

**FEBRUARY 2003 AGENDA**

SUBJECT	X	ACTION
Old Mill Pond Territory Transfer Appeal: From Scotts Valley Unified School District in Santa Cruz County to Los Gatos-Saratoga Joint Union High School District and Loma Prieta Joint Union Elementary School District in Santa Clara County.		INFORMATION
		PUBLIC HEARING

Recommendation:

Based solely on the administrative record: (1) reverse the decision of the Santa Clara County Committee on School District Organization (SDO); (2) approve the territory transfer appeal; and (3) establish the area of election as that of the petition area by adopting the proposed resolution. (Attachment 2)

Summary of Previous State Board of Education Discussion and Action

This is a new appeal before the State Board of Education (SBE).

Summary of Key Issue(s)

This is an appeal by the chief petitioners under *Education Code* Section 35710.5 of the Santa Clara County Committee on SDO's action to deny a petition to transfer a property at 885 Old Mill Pond Road in Santa Cruz County. The petition proposed the transfer of territory from the Scotts Valley Unified School District (USD) in Santa Cruz County to the Los Gatos-Saratoga Joint Union High School District (HSD) and the Loma Prieta Joint Union Elementary School District (ESD) in Santa Clara County. The Scotts Valley USD and Loma Prieta Joint Union ESD support the transfer, while the Los Gatos-Saratoga Joint Union HSD opposes the transfer.

The Santa Cruz County Committee on SDO concluded that the petition substantially complied with the nine criteria of *Education Code* Section 35753(a) and unanimously approved the transfer of territory. The Santa Clara County Committee on SDO also concluded that the petition substantially complied with the nine criteria *Education Code* Section 35753(a). However, the Santa Clara County Committee on SDO on a six to four vote turned down the transfer. The committee members voting "yes" found compelling reasons for doing so, including a perception of greater difficulty traveling to Scotts Valley USD schools, the availability of bus transportation to Los Gatos-Saratoga High School, and the isolation of families who would be better served in the Los Gatos and Loma Prieta districts. The members voting "no" found no compelling reasons for the transfer and no reasons compelling enough to override opposition of the Los Gatos-Saratoga Joint Union HSD.

The chief petitioners are appealing the Santa Clara County Committee on SDO's action, asserting that all nine criteria of *Education Code* Section 35753(a) are substantially met, and that compelling need exists for the proposed transfer based on the Santa Clara County Committee on SDO's definition of compelling need.

Summary of Key Issue(s)

California Department of Education (CDE) staff concurs with both County Committees' conclusion that the nine criteria of *Education Code* Section 35753(a) have been substantially met. However, CDE staff disagrees with the "no" votes of the Santa Clara County Committee members regarding a compelling reason for the transfer. Accordingly, CDE staff recommends the SBE, following a review based solely on the administrative record, reverse the action of the Santa Clara County Committee on SDO by granting the appeal and approving the transfer of territory.

Fiscal Analysis (as appropriate)

There are no significant fiscal effects to be considered.

Attachment(s)

[Attachment 1](#): Old Mill Pond Road Territory Transfer Appeal Analysis of Statement of Reasons and Factual Evidence (Pages 1-6)

[Attachment 2](#): Proposed Resolution (Page 1 of 1)

Attachment 3: Appeal From Chief Petitioners of Santa Clara County Committee on School District Organization Action (Pages 1-9)

Attachment 4: Santa Clara County Committee on School District Organization Geographic Isolation Criteria (Page 1 of 1)

[Attachment 5](#): Alternative Proposed Resolution (Page 1 of 1)

**OLD MILL POND ROAD TERRITORY TRANSFER
APPEAL ANALYSIS OF STATEMENT OF
REASONS AND FACTUAL EVIDENCE**

RECOMMENDATION

California Department of Education (CDE) staff recommends that the State Board of Education (SBE) reverse the action of the Santa Clara County Committee on School District Organization (SDO) in disapproving the proposed transfer and support the action of the Santa Cruz County Committee on SDO in approving the proposed transfer of territory by granting the appeal and adopting the proposed resolution in Attachment 2.

