



November 22, 2010

Rebecca Tolentino, Senior Planner
Community Development Department
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037-4128

**RE: NOTICE OF PREPARATION FOR THE MORGAN HILL SOUTHEAST
QUADRANT (SEQ) GENERAL PLAN AMENDMENTS AND AGRICULTURAL
MITIGATION AND PRESERVATION PROGRAM**

Dear Ms. Tolentino:

Thank you for providing the Local Agency Formation Commission (LAFCO) of Santa Clara County with an opportunity to comment on the City of Morgan Hill's Notice of Preparation for the SEQ General Plan Amendments and Agricultural Mitigation and Preservation Program and for extending the comment period to November 23rd. The Notice of Preparation notes that the project will require approval from LAFCO for annexation and inclusion of the project area in the City's Urban Service Area. Therefore, LAFCO is a responsible agency. LAFCO's comments on the NOP are provided below.

1. THE NOP CONTAINS INSUFFICIENT INFORMATION

LAFCO's response to the NOP is limited to the information provided to it, and LAFCO reserves the right to comment upon any information ultimately included in the EIR:

Project Description in the NOP is Inadequate and Confusing (Section 1.3)

The State CEQA Guidelines require that a Notice of Preparation (NOP) "provide the responsible and trustee agencies and the Office of Planning and Research with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response." (State CEQA Guidelines, §15082(a) (1)) The NOP does not provide a clear or sufficiently detailed description of the project. LAFCO requests that a more complete project description be provided and that it include, at a minimum, the following information:

- Language for the City's proposed Agricultural Land Use Designation
- Language for the City's proposed Sports-Recreation-Leisure Land Use Designation
- Language for the City's proposed Open Space Zoning District
- Language for the City's proposed Agricultural Zoning District
- Language for the City's proposed Sports-Recreation-Leisure Zoning Districts
- Language for the City's proposed Agricultural Preservation Policies/Program
- Language for the City's proposed Agricultural Conversion Policies
- Language for the City's proposed Open Space Program

- Site plans for the proposed Private High School and any specific details or plans available for the other 6 development proposals

In addition, the NOP also lists the following two objectives of the EIR:

- Identify lands within the SEQ viable for long-term agriculture
- Develop a program that fosters long-term agriculture within the SEQ through land use planning, agricultural preservation policies/programs, and agricultural mitigation.

Based on the NOP, it appears that these objectives are to be accomplished through the environmental impact report (EIR), which is in conflict with the purpose of an EIR. Pursuant to State CEQA Guidelines §15121(a), an EIR only serves the purpose of “an informational document which will inform public agency decision makers and the public generally of the significant environmental effects of a project ...”. Please provide clarification and more detailed information on the two objectives listed above and their relationship to the EIR.

The NOP indicates in sections 1.3.3 through 1.3.5 that the City intends to develop various policies for agricultural preservation and conversion, as well as an Open Space Program. Those policies and programs are included in the Project Description, but it is not clear whether such policies would actually be included in the City’s General Plan Amendment. Moreover, few details about such policies and programs are provided, limiting the ability to provide a meaningful response to the NOP. Nevertheless, at a minimum, the EIR must address all of the comments raised in prior LAFCO letters to the City dated April 6 and February 17, 2010, both of which are incorporated herein by reference.

Description of Existing Conditions Requires Clarification (Section 1.2)

The description of existing conditions in section 1.2 of the NOP states that the Southeast Quadrant area is “characterized by rural residences and agricultural lands.” It then predicts that agricultural and orchard uses of the area would gradually cease and that rural residential uses would predominate. These statements in the NOP appear to prejudge the feasibility of continued agricultural uses of the area, despite a contrary statement in section 1.3.3 of the NOP. In any event, section 15125(a) of the State CEQA Guidelines requires that the EIR include a description of physical environmental conditions in the project area “as they exist at the time the notice of preparation is published [.]” Additionally, the EIR’s description of the environmental setting must include both local and regional perspectives. (State CEQA Guidelines, §15125(a)). Thus, the EIR will need to address existing agricultural uses, and conversion pressures, not just in the Southeast Quadrant, but the rest of the region as well. This description of the existing environmental setting must also address the availability of vacant and underutilized lands within the City.

