



**Local Agency Formation Commission of Napa County**  
Subdivision of the State of California

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*We Manage Local Government Boundaries, Evaluate Municipal Services, and Protect Agriculture*

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**Agenda Item 5f (Consent/Information)**

**TO:** Local Agency Formation Commission  
**PREPARED BY:** Brendon Freeman, Executive Officer  
**MEETING DATE:** August 5, 2019  
**SUBJECT:** Outside Service Agreements Process Summary

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**BACKGROUND AND SUMMARY**

This report is for information only and follows from a request by the Commission for staff to return with a summary of the process relating to outside service agreements, including the process to substantiate a “threat to public health or safety”.

***State Law***

California Government Code (G.C.) Section 56133, included as Attachment One, provides the basic statutory authority for the Commission to authorize cities and special districts to provide municipal services outside their jurisdictional boundaries. With limited exceptions, a city or district may only provide new or extended services outside its boundaries if it first make a formal request for authorization from the Commission.

G.C. Section 56133(b) allows the Commission to authorize a city or district to provide new or extended services outside its boundary but within its sphere of influence (SOI) in anticipation of a later change of organization (e.g., annexation).

G.C. Section 56133(c) allows the Commission to authorize a city or district to provide new or extended services outside its boundary and SOI to respond to a threat to health or safety.

G.C. Section 56133(e) provides the following exemptions for cities and special districts to provide new or extended services outside their boundaries without requiring authorization from the Commission:

- Alternative to existing services already provided by another public service provider
- Transfer of nonpotable or non-treated water
- Surplus water to agricultural lands and facilities
- Extended service already provided on or before January 1, 2001
- Local publicly owned electric utility providing electric services
- Fire protection contracts as defined in G.C. Section 56134(a)

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Ryan Gregory, Alternate Commissioner  
County of Napa Supervisor, 2nd District

Brendon Freeman  
Executive Officer

G.C. Section 56133.5, included as Attachment Two, provides a pilot program that is only in effect until January 1, 2021, for Napa and San Bernardino LAFCOs to authorize a city or district to provide new or extended services outside its boundary and SOI to support existing or planned uses if the Commission determines the following:<sup>1</sup>

- The extension of service or services deficiency was identified and evaluated in a municipal service review
- The extension of service will not result in growth inducing impacts or adverse impacts on open space or agricultural lands
- An SOI change involving the city or district is not feasible under State law or desirable based on local policies

In all situations, the request for LAFCO authorization to enter into an outside service agreement must be formally submitted by the affected city or district.

### ***Consultation Process***

The practice has been for landowners in need of a public service to consult with a nearby city or district to discuss the possibility of obtaining the needed service. If the affected territory is within the city or district's SOI, the landowner is instructed to initiate annexation proceedings to facilitate the extension of service. If the affected territory is outside the city or district's SOI, the landowner is informed the only way to obtain service is to provide documentation of a threat to public health or safety prior to the city or district considering an outside service agreement for the affected territory.

The process to determine if a threat to public health or safety exists (e.g., contaminated well or failed septic system) requires the landowner to obtain documentation confirming the threat. This documentation is typically provided by the County of Napa's Environmental Health Division. If County Environmental Health confirms the threat, a letter is transmitted to the LAFCO Executive Officer identifying any potential remedies to address the threat. All potential remedies (e.g., enhanced water treatment, repair or replace the septic system, etc.) are considered prior to initiating a request for an outside service agreement with a city or district. The letter from County Environmental Health may deem the need for service an emergency and recommend the affected territory immediately connect to the nearest city or district that provides the needed service. The Executive Officer defers to County Environmental Health with respect to identifying emergencies.

If County Environmental Health recommends connection to a city or district to address the threat to health or safety, a nearby city or district may make a formal request to LAFCO for authorization to enter into an outside service agreement.

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<sup>1</sup> For purposes of G.C. Section 56133.5, "planned use" means any project that is included in an approved specific plan as of July 1, 2015.

### ***Local Policy Considerations***

The Commission's adopted *Policy on Outside Service Agreements* ("the Policy") is included as Attachment Three. The form for a city or district to request LAFCO authorization for an outside service agreement is attached to the Policy.

When a request for an outside service agreement involves territory within a city or district's SOI, the Policy requires the affected city or district to specify the nature and timing of the anticipated annexation of the affected territory.

When a request for an outside service agreement involves territory outside a city or district's SOI, the Policy requires the Commission to consider seven specific factors in a report from the Executive Officer.

Absent an emergency, the request for an outside service agreement will be considered by the Commission at a public hearing.

