.
- b. Establishing buffers between new uses and any adjacent prime agricultural and agricultural lands.
- c. Including a "Right to Farm" agreement in the title of the land and subdivision thereof.
- d. Participation in other local development programs that direct development towards urban areas in the county (such as transfer or purchase of development credits).
- e. Payment to local government agencies and/or recognized non-profit organizations working in Contra Costa County for the purpose of preserving prime agricultural, agricultural and/or open space lands; payment should be sufficient to fully fund the acquisition, dedication, restoration and maintenance of land which is of equal or better quality.
- f. Establishment of buffers of at least 300 feet to protect adjacent prime agricultural, agricultural and/or open space lands from the effects of development. Such buffers may be permanent, temporary, or rolling, and may take many forms (e.g., easements, dedications, appropriate zoning, streets, parks, etc.).
- g. Where applicable, compliance with the provisions of the ECCCHCP/NCCP or a similar plan enacted by the County, cities or another regional, state or federal permitting agency.
- h. Other measures agreed to by the applicant and the land use jurisdiction that meet the intent of replacing prime agricultural and agricultural lands.
- i. Participation in an advanced mitigation plan for prime agricultural, agricultural and/or open space lands.
- j. Participation in measures to promote and/or enhance the viability of prime agricultural and agricultural lands and the agricultural industry in Contra Costa County.

**Guideline 5.** Detachment of prime agricultural, agricultural and/or open space lands should be encouraged if consistent with the SOI for that agency.

**Guideline 6.** Annexation for land uses in conflict with an existing agricultural preserve contract shall be prohibited, unless the Commission finds that it meets all the following criteria:

- a. The area is within the annexing agency's SOI.
- b. The Commission makes findings required by Gov. Code Section 56856.5.

- c. The parcel is included in an approved city specific plan.
- d. The soil is not categorized as prime agricultural land.
- e. Mitigation for the loss of agricultural land has been secured in the form of agricultural easements to the satisfaction of the annexing agency and the county.
- f. There is a pending, or approved, cancelation for the property that has been reviewed by the local jurisdictions and the Department of Conservation.
- g. The Williamson Act contract on the property has been non-renewed and final approval of the non-renewal has been granted.

**Guideline 7.** Property owners of prime agricultural and agricultural lands adjacent to land that is the subject of a LAFCO application shall be notified when an application is submitted to LAFCO.

**Guideline 8.** Regarding the timing and fulfillment of mitigation, if the mitigation measure is not in place prior to LAFCO's approval, the responsible entity (e.g., government agency, recognized non-profit organization) should provide LAFCO with information as to how the entity will ensure that the mitigation is provided at the appropriate time. Following LAFCO's approval, the responsible entity should provide LAFCO with an annual update on the status of agricultural mitigation fulfillment until the mitigation commitment is fulfilled.

### **OBSERVATIONS**

LAFCO identified other actions that are not within its purview but that if followed could reduce the impacts of new development on prime agricultural, agricultural, and open space lands. These are provided here so that applicants, other governmental agencies, advocacy organizations, and the public might consider them.

**Observation 1.** LAFCO will evaluate all applications that are submitted and complete. However, LAFCO notes that over a period the impact of new applications is likely to be reduced if applicants adopt a hierarchy that gives preference to those projects that have no impacts on prime agricultural, agricultural and/or open space lands, followed by those that minimize impacts, and lastly those that require mitigation of their impacts.

**Observation 2.** Undeveloped prime agricultural, agricultural and open space lands exist primarily in east Contra Costa County, as does much of the remaining open space; however, most of the historical conversion of this land occurred elsewhere in the county. In order to preserve the remaining land, a countywide effort involving funding may be appropriate.

**Observation 3.** Any jurisdiction that contains prime agricultural, agricultural and/or open space land can periodically review whether its land use and other regulations strike the proper balance between discouraging development and conversion of prime agricultural, agricultural and open space lands with encouraging economically viable agriculture-based businesses that will keep agriculture production high.

October 24, 2016

**Office of the County Counsel**651 Pine Street, 9th Floor  
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Contra Costa County

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Date: November 2, 2016

To: LAFCO Board of Commissioners

From: Sharon L. Anderson, LAFCO Legal Counsel  
By: Stephen M. Siptroth, Deputy 

Re: **CEQA ANALYSIS OF LAFCO'S PROPOSED AGRICULTURAL AND OPEN SPACE PRESERVATION POLICY**

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**SUMMARY**

The proposed “Agricultural and Open Space Preservation Policy” recommended by the LAFCO Policies and Procedures Committee – the third version of the policy – is scheduled for consideration by the LAFCO Commissioners on November 9, 2016. The recommended policy directs applicants to provide the Commission with information to enable LAFCO to satisfy its statutory powers and obligations concerning the preservation of prime agricultural, agricultural, and open space land and orderly development. The policy does not require that proposals incorporate specific measures to mitigate impacts to prime agricultural, agricultural, and open space lands. Rather, the policy provides a framework for determining, on a case by case basis, appropriate mitigation measures that LAFCO may require when it evaluates proposals as a responsible agency, or as a lead agency, under the California Environmental Quality Act (“CEQA”).

The adoption of the recommended policy is not a project under CEQA because the policy only provides a framework for satisfying LAFCO’s existing obligations under state law.<sup>1</sup> The policy does not commit to, influence, determine, or promote any proposal in a way that could result in a direct, or reasonably foreseeable indirect, physical change in the environment.<sup>2</sup> The policy does not portend any particular future actions affecting the environment. Even though adoption of the recommended policy is not a project, the Commission may direct staff to file a CEQA notice of exemption to trigger a shortened 35-day statute of limitations for challenging the adoption of the policy on CEQA grounds.

The same analysis also can be used in relation to the first version of the policy considered by the LAFCO Commissioners. For CEQA purposes, a policy that resembles or expands upon the second version of the policy could be distinguished from the first and third versions because it would include what could be described as discretionary mitigation requirements. If the LAFCO Commissioners desire to adopt a policy that resembles or expands upon the second version of the policy, we would first need to evaluate whether an exemption applies or whether an initial study would be needed before the policy is adopted.

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<sup>1</sup> See *Northwood Homes, Inc., v. Town of Moraga* (1989) 216 Cal.App.3d 1197, 1206.

<sup>2</sup> See *City of Livermore v. Local Agency Formation Commission of Alameda County* (1986) 184 Cal.App.3d 531, 538.



## **RELEVANT FACTUAL AND LEGAL BACKGROUND**

Contra Costa Local Agency Formation Commission (“LAFCO”) is considering whether to adopt an “Agricultural and Open Space Preservation Policy” that has been recommended by LAFCO’s Policies and Procedures Committee. This office has been asked to analyze what level of CEQA review is required prior to adopting the recommended policy. This analysis pertains to the version of the policy recommended by LAFCO’s Policies and Procedures Committee and included in the Commission’s November 9, 2016, agenda packet. This analysis also applies to the first version of the policy, which contains applicant-proposed mitigation. For the reasons described in Section B, for CEQA purposes, the second version of the policy potentially involves a slightly different CEQA analysis.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (“CKH”) delineates LAFCO’s statutory authority and obligations. CKH is to be “liberally construed to effectuate its purposes.”<sup>3</sup> CKH requires LAFCO to establish written policies and procedures to enable it to carry out its statutory powers.<sup>4</sup> Under CKH, LAFCO’s purposes include “discouraging urban sprawl,” “preserving open-space and prime agricultural lands,” and obtaining and furnishing “information which will contribute to the logical and reasonable development of local agencies” in Contra Costa County.<sup>5</sup> LAFCO is authorized to consider and act on proposals for changes in organization, and for reorganization, in accordance with LAFCO policies, procedures, and guidelines.<sup>6</sup> LAFCO must reach its own independent decision on each proposal it considers.<sup>7</sup>

LAFCO has several obligations related to the preservation of agricultural and open space lands. LAFCO may adopt standards for evaluating “the effect of the proposal on maintaining the physical and economic integrity of agricultural lands,” which LAFCO must consider in its review of a proposal.<sup>8</sup> LAFCO must guide development away from prime agricultural lands, unless doing so would not promote orderly development.<sup>9</sup> LAFCO also must encourage development of vacant or non-prime agricultural lands within a local agency’s jurisdiction before open space lands outside of the local agency’s jurisdiction are developed.<sup>10</sup> LAFCO considers the extent to

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<sup>3</sup> Gov. Code, § 56107(a).

<sup>4</sup> Gov. Code, §§ 56300, 56375(g).

<sup>5</sup> Gov. Code, § 56301.

<sup>6</sup> Gov. Code, § 56375(a)(1).

<sup>7</sup> *San Mateo County Harbor Dist. v. Bd. of Supervisors of San Mateo County* (1969) 273 Cal.App.2d 165, 168.

<sup>8</sup> Gov. Code, §§ 56375(g), 56668(e). Agricultural lands include commercial agricultural lands, fallowed lands, and lands enrolled in an agricultural subsidy or set-aside program. (Gov. Code, § 56016.)

<sup>9</sup> Gov. Code, § 56377(a).

<sup>10</sup> Gov. Code, § 56377(b).

which a proposal satisfies these requirements, and the extent to which the proposal is consistent with applicable general and specific plans.<sup>11</sup>

## DISCUSSION

### **A. The Third and First Versions of the Proposed Policy Reflect LAFCO’s Statutory Authority and Obligations**

The purpose of this policy is to provide a framework for LAFCO to use when it evaluates applications that will lead to the conversion of prime agricultural, agricultural, and open space lands.<sup>12</sup> The policy will apply to applications for changes in “organization, reorganization, the establishment of or change to a sphere of influence (SOI), the extension of extraterritorial services, and other LAFCO actions.”<sup>13</sup>

The policy recognizes that LAFCO does not have land use planning authority, and that the preservation of prime agricultural, agricultural, and open space lands is a cooperative effort among LAFCO and land use planning agencies.<sup>14</sup> The policy includes several goals generally related to (1) ensuring orderly development, (2) encouraging local agencies to cooperate in their agricultural preservation efforts, and (3) avoiding impacts to commercial agriculture.<sup>15</sup> A further goal of the policy is to:

“Mitigate the impacts that will result from a LAFCO approval that will lead to the conversion of prime agricultural, agricultural, and open space lands using the Policies and Guidelines included in this Agricultural and Open Space Preservation Policy as an input to defining and assessing mitigations.”<sup>16</sup>

The policy does not mandate specific mitigation measures. Rather, the policy provides that applications “should” discuss mitigation measures that will mitigate project impacts to prime agricultural, agricultural, and open space lands, and “should” compare the mitigation proposed by the applicant with the “examples” of mitigation included in the policy.<sup>17</sup> The policy provides that certain mitigation measures will generally be considered satisfactory by LAFCO, but these

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<sup>11</sup> Gov. Code, § 56668(d), (h).

<sup>12</sup> Policy, pp. 2-3. Policy citations are to the third version of the policy unless otherwise noted.

<sup>13</sup> Policy, p. 3.

<sup>14</sup> Policy, p. 2.

<sup>15</sup> Policy, pp. 4-5.

<sup>16</sup> Policy, p. 5 (Goal 7).

<sup>17</sup> Policy, p. 7 (Guidelines I.f- I.h.). The policy does not “impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements.” (Gov. Code, § 56375(a)(6).)

measures are not required.<sup>18</sup>

The policy also requires each applicant to provide LAFCO specific information about a proposal's impact to prime agricultural, agricultural, and open space lands.<sup>19</sup> This information, and the mitigation proposed by each applicant, will enable LAFCO to determine (1) whether and how a proposal will affect the physical and economic integrity of prime agricultural, agricultural, and open space lands, (2) whether and how development can be guided away from prime agricultural lands, (3) whether and how development can be guided to vacant or non-prime agricultural lands within a local agency's jurisdiction before open space lands outside of its jurisdiction are developed, and (4) whether a proposal is consistent with applicable general and specific plans, all of which are among LAFCO's statutory obligations.<sup>20</sup>

Finally, the policy also will assist LAFCO to independently consider, as a CEQA responsible agency, the environmental effects of a proposal as shown in the CEQA lead agency's certified environmental document, and to consider feasible mitigation measures or alternatives within LAFCO's powers.<sup>21</sup> Although LAFCO generally does not act as a CEQA lead agency, when it does act in that capacity, the policy will assist LAFCO to determine appropriate mitigation measures for project impacts to prime agricultural, agricultural, and open space lands.<sup>22</sup>

#### **B. The Adoption of the Third (or First) Version of the Policy is not a Project under CEQA**

A "project" under CEQA is defined as "the whole of an action", including any action by a public agency, "which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment..."<sup>23</sup> A "project" does not include a public agency's administrative activities, including "general policy and procedure making."<sup>24</sup> The policy does not appear to be a project under CEQA because it only provides a framework to be used by LAFCO to exercise its existing statutory powers and to satisfy its existing statutory obligations.

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<sup>18</sup> Policy, pp. 7-8 (Guidelines 3 & 4).

<sup>19</sup> Policy, pp. 6-7 (Guideline 1).

<sup>20</sup> See Gov. Code, §§ 56375(g), 56377(a) & (b), 56668(d), (e) & (h). The policy does not prioritize agricultural and open space lands above other lands in a way that is inconsistent with the priority given to agricultural and open space lands by these statutes.

<sup>21</sup> Cal. Code Regs., tit. 14, § 15096(f)-(g). If any such mitigation measures or alternatives are feasible and would substantially reduce or avoid a significant project impact, LAFCO must adopt those measures or alternatives. (Cal. Code Regs., tit. 14, § 15096(g).)

<sup>22</sup> Cal. Code Regs., tit. 14, § 15126.4.

<sup>23</sup> Pub. Res. Code, § 21065; Cal. Code Regs., tit. 14, § 15378(a).

<sup>24</sup> Cal. Code Regs., tit. 14, § 15378(b)(2).

In *City of Livermore v. Local Agency Formation Commission of Alameda County* (1986) 184 Cal.App.3d 531 (“*City of Livermore* case”), the Court of Appeal considered whether Alameda County LAFCO’s sphere of influence guideline amendments constitute a project under CEQA. Alameda County LAFCO amended its sphere of influence guidelines, to provide that “future incorporation of urban development outside of an existing sphere of influence would be based on a county plan, not a city plan.”<sup>25</sup> The effect of LAFCO’s decision was to cause future development to be placed under the jurisdiction of the county. Alameda County LAFCO stated that the changes incorporated actual informal policies, and, therefore, it argued that the action was exempt from the definition of a “project” under CEQA, pursuant to CEQA Guidelines Section 15378(b)(2).<sup>26</sup> The First District Court of Appeal, however, concluded that the revisions to the sphere of influence guidelines were a project under CEQA, and that Section 15378(b)(2) only applies to “ministerial policymaking.”<sup>27</sup> The Court of Appeal distinguished the sphere of influence guidelines from ministerial policymaking, stating:

“The sphere of influence guidelines *influence* LAFCO decisions about development plans and future growth of cities and service areas. The guidelines play a part in *determining* whether growth will occur in unincorporated areas and whether agricultural land will be preserved or developed. They may change the focus of urban development by *promoting* county plans over city plans. *These potential effects certainly impact the environment.*”<sup>28</sup>

Three and one-half years after it issued its decision in the *City of Livermore* case, the First District Court of Appeal issued a decision in *Northwood Homes, Inc., v. Town of Moraga* (1989) 216 Cal.App.3d 1197 (“*Northwood Homes* case”), which concluded that a town’s adoption of guidelines for implementing a voter-enacted ordinance – the Moraga Open Space Ordinance (MOSO) – was not a project under CEQA. The town voters had enacted the MOSO to amend the open space element of the Town’s general plan.<sup>29</sup> After the MOSO was adopted, Town planning staff developed MOSO implementation guidelines.<sup>30</sup> The MOSO implementation guidelines were not the subject of CEQA environmental review before they were adopted by the Town Council.<sup>31</sup> The Court of Appeal concluded that the adoption of the implementation

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<sup>25</sup> *City of Livermore, supra*, 184 Cal.App.3d at p. 536.