Information on Probable Environmental Effects is Insufficient (Section 1.5)

Pursuant to state law, at a minimum, the NOP must also identify any “[p]robable environmental effects of the project.” (State CEQA Guidelines, §15082(a) (1) (C)).

Section 1.5 of the NOP lists fifteen topics that will be analyzed in the EIR. That section does not describe those potential effects, or indicate which environmental effects may be probable. Please provide more information regarding potential environmental impacts or please provide a copy of the initial study. Based solely on the information provided in the NOP, the following impacts, alternatives and mitigation measures must be addressed in the EIR.

Agricultural Impacts: As previously noted, the EIR will need to address impacts to all agricultural land. Such lands should include not just those identified on the Important Farmland Map and modified LESA model, but also all of those lands that fall within LAFCO's definition of prime agricultural land. Further, the EIR must analyze potential indirect impacts to agriculture resulting from the development of urban uses in close proximity to agricultural uses. Cumulative impacts related to conversion of agriculture within the region must also be analyzed. LAFCO has also adopted many policies for protecting agricultural resources that should be addressed in the EIR's analysis of agricultural impacts.

Biological Resources: Agricultural lands often provide foraging and nesting habitat for wildlife. The EIR should, therefore, address the potential direct, indirect and cumulative impacts to listed, special-status and non-listed species.

Climate Change: The list of topics in Section 1.5 indicates that the EIR would address climate change along with air quality. Recent amendments to the State CEQA Guidelines clarify that an EIR address whether the project will increase greenhouse gas emissions compared to the existing environmental setting. (State CEQA Guidelines, § 15064.4(b).) Thus, the analysis should address the project site's existing carbon sequestration, as well as the emissions that may result from conversion, construction and ultimate operation of activities described in the NOP. The EIR should also address the project's consistency with statewide policies encouraging in-fill and compact development and discouraging expansion into non-urbanized areas.

Energy Impacts: Appendix F of the State CEQA Guidelines requires analysis of a project's energy impacts. This analysis should address energy conservation, consumption and efficiency, particularly related to the expansion of services in the project area.

Land Use: LAFCO's prior comments alerted the City to the proposed project's inconsistency with existing LAFCO policies. Appendix G of the State CEQA Guidelines suggests addressing whether the project conflicts with any applicable policy of an agency with jurisdiction over the project. Here, LAFCO is a responsible agency. Consistency with its policies is a key issue that must be addressed in the EIR.

Public Services: The project includes extension of the City's Urban Service Area and annexation of agricultural lands for conversion to more urban uses. The City's ability to provide urban services, including, among others, public safety, libraries, schools, utilities, etc., must be analyzed in the EIR. Additionally, given the project's size and character, a water supply assessment may be required.

Mitigation Measures: As noted in LAFCO’s previous comments, LAFCO has adopted Agricultural Mitigation Policies. The most recent information provided by the City indicates that its mitigation plan is not consistent with LAFCO policies. Those inconsistencies must be addressed in order for LAFCO, acting as Responsible Agency, to find that mitigation to be effective.

Alternatives: The EIR will be required to analyze a reasonable range of alternatives to the proposed project. Given that the project site includes prime agricultural land, the EIR must analyze alternative locations within the City to establish Sports-Recreation-Leisure districts. If the City concludes that no feasible alternative location exists, it must disclose the reasons for that conclusion in the EIR.