BACKGROUND

The chief petitioners (hereinafter appellants) have appealed the Santa Clara County Committee on SDO's disapproval of a petition to transfer the property at 885 Old Mill Pond Road in Santa Cruz County from the Scotts Valley Unified School District (USD) in Santa Cruz County to the Los Gatos-Saratoga Joint Union High School District (HSD) and the Loma Prieta Joint Union Elementary School District (ESD) in Santa Clara County. The area proposed for transfer includes one parcel of about 19 acres of land. The parcel is located on a portion of the north and northeastern boundaries of the Scotts Valley USD in Santa Cruz County, at a point where the boundary line overlaps a portion of the southwestern boundaries of the Loma Prieta Joint Union ESD and the Los Gatos-Saratoga Joint Union HSD, which are under the jurisdiction of the Santa Clara County Superintendent of Schools. Currently, no school-aged children reside at the above address.

The Santa Cruz County Committee on SDO concluded that this petition substantially complies with the nine criteria of *Education Code* Section 35753(a) and unanimously approved the transfer of territory. The Santa Clara County Committee on SDO also concluded that this petition substantially complies with the nine criteria of *Education Code* Section 35753(a). However, after taking into consideration all facts, the Santa Clara County Committee on SDO's motion to approve this territory transfer resulted in a vote of four members supporting the petition and six members not supporting the petition. Thus, it rejected this petition. The Santa Clara County Committee on SDO did not consider the reasons for the transfer compelling.

POSITIONS OF AFFECTED DISTRICTS

The district in which the property is currently located, the Scotts Valley USD, and one of the two districts that would have received the property, the Loma Prieta Union ESD, both unanimously consented to the proposed transfer. However, the Los Gatos-Saratoga Joint Union HSD opposed the transfer.

APPEAL

Education Code Section 35710.5 limits appeals of denials of territory transfers to issues of noncompliance with the provisions of sections 35705, 35706, 35709, 35710 and, by references in sections 35709 and 35710, to the nine criteria prescribed in Section 35753(a) for proposals to reorganize school districts. If the nine criteria in Section 35753(a) are substantially met, county committees on school district organization may, but are not required to, approve the reorganization proposal.

The appellants in this case state that the original territory transfer petition met all nine criteria listed in *Education Code* Section 35753(a), that access to Scotts Valley schools requires them to drive on Highway 17, which is an extreme safety concern, and that they are part of the Los Gatos community (Attachment 3).

STAFF ANALYSIS

In evaluating the appellants' arguments, CDE staff reviewed the full administrative record as provided by the Santa Clara County Office of Education (COE).

The appellants are appealing because both the Santa Clara and Santa Cruz Committees on SDO found that the territory transfer petition met all nine conditions listed in *Education Code* Section 35753(a). The appellants also believe that the reasons for the transfer are compelling.

The Santa Clara County Committee on SDO's definition of "compelling need" includes, but is not limited to, geographic isolation, which requires either more than 20 minutes travel time to the nearest school or travel on roads or in traffic that places a student in significantly greater danger during the commute between his home and the closest schools within the current district of residence than during the commute between his home and the closest school in the desired district of residence (Attachment 4).

The feasibility study prepared by the Santa Clara COE on this proposed transfer of territory states that for elementary and middle school students, travel distance and time to Loma Prieta Joint Union ESD are shorter than the travel distance and time to Scotts Valley USD schools. For high school students, the travel distance to either Los Gatos or Scotts Valley high school is approximately the same, and students must travel on Highway 17 if attending either school (unless an alternate route is taken). Due to heavy commute traffic northbound on Highway 17, the travel may be longer to Los Gatos High School than to Scotts Valley High School during the morning commute. In addition, there is a greater concern over student safety because of the heavy commute traffic.

Using the most generally accepted routes to and from the petition area, the distances and travel times to the various schools were measured by both the Santa Cruz and Santa Clara COEs as shown below:

Schools	Distance (Miles)	Time (Minutes)
<u>Elementary Schools</u>		
Loma Prieta (Loma Prieta Joint Union ESD)	4.5	11
Vine Hill (Scotts Valley USD)	11.9	22
<u>Middle Schools</u>		
C.T. English (Loma Prieta Joint Union ESD)	4.5	11
Scotts Valley Jr. High (Scotts Valley USD)	13.9	25
<u>High Schools</u>		
Los Gatos (Los Gatos- Saratoga Joint Union HSD)	9.6	20
Scotts Valley (Scotts Valley USD)	10.5	21

Travel time is subject to change due to changing conditions on Highway 17. The time of day that parents usually take students to and from school coincide with the heavy traffic times caused by the Santa Cruz-San Jose area commuters.