In emergencies, the Policy delegates authority to the Executive Officer, in consultation with the Chair, to administratively approve the request for an outside service agreement. When this occurs, the Commission shall ratify the approval at the next scheduled meeting.

The Commission's approval expires within one year unless a contract has been executed and the construction of any needed infrastructure improvements has commenced. A time extension may be requested by the affected city or district if necessary.

### ***Environmental Review***

Outside service agreements are subject to the review procedures defined in the California Environmental Quality Act (CEQA). A commonly utilized CEQA exemption for outside service agreements is Public Resources Code Section 21080(b)(4), which exempts "specific actions necessary to prevent or mitigate an emergency." Absent an emergency, another common CEQA exemption is CEQA Guidelines Section 15282(k), which exempts the installation of new pipeline as long as the project does not exceed one mile in length.

### ***Other LAFCOs***

A survey of other LAFCOs suggests the Commission's process is sound. All responding LAFCOs confirmed they also defer to their county's determination with respect to emergencies involving threats to public health or safety.

## **ATTACHMENTS**

- 1) Government Code Section 56133
- 2) Government Code Section 56133.5
- 3) Policy on Outside Service Agreements

**State of California**

**GOVERNMENT CODE**

**Section 56133**

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56133. (a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundary only if it first requests and receives written approval from the commission.

(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundary but within its sphere of influence in anticipation of a later change of organization.

(c) If consistent with adopted policy, the commission may authorize a city or district to provide new or extended services outside its jurisdictional boundary and outside its sphere of influence to respond to an existing or impending threat to the health or safety of the public or the residents of the affected territory, if both of the following requirements are met:

(1) The entity applying for approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.

(2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.

(d) The executive officer, within 30 days of receipt of a request for approval by a city or district to extend services outside its jurisdictional boundary, shall determine whether the request is complete and acceptable for filing or whether the request is incomplete. If a request is determined not to be complete, the executive officer shall immediately transmit that determination to the requester, specifying those parts of the request that are incomplete and the manner in which they can be made complete. When the request is deemed complete, the executive officer shall place the request on the agenda of the next commission meeting for which adequate notice can be given but not more than 90 days from the date that the request is deemed complete, unless the commission has delegated approval of requests made pursuant to this section to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the extended services. If the new or extended services are disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to any of the following:

(1) Two or more public agencies where the public service to be provided is an alternative to, or substitute for, public services already being provided by an existing public service provider and where the level of service to be provided is consistent with the level of service contemplated by the existing service provider.

(2) The transfer of nonpotable or nontreated water.

(3) The 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. However, prior to extending surplus water service to any project that will support or induce development, the city or district shall first request and receive written approval from the commission in the affected county.

(4) An extended service that a city or district was providing on or before January 1, 2001.

(5) A local publicly owned electric utility, as defined by Section 9604 of the Public Utilities Code, providing electric services that do not involve the acquisition, construction, or installation of electric distribution facilities by the local publicly owned electric utility, outside of the utility's jurisdictional boundary.

(6) A fire protection contract, as defined in subdivision (a) of Section 56134.

(f) This section applies only to the commission of the county in which the extension of service is proposed.

(Amended by Stats. 2015, Ch. 763, Sec. 2.5. (SB 239) Effective January 1, 2016.)



## State of California

### GOVERNMENT CODE

#### Section 56133.5

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56133.5. (a) A pilot program is hereby established for the Napa and San Bernardino commissions. If consistent with adopted policy, the Napa and San Bernardino commissions may authorize a city or district to provide new or extended services outside its jurisdictional boundary and outside its sphere of influence to support existing or planned uses involving public or private properties, subject to approval at a noticed public hearing in which the commission makes all of the following determinations:

(1) The extension of service or services deficiency was identified and evaluated in a review of municipal services prepared pursuant to Section 56430.

(2) The extension of service will not result in either (1) adverse impacts on open space or agricultural lands or (2) growth inducing impacts.

(3) A sphere of influence change involving the affected territory and its affected agency is not feasible under this division or desirable based on the adopted policies of the commission.

(b) Subdivision (d) of Section 56133 shall apply to any request for new or extended services pursuant to this section.

(c) For purposes of this section, "planned use" means any project that is included in an approved specific plan as of July 1, 2015.

(d) The Napa and San Bernardino commissions shall submit a report before January 1, 2020, to the Legislature on their participation in the pilot program, including how many requests for extension of services were received pursuant to this section and the action by the commission to approve, disapprove, or approve with conditions. The report required to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(e) The pilot program established pursuant to this section shall be consistent with Chapter 8.5 (commencing with Section 1501) of the Public Utilities Code.