<sup>26</sup> *City of Livermore, supra*, 184 Cal.App.3d at pp. 542-543.

<sup>27</sup> *Id.*, at pp. 538-539.

<sup>28</sup> *Id.*, at p. 538 (italics added).

<sup>29</sup> *Northwood Homes, Inc., supra*, 216 Cal.App.3d at p. 1200. (The voter-enacted ordinance was not a project under CEQA, pursuant to CEQA Guidelines Section 15378(b)(3).)

<sup>30</sup> *Id.*, at p. 1206. The MOSO implementation guidelines included, for example, criteria for determining whether an area was “high risk.” (*Id.*, p. 1206 fn. 10.)

<sup>31</sup> *Id.*, at p. 1206.

guidelines did not constitute a “project” under CEQA, pursuant to CEQA Guidelines Section 15378(b)(2).<sup>32</sup> The Court of Appeal distinguished the implementation guidelines from the sphere of influence guideline amendments at issue in the *City of Livermore* case, by explaining that the revised sphere of influence guidelines were similar to a general plan amendment “in that they had a potential impact on the environment.”<sup>33</sup> The implementation guidelines, however, did “no more than provide the procedural implementation (e.g., definitions of terms, application procedures) of the land use decisions reflected in MOSO – itself an enactment exempt from CEQA requirements.”<sup>34</sup>

Unlike the sphere of influence guidelines at issue in the *City of Livermore* case, the Agricultural and Open Space Preservation Policy does not commit to, influence, determine, or promote any proposal in a way that could result in a direct, or reasonably foreseeable indirect, physical change in the environment. The policy requires information to be submitted to LAFCO so that LAFCO can satisfy its existing statutory obligations. Therefore, the policy is not a project under CEQA pursuant to the Court of Appeal’s decision in the *Northwood Homes* case.

Further, an activity is a “project” under CEQA only if it has “the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”<sup>35</sup> In other words, an activity must be “an essential step that culminates in an action which may affect the environment” to be considered a “project.”<sup>36</sup> But an agency action that “portends no particular action affecting the environment” will not be considered a “project.”<sup>37</sup> LAFCO’s policy does not impose any specific mitigation requirements on proposals, so the policy has no potential for affecting the physical environment. The policy also portends no particular future actions. Therefore, the policy is not a project under CEQA and no environmental review is required.<sup>38</sup>

Note that, for CEQA purposes, a policy that resembles or expands upon the second version of the policy could be distinguished from the first and third versions of the policy. A policy that resembles or expands upon the second version of the policy would include what could be described as discretionary mitigation requirements. This causes the policy to be a project for

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<sup>32</sup> *Id.*, at p. 1207.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*, at p. 1206.

<sup>35</sup> Cal. Code Regs., tit. 14, § 15378(a); see also Pub. Res. Code, § 21065.

<sup>36</sup> *Fullerton Joint Union High Sch. Dist. v. State Bd. of Educ.* (1982) 32 Cal.3d 779, 797.

<sup>37</sup> *Id.*

<sup>38</sup> CEQA also requires environmental review to be timed to occur, “as early as feasible in the planning process to enable environmental considerations to influence project program and design and *yet late enough to provide meaningful information for environmental assessment.*” (Cal. Code Regs., tit. 14, § 150004(b) (*italics added*)). Without project-specific information of as-yet-unknown future projects, it would be premature to evaluate speculative environmental impacts of a policy that does not require any specific mitigation measures.

CEQA purposes because the policy arguably would do more than provide procedural implementation of existing legal requirements. The policy could be viewed as influencing proposals in a way that could result in a direct or reasonably foreseeable indirect physical change in the environment.<sup>39</sup> If the Commission were to consider adopting a policy that resembles or expands upon the second version of the policy, we would need to evaluate, first, whether a CEQA exemption applies. If an exemption does not apply, a CEQA initial study would be needed to determine if the policy may have a significant effect on the environment.<sup>40</sup> If the LAFCO Commissioners desire to adopt a policy that resembles or expands upon the second version of the policy, this office and LAFCO's CEQA consultant should determine the appropriate action to be taken under CEQA before the policy is adopted.

Even though the adoption of the third (or first) version of the policy is not a project under CEQA, as part of the policy adoption the Commission could direct staff to file a CEQA notice of exemption. This action is permissible, and it will start a 35-day statute of limitations for bringing a CEQA lawsuit.<sup>41</sup>

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cc: Lou Ann Texeira, LAFCO Executive Officer

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<sup>39</sup> *City of Livermore, supra*, 184 Cal.App.3d at p. 538.

<sup>40</sup> See Cal. Code Regs., tit. 14, § 15063(a).

<sup>41</sup> See Pub. Res. Code, § 21167(d); *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified Sch. Dist.* (2006) 139 Cal. App. 4th 1356, 1385. A CEQA notice of exemption can be filed even if an activity is not a project under CEQA (See *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1019-1020 (“If the project is exempt from CEQA, either because it is not a project as defined in section 15378 of the Guidelines or because it falls within one of several exemptions to CEQA ... The agency may prepare and file a notice of exemption, citing the relevant section of the Guidelines and including a brief statement of reasons to support the finding.”)); see also Kostka & Zischke, *Practice Under the California Environmental Quality Act*, p. 5-105.

# Frequently Asked Questions

## Contra Costa Local Agency Formation Commission

### Agricultural & Open Space Preservation Policy

The questions and answers below pertain to the Contra Costa Local Agency Formation Commission (LAFCO) and the Commission's Agricultural & Open Space Preservation Policy (AOSPP).

#### ***What is a Local Agency Formation Commission (LAFCO)?***

LAFCO is an independent regulatory agency that receives its powers directly from the California State Legislature. LAFCO regulates the boundaries of cities and most special districts under its jurisdiction, encourages orderly boundaries, ensures the efficient delivery of services, discourages urban sprawl, and preserves agricultural lands and open space.

#### ***What Does LAFCO Do?***

LAFCO is responsible for reviewing proposed jurisdictional boundary changes including annexations and detachments to/from cities and special districts, incorporation of new cities, formation of new special districts, and the consolidation, merger, and dissolution of existing special districts. LAFCO is also responsible for reviewing extraterritorial service agreements between local governmental agencies and establishing and reviewing spheres of influence (SOIs) for cities and special districts. LAFCO has authority to approve a proposal, with or without conditions, or deny a proposal.

#### ***Who Runs LAFCO?***

Contra Costa LAFCO is composed of seven regular commissioners: two members from the County Board of Supervisors; two members who represent cities in the county; two members who represent independent special districts in the county, and one public member. There are also four alternate commissioners, one from each of the above categories. LAFCO staff consists of an Executive Officer, LAFCO Clerk, legal counsel and various support services provided under contracts.

#### ***Why Does LAFCO Have an AOSPP?***

One of LAFCO's responsibilities is to protect agricultural lands and open space. Agriculture and open space are vital to Contra Costa County and offer environmental, economic, quality of life and other benefits.

#### ***Does LAFCO's AOSPP Prioritize the Preservation of Agricultural and Open Space Lands Over Orderly Growth and Development?***

No. LAFCO is charged with balancing sometimes competing state interests of orderly development with discouraging urban sprawl, preserving open space and agricultural land, and efficiently extending government services. The AOSPP focuses primarily on the preservation of agricultural and open space lands. Contra Costa LAFCO has a multitude of other policies and procedures that deal with orderly growth and development, the extension of services, and numerous other issues.

#### ***What is the Purpose of LAFCO's AOSPP?***

The purpose of LAFCO's AOSPP is to 1) provide guidance to an applicant on how to assess the impacts on agricultural and/or open space lands of applications submitted to LAFCO, and to explain

how the applicant intends to mitigate those impacts; 2) provide a framework for LAFCO to evaluate, and process in a consistent manner, applications before LAFCO that involve or impact and/or open space lands; and 3) explain to the public how LAFCO will evaluate and assess applications that affect agricultural and/or open space lands.

### ***What Will I Find in LAFCO's AOSPP?***

LAFCO's AOSPP contains Goals, Policies and Guidelines. The *Goals* support the importance of agriculture and open space lands in Contra Costa County, and help guide LAFCO's decisions regarding boundary changes and the preservation of agricultural and open space lands. The *Policies* provide for a mitigation hierarchy which 1) encourages avoidance of impacts to prime agricultural, agricultural and open space lands, 2) minimizes impacts to these lands, and 3) mitigates impacts that cannot be avoided while pursuing orderly growth and development. The *Guidelines* provide further direction regarding the application of LAFCO's Goals and Policies; advise and assist the public, agencies, property owners, farmers, ranchers and other stakeholders with regard to LAFCO's expectations in reviewing an application that involves agricultural and/or open space lands; and provides sample mitigation measures to address such lands. In addition, the AOSPP contains some general observations as "food for thought." Nothing in LAFCO's AOSPP is construed to automatically disqualify an application.

### ***Can LAFCO stop me from selling my agricultural land to a developer?***

No. LAFCO has no direct land use authority and has no role in who owns land. LAFCO's AOSPP encourages mitigation that will result from a LAFCO approval that will lead to the conversion of prime agricultural, agricultural, and open space lands to at least the degree specified in the AOSPP.

### ***Can LAFCO's AOSPP force me to put a conservation easement on my property?***

No. LAFCO's policy will require that a LAFCO application that will convert agricultural and/or open space land to an urban use mitigate for the loss of land (e.g., paying a fee, purchasing a conservation easement from a willing farmer or rancher, otherwise supporting agriculture business, etc.).

### ***Do agricultural conservation easements allow public access on my land?***

Public access may be allowed but is not a required component of an agricultural conservation easement. An agricultural conservation easement is an agreement between a willing farmer or rancher and a land trust. Farmers and ranchers can negotiate various easement terms, including whether to allow public access. Most agricultural conservation easements do not allow public access.

### ***Do agricultural conservation easements restrict the way that farmers can farm?***

The property owner and the land trust negotiate the terms of the easements. Current agricultural easements in East Contra Costa County provide farmers with broad discretion in how they farm their land.

### ***LAFCO's AOSPP Requires a Land Use Inventory. Where Can I Find This Information?***

LAFCO's AOSPP requests that the applicant reference and include a land use inventory that indicates the amount of available land within the subject jurisdiction *for the proposed land use*. The land use inventory may be one that has been prepared by the applicable land use agency. The County and cities are required to prepare a Housing Element, which includes a "Sites Inventory and Analysis." In



addition, many counties and cities maintain GIS data layers which include an inventory of vacant parcels.

***LAFCO Requires an Agricultural and Open Space Impact Assessment as Part of an Application to LAFCO. What if the Applicant Fails to Complete, or Partially Completes the Assessment?***

Depending on the nature of the proposal, the application may be deemed incomplete until the needed information is provided. LAFCO staff is available for pre-application meetings and to assist with applications. There is no fee for these services.

***What If My Application to LAFCO Will Convert Agricultural or Open Space Land to a Non-Agricultural or Non-Open Space use – Can LAFCO Impose Mitigation Measures?***

LAFCO can impose terms and conditions on any proposal, including, but not limited to, those measures identified in the AOSPP.

***What if the Application to LAFCO Will Convert Agricultural or Open Space Land to a Non-Agricultural or Non-Open Space use, and the Applicant Has Already Paid an Agricultural Mitigation Fee (e.g., City of Brentwood) and/or Paid into a Comparable Conservation Program (e.g., East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan)? Will LAFCO Take This Into Consideration? Can LAFCO Impose Additional Measures?***

Yes. These types of measures are recognized and included among LAFCO's list of sample mitigation measures and LAFCO can consider these as mitigation. Yes, LAFCO can impose additional mitigation measures if it believes that the proposed measures do not adequately mitigate the impacts to agricultural and/or open space lands.

***What if Only a Portion of My Project Area Impacts Agricultural or Open Space Land?***

LAFCO considers each application on its own merits. When reviewing an application, LAFCO must consider at least 16 different factors, one of which is "the effect of the proposal on maintaining the physical and economic integrity of agricultural lands..." No one factor is determinative. The AOSPP will apply only to the portion of the project area that consists of prime agricultural, agricultural, or open space land.

***What if the Project Area is Currently Designated for an Agricultural or Open Space Use (by the County), and the Annexing City has Pre-Zoned the Project Area for a Non-Agricultural or Open Space Use – Can LAFCO Deny the City's Request to Annex the Property?***

Yes. LAFCO has broad discretion to approve, with or without conditions, or deny a proposal. The applicability of the AOSPP to a parcel is determined by several factors and zoning is only one of these factors.

***What if the Project Area is Currently Designated for an Agricultural or Open Space Use, and is Within a Voter Approved Urban Limit Line – Can LAFCO Deny the Request to Annex the Property?***

Yes. LAFCO has broad discretion to approve, with or without conditions, or deny a proposal. LAFCO consider the location of a parcel vis-a-vis urban limit lines and urban growth boundaries as a factor in its deliberations.

**Kate Sibley**

---

**From:** Juliet Ryan-Davis <juliet.ryan.davis@gmail.com>  
**Sent:** Tuesday, September 20, 2016 10:30 PM  
**To:** Kate Sibley  
**Subject:** Please support local agriculture

Juliet Ryan-Davis  
136 B Amherst Ave  
Menlo Park, CA 94025

September 21, 2016

Dear Kate Sibley,

I am writing to urge the Contra Costa LAFCo to adopt strong policies in support of local agriculture.

Farming and ranching contributes so much to the Bay Area food culture, economy, and environment. But Contra Costa County is losing agricultural land at alarming rates, partly due to the incentive for farmers and ranchers to sell their land to sprawl developers.

Please consider adopting a policy that does the following:

1. Mitigates at a three-to-one ratio each acre of farmland lost to development
2. Uses mitigation funds to permanently preserve agricultural land

These policies are critical to the success of agriculture in Contra Costa County. Adopting them will protect our agricultural land and help local farmers and ranchers thrive.

Sincerely,  
Juliet Ryan-Davis

On Oct 25, 2016, at 6:42 PM, "[vendor1@goairtight.com](mailto:vendor1@goairtight.com)" <[vendor1@goairtight.com](mailto:vendor1@goairtight.com)> wrote:

Dear Official,

My name is Don Dudan and I am writing you in support of the draft LAFCO Agricultural and Open Space Preservation Policy (Policy). We appreciate the work that LAFCO commissioners and staff have put into the Policy, and think that it should be strengthened by requiring a mitigation ratio of at least 1:1 for annexations affecting open space and agricultural land.