In addition, the residents of Old Mill Pond Road consider themselves part of the Los Gatos community. The appellants indicate that all other public school children who live on their road are already in the Loma Prieta and Los Gatos Saratoga school districts. The appellants have a Los Gatos address, a Los Gatos phone number, and Los Gatos postal delivery.

STATE BOARD OPTIONS

Upon receipt of an appeal the SBE may, pursuant to *Education Code* Section 35710.5(c):

1. Summarily deny review of the appeal, thus ratifying the Santa Clara County Committee on SDO's decision. (Attachment 5 - Alternative Resolution)
2. Review the appeal for noncompliance by the county committee, in this case the Santa Clara County Committee on SDO, with the provisions of the specified *Education Code* sections, either solely on the administrative record or in conjunction with a public hearing.

If the SBE elects to review the appeal, the SBE, following the review, will:

- (a) affirm or reverse the action of the county committee; and

- (b) if the petitions will be sent to election, determine the area of election (discussed later in this report under *Area of Election Legal Principles and Recommendations*)
3. Reverse or modify the action of the Santa Clara County Committee on SDO in any manner consistent with law.

AREA OF ELECTION LEGAL PRINCIPLES

The Local Agency Formation Commission¹ (*LAFCO*) court decision provides the most current legal interpretations to be followed in deciding the area of school district reorganization elections. The court in *LAFCO* held that in the absence of racial issues or a declared public interest underlying the determination that has a real and appreciable impact on the equality, fairness, and integrity of the electoral process, the rational basis test should be used to determine whether the area of election should be less than the total area of the district affected by the proposed reorganization. In applying the rational basis test, a determination must be made as to whether:

1. There is a genuine difference in the relevant interests of the groups, in which case an enhancement of the minority voting strength is permissible; and
2. There is a legitimate public purpose to which a reduced voting area has a fair relationship:
 - (a) The fair relationship to a legitimate public purpose is found in *Government Code* Section 56001, which expresses the legislative intent "to encourage orderly growth and development," such as promoting orderly school district reorganization statewide under the concept of master planning.
 - (b) Preserving the concept of master planning allows for planned, orderly community-based school systems that adequately address transportation, curriculum, faculty, and administration. This concept includes both:
 - (1) Avoiding the risk that residents of the area to be transferred, annexed, or unified might be unable to obtain the benefits of the proposed reorganization if it is unattractive to the residents of the remaining district; and
 - (2) Avoiding islands of unwanted, remote, or poorly served school communities within large districts.

¹*Board of Supervisors of Sacramento County, Et Al., v. Local Agency Formation Commission* (3 Cal. 4th 903, 19 92)

RECOMMENDATIONS

Appeal Recommendation

CDE staff recommends that the SBE reverse the action of the Santa Clara County Committee on SDO by supporting the action of the Santa Cruz County Committee on SDO and adopt the proposed resolution in Attachment 2.

Following are the reasons for granting the appeal:

1. All nine criteria listed in *Education Code* Section 35753(a) are met.
2. It is a safer commute to the elementary school and middle school in Santa Clara County since this would avoid the necessity of traveling on Highway 17 to attend the elementary and middle schools in Santa Cruz County. In addition, the commute time to the elementary and middle schools in Santa Clara County would be much shorter than the commute time to the Santa Cruz County schools.
3. Strong community identity exists between the transfer area and the Los Gatos community in Santa Clara County.
4. There is bus transportation available to the Santa Clara County schools (Loma Prieta ESD operates school buses and County Public Transit is available to the high school), while none is available to the Santa Cruz County schools.

If the SBE affirms the Santa Clara County Committee on SDO's decision, action denying the transfer stands. Attachment 5 provides an alternative resolution for the SBE if it chooses this course. However, if the SBE reverses the action of the Santa Clara County Committee on SDO, as recommended, and approves the transfer of territory, the SBE must also determine the area of election.