(f) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

(Amended by Stats. 2018, Ch. 86, Sec. 4. (AB 3254) Effective January 1, 2019. Repealed as of January 1, 2021, by its own provisions. )



## LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY

### *Policy on Outside Service Agreements*

(Adopted: November 3, 2008; Last Amended: February 5, 2018)

#### **I. BACKGROUND**

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 includes provisions requiring cities, towns, and special districts to request and receive written approval from the Commission before providing new or extended services by agreements outside their jurisdictional boundaries with limited exemptions pursuant to Government Code (G.C.) Sections 56133, 56133.5, and 56134.

The Commission may authorize a city, town, or special district to provide new or extended service outside its jurisdictional boundary, but within its sphere of influence, in anticipation of a subsequent change of organization, such as an annexation. The Commission may also authorize a city, town, or special district to provide new or extended service outside its jurisdictional boundary *and* sphere of influence (a) to address an existing or impending threat to public health or safety or (b) if the Commission makes the determinations set forth in Section V(A)(4) of this policy at a noticed public hearing.

#### **II. PURPOSE**

The purpose of these policies is to guide the Commission in reviewing city, town, and special district requests to provide new or extended services by agreement outside their jurisdictional boundaries. This includes making policy statements and establishing consistent procedures with respect to the form, review, and consideration of requests.

#### **III. OBJECTIVE**

The objective of the Commission in implementing these policies is to ensure the extension of services by cities, towns, and special districts outside their jurisdictional boundaries is logical and consistent with supporting orderly growth and development in Napa County, and to prevent the circumvention of the LAFCO process by providing services by contract instead of through the annexation of territory. The Commission recognizes the importance of considering local conditions and circumstances in implementing these policies.

From LAFCO's perspective, an Outside Service Agreement can:

- 1) Protect the public from threats to health and safety.
- 2) Impose restrictions that limit development to existing intensities.
- 3) Permit a city or town to plan for future development in an orderly manner through the use of traditional zoning or specific plans.
- 4) Discourage premature development of fringe properties.

#### **IV. DEFINITIONS**

The Commission shall incorporate the following definitions in administering this policy:

- A. “Services” shall mean any municipal service provided by a city, town, or special district unless otherwise exempted under G.C. Section 56133.
- B. “New” shall mean the extension of a service to previously unserved non-jurisdictional land.
- C. “Extended” shall mean the intensification of existing services.
- D. “Outside Service Agreement” shall mean an agreement contemplated by G.C. Sections 56133, 56133.5, or 56134.

#### **V. LOCAL CONSIDERATIONS**

##### **A. Consideration of New or Extended Services Outside a Jurisdictional Boundary and Outside the Sphere of Influence (G.C. Sections 56133(c) or 56133.5)**

When considering any proposed Outside Service Agreement pursuant to G.C. Section 56133(c) or the Pilot Program under G.C. Section 56133.5, the Commission will consider the following, which will be addressed in the Executive Officer’s written report:

- 1) The ability of the applicant to extend the subject service to the affected territory.
- 2) The application’s consistency with the policies and general plans of all affected local agencies.
- 3) The application’s effect on growth and development within and adjacent to the affected territory.
- 4) The documentation presented pursuant to G.C. Section 56133(c)(1), which must provide substantial evidence to support a finding by the Commission of an impending threat to the health or safety of the public or the residents of the affected territory.
- 5) The application’s potential impacts on prime agricultural or open space lands.
- 6) The application’s consistency with the Commission’s adopted municipal service review determinations and recommendations.
- 7) The application’s potential impacts with respect to supporting affordable or farmworker housing.



**B. Consideration of New or Extended Services Outside the Jurisdictional Boundary but within the Sphere of Influence in Anticipation of a Later Change of Organization (G.C. Section 56133(b))**

Annexations to cities, towns, and special districts involving territory located within the affected agency's sphere of influence are preferred to Outside Service Agreements. The Commission recognizes, however, that there may be instances when Outside Service Agreements involving territory within the affected agency's sphere of influence are appropriate given unique local circumstances.

When submitting an application under G.C. Section 56133(b), the city, town, or district must state with specificity the nature and timing of the anticipated later change of organization for the area affected by the potential Outside Service Agreement.

**C. Environmental Review**

The review of a proposed Outside Service Agreement will be subject to the review procedures defined in the California Environmental Quality Act (CEQA) and the Napa LAFCO CEQA Guidelines. Napa LAFCO will act as the Lead Agency under CEQA for its environmental review of any Outside Service Agreement request.