This modest change is in agreement with what many other LAFCOs across the state have done, and would help to mitigate the effects of development that has already greatly reduced the amount of agricultural land in Contra Costa and across the Bay Area. I ask you to support the draft Policy and incorporate the modest change of a 1:1 mitigation requirement.

Thank you.

—  
Don Dudan  
50 Layman Ct  
Walnut Creek CA 94596

On Oct 26, 2016, at 9:37 AM, Business Seven <[business77@gmx.com](mailto:business77@gmx.com)> wrote:

Hello,

My name is Douglas Bright and I am writing you in support of the draft LAFCO Agricultural and Open Space Preservation Policy (Policy). I appreciate the work that LAFCO commissioners and staff have put into the Policy, and think that it should be strengthened by requiring a mitigation ratio of at least 1:1 for annexations affecting open space and agricultural land.

This modest change is in agreement with what many other LAFCOs across the state have done, and would help to mitigate the effects of development that has already greatly reduced the amount of agricultural land in Contra Costa and across the Bay Area. I ask you to support the draft Policy and incorporate the modest change of a 1:1 mitigation requirement. Thank you.

Thank you,

Douglas Bright  
Hercules, Calif.

**From:** [nabilamaniya@hotmail.com](mailto:nabilamaniya@hotmail.com) [<mailto:nabilamaniya@hotmail.com>]

**Sent:** Saturday, October 29, 2016 9:59 AM

**Subject:** LAFCO Agricultural and Open Space Preservation Policy

Dear LAFCO Representatives,

My name is Nabila Maniya. I live in Walnut Creek, am an avid hiker, and love the Bay Area trails. I am writing you in support of the draft LAFCO Agricultural and Open Space Preservation Policy (Policy). We appreciate the work that LAFCO commissioners and staff have put into the Policy, and think that it should be strengthened by requiring a mitigation ratio of at least 1:1 for annexations affecting open space and agricultural land.

This modest change is in agreement with what many other LAFCOs across the state have done, and would help to mitigate the effects of development that has already greatly reduced the amount of agricultural land in Contra Costa and across the Bay Area. I ask you to support the draft Policy and incorporate the modest change of a 1:1 mitigation requirement. Thank you.

Regards,  
Nabila



Lou Ann Teixeira  
Executive Officer

**MEMBERS**

Donald A. Blubaugh  
*Public Member*  
Federal Glover  
*County Member*  
Michael R. McGill  
*Special District Member*  
Mary N. Piepho  
*County Member*  
Rob Schroder  
*City Member*  
Igor Skaredoff  
*Special District Member*  
Don Tatzin  
*City Member*

**ALTERNATE MEMBERS**

Candace Andersen  
*County Member*  
Sharon Burke  
*Public Member*  
Tom Butt  
*City Member*  
Stanley Caldwell  
*Special District Member*

November 9, 2016  
Agenda Item 10

November 9, 2016 (Agenda)

Contra Costa Local Agency Formation Commission  
651 Pine Street, Sixth Floor  
Martinez, CA 94553

**Proposed Amendment to the LAFCO Employee Benefit Plan**

Dear Commissions:

LAFCO is an independent entity created by the State Legislature. Pursuant to Government Code §56000 et seq., LAFCO hires its own staff and can provide benefits, including health, dental, retirement and other benefits for its employees.

In November 2007, the Commission adopted a personnel system for Contra Costa LAFCO, including job descriptions, a classification/salary plan, an updated contract between LAFCO and Contra Costa County Employees’ Retirement Association, and a LAFCO Employee Benefit Plan. The LAFCO Employee Benefit Plan provides benefits comparable to the County’s management benefit plan in place at the time.

Contra Costa LAFCO currently employs two full-time employees and purchases its health, dental and other employee benefits through Contra Costa County. LAFCO staff was recently contacted by the County Human Resources Department with information relating to new benefits programs, including a new vision plan, which can be made available to LAFCO employees in 2017. The new vision plan is employee paid, with no cost to the employer.

The new vision plan is offered through VSP – Vision Care for Life, and is a full service vision plan that provides comprehensive coverage, plan options and competitive rates. See attached for vision care plan features and summary of coverage (Attachment 1).

**RECOMMENDATION:** Staff recommends that the Commission amend the LAFCO Employee Benefit Plan per the attached resolution (Attachment 2) to include the new vision plan.

Sincerely,

LOU ANN TEXEIRA  
EXECUTIVE OFFICER

Attachment 1 – Voluntary Vision Plan and VSP® Vision Care Summary  
Attachment 2 - LAFCO Resolution 2016-1 Amending the LAFCO Employee Benefit Plan

c: Craig Taylor, County Employee Benefits Supervisor

# Protect your vision with VSP.



## Get the best in eye care and eyewear with CONTRA COSTA COUNTY - VOLUNTARY VISION PLAN and VSP® Vision Care.



Why enroll in VSP? We invest in the things you value most—the best care at the lowest out-of-pocket costs. Because we're the only national not-for-profit vision care company, you can trust that we'll always put your wellness first.

### You'll like what you see with VSP.

- **High Quality Vision Care.** You'll get the best care from a VSP provider, including a WellVision Exam®—the most comprehensive exam designed to detect eye and health conditions.
- **Choice of Providers.** The decision is yours to make—choose a VSP doctor, a participating retail chain, or any out-of-network provider.
- **Great Eyewear.** It's easy to find the perfect frame at a price that fits your budget.

Save with VSP Coverage	Without VSP Coverage	With VSP Coverage
Eye Exam	\$163	\$0
Frame	\$150	\$0
Single Vision Lenses	\$89	\$0
Photochromic Adaptive Lenses	\$109	\$70
Anti-reflective Coating	\$113	\$69
Member-only Annual Contribution	N/A	\$120.96
<b>Total</b>	<b>\$624</b>	<b>\$259.96</b>

Comparison based on CA averages for comprehensive eye exams and most commonly purchased brands

NOTE: Dollar amounts in the savings chart are estimates and don't reflect additional discounts from current VSP offers and promotions.

Average Annual Savings with a  
VSP Provider: **\$364.04**

### Using your VSP benefit is easy.

- **Create an account at [vsp.com](http://vsp.com).** Once your plan is effective, review your benefit information.
- **Find an eye care provider who's right for you.** To find a VSP provider, visit [vsp.com](http://vsp.com) or call **800.877.7195**.
- **At your appointment, tell them you have VSP.** There's no ID card necessary. If you'd like a card as a reference, you can print one on [vsp.com](http://vsp.com).

**That's it! We'll handle the rest**—there are no claim forms to complete when you see a VSP provider.

### Choice in Eyewear

From classic styles to the latest designer frames, you'll find hundreds of options. Choose from featured frame brands like bebe®, Calvin Klein, Cole Haan, Flexon®, Lacoste, Nike, Nine West, and more<sup>1</sup>. Visit [vsp.com](http://vsp.com) to find a Premier Program location that carries these brands. Prefer to shop online? Check out all of the brands at [Eyeconic.com](http://Eyeconic.com), VSP's online eyewear store.

Enroll in VSP 10/10/2016 - 10/28/2016. You'll be glad you did.  
Contact us. **800.877.7195**  
[www.vsp.com/go/contracostacounty](http://www.vsp.com/go/contracostacounty)

# Your VSP Vision Benefits Summary



CONTRA COSTA COUNTY - VOLUNTARY VISION PLAN and VSP provide you with an affordable eye care plan. Open Enrollment is here, and it's time to enroll in your VSP voluntary vision plan.

**Open Enrollment:** 10/10/2016 - 10/28/2016

**VSP Coverage Effective Date:** 01/01/2017

**VSP Provider Network:** VSP Choice

Benefit	Description	Copay	Frequency
<b>Your Coverage with a VSP Provider</b>			
<b>WellVision Exam</b>	<ul style="list-style-type: none"> <li>Focuses on your eyes and overall wellness</li> </ul>	\$0	Every 12 months
<b>Prescription Glasses</b>			
<b>Frame</b>	<ul style="list-style-type: none"> <li>\$150 allowance for a wide selection of frames</li> <li>\$170 allowance for featured frame brands</li> <li>20% savings on the amount over your allowance</li> <li>\$80 Costco® frame allowance</li> </ul>	\$0	Every 12 months
<b>Lenses</b>	<ul style="list-style-type: none"> <li>Single vision, lined bifocal, and lined trifocal lenses</li> <li>Polycarbonate lenses for dependent children</li> </ul>	\$0	Every 12 months
<b>Lens Enhancements (Lens Enhancement copay amounts are valid through VSP Choice Providers and are subject to change without notice).</b>	<ul style="list-style-type: none"> <li>Progressive lenses</li> <li>Anti-reflective coating</li> <li>Polycarbonate lenses for adults</li> <li>Photochromic/Tints</li> <li>Scratch-resistant coating</li> <li>UV Protection</li> <li>Most lens enhancements are covered after a copay, saving VSP® members an average of 20-25%.</li> </ul>	\$55 - \$105 \$41 - \$85 \$31 - \$35 \$33 - \$82 \$17 - \$33 \$10 - 16	Every 12 months
<b>Contacts (instead of glasses)</b>	<ul style="list-style-type: none"> <li>\$130 allowance for contacts</li> <li>Contact lens exam (fitting and evaluation)</li> </ul>	\$0 Up to \$60	Every 12 months
<b>Diabetic Eyecare Plus Program</b>	<ul style="list-style-type: none"> <li>Services related to diabetic eye disease, glaucoma and age-related macular degeneration (AMD). Retinal screening for eligible members with diabetes. Limitations and coordination with medical coverage may apply. Ask your VSP doctor for details.</li> </ul>	\$20	As needed
<b>Extra Savings</b>	<b>Glasses and Sunglasses</b>	<ul style="list-style-type: none"> <li>Extra \$20 to spend on featured frame brands. Go to <a href="http://vsp.com/specialoffers">vsp.com/specialoffers</a> for details.</li> <li>20% savings on additional glasses and sunglasses, including lens enhancements, from any VSP provider within 12 months of your last WellVision Exam.</li> </ul>	
	<b>Retinal Screening</b>	<ul style="list-style-type: none"> <li>No more than a \$39 copay on routine retinal screening as an enhancement to a WellVision Exam</li> </ul>	
	<b>Laser Vision Correction</b>	<ul style="list-style-type: none"> <li>Average 15% off the regular price or 5% off the promotional price; discounts only available from contracted facilities</li> </ul>	
<b>Your Monthly Contribution</b>	\$10.08 Member only    \$20.14 Member + 1    \$32.44 Member + family		

### Your Coverage with Out-of-Network Providers

Visit [vsp.com](http://vsp.com) for details, if you plan to see a provider other than a VSP network provider.

Exam .....	up to \$45	Lined Bifocal Lenses .....	up to \$50	Progressive Lenses .....	up to \$50
Frame .....	up to \$70	Lined Trifocal Lenses .....	up to \$65	Contacts .....	up to \$105
Single Vision Lenses .....	up to \$30				

Coverage with a participating retail chain may be different. Once your benefit is effective, visit [vsp.com](http://vsp.com) for details. Coverage information is subject to change. In the event of a conflict between this information and your organization's contract with VSP, the terms of the contract will prevail. Based on applicable laws, benefits may vary by location.

Contact us. [800.877.7195](tel:800.877.7195) | [www.vsp.com/go/contracostacounty](http://www.vsp.com/go/contracostacounty)

<sup>1</sup>Brands/Promotion subject to change.

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RESOLUTION NO. 2016-1

**RESOLUTION OF THE CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
AMENDING THE CONTRA COSTA LAFCO EMPLOYEE BENEFIT PLAN**

**WHEREAS**, the Contra Costa Local Agency Formation Commission (LAFCO) is an independent regulatory agency created by the State Legislature; and

**WHEREAS**, pursuant to Government Code §56385, LAFCO may provide benefits, including retirement, health, dental and other benefits to its employees; and

**WHEREAS**, in 2007, the Commission adopted a benefit plan for LAFCO employees; and

**WHEREAS**, Contra Costa LAFCO participates in Contra Costa County administered benefit programs for health, dental, life insurance, deferred compensation and other employee benefit; and

**WHEREAS**, any changes to the LAFCO employee benefit plan must be approved by the Commission; and

**WHEREAS**, Contra Costa LAFCO retains the right to modify the LAFCO employee benefit plan at any time, and will notify the County in such event; and

**WHEREAS**, the Contra Costa County Human Resources Department advised LAFCO of a new vision plan (employee paid) in which LAFCO employees are eligible to participate.

**NOW, THEREFORE, BE IT RESOLVED** that Contra Costa LAFCO hereby amends its employee benefit plan to add the following language:

**MEDICAL, DENTAL AND RELATED BENEFITS:** Effective January 1, 2017, LAFCO employees may participate in a 100% employee paid eye care plan that provides vision care and eyewear.

\*\*\*\*\*

PASSED AND ADOPTED THIS 9<sup>TH</sup> day of November 2016, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

\_\_\_\_\_  
MARY N. PIEPHO, CHAIR, CONTRA COSTA LAFCO

*I hereby certify that this is a correct copy of a resolution passed and adopted by this Commission on the date stated above.*

Dated: November 9, 2016

\_\_\_\_\_  
Lou Ann Texeira, Executive Officer



November 9, 2016  
Agenda Item 11

## AGENDA

### RETIREMENT BOARD MEETING

SPECIAL MEETING  
October 20, 2016  
9:00 a.m.

Retirement Board Conference Room  
The Willows Office Park  
1355 Willow Way, Suite 221  
Concord, California

THE RETIREMENT BOARD MAY DISCUSS AND TAKE ACTION ON THE FOLLOWING:

1. Pledge of Allegiance.
2. Accept comments from the public.
3. Approve minutes from the September 14, 2016 meeting.

#### *CLOSED SESSION*

4. The Board will meet in closed session pursuant to Govt. Code Section 54956.9(d)(2) to confer with legal counsel regarding potential litigation.

#### *OPEN SESSION*

5. Educational presentation from Segal on Actuarial 101.
6. Presentation from Segal regarding the December 31, 2015 Valuation Report.
7. Consider and take possible action to adopt the December 31, 2015 Valuation Report and contribution rates for the period July 1, 2017 – June 30, 2018.
8. Consider and take possible action to approve the GASB 68 report from Segal.
9. Miscellaneous
  - a. Staff Report
  - b. Outside Professionals' Report
  - c. Trustees' Comments

The Retirement Board will provide reasonable accommodations for persons with disabilities planning to attend Board meetings who contact the Retirement Office at least 24 hours before a meeting.



## AGENDA

### RETIREMENT BOARD MEETING

SECOND MONTHLY MEETING  
October 26, 2016  
9:00 a.m.

Retirement Board Conference Room  
The Willows Office Park  
1355 Willow Way, Suite 221  
Concord, California

THE RETIREMENT BOARD MAY DISCUSS AND TAKE ACTION ON THE FOLLOWING:

1. Pledge of Allegiance.
2. Accept comments from the public.
3. Presentation from staff and Siguler Guff regarding a potential commitment to Siguler Guff Secondary Opportunities Fund.
4. Consider and take possible action regarding a commitment to Siguler Guff Secondary Opportunities Fund.
5. Consider and take possible action to authorize manager searches for:
  - a. Emerging market equity
  - b. Passively managed US equity
6. Consider and take possible action to adopt BOR Resolution 2016-3, Investment Asset Allocation Targets and Ranges.
7. Consider authorizing the attendance of Board and/or staff:
  - a. Aether annual meeting, Aether, January 25-26, 2017, Denver, CO.
8. Miscellaneous
  - a. Staff Report
  - b. Outside Professionals' Report
  - c. Trustees' Comments

The Retirement Board will provide reasonable accommodations for persons with disabilities planning to attend Board meetings who contact the Retirement Office at least 24 hours before a meeting.