2. THE PROJECT IS A MAJOR REVISION OF THE CITY’S GENERAL PLAN AND SHOULD BE CONSIDERED IN THE CONTEXT OF A COMPREHENSIVE GENERAL PLAN UPDATE AND SHOULD INVOLVE BROAD STAKEHOLDER PARTICIPATION

As we understand it, the scope of the City’s potential project is extensive; it involves major changes to the City’s General Plan and includes at least the following:

Changes to existing growth management boundaries and jurisdictional boundaries
<ul style="list-style-type: none"> • Expanding the City’s Urban Limit Line to include 700 acres in the SEQ. • Expanding the City’s Urban Growth Boundary to include 660 acres in the SEQ. • Expanding the City’s Urban Service Area to include 305 acres in the SEQ. • Annexing 760 acres of the SEQ into the City Limits
Creation of New Land use Designations in the City’s General Plan and Creation of New Zoning Districts
<ul style="list-style-type: none"> • Create an Agriculture land use designation and zoning district • Create a Sports-Recreational- Leisure land use designation and zoning district
Application of Land Use and Zoning Designations to Lands in the SEQ
<p>Apply the following land use designations to SEQ lands:</p> <ul style="list-style-type: none"> • Sports-Recreation-Leisure: 359 acres • Residential Estate: 215 acres • Public Facility: 82 acres • Open Space: 121 acres • Agriculture: 266 acres • Rural County 291 acres
Establishment of Citywide Policies / Programs re. Agricultural & Open Space Lands
<ul style="list-style-type: none"> • Development of Agricultural Preservation Policies and Mitigation • Development of Agricultural Conversion Policies • Development of Open Space Program
Analysis of Development Proposals in the SEQ
<ul style="list-style-type: none"> • Project level analysis of development of a private high school on 40 acres • Programmatic level analysis of five other public and privately initiated development proposals in the SEQ covering over 376 acres

Given the project's sizeable scope (as outlined above), the large amount of unincorporated land that will be directly affected by the project (approximately 1,300 acres in the SEQ which is equal to over 15% of current city lands), the fact that these lands are overwhelmingly prime agricultural lands and the long-term significance of planning for these lands not only to the property owners/businesses in the vicinity but to the entire city and the region, the project should be considered in the context of a comprehensive general plan update.

Furthermore, in 1996, the City of Morgan Hill adopted its urban growth boundary (UGB). Subsequently, the County and the City adopted joint policies in their respective general plans to address among other things, how to administer and maintain a dependable UGB and established a rational process for considering changes to the UGB over time. According to these policies, major modifications to the UGB location should be processed only in the context of a "comprehensive City General Plan land use element update, which occurs on an approximately 10 year interval, unless triggered by the established criteria, findings, or prerequisites, to ensure coordination between relevant land use planning issues and growth management considerations."

This project has the potential to impact the entire city, the surrounding unincorporated lands, and the region. Consideration of these impacts and the overall need, timeliness, and location of such a project are best considered and analyzed through a comprehensive general plan update process.

3. LAFCO'S PREVIOUS LETTERS IDENTIFY SEVERAL MAJOR CONCERNS REGARDING THIS PROJECT AND ITS CONSISTENCY WITH LAFCO POLICIES AND STATE LAW

As noted in this letter and our two previous letters (dated February 17, 2010 and April 6, 2010) to the City, there are many issues and unanswered questions concerning the project's consistency with the various City, County, and LAFCO Policies.

These are the type of issues that should be fully considered by the community, the stakeholders and the decision makers through a comprehensive general plan update process. Furthermore these are the types of issues LAFCO is required to consider in its review of any USA amendment proposals. Therefore we respectfully recommend that these issues be addressed as early as possible in the process.

Lastly, the NOP is inadequate for LAFCO's use as a responsible agency. Please revise the NOP to clearly define the project, identify the potential impacts and re-circulate it for review and comment to the affected agencies and the public.

If you have any questions regarding these comments, please contact me at (408) 299-5127. Thank you again for providing us with the opportunity to comment on this significant project.

Sincerely,



Neelima Palacherla
LAFCO Executive Officer

Cc: LAFCO Members
Jody Hall Esser, Director, Santa Clara County Department of Planning & Development

ATTACHMENTS

LAFCO's April 6, 2010 and February 17, 2010 Comment Letters Re: Southeast Quadrant, including LAFCO's Urban Service Area Policies, Annexation Policies, and Agricultural Mitigation Policies.