If an environmental assessment/analysis was prepared for the project associated with the service extension request (i.e. the County or agency's environmental analysis for a project) and LAFCO was afforded the opportunity to evaluate and comment during the Lead Agency's environmental review process, then LAFCO can act as a Responsible Agency under CEQA for its environmental review of an Outside Service Agreement.

A complete set of the adopted environmental documents prepared for the project, a copy of the filed Notice of Determination/Notice of Exemption, and a copy of the Department of Fish and Wildlife fee receipt must be submitted as part of the application. Completion of the CEQA review process will be required prior to action by the Executive Officer or the Commission.

**VI. FORM OF REQUEST**

The Commission encourages cities, towns, and special districts to coordinate with the Executive Officer prior to filing a request under G.C. Sections 56133 or 56134 in order to determine if the Pilot Program under G.C. Section 56133.5 or the exemptions under G.C. Section 56133(e) may apply.

Requests to authorize an Outside Service Agreement shall be filed with the Executive Officer by the affected city, town, or special district. Requests shall be made by resolution of application with a cover letter accompanying a completed application using the form provided in Attachment A. Requests shall identify any assurances that the Outside Service Agreement would not induce growth or result in the premature conversion of agricultural or open space lands to an urban use.

Requests shall include a check in the amount prescribed under the Commission's adopted fee schedule along with a copy of the proposed Outside Service Agreement. The application shall be signed by an authorized representative of the city, town, or special district.

## **VII. REVIEW OF REQUEST**

The Executive Officer shall review and determine within 30 days of receipt whether the request to authorize an Outside Service Agreement is complete. If a request is deemed incomplete, the Executive Officer shall immediately notify the applicant and identify the information needed to accept the request for filing.

## **VIII. CONSIDERATION OF REQUEST**

Once a request is deemed complete, the Executive Officer will prepare a written report with a recommendation.

In the case of a request involving an existing or impending public health or safety emergency, the Executive Officer will consult with the Chair regarding the request. If the Chair agrees that the request should be granted, then the Executive Officer may approve the request. The Commission shall ratify the approval at the next scheduled meeting. If the Chair does not agree, then the request will be presented at the Commission's next meeting.

For requests not involving an existing or impending public health or safety threat, the Executive Officer will present his or her report and recommendation at a public hearing for Commission consideration. The public hearing will be scheduled for the next meeting of the Commission for which adequate notice can be given but no later than 90 days from the date the request is deemed complete.

The Commission may approve, approve with conditions, or deny the request for an Outside Service Agreement. The Commission's determination and any required findings will be set out in a resolution that specifies the property or area to be served, the services to be provided, and the authority of the agency to provide its services outside its boundaries.

If the request is approved, the Commission's approval shall expire within one year from approval unless a contract has been executed and the construction of any needed infrastructure improvements has commenced. A one-time extension may be requested by the applicant for a period of time that is necessary to complete the Commission's conditions. Time extension requests shall include a check in the amount prescribed under the Commission's adopted fee schedule.



**D. Service Information**

1) Describe how the agency would provide the proposed new or extended service to the subject territory. Please identify any necessary infrastructure or facility improvements and associated funding requirements necessary to provide service to the subject territory.

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2) If the proposed new or extended service involves water or sewer, identify the anticipated demand in terms of use (i.e., gallons) associated with serving the subject territory.

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3) Does the agency have sufficient capacities to provide the proposed new or extended service to the subject territory without adversely effecting existing service levels?

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4) What services, if any, are currently provided to the subject territory?

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**E. Additional Information**

- 1) Identify the subject territory’s land use designation and zoning standard along with the minimum parcel density requirements.

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- 2) Are there any proposed or approved, but not yet built, development projects involving the subject territory?

Yes  No

If yes, describe the proposed projects or the approved permits/land use entitlements.

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- 3) The Commission’s action regarding this request by the agency to provide new or extended services outside its jurisdictional boundary is subject to the requirements of the California Environmental Quality Act (CEQA). Has the agency conducted any CEQA reviews for any projects associated with this application?

Yes  No

If yes, please provide copies of the environmental documentation, including the Notice of Exemption or Notice of Determination as well as proof of payment of applicable California Department of Fish & Game fees.

- 4) Is the subject territory located within the agency’s sphere of influence?

Yes  No

If no, please identify whether there is an existing or impending threat to public health and safety or to the residents in support of the application.

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