## AGENDA

### RETIREMENT BOARD MEETING

REGULAR MEETING  
November 2, 2016  
9:00 a.m.

Retirement Board Conference Room  
The Willows Office Park  
1355 Willow Way, Suite 221  
Concord, California

THE RETIREMENT BOARD MAY DISCUSS AND TAKE ACTION ON THE FOLLOWING:

1. Pledge of Allegiance.
2. Accept comments from the public.
3. Approve minutes from the September 28 and October 12, 2016 meetings.
4. Routine items for November 2, 2016.
  - a. Approve certifications of membership.
  - b. Approve service and disability allowances.
  - c. Accept disability applications and authorize subpoenas as required.
  - d. Approve death benefits.
  - e. Accept Asset Allocation Report
5. Educational presentation on Ralph M. Brown Act open meetings laws.
6. Educational session on fiduciary duties presented by fiduciary counsel.
7. Miscellaneous
  - a. Staff Report
  - b. Outside Professionals' Report
  - c. Trustees' comments

The Retirement Board will provide reasonable accommodations for persons with disabilities planning to attend Board meetings who contact the Retirement Office at least 24 hours before a meeting.

# MEMORANDUM

November 9, 2016  
Agenda Item 13a

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**CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION**  
651 Pine Street, Sixth Floor ♦ Martinez CA 94553 ♦ (925) 335-1094 ♦ Fax (925) 335-1031

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November 9, 2016

**TO:** Each Member of the Commission  
**FROM:** LAFCO Executive Officer  
**SUBJECT:** Highlights of 2016 Annual CALAFCO Conference

Commissioners, guests and LAFCO staff attended the 2016 Annual CALAFCO Conference in Santa Barbara (October 26-28) hosted by Santa Barbara LAFCO. The conference was well attended with 284 attendees, guests and speakers representing 47 of the 58 LAFCOs.

The conference theme was *Orchards to Oceans... Balancing California's Diversity* and provided a number of timely sessions. General sessions focused on water; curbing urban sprawl and preserving agricultural lands; and LAFCO and State legislative overrides. Breakout sessions covered cutting edge trends (GIS/public policy/future challenges); AB 8 – realignment of property tax revenues and services; city incorporations (case studies); growth and development (demographic and governance changes); CEQA; and disadvantaged communities.

The conference drew a number of expert speakers including Mark Cowin - California Department of Water Resources, Serena Unger - American Farmland Trust, Randall Wilson- California Strategic Growth Council, Carolyn Chu – Legislative Analyst's Office, Michael Latner - Political Science & Public Policy Professor, Dr. David Lopez Carr – Geography Professor, Anton Favorini-Csorba, Consultant – State Governance & Finance Committee and a number of LAFCO Commissioners and staff from around the State.

The keynote speaker was Jean-Michel Cousteau, Explorer, Environmentalist, Educator, and Film Producer. Honoring his heritage, in 1999 Jean-Michel founded *Ocean Futures Society*, a non-profit marine conservation and education organization, which serves as a “voice for the ocean.” Jean-Michel is an impassioned ambassador for the environment. He has produced over 80 films, and received numerous awards and acclaims. Look for his newest film *Secret Ocean 3D* – coming soon.

The conference also included a mobile workshop, LAFCO 101, the annual beer & wine reception, regional roundtable discussions, the annual CALAFCO business meeting, the annual awards ceremony, CALAFCO Board of Directors meeting, and a CALAFCO legislative update. Conference material is available on the CALAFCO website at [www.calafco.org](http://www.calafco.org).

We are pleased to announce that Contra Costa LAFCO was the recipient of two awards. Commissioner Tatzin was named the 2016 “Outstanding Commissioner” for his role in facilitating a number of complex reorganizations and his work as a member of the Policies & Procedures Committee; and Contra Costa County took home the Bronze medal (red wine category) – thank you, Commissioner Piepho! In addition, Commissioner McGill was re-elected to the CALAFCO Board of Directors (Special District seat) representing the Coastal Region. Congratulations to all and staff thanks the Commission for the opportunity to attend.

**CONTRA COSTA LOCAL AGENCY FORMATION COMMISSION  
PENDING PROPOSALS – NOVEMBER 9, 2016**

November 9, 2016  
Agenda Item 13b

<b>LAFCO APPLICATION</b>	<b>RECEIVED</b>	<b>STATUS</b>
Town of Discovery Bay Community Services District (DBCSD) SOI Amendment (Newport Pointe): proposed SOI expansion of 20± acres bounded by Bixler Road, Newport Drive and Newport Cove	July 2010	Incomplete; awaiting info from applicant
DBCSD Annexation (Newport Pointe): proposed annexation of 20± acres to supply water/sewer services to a 67-unit single family residential development	July 2010	Incomplete; awaiting info from applicant
Bayo Vista Housing Authority Annexation to RSD: proposed annexation of 33± acres located south of San Pablo Avenue at the northeastern edge of the District's boundary	Feb 2013	Continued from 11/12/14 meeting
Reorganization 186 (Magee Ranch/SummerHill): proposed annexations to Central Contra Costa Sanitary District (CCCSD) and East Bay Municipal Utility District (EBMUD) of 402± acres; 9 parcels total to CCCSD (8 parcels) and EBMUD (7 parcels)	June 2014	Removed from the Commission's calendar pending further notice
Tassajara Parks Project – proposed SOI expansions to CCCSD and EBMUD of 30± acres located east of the City of San Ramon and the Town of Danville	May 2016	Currently incomplete
Tassajara Parks project – proposed annexations to CCCSD and EBMUD of 30± acres located east of the City of San Ramon and the Town of Danville	May 2016	Currently incomplete
Reorganization 191 (Faria Preserve West): Annexations to CCCSD and EBMUD of 9.7± acres in the City of San Ramon	Oct 2016	Under review



## Governor Signs Bill Limiting Eden Health District's Administrative Spending

Posted by : [Steven Tavares](#) October 4, 2016

*By Steven Tavares.*

Legislation that could be the first nail in the Eden Health District's coffin was signed last week by Gov. Jerry Brown. The new law, authored by East Bay Assemblymember Rob Bonta, requires the struggling Eden Health District to allocate a minimum of 80 percent of its operating budget for health-related expenditures. The narrowly-tailored bill only pertains to the Eden Health District, which covers much of Central Alameda County.

Following a years-long legal battle with hospital provider Sutter Health over ownership of San Leandro Hospital, the healthcare district's financial situation has been precarious in recent years. After losing the lawsuit, Eden Health District was ordered to pay \$20 million in damages to Sutter Health spread out over 10 years.

In addition to no longer overseeing a hospital, which was its original duty when voters created the district in 1948, its grant-giving ability has also been severely limited in recent years. Much of its income comes from medical office properties the district owns in Castro Valley and Pleasanton. The healthcare district is not funded by any taxes. Nearly two years ago, Eden Health District spent just 12 percent of its budget outside of administrative costs.

"The Eden District now essentially functions as a commercial real estate management operation, rather than a healthcare provider for the public," said Bonta. "Unfortunately, the mismanagement of the district and failure to meet the stated mission has gone on for too long and has violated the public trust by spending a disproportionate amount of their budget on administrative costs and not on helping people."

Bonta's bill faced little opposition through the legislative process before being signed by Brown on Sept. 21. Hayward Assemblymember Bill Quirk also offered legislation related to Eden Health District this session. Quirk's bill would have been far more punitive and ask for an immediate dissolution of the healthcare district. That bill, however, was shelved, in favor of Bonta's legislation.

But the push by Alameda County officials and local mayors to dissolve Eden Health District may only be beginning. The Alameda County Local Agency Formation Commission (LAFCO), which oversees the boundaries of jurisdictions in the region, is currently discussing the district's future, including the possibility of dissolution. A final report commissioned by LAFCO is scheduled for January 2017, according to a timeline offered last month. LAFCO's next meeting is Nov. 10.

*[Originally posted at East Bay Citizen.](#)*

## Health district detachment; setting stage for reconsideration

by Frank Robertson Sonoma West Staff Writer news@sonomawest.com | Posted: Wednesday, October 12, 2016 11:26 am

County officials agreed to detach the lower Russian River area from the Palm Drive Health Care District last week, setting the stage for a protest proceeding expected to last into next year.

In a landmark vote that will drastically lower the Palm Drive Health Care District's approximately \$4 million in annual property tax revenues, members of the Sonoma County Local Agency Formation Commission (LAFCO) voted unanimously to detach the Monte Rio, Guerneville and Forestville area school district taxpayers from the Health Care District now in its second bankruptcy proceeding.

The vote formally vindicates months of signature gathering by members of TAUT, Taxpayers Against Unfair Taxes, the volunteer group started by three district residents, Margaret Benelli of Guerneville and Carolyn and Gary Harris of Forestville.

The LAFCO vote last week "acknowledges the heartbeat of our community," said Carolyn Harris, one of the organizers of the successful petition drive begun two years ago to get River residents out of the Palm Drive Hospital tax base.

The detachment advocates raised concerns about the fairness of the health care district's \$155 annual parcel tax that burdened taxpayers even after the former Palm Drive Hospital, now called Sonoma West Medical Center, went into bankruptcy and closed for 18 months.

Health Care District representatives last week again promised that Sebastopol's Sonoma West Medical Center is headed for solvency and can continue to deliver needed medical services to the River detachment area.

"Things are turning around rapidly," for the Sonoma West Medical Center, Palm Drive Health Care District Director Dennis Colthurst told LAFCO last week. Under the direction of Pipeline Health as the current management team, the bankrupt hospital "is not heading into the ashes again," said Colthurst.

LAFCO's seven board members wished the hospital well but said detachment is appropriate after more than 25 percent of the River area's voters signed petitions in support of getting out of the Palm Drive Health Care District's tax area. Detachment will cut Health Care District tax revenues by about 40 percent, "a huge hit to the district," said Palm Drive Health Care District Executive Director Allana Brogan last week.



“This is a tough day for the health care district,” agreed 5th District Supervisor Efren Carrillo, who serves as LAFCO’s chairman. But detachment could create the impetus for the Sebastopol hospital to find fiscal stability without taxing residents who don’t use the facility, said LAFCO.

The financial difficulties at the Sebastopol hospital reflect similar challenges nationally for small publicly owned hospitals, said Carrillo. The successful River-area petition drive begun two years ago was considered a longshot but met all the rather stringent requirements of the LAFCO detachment process, said Carrillo. “That was really the turning point,” in persuading LAFCO to approve the detachment application, said Carrillo.

The detachment process will now continue with a 30-day window during which Palm Drive Health Care District directors can ask for a formal reconsideration of the detachment vote.

If the health care district asks for reconsideration, LAFCO would then hold a hearing at its regular Dec. 7 meeting to weigh the request.

If LAFCO denies the reconsideration request, a protest proceeding would open to allow Health Care District residents to protest detachment. The protest process would continue for seven weeks, during which detachment opponents would need formal support from more than 25 percent of either (A) voters in the detachment area or (B) 25 percent of landowners who own at least 25 percent of the assessed land value of the land within the affected territory, the Monte Rio, Guerneville and Forestville school districts, according to the staff report to LAFCO last week from LAFCO Executive Officer Mark Bramfitt.

Health Care District Directors have indicated they intend to file a request for reconsideration, said Bramfitt. The request will require new information that could not have been known prior to the vote last week. The request also requires a \$2,300 fee, said Bramfitt.

If the protest process opens in December it would continue until February of next year, according to the LAFCO schedule approved last week. If the protest fails to meet the criteria, “This could all be over in February,” said Bramfitt.



## WaterNews

# California Designs First Statewide Water Affordability Program

October 13, 2016 / in United States, Water Management, Water News, Water Pricing / by Brett Walton

*Many questions before the program begins operating.*



California officials are developing the nation's first state program to assist poor families who have trouble paying their water bill. Photo © Matt Black

**By Brett Walton, Circle of Blue**

Prompted by a [2015 state law \[https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB401\]](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB401), the State Water Resources Control Board has begun designing a program to provide state aid to individuals and families who need help paying their water bills. Due to the Legislature by February 1, 2018, California is determined to be the first to use state funds to subsidize water service for poor residents, water rate experts say.

California is in the vanguard of what is becoming a [nationwide movement for affordable water \[http://www.circleofblue.org/2016/water-policy-politics/water-rights-access/water-affordability-new-civil-rights-movement-united-states/\]](http://www.circleofblue.org/2016/water-policy-politics/water-rights-access/water-affordability-new-civil-rights-movement-united-states/). The cost of water service is increasing across the country as cities repair old pipes,

overhaul treatment facilities, and comply with state and federal drinking water regulations. Meanwhile, the incomes of the poorest Americans, though they rose at an encouraging rate in 2015 [[https://www.washingtonpost.com/business/economy/us-household-incomes-soared-in-2015-recording-biggest-gain-in-decades/2016/09/13/a832da44-79e0-11e6-ac8e-cf8e0dd91dc7\\_story.html](https://www.washingtonpost.com/business/economy/us-household-incomes-soared-in-2015-recording-biggest-gain-in-decades/2016/09/13/a832da44-79e0-11e6-ac8e-cf8e0dd91dc7_story.html)], have not kept pace with the rising cost of household needs for food, housing, phone service, healthcare, and other essentials, including water.

Interest in the topic is widespread. Utilities, often at the forefront of the affordability question, are expanding or reworking their aid packages. Philadelphia's water utility, for one, is testing an income-based water rate, which will be rolled out by next spring. Federal officials are interested, too. The U.S. Environmental Protection Agency is studying affordability, as are several expert groups that are advising the agency while it prepares a new national drinking water strategy, due in December. The U.S. Senate held a [hearing in April](http://www.epw.senate.gov/public/index.cfm/hearings?ID=6F546780-A36E-44FE-9C5B-6B797D7F00A6) [<http://www.epw.senate.gov/public/index.cfm/hearings?ID=6F546780-A36E-44FE-9C5B-6B797D7F00A6>] on the cost of water service, and earlier that month U.S. officials from four government agencies [testified before the Inter-American Commission on Human Rights](https://www.youtube.com/watch?v=uNqNhuNnFWE) [<https://www.youtube.com/watch?v=uNqNhuNnFWE>] on access to water in the United States. It was the first time that U.S. authorities had appeared in front of the commission to address domestic drinking water access.

All of which makes California an interesting case study, says Stacey Isaac Berahzer of the Environmental Finance Center at the University of North Carolina. There is much work to do. Comments from water board officials at a public meeting in Fresno, on October 12, indicate that the state's thinking about the program is still in its very earliest stages.

"We'll be collecting a certain amount of money in some way so that it gets to people to help pay their water bill," said Max Gomberg of the State Water Resources Control Board. The Fresno meeting was the first of five forums over the next month to gather public input on the program.

The ambiguity in Gomberg's statement reflects the difficulty of the water board's task. It must estimate statewide needs based on financial circumstances that vary from household to household. It must also find a funding source, most likely taxes or fees, that does not run afoul of state rules that prohibit utilities from charging higher rates on one group of customers to subsidize another.

