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November 24, 2024

Via Electronic Mail

Malathy Subramanian

Local Agency Formation Commission of Santa Clara County

Malathy.Subramanian@bbklaw.com

Re: Santa Clara LAFCO Policy Revisions

Dear Ms. Subramanian:

Thank you for taking the time to speak with me and Assistant County Counsel Elizabeth Pianca about the proposed updates to the policies of the Local Agency Formation Commission of Santa Clara County (“Santa Clara LAFCO”) on November 7, 2024. We appreciated the opportunity to discuss possible unintended consequences of the proposed policies to the County of Santa Clara’s Agricultural Worker Housing Workplan, as directed by the Santa Clara LAFCO Board.¹ This letter memorializes our discussion regarding the updates to Santa Clara LAFCO’s Out-of-Agency Service Contract Policies (Chapter 5) and Urban Service Area Policies (Chapter 3).²

Updates to Out-of-Agency Service Contract Policies (Chapter 5)

In the proposed updates to the Out-of-Agency Service Contract (OASC) Policies, Section 5.3(3)(b)(i) states that qualifying OASC proposals for agricultural worker housing will

¹ The Board of Supervisors, at its regular meeting on December 5, 2023 (Item No. 21), received a report on the County’s Agricultural Worker Housing Workplan. Among other actions, it directed Administration and County Counsel to work on potential changes to Santa Clara LAFCO policies and to consult with LAFCO staff on policy updates that could be submitted to Santa Clara LAFCO for consideration. Additional information regarding the Board of Supervisors action on December 5, 2023 is available at https://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=117859.

² We attach the draft Chapter 5 and Chapter 3 policies that you shared with us and that we reviewed during our call on November 7, 2024.

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receive “special consideration” from Santa Clara LAFCO. We appreciate your clarification that the intent of this “special consideration” is to establish an exception to the general policy that Santa Clara LAFCO shall discourage OASC proposals that are intended to support new development in the unincorporated county.

During the meeting, we offered one comment on Section 5.3(3)(b)(i), which specifies certain qualifications for OASC proposals for agricultural worker housing. The first requirement is that the County has methods “currently in place to ensure affordability and occupancy of the proposed agricultural worker housing for eligible agricultural workers over the long term and for not less than 55 years.” As discussed during the call, the County’s Zoning Ordinance includes requirements for permanent agricultural employee housing, which may not align with the 55-year requirement. Specifically, Zoning Ordinance Section 4.10.040(E) requires recordation of permit conditions restricting the use to agricultural employee housing. Accordingly, we recommend revising the phrase to read “and for not less than 55 years or for the duration of the approved use.”³

We also discussed the distinction between the “special consideration” proposed in Section 5.3(3)(b)(i) and the exemptions addressed in Section 5.2(4). Consistent with Government Code section 56133(e), Section 5.2(4) provides that certain OASC proposal are exempt from Santa Clara LAFCO approval, including OASC proposals under section 56133(e)(3) for “[t]he provision of surplus water to agricultural lands and facilities, including, but not limited to, incidental residential structures, for projects that serve conservation purposes or that directly support agricultural industries.” Such proposals are exempt from Santa Clara LAFCO approval under Government Code section 56133(e) and, therefore, are not subject to the restrictions or requirements outlined in Section 5.3(b)(i).⁴

Relatedly, we raised questions during the meeting about Section 5.2(4), which gives the Executive Officer of Santa Clara LAFCO authority to “determine if a proposed OASC is exempt from the requirement for LAFCO approval pursuant to exemptions in [Government Code section] 56133(e).” As we noted during the meeting, nothing in Government Code section 56133—or any other provision of California law—grants Santa Clara LAFCO authority to make exemption determinations. Instead, the Government Code states that the requirements for LAFCO approval of OASC proposals “do not apply” to the categories of projects described in Section 56133(e)(1)-(6).

³ We also recommend that this language—“and for not less than 55 years or for the duration of the approved use”—also be used in Section 3.4(15)(a)(i).

⁴ The proposed edits to the policies do not address what process LAFCO would use to approve a project that is exempt under Section 56133(e)(3) but subject to LAFCO approval because it “will support or induce development.”

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Updates to Urban Service Area Policies (Chapter 3)

Finally, during the meeting, we raised a question about Section 3.4(15)(a) in the proposed updates to the Urban Service Area (USA) Policies. This Section directs Santa Clara LAFCO to give “special consideration” to qualifying USA amendment proposals that “consist solely of agricultural worker housing.” During a follow-up call after the meeting, you clarified that the intent of this “special consideration” is to establish an exception to Section 3.4, which states that Santa Clara LAFCO shall discourage USA amendment proposals “when a city has a more than 5-year supply of vacant land within its existing USA.” It may be helpful to make the impact of this “special consideration” explicit in Section 3.4(15)(a).

Thank you again for taking the time to meet with us to discuss the proposed updates to these important policies. Please do not hesitate to reach out with any further questions.

Very truly yours,

TONY LOPRESTI
County Counsel

A handwritten signature in blue ink, appearing to read 'A Forbath', enclosed in a light blue rectangular box.

AARON FORBATH
Deputy County Counsel

c: James R. Williams, County Executive
Sylvia Gallegos, Deputy County Executive
Jacqueline R. Onciano, Director, Department of Planning and Development

Attachments:

1. Draft Updates to Santa Clara LAFCO Out-of-Agency Service Contract Policies (Chapter 5)
2. Draft Updates to Santa Clara LAFCO Urban Service Area Policies (Chapter 3)