Area of Election Recommendation

Residents of Old Mill Pond Road have genuinely different relevant interests from the remaining residents of the Scotts Valley USD. The majority of Old Mill Pond Road residents wish to transfer to the Los Gatos-Saratoga Joint Union HSD and Loma Prieta Joint Union ESD, while the remaining voters in the Scotts Valley USD would likely be indifferent to the proposal. The quality of education provided to children attending the Scotts Valley USD will not be negatively impacted by the transfer since no students from the area currently attend the district. Finally, the petition does not promote segregation or discrimination. Thus, exclusion of the Scotts Valley USD from the vote meets the LAFCO court decision's rational basis test.

Based on the CDE staff analysis, the impact of the petitions on the receiving districts would be insignificant. The property to be transferred is one lot and will never add a significant number of

students to the district population, and the Loma Prieta Joint Union ESD has already established transportation for students to and from the area. It is our opinion that voters in the Los Gatos-Saratoga Joint Union HSD and the Loma Prieta Joint Union ESD would find the transfer to have a minimal effect. Thus, exclusion of the districts from the vote would also meet the LAFCO court decision's rational basis test.

Therefore, if the SBE reverses the action of the Santa Clara County Committee on SDO and approves the territory transfer, CDE staff recommends the SBE establish the petition area as the area of election.

CALIFORNIA STATE BOARD OF EDUCATION
February 2003

PROPOSED RESOLUTION

Appeal by the Chief Petitioners regarding the Santa Clara County Committee on School District Organization's Disapproval of a Transfer of Territory Known as the "Old Mill Pond" Area from the Scotts Valley Unified School District in Santa Cruz County to the Los Gatos-Saratoga Joint Union High School District and the Loma Prieta Joint Union Elementary School District in Santa Clara County

RESOLVED, that under the authority of *Education Code* Section 35710.5, the appeal, filed on or about October 5, 2001, by chief petitioners of an action of the Santa Clara County Committee on School District Organization disapproving a transfer of territory from the Scotts Valley Unified School District in Santa Cruz County to the Los Gatos-Saratoga Joint Union High School District and the Loma Prieta Joint Union Elementary School District in Santa Clara County is hereby granted; and be it

RESOLVED further, that the Santa Clara County Superintendent of Schools and the Santa Clara County Committee on School District Organization be informed that, under Section 35710.5 of the *Education Code*, the County Committee's action to deny such petition is reversed by the State Board of Education; and be it

RESOLVED further, that the State Board of Education has determined the area of election to be that of the petition area; and be it

RESOLVED further, that the Santa Cruz County Superintendent of Schools call an election on the transfer of territory within the boundaries of the petition area, to be conducted at the next regular election; and be it

RESOLVED further, that the Secretary of the State Board of Education notify, on behalf of said Board, the Santa Clara County Committee on School District Organization, the Santa Cruz County Committee on School District Organization, the chief petitioners, and the affected school districts of the action taken by the State Board of Education.

CALIFORNIA STATE BOARD OF EDUCATION
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ALTERNATIVE PROPOSED RESOLUTION

Appeal by the Chief Petitioners regarding the Santa Clara County Committee on School District Organization's Disapproval of a Transfer of Territory Known as the "Old Mill Pond" Area from the Scotts Valley Unified School District in Santa Cruz County to the Los Gatos-Saratoga Joint Union High School District and the Loma Prieta Joint Union Elementary School District in Santa Clara County

RESOLVED, that under the authority of *Education Code* Section 35710.5, the appeal, filed on or about October 5, 2001, by chief petitioners of an action of the Santa Clara County Committee on School District Organization disapproving a transfer of territory from the Scotts Valley Unified School District in Santa Cruz County to the Los Gatos-Saratoga Joint Union High School District and the Loma Prieta Joint Union Elementary School District in Santa Clara County is hereby denied; and be it

RESOLVED further, that the Secretary of the State Board of Education notify, on behalf of said Board, the Santa Clara County Committee on School District Organization, the Santa Cruz County Committee on School District Organization, the chief petitioners, and the affected school districts of the action taken by the State Board of Education.