The water board identified four main questions that will guide the development of the program:

- 1) Who is eligible?
- 2) How much aid will be offered and what form will it take (a rebate, a tax credit, or a reduced bill)?
- 3) How will the state pay for it?
- 4) How will it be administered?

Regarding eligibility, Gomberg said that the water board is considering whether

enrollment for other services such as Medicaid or home-heating assistance can be used as a proxy, to reduce paperwork and processing. Other questions: At what percent of monthly income does water become unaffordable? How should the state account for renters and those who live in apartments and might not be directly billed for water?

Measuring affordability is a challenge. The U.S. Environmental Protection Agency uses median household income for a utility's service area as the basis for affordability. Water bills are deemed "unaffordable" if they exceed 2.5 percent of the median income. Numerous critics, however, point out that this is a blunt tool. Poorer residents may be paying far more as a percent of their income.

A 2013 study [<http://d3n8a8pro7vhmx.cloudfront.net/communitywatercenter/pages/52/attachments/original/1394397950/assessing-water-affordability.pdf?1394397950>] by the Pacific Institute, Community Water Center, and Fresno State University used more detailed data that incorporated household income. The researchers found that nearly one-quarter of households in the Sacramento metropolitan region were paying more than two percent of household income on water. Two percent is the affordability threshold that California uses.

Private wells are another issue. Generally households that use a well are responsible for maintenance and testing. Gomberg said that the water board, which estimates as many as two million Californians are served by private wells, would consider using state aid if a family could not afford maintenance.

"We're trying to implement the right to water," Gomberg said, referring to California's 2012 law that established a state role in ensuring water access for all residents. "So we would look at including private well owners."

Quality is another matter, but one that is probably beyond the water affordability program's mandate. Many towns in the Central Valley and Salinas Valley, two major farm regions, supply water to homes with high levels of nitrates, which can kill an infant. Not only might it be unaffordable, the water is undrinkable. The water board is considering whether families who buy bottled water because their tap water is unsafe should be eligible for aid under the affordability program. Per gallon, bottled water is dozens or hundreds of times more expensive than tap water.

All of the ideas will be incorporated into a draft plan, which will be released early next year, Gomberg said.

The plan, once finalized by February 2018, is only a first step. The Legislature will have to approve a funding source, probably taxes or fees, Gomberg said. The earliest the program might begin handing out aid is 2019, he reckoned.

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**Brett Walton** [<http://circleofblue.org/author/brett>]

Brett writes about agriculture, energy, infrastructure, and the



[http://twitter.com/waltonwater]

politics and economics of water in the United States. He also writes the Federal Water Tap [http://www.circleofblue.org/water-tap/], Circle of Blue's weekly digest of U.S. government water news. He is the winner of two Society of Environmental Journalists reporting awards, one of the top honors in American environmental journalism: first place for explanatory reporting for a series on septic system pollution in the United States (2016) and third place for beat reporting in a small market (2014). Brett lives in Seattle, where he hikes the mountains and bakes pies. Contact Brett Walton [http://www.circleofblue.org/contactbrettwalton/]

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## East Bay Times

# Sewer water die hards refuse to give up



Sam Lipson, of Martinez, fills five gallon jugs with recycled water at the Central Contra Costa Sanitary District recycled water filling station in Martinez, Calif., on Wednesday, Oct. 12, 2016. Recycle water for landscape irrigation is provided free of charge to homeowners. (Anda Chu/Bay Area News Group)

By [Denis Cuff](mailto:dcuff@bayareanewsgroup.com) | [dcuff@bayareanewsgroup.com](mailto:dcuff@bayareanewsgroup.com)

PUBLISHED: **October 17, 2016** at 7:00 am | UPDATED: October 16, 2016 at 3:54 pm

MARTINEZ — Though he knows it makes no financial sense, Sam Lipson regularly drives to a local sewer plant to haul home free effluent to irrigate the trees in his yard.

A year ago, at the height of California's drought when residents faced higher rates and penalties for using too much water, the time and effort saved Lipson money.

Now, with drought rates and penalties gone, Lipson saves less than 20 cents on his water bill each time he picks up 40 gallons of free effluent, instead of getting the water from his faucet at home. That's scant compensation for the time and effort.

But he — like many other Californians — continues to do it.

Water officials thought business at drought-inspired recycled water fill stations would wither and die after rates dropped back to normal and rainfall returned to near normal in much of California. Business has slowed but far from dried up.

Thousands of homeowners are still tanking up at sewer plants in Scotts Valley near Santa Cruz, Redwood City, Martinez, Pleasanton, Brentwood, Pittsburg, Livermore, Irvine, San Diego Los Angeles and Calabasas.

Heather Cooley, water program director at the Oakland-based Pacific Institute, a water think tank, said it's hard to predict how long the fill stations will stay in California. But she added that the users are sending an important message that public views have shifted about water scarcity and reuse.

"The public is understanding that California's water problems are not just in droughts but in normal years," Cooley said. "The message is that we need to look at effluent not just as a waste product but as a natural resource that we can make greater use of."

Lipson, a semi-retired community college chemistry professor who fills up eight 5-gallon jugs at the fill station at the Central Contra Costa Sanitary District plant in Martinez, says, "I do it because it's the right thing to do. ... I can't stand the idea of using fresh tap water on plants and trees when we're not using millions of gallons of our wastewater."

The more than 15 fill stations that popped up in the drought are a striking throwback to a low-tech, grass-roots course of individual action in the state with the most advanced water plumbing system in America. The volumes used are a drop in the bucket compared with overall water use.

Planners wonder: Is it a fad? Is it a feel-good measure? Or is it a vanguard of greater acceptance for using more recycled water in an arid state?

At the fill stations, people use tanks, barrels and jugs to haul home their water, which weighs 7.8 pounds per gallon, giving them a sense of mission and control over at least part of their supply.

In Scotts Valley near Santa Cruz, Bill Ekwall, a retired firefighter, picks up free effluent to irrigate his lawns, potted plants and other landscaping even though the Scotts Valley Water District has more abundant supplies this year.

Ekwall said he doesn't feel good about using Scotts Valley's limited groundwater to irrigate his plants when treated sewage is being piped out to sea.

"The newly constructed areas in town are built to get recycled water in purple pipes. The parks use recycled water," he said. "Why can't homeowners in the older areas have the same access to recycled water?"

Water and sewer industry managers say the steep cost of installing new purple pipes is a big deterrent to delivering recycled water to older neighborhoods.

Responding to public demand amid drought restrictions, some communities opened recycled water fill stations in the past two years to provide a temporary way to let homeowners get the effluent on a do-it-yourself basis.

The number of customers that pick up recycled water varies from community to community, according to a survey by the website [www.recycledh2o.net/](http://www.recycledh2o.net/), which tracks the trend.

About 88 people in Scotts Valley are signed up. Some 3,800 or more are signed up in the Dublin San Ramon Services District, the agency that opened the first fill station in 2014 and served as a model for other stations.

About 27 people are registered to use a fill station opened in Los Angeles this summer by the Los Angeles Department of Water and Power. The station recently switched from weekday to weekend hours in a move to make it more accessible and popular.

Los Angeles' primary reason for the station is to promote greater understanding and acceptance of recycled water as more California communities study expanding its use, said Alberto Rodriguez, a department spokesman.

In Scotts Valley, Piret Harmon, the local water district general manager, said her agency benefits from offering the free service because it lays a foundation of public understanding of recycled water. The district is studying whether to use treated effluent to replenish the local underground basins from where the district pumps its water supply.

She expects the Scotts Valley fill station will stay in business as long as there are a significant number of users.

“I think it’s a feel-good thing,” Harmon said.

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#### SOME BAY AREA RECYCLED WATER FILL STATIONS\*

Redwood City, 601 Chesapeake Dr., Redwood City. Visit <http://bit.ly/2e4I5Hz> for information

Martinez: Central Contra Costa Sanitary District, 4797 Imhoff Dr. Martinez.

<http://bit.ly/2e4IUAg>

Scotts Valley: Scotts Valley Water District, 370 Kings Village Road. <http://bit.ly/2e4Mha9>

Pleasanton: Dublin San Ramon Services District. 7399 Johnson Drive, Pleasanton.

<http://bit.ly/27BPba5>

Brentwood: Brentwood wastewater plant, 2251 Elkins Way. <http://bit.ly/2e4OH8H>

\*Some fill stations limit use to local residents. Hours and days open vary from station to station.



## New York Times

# As California Water Use Rises, Some Ask: Were Limits Eased Too Soon?

By [ADAM NAGOURNEY](#)

OCT. 19, 2016

EAST PORTERVILLE, Calif. — This state slashed urban water use over 25 percent in the face of a punishing drought last year, exceeding a mandatory order issued by Gov. Jerry Brown and turning California into a model of water conservation. Californians tore out lawns, cut back landscape watering and took shorter showers as they embraced Mr. Brown’s call to accommodate what he warned were permanently drier times.

But this year, after regulators lifted the [mandatory 25 percent statewide cut](#) following a relatively wet winter, water use is up again, a slide in behavior that has stirred concern among state officials and drawn criticism that California abandoned the restrictions too quickly. In August, [water conservation dropped below 18 percent](#) compared with August 2013, the third consecutive month of decline.

“The lifting of the mandatory conservation targets was a big mistake,” said Peter H. Gleick, a founder of the [Pacific Institute](#), a think tank dedicated to water issues. “It sent the wrong message, it stopped the implementation of a growing set of effective urban conservation and efficiency programs, and it took pressure off both utilities and individuals to continue to improve water-use efficiency.”

Felicia Marcus, the chairwoman of the [Water Resources Control Board](#), said the state could not continue to ask Californians to take emergency measures amid evidence that the situation had eased. Still, she said she was concerned by the rise in water use and warned that the state may reimpose mandatory cuts if conservation continues to decline and California endures another dry winter.

“It’s not clear whether it is an understandable and reasonable relaxation or a turning away from the effort,” she said. “You can see it as people still saving two-thirds of what they were saving in the worst water moment in modern history, or you can worry that people are saving one-third less than last year. It really appears to be a mixed picture.”

## California Today

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“I worry about the slippage,” Ms. Marcus said. “But folks are still saving a lot of water without the state giving them a number.”

By any measure, California is confronting a complicated new chapter as it enters the sixth year of a drought that has forced it to balance huge demand for a sparse resource — water — from farmers, residents, municipalities and developers. For one thing, the situation is not as dire as a year ago after a relatively normal rainy season. Some of the most searing symbols of the drought, such as near-empty reservoirs, are harder to find.



The home of Sebastian Mejia and his family in East Porterville. They were provided a water tank when their well ran dry. Credit Stuart Palley for The New York Times

The improvement can be seen in and around this Central Valley farming community that became a national symbol of the drought. For nearly two years, Sebastian Mejia, a truck driver who lives here with his wife and four daughters, had to haul buckets of water to his home so his family could take showers, flush the toilet and wash the dishes. No more.

“I just took a shower right now,” Mr. Mejia said, standing on his dusty street on the edge of a community where many homes, including his, have temporary water tanks perched on their lawns.

A few miles away at the Drought Resource Center, no one was in line on a recent afternoon to use the temporary showers that were set up last year.

But the drought shows no sign of ending. Meteorologists say it would take five years of normal to heavy rain to replenish depleted groundwater supplies and reservoirs. Last year, after forecasts of a heavy [El Niño weather system](#) that would soak the state, California ended up with average rainfall, concentrated in the north of the state.

And a number of environmentalists say this is not a typical cyclical drought that is part of life here, but rather the beginning of a more arid era created by global warming.

“We’ve had less than 39 inches of rain in five years in L.A. County, which is absolutely unprecedented in our history,” said Mark Gold, an environmental professor at the University of

California, Los Angeles. “The timing of the rollback and the mixed message could have severe consequences. The public did their part in responding to the emergency. We are still under emergency conditions.”

Even in places like this community, improvement in the availability of water has been limited.

Elva Beltran, who runs the Porterville Area Coordinating Council, which provides emergency water to families who run out, said that while the pace had slowed, people were still coming in for help. “I never know from one day to the next when a family is going to come by and say, ‘Mrs. Beltran, we are out of water.’ ”

In suspending the cutback, the board instructed the state’s 411 water agencies to determine whether conservation measures were necessary in their districts. (By easing the rules, the board was also acting in response to financial problems that some agencies suffered as drops in consumption led to decreased revenue.) The vast majority of districts declared that they did not need to impose rationing, relying on consumers to restrict use on their own.



A Drought Resource Center on the grounds of a local church. It provides showers, restrooms and drinking water for residents facing water shortages because of the drought. Credit Stuart Palley for The New York Times

Mayor Eric M. Garcetti of Los Angeles said he feared that that sent a confusing message to water users, signaling that it was fine to return to old habits when it was not. Ms. Marcus agreed that it was a challenging argument to make. “It’s less easy to message, that’s for sure,” she said.

Tracy Quinn, a policy analyst with [Natural Resources Defense Council](#), said the easing of the rules had come amid evidence that people were recognizing the severity of the situation and changing their habits. And some changes — such as replacing lawns with drought-tolerant plants — produced permanent reductions in water use.

“You had people willing to change their behavior altogether,” she said. “Watering their lawns less often. Taking shorter showers. I think people were making a lot of strides, and conservation was truly becoming a way of life.”

“We had one normal, average precipitation year among five,” she said. “We certainly don’t know what the next few years will bring.”

But Jeffrey Kightlinger, the general manager of the Metropolitan Water District of Southern California, which provides water for about 19 million people, said the state would have undercut its credibility if it had left the rule in place. He said that while conservation was down in his area, the agency had been able to build up its reserves by bringing water down from the north.

“If you tell people it’s an emergency and you had an average water year, people get cynical and say you are only playing with numbers,” he said. “The tension is: Do you continue to push an emergency message when it’s really not an emergency?”

Ms. Marcus said she had been encouraged by the way the public had rallied during the worst months of the drought and was confident that people would step up again if conditions grew worse. If not, under the original drought order issued by Mr. Brown, the state can reimpose mandatory conservation with 10 days’ notice, though Ms. Marcus said the board would probably hold hearings to give the public a chance to comment. “We’re not planning on surprising anyone,” she said.

David L. Sedlak, a director of the Berkeley Water Center at the University of California, Berkeley, said that in lifting the rules, the state risked having people return to old habits.

“But we have to balance that risk against the risk of crying wolf,” he said. “If we make the drought restrictions permanent, what do we do the next time the drought becomes severe? There will be no more buttons to push.”

## East Bay Times

# Martinez officials left in the dark about rumored Shell refinery sale



Doug Duran/Staff

The Shell oil refinery in Martinez, seen from across the Carquinez Strait in Benicia.

By [Sam Richards](#) | [srichards@bayareanewsgroup.com](mailto:srichards@bayareanewsgroup.com)

PUBLISHED: **October 19, 2016** at 1:15 pm | UPDATED: October 20, 2016 at 4:47 am

**MARTINEZ** — A new published report said this week that Royal Dutch Shell has enlisted a German company to help find a buyer for its Martinez Refinery.

Local officials in Martinez, where Shell has operated for more than a century, say they've heard next to nothing about a possible sale since an initial report in June. But as news of a possible sale advances, they say they have concerns about whether a new operator would be as good a corporate citizen as Shell has been.

“The relationship the city has had with Shell has been a close one; it's not just ‘the refinery,’ it's a part of the city's cultural fabric,” said Mayor Rob Schroder, whose father-in-law worked at Shell for 40 years. He and other council members say they've heard the scuttlebutt around town, based largely on news reports, but have heard nothing official from Shell managers. “Any change is concerning.”

Shell spokesman Ray Fisher in Houston said the company wouldn't have any comment on Tuesday's Reuters News Service report, or on any aspect of a possible sale.

The Reuters story said Royal Dutch Shell has enlisted Deutsche Bank, a German global banking and financial services company, to find a buyer for the Martinez refinery. The Martinez refinery and its 700 employees produce gasoline, jet fuel, diesel fuel, petroleum coke, industrial fuel oils, liquefied petroleum gas, asphalt and sulfur.

That report cited one interested company, New Jersey-based PBF Energy, which recently bought a similarly sized refinery in Torrance from Exxon Mobil for a reported \$537 million.

A June report by Reuters about a possible sale of the Martinez refinery said the move was part of an effort among the big oil companies to shed some lower-profit operations before crude oil prices rise much further from low 2015 levels.

Area officials aren't concerned about the refinery closing — it is the fifth-largest in California as measured by barrels per day processed (more than 150,000). Approximately 40 percent of the refinery is within Martinez city limits, and the city collects about \$400,000 a year in property tax revenue from the refinery, said Cindy Mosser, the city's finance manager. (Contra Costa County gets the rest, and most of the sales tax revenue from the refinery).

But the replacement of a known solid corporate citizen with an unfamiliar operator gives local leaders pause. They've seen first-hand that not all cities that host large refineries have similar relationships.

"You just don't know what philosophy a new company would come in with," said Councilwoman Anamarie Avila Farias. "Shell has been a good neighbor, and has worked really well with the city."

"They've set a high bar in that regard," added Councilman Mark Ross. "Their people are out in the community. What the new owners would allow those local people to do is yet to be seen."

Shell has had some problems over the years, including explosions and an April 1988 oil spill that killed hundreds of water birds and resulted in a \$19.75 million legal settlement. But Contra Costa Health Services records show the Martinez refinery has had fewer incidents than other Contra Costa refineries over the past 30 years.

In 2014, Shell officials announced plans for the Martinez refinery to seek approval to process a lighter mix of crude oils and permanently shut down one of two coker units — moves to both increase refinery efficiency and make its operations more environmentally friendly. The changes would take several years to complete.

**East Bay Times**

## **West County Healthcare District files bankruptcy**

**The owner of the shuttered Doctors Medical Center had accepted an offer in January from Davis-based Royal Guest Hotels to buy 8.3 acres containing the hospital for \$13.5 million, but the hotel company recently pulled out of the deal.**

By [Tom Lochner](#) | [tlochner@bayareanewsgroup.com](mailto:tlochner@bayareanewsgroup.com)

PUBLISHED: **October 22, 2016** at 12:20 pm | UPDATED: October 24, 2016 at 5:22 am

SAN PABLO — The special district that owns the shuttered Doctors Medical Center filed for Chapter 9 bankruptcy protection this week after a hotel operator pulled out of a deal to buy what remains of the hospital's campus.

The board of the West Contra Costa Healthcare District, which owns the hospital, had accepted an offer in January from Davis-based Royal Guest Hotels to buy the remaining 8.3 acres containing the hospital for \$13.5 million.

But Royal Guest decided to cancel the agreement, said Healthcare district board chairman Eric Zell.

“With no chance to bring in revenue in the short term to cover existing district expenses, such as worker compensation claims and medical record storage, the district board voted unanimously to file for bankruptcy to allow for the orderly disposition of remaining financial obligations, including those owed to past district employees and vendors,” Zell said.

Doctors Medical Center, at 2000 Vale Road, San Pablo, closed in April 2015 after years of financial struggles that officials blamed largely on low reimbursement rates for Medi-Cal and Medicare patients, who constituted about 80 percent of DMC's patient mix. It had opened in 1954 as Brookside Hospital.

In March, the district sold to San Pablo a 2.5-acre slice of the campus that is being used by the adjacent Lytton Rancheria casino for parking. In 2014, the Lytton Rancheria had paid \$4.6 million upfront for a 20-year easement on the property, which remains in effect.

Royal Guest Hotels did not respond to an email Friday.

Check back for updates.

**East Bay Times**

# Multiple fire district measures on ballot in Contra Costa

By [Rowena Coetsee](mailto:rcoetsee@bayareanewsgroup.com) | [rcoetsee@bayareanewsgroup.com](mailto:rcoetsee@bayareanewsgroup.com)

PUBLISHED: **October 25, 2016** at 6:00 am | UPDATED: October 30, 2016 at 1:21 pm

Voters in far East Contra Costa and parts of West County will decide next month whether they will pay more to restore the fire services they have lost over the past few years.

Among the communities served by the financially strapped East Contra Costa Fire District, Brentwood and Oakley have placed similar proposed utility user taxes on the ballot that would generate the millions needed to reopen fire stations that have closed as well as build new ones.

And in Rodeo and Hercules, residents are being asked whether they are willing to shell out \$216 more each year to keep both fire stations open.

If it receives a majority vote, Brentwood's Measure Z would phase in an ongoing tax on residents' and businesses' telephone, electricity, gas and cable television bills over two years — 3 percent starting in January and 6 percent one year later.

The tax would not apply to low-income residents, whose eligibility will be determined by whether they qualify for utilities companies' discounted rates.

By the second year, the tax would be producing an estimated \$6.1 million annually for the city's general fund.

An independent, third party would include Measure Z revenue in its annual audits of the city's finances, monitoring how the money has been spent and publicizing that information.

Although the revenue is not earmarked for fire and emergency medical services, voters can express their wish that the city spend the money in this way by approving Measure A, a non-binding directive.

Brentwood's approximately 60,000 residents currently have one fire station that has only three firefighters on duty at a time. The goal is to open two more with the additional tax revenue.

Oakley's version of the proposed levy is Measure E, which would establish a 3.5 percent tax on not only electricity, gas and cable television but water and sewer use as well.

Schools, special districts and households that the city deems low-income will be exempt.



If it receives a majority vote, the tax is expected to drum up approximately \$2 million per year, which, like Measure Z, would flow into the city's general fund.

And Measure E comes with a companion proposal as well — Measure G — that asks Oakley residents whether they want the funds spent on fire and medical calls. If they do, the money would go toward staffing a second firehouse.

Measure E also would require the City Council to appoint a committee of residents to recommend how the tax revenue should be spent and oversee its use.

In addition, it would instruct the fire district to reimburse residents of the Summer Lake South development for the additional fees they already are paying to receive its services.

The 612 property owners in the not-quite-finished 625-home community at Bethel Island and East Cypress roads are contributing about \$150,000 annually.

The two measures are yet another attempt to shore up East Contra Costa Fire after voters rejected both a parcel tax in 2012 and a benefit assessment last year.

The district long has struggled to make ends meet, but money has become critically short since 2010 when it had an all-time high of eight stations.

East Contra Costa Fire closed two of them that year and three more following the defeat of the parcel tax.

The district's precarious finances have placed it in a state of flux, with stations closing, reopening and then closing again.

The agency currently has four stations serving about 110,000 residents — one in Discovery Bay, Oakley and Brentwood as well as another in Knightsen that is scheduled to close at the end of June 2017.

If both proposed utility taxes fail, far East County will return to three stations on July 1, 2017. If they succeed, the fire district will build or reopen several more — one in Oakley, two in Brentwood — for a total of six.

That still falls short of the nine stations that a consulting firm recommended in June, however.

Area residents also will be voting on Measure N, which offers the choice of electing the fire district board's nine members directly or continuing to allow the Brentwood and Oakley city councils along with the county Board of Supervisors to appoint representatives.

Another fire agency in Contra Costa County that has a proposal on the ballot to ease its financial stress is the Rodeo-Hercules Fire District.

The two-station district is asking residents to approve a \$216 annual parcel tax by voting for Measure O, which will require a two-thirds approval to pass.

Measure O is ongoing and expected to generate \$2.5 million annually once it takes effect July 1, 2017.

The tax would increase each year by no more than 3 percent. Seniors 65 and older are exempt.

The district has been in financial straits in recent years as its tax base shrunk and pension obligations increased.

The measure would replace a benefit assessment that was generating about \$940,000 annually — and that the district will rescind next year as the result of a lawsuit. The assessment helped reopen the Rodeo fire station, which closed in 2012 for lack of money.

If Measure O fails, that facility likely would close again at the end of 2017, according to then-Fire Chief Charles Hanley.

## East Bay Times

# Closed Pittsburg fire station to reopen



Susan Tripp Pollard/Staff archives

Contra Costa Fire Protection District Station 13, which closed in July 2013, is now set to reopen by Jan. 1

By [Sam Richards](#) | [srichards@bayareanewsgroup.com](mailto:srichards@bayareanewsgroup.com)

PUBLISHED: **October 25, 2016** at 4:31 pm | UPDATED: October 25, 2016 at 4:35 pm

PITTSBURG — A fire station that closed in 2013 is set to reopen by Jan. 1, thanks to an improving economy, better-than-expected performance of employee retirement investments and a city fee designed to help pay for fire protection, county officials said Tuesday.

Contra Costa Fire Station 87, on West Leland Road near John Henry Johnson Park and the Delta View Golf Course, closed in July 2013 amid fire budget problems stemming from a downfall in property tax revenues.

Contra Costa Fire District Chief Jeff Carman told the Contra Costa County Board of Supervisors that the general economic recovery has helped revive property values, which in turn drives up property tax revenue, a major source of funding for the district. He also credited what he said has been a better-than-expected performance of employee investments through the Contra Costa County Employees' Retirement Association.

Station 87 had first opened in 2000, serving western Pittsburg and parts of Bay Point. It closed after Measure Q, a parcel tax measure on the November 2012 ballot, was defeated by voters.

“It’s never an easy decision about what fire station to reopen and when,” Carman told county supervisors. But the Pittsburg-Antioch-Bay Point area has a high volume of calls, he said, which makes reopening a station there — in its Battalion 8 area — a sensible move.

Also getting credit for helping Station 87 reopen is a new Community Facilities District through which the city of Pittsburg will collect a fee for every new structure built in the city. The money will pay for fire protection and other emergency services. Pittsburg spokeswoman Jill Hecht said it’s too early to know how much money these building fees will bring in.

Carman said Pittsburg is the first city in the district to help pay for fire protection in this way, and hopes other Contra Costa cities adopt the same strategy.

Since Station 13 closed, Carman said, ConFire has made other cost-saving changes, including partnering with a private contractor for ambulance service.

County Supervisor Federal Glover of Pittsburg lauded the planned station reopening, and said that area has special fire needs. “Because of Highway 4 and its congestion, and with all the petrochemical companies in the area, it makes sense” to reopen a local fire station, he said.

The ConFire station in Clayton, Station 11, reopened in January 2015, after being closed for three years.

The following article was posted on October 26th, 2016

## **Santa Maria Sun - Volume 17, Issue 34**

### **Cuyama to host groundwater sustainability agency formation workshop Oct. 27**

**By DAVID MINSKY**

On Oct. 27, the Cuyama Community Services District will host a public workshop regarding the Sustainable Groundwater Management Act (SGMA) and the formation of the Cuyama Basin Water District.

The workshop will take place from 6 to 8 p.m. at the Cuyama Elementary School cafeteria located at 2300 Highway 166 in Cuyama and will include representatives from Santa Barbara, San Luis Obispo, Kern, and Ventura counties.

Growers and cattle ranchers from all four counties will be included in the Cuyama Basin Water District, which was approved by the Santa Barbara County Local Agency Formation Commission (LAFCO) and is described by LAFCO Executive Director Paul Hood as the “largest ever” in the agency’s history—encompassing more than 83,000 acres.

The district, which was approved by LAFCO on Sept. 1, will be a part of a larger groundwater sustainability agency that’s mandated by SGMA.

The formation of the Cuyama Basin Water District came as a result of SGMA, which was passed by Gov. Jerry Brown in September 2014 and is intended to protect California’s groundwater.

The new district drew controversy among some residents who said they were being excluded from the formation process and that the new district—which they say benefits only farmers—will take all of their water.

A depleting aquifer directly underneath the Cuyama Valley is the area’s only source of water for residents and farmers.

“No individual owns water on a lifeboat,” John Coats, manager of the Cuyama Community Services District, said at a LAFCO meeting in August.

Ernest Conant, a Bakersfield attorney, is leading the effort for the formation of the district, whose members include larger growers like Bolthouse Farms, a subsidiary of the Campbell Soup Company.

Representatives from the California Department of Water Resources and the State Water Resources Control Board will also be present at the workshop.

## East Bay Times

# Contra Costa: Urban limit line battle coming to head in Tassajara Valley



Undeveloped land is seen in Contra Costa County near Danville on Oct. 20. The Contra Costa Board of Supervisors may soon decide whether to approve a new housing project in the Tassajara Valley that would breach the county's urban limit line. (Kristopher Skinner/Bay Area News Group)

By [Sam Richards](#) | [srichards@bayareanewsgroup.com](mailto:srichards@bayareanewsgroup.com)

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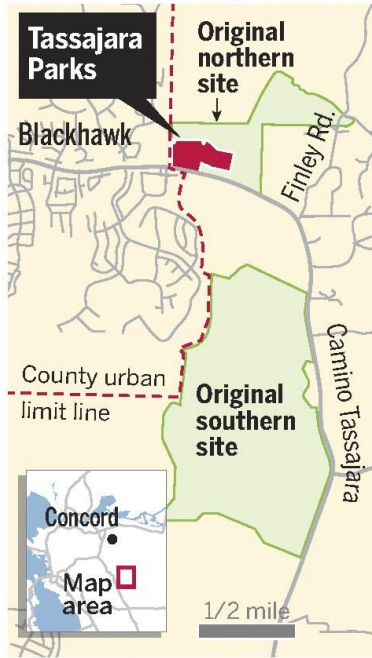
TASSAJARA VALLEY — Amid the open spaces of this rural area east of Danville, a developer wants to build houses on a relatively small parcel of land — 30 acres — and has scaled back his proposal over several years to appease neighbors.

Nevertheless, the project continues to generate a fierce backlash among some environmentalists and residents who fear it will cross a sacrosanct boundary — Contra Costa County's urban limit line — that has not been breached since its creation in 1990.

The 125-home project site is outside that line, an established outer boundary of commercial and residential development approved by voters.

## TASSAJARA VALLEY PLAN

A 2007 development plan in the unincorporated area between San Ramon and Danville that drew the ire of environmentalists and residents has been scaled back and renamed Tassajara Parks.



Opponents say approval of Tassajara Parks, which could happen by year's end, might open the floodgates to development, in a worst-case scenario triggering a prospective domino effect replacing brown grazing lands and dry-ranching prairie with yet more houses. As many as 964 parcels could be affected, they say.

"I fear that developers could just march right down the (Tassajara) valley, and if they could do it in 30-acre increments, a bit here and a bit there, it all works," said Donna Gerber, who as a county supervisor in 2000 worked with fellow former supervisor Joe Canciamilla and others to give 14,000 acres of open space and agricultural land urban limit line protection.

Tassajara Parks' backers say this won't happen near their project. "There is hardly any private land touching the urban limit line," said David Bowlby, a consultant and spokesman for the project proposed by Samir F. Kawar. "There aren't more than two or three parcels where that could happen."

While voters must approve any move of the urban limit line involving more than 30 acres, the Contra Costa County Board of Supervisors can unilaterally decide to move parcels of 30 acres or fewer outside (or inside) that line by a four-fifths vote, if certain findings are made.

Contra Costa is the only Bay Area county to have such an urban limit line, and San Ramon its only city to have one. Seven Santa Clara County cities, including San Jose, have set urban growth boundaries; they've also been adopted by Livermore, Pleasanton and Hayward and more than 100 other city and county governments around the United States.

The Tassajara Parks proposal is from FT Land LLC, whose principal is Kawar, a former Jordanian transportation minister who owns the land. The public face of what began in 2007 as the 187-house New Farm project initially was East Bay consultant-power broker Tom Koch, but Bowlby last week adamantly denied that Koch — the lead consultant on Brentwood's failed 2010 Measure F to move the limit line near that city — has any involvement with Tassajara Parks now.

Gerber said she believes otherwise, and expects Koch will push for a supervisors' vote on the project before the end of December.

### Developer touts 'green wall'

Bowlby said the plan to deed 616 acres south of the proposed houses to the East Bay Regional Park District as open space for recreational use would create a "green wall" that would protect

most of the urban limit line in the Tassajara Valley. But Gerber said the green wall won't protect anything. "It's a flim-flam proposal, and I find it offensive," she said.

As of late October, Contra Costa County planners were evaluating comments on Tassajara Parks' recirculated draft environmental impact report, one changed significantly by 25 recent comments, most of them about water. The last day to comment is Nov. 14. The next Tassajara Parks hearing, by the county's zoning administrators, is scheduled for Nov. 7 in Martinez.

To justify moving the urban limit line, supervisors must make at least one finding from a list of seven. One involves whether the project has public benefits.

Kim McKnight, a volunteer traffic guide at Diablo Vista Middle School near where the houses would be, said school parking lot and drop-off improvements the project would bring are a considerable benefit. "It's poorly designed, and I'm surprised no child has been hit so far," McKnight said.

Another "finding" is presence of a thorough preservation agreement supported by neighboring cities. Gerber asserts an existing proposed "memorandum of understanding" doesn't qualify as a preservation agreement or, by extension, as a condition for moving the urban limit line.

### **Opposition to a change**

Steve Barr and Diane Burgis, the two county supervisor candidates competing in the Nov. 8 election to represent District 3, which covers most of Tassajara Valley, have not taken a public position, saying that could compromise a vote they may be asked to make if elected. That district contains 51 percent of the land protected by the urban limit line.

Gretchen Logue, co-founder of the Tassajara Valley Preservation Association, whose primary mission is to defend adherence to the urban limit line, said Tassajara Parks would mean more traffic, more stress on wildlife, further crowding of area schools and, perhaps most important, added pressure on the area's already-depleted underground water table.

While the group Greenbelt Alliance opposes Tassajara Parks, Save Mount Diablo has been working with FT Land LLC to make this a more tolerable project than the original New Farm, said Seth Adams, the group's land conservation director. Save Mount Diablo is withholding final judgment on the Tassajara Parks project pending a final version of the memo of understanding, he said. But he said his group, unlike Greenbelt Alliance, is "impressed by the conservation aspect" of the 616 acres.

Logue and Richard Fischer, the other Tassajara Valley Preservation Association co-founder, plan to talk to each supervisor about preserving the limit line; the first such meeting, with District 5 Supervisor Federal Glover, went well, Fischer said last week. Gerber and Canciamilla plan similar meetings after the election but before one incumbent, possibly two, leave office.

"We're trying to give the supervisors a reason to say 'no,'" Gerber said.



## East Bay Times

# Kensington board names interim general manager/police chief

**Kevin Kyle, the former police chief of Santa Clara, has been selected as Kensington's interim general manager/police chief.**

By [Rick Radin](#)

PUBLISHED: **October 27, 2016** at 1:46 pm | UPDATED: October 28, 2016 at 5:25 am

KENSINGTON — Kevin Kyle, the former police chief of Santa Clara, has been selected as the interim general manager/police chief to replace the current interim Chief Kevin Hart, who is retiring on Nov. 1.

The 3-2 decision came at a special Kensington police protection district board meeting Wednesday, where the board also voted to appoint former Walnut Creek assistant City Attorney Amara Morrison as its general counsel.

The board will wait until its next regular meeting on Nov. 10 to confirm Kyle's appointment and pay package, but under the rules of the California Public Employees Retirement System a retired official can only receive an hourly rate, exclusive of vacation and benefits.

Board financial management consultant Adam Benson said Kyle will receive a flat rate of \$70 per hour working 20 to 30 hours per week on average.

Board members Chuck Toombs, Pat Gillette and board President Len Welsh voted for the appointment, with Rachelle Sherris-Watt and Vanessa Cordova, on a telephone line from Europe, voting against.

Sherris-Watt told about the 40 to 50 residents attending the meeting that she favored Kyle's appointment, but wanted to wait until the board's next regular meeting on Nov. 10 to confirm the commitment.

Welsh said that Kyle will be an "at will" employee, meaning that a new board could replace him at any time.

He added that the board chose to move ahead now to avoid leaving the position vacant until a new board is in place.

"We're not going to leave the position unfilled," Welsh said.

Still, several speakers opposed the move saying that a “lame duck” board should not be making such a significant move ahead of the Nov. 8 election.

“I don’t see what the rush is,” said resident David Bergen. “The new board might have to start out by firing someone.”

The district has been wracked by dissension over a variety of issues in recent years, with opponents of what some refer to as the “board majority” of Toombs, Gillette and Welsh favoring splitting the police chief and general manager roles to increase police department oversight.

Former Police Chief/General Manager Greg Harman came under fire and was dismissed for delays in investigating a scandal in which a police officer’s gun was stolen by a prostitute and later used in a robbery attempt.

The board replaced Harman with Hart as an interim appointment in August 2015.

Gillette is retiring from the board after the Nov. 8 election, but Toombs is running for a third term, along with newcomers David Spath, Eileen Nottoli and Sylvia Hacaj.

## Point Reyes Light

# Nicasio comes closer to greater water security

By

Samantha Kimmey

10/27/2016

Nicasio landowners seeking trucked water from Marin Municipal Water District cleared a first hurdle this month, when a Marin commission that oversees local agencies approved a resolution to help them. The vote by the Marin Local Agency Formation Commission, or LAFCO, was paired with a decision to study the water district's "sphere of influence," or probable future boundaries. That study, conducted over the next five years, would examine whether 2,300 acres of Nicasio should be included in the district's boundaries. Nicasio has no municipal water service and some landowners struggle with insufficient wells, particularly during drought conditions. A letter to LAFCO from the Nicasio Landowners Association attributes the problem of insufficient water supply in part to subpar testing criteria for wells in the past, which led to the approval of homes that didn't always have an adequate water supply. "[S]ome Nicasio homeowners carry the legacy of these prior inadequate standards. Today, we have homes that are forced to truck in potable water to meet their basic water needs even during years of normal precipitation, and we also have a larger group of homes that routinely need water deliveries in dry years," the association's letter states. Since some Nicasio residents also want a short-term solution, LAFCO approved the new policy statement that would allow it to approve limited trucked water service. That decision doesn't mean that the water district will agree to truck water, but rather that LAFCO doesn't want to stand in the way. "What we're trying to do is at least signal that, 'Hey, if you and the landowners get together on this, don't view LAFCO as a hurdle...' We are trying to help," said LAFCO's executive director, Keene Simonds.

**East Bay Times**

## **Supporters rally for Eden Health District as opponents question operations**

### **Alameda County commission begins study on special district's future**

By [Darin Moriki](#) | [dmoriki@bayareanewsgroup.com](mailto:dmoriki@bayareanewsgroup.com)

PUBLISHED: October 27, 2016 at 6:00 pm | UPDATED: **October 28, 2016** at 5:13 am

CASTRO VALLEY — Views on whether to keep or dissolve the Eden Health District were mixed during the first public meeting on a special study commissioned to determine its future and financial viability.

Cherryland Elementary School Principal Itoco Garcia says his school is in an area where some health statistics such as childhood poverty and accidental deaths are among the worst in Alameda County.

There, Eden Health District and its grant-funded organizations, including the Oakland-based East Bay Agency for Children, often step in to fill those gaps by connecting students and their families with direct health care services, Garcia said.

But he worries that could change if the Alameda County Local Agency Formation Commission that oversees changes to special districts recommends dissolving the Eden Health District.

“Eden Health Care District’s support of our school in unincorporated Alameda County region that often cannot access resources or partnerships with cities has been transformative and instrumental in turning around a very low-performing school ... specifically in support of our community school model that leveraged an initial annual health fair into a very strong network of partnerships that connect members of our community who have no other way to connect with health care to direct services and information,” Garcia told Local Agency Formation commissioners at an Oct. 17 meeting at the Castro Valley Library.

Garcia was one of eight residents and health district administrators who spoke in favor of saving the Eden Health District, the subject of a special study that will analyze its financial viability and future options, including dissolution.

Castro Valley resident Phyllis Moroney said she sees things differently and believes Eden Health District has become obsolete and should be dissolved. She pointed to an Alameda County grand jury report, released in June, which said 88 percent of the district’s budget is spent on real estate, administration, legal and consulting fees.

Only the remaining 12 percent, totaling \$528,000, is set aside for grants, scholarships and health care services.

“That’s not enough of the money that is spent on people,” Moroney said.

Excess funds from the health district's dissolution should be invested in mental health and post-acute care services rather than given to either the Alameda Health System or St. Rose Hospital in Hayward, she said.

Fairview resident Chris Higgins said he is split on whether to keep or dissolve the health district and was troubled by mistakes made by past board members. He also recognized the positive benefits from Eden Health District-funded services in communities such as Cherryland and Ashland.

"If you're going to do away with this district, maybe you should consider giving the money back to us, the people who funded it, rather than give it to some place where it's going to dissolve," Higgins said.

The special study process began in June after former Hayward City Manager Fran David sent a letter to commissioners requesting a comprehensive review of the health district.

The letter cited a "lack of a thorough and in-depth study of the district's finances and decision-making abilities by an independent entity; whether or not district resources are being and have been used appropriately to facilitate the delivery of critical healthcare services to those in desperate need within the voter-approved mission of the district; and the lack of an inclusive, informed and transparent community conversation on the topic."

The Local Agency Formation Commission approved Hayward's request in July and set aside up to \$30,000 for Bay Area-based Berkson Associates to conduct the special study.

The healthcare district covers Hayward, San Leandro and western unincorporated Alameda County, including San Lorenzo and Castro Valley.

A 2013 Local Agency Formation Commission review of the district explored possible dissolution but concluded the district should remain in its current form.

The Eden Health District was formed in 1948 to finance, construct and operate Eden Hospital in Castro Valley but no longer owns or operates it.

The health district now awards community grants to nonprofit groups and organizations that provide healthcare services. It owns three medical office buildings.

"I'm kind of disappointed that we got to this position because we did conduct all of these studies ... but we didn't really have anyone come up and tell us how good or bad the district was and what it was doing," Local Agency Formation Commissioner Georgean Vonheeder-Leopold said.

"It sounds like it's doing some remarkable things, so I'll be really interested to see what the study says," she said.

A draft report should be available for public review and comment in mid- to late- November said Richard Berkson of Berkson Associates. A final meeting on the study will be held at 5:30 p.m. Nov. 7 in the San Leandro City Hall council chambers, 835 E. 14th St.

Contact Darin Moriki at 510-293-2480 or follow him at [Twitter.com/darinmoriki](https://twitter.com/darinmoriki).

## East Bay Times

# Planned closure of Alta Bates raises concerns of a health care desert

## A drop in the number of people hospitalized spurs Alta Bates closure, although ER visits are up



Donald Goldmacher, of Berkeley, is photographed near the Alta Bates Summit Medical Center in Berkeley, Calif., on Monday, Oct. 24, 2016. Goldmacher, 75, has had a number of emergency situations that have required treatment at Alta Bates, and is concerned about the hospital's impending closure. (Jane Tyska/Bay Area News Group)

By [Karina Ioffee](mailto:kioffee@bayareanewsgroup.com) | [kioffee@bayareanewsgroup.com](mailto:kioffee@bayareanewsgroup.com)

PUBLISHED: **October 30, 2016** at 8:00 am | UPDATED: October 31, 2016 at 8:34 am

BERKELEY — The announcement earlier this year that Alta Bates Summit Medical Center would close its campus here, possibly as early as 2018 but certainly by 2030, sent shock waves through the East Bay. Cities issued resolutions calling for the hospital to stay open, and “Save Our Hospital” signs popped up on lawns and in store windows.

Coming just a year after Doctors Medical Center in San Pablo closed following a long struggle to stay solvent, Alta Bates’ plans to shutter have stoked fears that a large swath of the East Bay is turning into a health care desert that will result in delays in care for those facing life-threatening conditions and longer waits for inpatient procedures.

Others, however, see it as the inevitable result of changes in health care over the past decade, as outpatient services become more common, hospital stays shorten and consolidation increasingly becomes the solution to rein in out-of-control costs.

Data show the overall need for hospital beds is falling even as emergency rooms become more crowded. But for residents who have spent their lives relying on Alta Bates for care, its anticipated demise is wrenching no matter how the decision is spun.

“I know for certain that this hospital has saved my life, on numerous occasions,” said Donald Goldmacher, 75, a Berkeley resident who has received three emergency angioplasties at Alta Bates since 1988.

Rather than cutting services, Alta Bates’ owner, Sutter Health, says it is consolidating care at its sister campus, Summit Medical Center, three miles away in Oakland. The hospital chain has also said that Alta Bates’ Ashby Avenue campus, built in phases starting in 1959, does not meet new seismic safety requirements that all California hospitals must adopt by 2030.

“If we are to remain viable as an organization and affordable to our patients, we cannot operate two full-service hospitals less than three miles apart,” said Carolyn Kemp, a spokeswoman for Alta Bates Summit Medical Center, in an email.

Since 2005, the rate of hospitalizations, measured by total days patients spent in the hospital, has decreased by 23 percent at Alta Bates, according to an analysis of state health care data by this newspaper. But emergency room visits shot up by 15 percent during the same period, according to the Office of Statewide Health Planning and Development.

Without Alta Bates, there would be only one ER along a 25-mile stretch of Interstate 80 from Vallejo to Oakland, a thoroughfare prone to nightmarish traffic jams.

Under the new plan, Sutter will open an urgent care center in Berkeley and transfer all hospital operations to Summit. It has also said that it will double the number of beds at Summit and the emergency room there.

But with few details available yet, many are worried that the closure would leave a significant number of East Bay residents without close access to a hospital.

“People have a right to decent health care, and the lack of it in their community will lead to death,” said Margy Wilkinson, 73, and a Berkeley resident. “Summit’s decision does not take the community’s needs into account.”



Alta Bates emergency department opened in 2005 and has seen a steady increase in traffic. Despite that, hospital officials earlier this year have said they would close the hospital and move all ER services to Oakland.

Last spring, Doctors Medical Center, which recorded an estimated 33,000 visits a year, [closed after more than a decade of financial losses](#). Today, the only hospital between Vallejo and Berkeley — an area that is home to more than 250,000 people — is Kaiser Permanente in Richmond, which has just 50 beds.

Since 2014, hospital admissions at Kaiser Richmond have tripled, forcing the hospital to operate above capacity on most days, said spokesman Jonathan Bair. Emergency room visits are up 29 percent this year.

Already, some observers have taken to describing West Contra Costa as a “health care desert,” even as medical clinics have sprung up to fill in the gaps.

[Sutter Health](#) contends that at least a third of those now seeking care in its emergency rooms can be better served on an outpatient basis, saving both the hospital and patients money. About half of a hospital’s expenses are for staffing due to staff-to-patient ratios mandated by the state.

At least some of the plans are the result of changes to the way health care is delivered. A decade ago, a patient could be guaranteed a stay in the hospital for bariatric surgery, total knee repair or a hernia repair. Today, these patients are increasingly operated on and released the same day, reducing the demand for hospital beds.

But the [California Nurses Association](#), the union that represents 100,000 nurses in the state, including 1,800 at Alta Bates, and some local politicians have sought to portray Sutter’s decision as financially motivated. Sutter Health, a nonprofit chain of 22 hospitals, [earned \\$400 million in total income](#) in 2014, and paid its recently retired CEO, Patrick Fry, \$3.6 million a year in base compensation, [according to tax records](#).

“They clearly have the money to make that (seismic) investment, but they seem to be making a decision to not do so,” said Contra Costa County Supervisor John Gioia of Richmond.

Nurses say the wait times at Summit are already long and may get longer once Alta Bates closes.

“If there are no beds up in the hospital, it all backs up through the emergency room,” said Mike Hill, a nurse at Summit.

The Berkeley Fire Department estimates that since Alta Bates’ Cath Lab, a specialized department that treats cardiac cases, relocated to Summit in 2014, it takes an additional 12 minutes to transport a patient.

“Right now, city resources are being used by a private company to save money at the expense of Berkeley taxpayers,” said Assistant Berkeley Fire Chief Dave Brannigan.

Once Alta Bates closes, ambulances will have to drive all patients the extra distance.

Others believe that Sutter is right to shift focus amid a changing health care industry in order to provide good care.

“I think it’s important that Alta Bates remain in the community, especially the birthing center, but we’re in a changing environment, so we will have to re-purpose,” said Berkeley Mayor Tom Bates.

That may be hard to accept for those who see Alta Bates, which was founded in 1905, as a pillar of the community — a place where people are born and die, not to mention a major local employer.

“Cities feel like they’re not a real city without a hospital because there are all these civic ties that create a connection,” said Wanda Jones, co-founder of the New Century Healthcare Institute in San Francisco and an expert on hospital consolidation. “It’s people who are closest to it who often cannot grasp the external factors that make closure necessary.”



**East Bay Times/AP**

## **In California, a \$350 million social experiment over lawns**



AP Photo/Eric Risberg

In this photo taken Tuesday, Aug. 23, 2016, city water resources specialist Randy Barron looks over a garden made to use less amount of water outside a Lomita Heights home in Santa Rosa, Calif. California water agencies that spent more than \$350 million in the last two years of drought to pay property owners to rip out water-slurping lawns are now trying to answer whether the nation's biggest lawn removal experiment was all worth the cost.

By [ELLEN KNICKMEYER, Associated Press](#)

PUBLISHED: **October 31, 2016** at 7:05 am | UPDATED: October 31, 2016 at 7:23 am

SANTA ROSA, Calif. — California water agencies that spent more than \$350 million in the last two years of drought to pay property owners to rip out water-slurping lawns are now trying to answer whether the nation's biggest lawn removal experiment was all worth the cost.

Around the state, water experts and water-district employees are employing satellite images, infrared aerial photos, neighborhood drive-bys and complex algorithms to gauge just how much grassy turf was removed. They also want to know whether the fortune in rebates helped turn California tastes lastingly away from emerald-green turf.

“How well did it work? That’s really key when we’re working on historic investments,” said Patrick Atwater, a project manager at the California Data Collaborative, a coalition of utilities and other water-related entities grappling with the question.

Removing lawns may sound like a small, wonky step, compared to building dams. But the green turf in American yards actually stands as a worthy target for water savings, a public enemy in the eyes of many during a drought such as California’s five-year-old one.

The U.S. Environmental Protection Agency estimates one-third of all water used by American households goes to watering lawns and gardens. That's 9 billion gallons of water each day — enough to supply drinking water daily for nine cities the size of New York.

In 2015, after a devastatingly dry winter, Gov. Jerry Brown ordered 25-percent water conservation by cities and towns. He mandated \$25 million in state-government spending to help cover the costs of low-income California families in particular removing their grass, and putting less-thirsty, climate-suitable plants in their yards instead.

Brown set a goal of eliminating 50 million square feet of lawn. That breaks down to less than two square miles of greenery, out of what the Public Policy Institute of California think-tank has estimated at around 1,000 square miles of watered yards statewide.

But state spending proved a drop in the bucket compared to the money local water districts put into lawn rebates.

Metropolitan Water District of Southern California, a giant water wholesaler providing water to Los Angeles and more than two dozen other cities, counties and water districts, poured just over \$300 million into lawn rebates from 2014 on, removing five square miles of lawn.

MWD doubled its rebate offer to \$2 for each square foot of lawn removed, and the lawn rebates quickly became the district's most popular program ever. Workers processed as much as \$10 million in rebate applications a week at peak. In July 2015 alone, Southern Californians applied for rebates to remove the equivalent of 1,665 front lawns.

Santa Clara Valley Water District, serving Silicon Valley, provided more than \$30 million in rebates. Dozens of other water districts put a few hundred thousand dollars to several million dollars into dead-lawn bounties. Rebates ranged from 50 cents a square foot of lawn to \$4 and up.

Water districts revised rebate rules and amounts on the fly, after controversies erupted over golf courses and other properties that got millions of dollars each in rebates. Water boards imposed caps on rebates. Some districts dictated that homeowners put in California-suitable plants. Other water agencies faced criticism for allowing artificial turf, and swathes of gravel.

Now some water-district managers are nervous over political fallout if the benefits don't measure up to the rebate costs, said Chelsea Minton of OmniEarth, a Virginia-based analytics firm that is using before-and-after satellite images to help tally the effectiveness of the lawn-removal program.

Privately, some worried water officials were "saying, 'Let's wait a year or two'" to study it, Minton said.

Figuring out whether California's experiment made sense economically is more involved than just totaling how much turf residents have ripped out.

Two key questions are whether households leave the lawns off for a generation or two, and whether each rebate helps turn Californian tastes away from lawns, independent of future rebates.

At Southern California's Claremont Graduate University, assistant professor Andrew Marx is drawing on infrared imagery from airplanes, normally used by farmers, to help figure out whether the rebates are changing Californians' tastes.

The state will go deeper still into the number-crunching, tallying not just water savings but spin-off savings. They range from lower energy costs for piping less water to households to reduced climate-changing pollution from lawn mowers, said Ken Frame, a project manager at California's Department of Water Resources.

In Southern California's Irvine Ranch Water District, which spent \$638,403 on lawn rebates since 2014, workers sent surveys and drove block to block to nail down just how many homeowners joined the lawn-less trend.

Irvine's pilot study found that for every three homeowners who took the rebate, at least four others converted their lawns to less water-hungry plants. Water experts say other factors besides the rebates played a part, including news reports about turf removal programs and the governor's drought-messaging.

Rebates aren't about trying "to buy up all the turf in California — that wouldn't be cost-effective," said Ellen Hanak, director of the water-policy center at the Public Policy Institute of California.

Instead, the rebates have built awareness that water-thrifty landscapes also look good, Hanak said.

In Santa Rosa, a city of about 170,000 in Northern California wine country, homeowner Trudi Schindler took the rebate to replace deep-green grass with flagstone pavers and a silvery-green groundcover with yellow flowers. Schindler wouldn't go back to grass.

"It looks beautiful and sophisticated. And just more lovely than a lawn," she said.



Published November 2nd, 2016

## ConFire Not Rattled by \$75 Million Pension Bond Downgrade

By Nick Marnell

Moody's Investor Services recently downgraded \$75 million in Contra Costa County Fire Protection District pension obligation bonds but district officials, while conceding that pension costs remain high, said the action poses no immediate threat to district finances or operations.

The credit rating company lowered the district bond rating from A1 to A2 based in part because of "the long-term challenge the district faces in addressing its rising pension costs, which are an unusually large portion of the district's operations." Indicating that the growth in short-term property tax receipts will mitigate the risk of ConFire's pension expense, the New York firm removed its negative outlook on the bond rating.

"Pension related costs are a significant portion of ConFire's operating budget and will continue to be through fiscal year 2022-23 when the district's pension obligation bonds will be paid off," said county administrator David Twa, but he added that even the recently confirmed \$2 million increase in the pension payment to the Contra Costa County Employees' Retirement Association should have no negative impact on the district.

According to Jackie Lorrekovich, district chief of administrative services, the ConFire pension obligation bonds cannot be called by the issuer nor can the interest rate be increased because of the lowered rating. She emphasized that the bonds are secured by a unique tax-intercept feature requiring the county to set aside the first annual apportionment of property taxes collected in order to cover debt service payments before ConFire receives any property tax revenue for its operations. "This, in my opinion, makes the bonds very secure from an investor perspective," Lorrekovich said.

District officials stressed that the rating drop will have no effect on district operations. The rebuild of station 16 in Lafayette will not be impeded and ConFire should have no problem financing additional apparatus. Were the district to try to issue a second pension obligation bond, the lowered rating on the current bonds would hypothetically impact the interest rates available to the district, Lorrekovich said, but ConFire has no plans to issue more pension obligation bonds.

"I think we are in better financial shape than we have been in a long, long time. That is why the rating drop is perplexing to me," Fire Chief Jeff Carman said. "We have sufficient reserve, more than is required by the board." Not only does ConFire recognize more than \$30 million in available reserves but in 2016, determined to add a new revenue source, the district assumed the bulk of the Contra Costa County ambulance transport contract, projected to net an additional \$2 million to the district in its first year. In part because of improved district finances, ConFire announced Oct. 25 that it will reopen fire station 87 in Pittsburg, closed since the middle of 2013.

"Barring a catastrophic economic collapse I think we are very stable where we are," Carman said.

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## MOFD Fails to Dampen Frustration of Orinda Citizens' Group Regarding Tax Differences

By Nick Marnell

Orindans dissatisfied with the allocation of resources by the Moraga-Orinda Fire District will have to wait another day for relief as the district tabled indefinitely any discussion of tax inequity and community service modifications.

In June, Orindans unhappy with the perceived inequities between taxes paid and services received by the residents of Orinda and Moraga presented their case to the MOFD board. The board set aside a portion of its Oct. 19 meeting to hear additional detail of the residents' complaints.

"It's not about tax equity or about fairness," said Steve Cohn, spokesman for the grassroots Orinda Citizens Emergency Services Task Force, which has long demanded additional district services for what it believes are shortchanged Orinda residents. "It's about carrying through a contract between the city of Orinda and the residents of Orinda." Cohn produced no such written contract, pointing only to statements printed in a voter's pamphlet for the 1997 election in which citizens voted to form the fire district; specifically, statements made by the Orinda City Council assuring that fire protection dollars paid by Orindans will stay in Orinda.

Board president Steve Anderson of Orinda likened the discussion to the perpetuity of the undead: "It keeps arising and re-rising. We need to put a stake in it," he said.

The Orindans' demand for service equal to taxes paid has been outlined numerous times to various public agencies over the years but has yet to effect any changes in the fire district. "It's the same old argument, offered again and again, just repackaged," said Moraga resident and past MOFD director Dick Olsen, who presented the analogy of the Orinda police patrolling neighborhoods of Orinda only in proportion to the amount of taxes that each neighborhood pays.

Orinda directors Alex Evans and Brad Barber did not agree with "putting a stake in it," as Barber insisted that the board be prepared for the inequity topic to come back again and again. "Equity problems kill partnerships," Evans explained to the two dozen or so in attendance. "We're not going to solve this problem, but we should not ignore it."

Director Fred Weil, whom Cohn urged to resign in 2015 over Weil's role in improperly funding a retiring fire chief's pension, has always relied on the level of service as the true measure of district performance and has continually refuted Cohn's argument, once referring to it as a flawed polemic. "Stop this discussion now," Weil demanded.

"This is not going to go away," warned Cohn, though despite his presentation and a task force petition signed by 129 people insisting that MOFD and the city of Orinda deal with the perceived taxation-service inequity, the board gave no direction to its staff to further analyze the Orindans' complaints and set no date for revisiting the discussion.

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# Water Education Foundation

Blog post **November 2, 2016** Susan Lauer

## Farming in the Delta with Less Water



[Photo by DWR](#)

If there is a positive outcome of five years of drought in California, it's the lessons learned about how to manage water during a shortage in the Sacramento-San Joaquin Delta. On the upside, farmers got creative to cut back their water diversions by 32 percent through a volunteer program. On the learning-curve side, complex water rights confound who gets water during shortage.

In the throes of the drought in 2014, growers concerned they were facing potential mandatory cutbacks in water proposed that they would reduce their water diversions by 25 percent from June through September. In return, the State Water Resources Control Board (State Water Board) agreed to refrain from enforcing stricter curtailments.

The growers developed individual plans – 217 in all – detailing ways they could reduce water use in their fields. The plans covered two-thirds of the Central and South Delta (and a portion of Contra Costa County) totaling 180,000 irrigated acres. Overall, they exceeded their 25 percent reduction target, reducing surface water diversions by 32 percent.



[Delta Watermaster Michael George](#)

“It was amazing to me the various ways which farmers could very creatively reduce their diversions,” said Delta Watermaster Michael George during the “[Drought and the Delta](#)” briefing cosponsored by the Water Education Foundation and the Sacramento–San Joaquin River Delta Conservancy on Oct. 25 in Stockton.

While initial expectations were that growers would fallow fields, George said, “we got much more creativity. People changed crops. They changed the way they were growing their crops. They took advantage of new irrigation systems – not just investment in drip irrigation but actual changes in the way they wet their fields.”

George noted the program achieved results without waiving water rights, going to court or triggering regulation. “What it unleashed was incentivized farmers to do the best they could.”

While growers were finding ways to reduce water use, the State Water Board was on a learning-curve to figure out complex water rights and who gets water during shortage.

In the Delta, landowners possess appropriative and riparian water rights, each with a different set of rules that makes it difficult to administer in times of shortage. For example, the growers in the diversion reduction program all had [riparian rights](#), meaning their crops border waterways in the Delta.

Other landowners with property away from waterways have [appropriative rights](#). Under that system during water shortage conditions, growers with senior rights get water, while those with junior rights are cut off. Under the riparian system, water users share the shortage, so all feel the pain yet still receive some water.

As Watermaster appointed by the State Water Board, George is responsible for overseeing day-to-day administration of water rights in the Delta.

“My view is we must work really hard to administer the priority system intelligently, predictably, transparently and honestly so we can keep a system that can work for allocating all the water we get when we need it or when we get it and know how to cut back when we don’t get it,” he said.