



Local Agency Formation Commission
LAFCO of Napa County

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February 1, 2010
Agenda Item No. 6c (Public Hearing)

January 25, 2010

TO: Local Agency Formation Commission

FROM: Keene Simonds, Executive Officer
Brendon Freeman, Analyst

SUBJECT: Ratification of an Outside Service Agreement Approval for the Napa Sanitation District Involving 2047 Big Ranch Road in the City of Napa

The Commission will consider ratifying an outside service agreement approved by the Chair authorizing the Napa Sanitation District to provide temporary public sewer service to 2047 Big Ranch Road in Napa to address a public health threat. Staff recommends ratification approval along with waiving the application fee.

Local Agency Formation Commissions (LAFCOs) are responsible under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 to regulate the formation and development of local governmental agencies and their municipal services. This includes approving or disapproving requests from cities and special districts to provide new or extended municipal services outside their jurisdictional boundaries under California Government Code (G.C.) Section 56133. LAFCOs are authorized to condition approval for outside service agreements as long as the terms do not directly regulate land uses.

A. Request Summary

LAFCO of Napa County (“Commission”) has received a written request from the Napa Sanitation District (NSD) to approve an outside service agreement to allow the agency to immediately extend new public sewer service to 2047 Big Ranch Road in the City of Napa. The affected territory is within NSD’s adopted sphere of influence. It is 1.1 acres in size and comprises an approximate 2,150 square foot single-family residence built in 1950. As allowed under policy, the Chair approved the outside service agreement request on November 18, 2009 given receipt of documentation stating the septic system serving the residence had failed, creating an urgent public health threat. The outside service agreement expires on May 1, 2010 and is intended to be succeeded through a future annexation proposal. Commission policy requires the Chair’s approval be ratified by the Commission at the next regular meeting as part of a public hearing.

Juliana Inman, Chair
Councilmember, City of Napa

Lewis Chilton, Commissioner
Councilmember, Town of Yountville

Joan Bennett, Alternate Commissioner
Councilmember, City of American Canyon

Bill Dodd, Vice Chair
County of Napa Supervisor, 4th District

Brad Wagenknecht, Commissioner
County of Napa Supervisor, 1st District

Mark Luce, Alternate Commissioner
County of Napa Supervisor, 2nd District

Brian J. Kelly, Commissioner
Representative of the General Public

Gregory Rodeno, Alternate Commissioner
Representative of the General Public

Keene Simonds
Executive Officer



B. Discussion

Agency Profile

NSD was formed in 1945 to provide public sewer service for Napa and the surrounding unincorporated area. NSD presently provides sewer service to most of Napa along with several surrounding unincorporated developments, including the Silverado Country Club, Napa State Hospital, and the Napa County Airport. In all, NSD currently serves 31,283 residential connections with an estimated resident service population of 81,023. NSD also serves 4,182 non-residential customers.¹

¹ The population estimate assumes 2.59 persons per residential connection.

Request Purpose

The purpose of the approval request before the Commission is to authorize new public sewer service to an existing single-family residence occupying the affected territory in a manner responsive to local conditions and statutory requirements. As mentioned, the septic system serving the residence failed, creating an urgent threat to public health as determined by County Environmental Management. As a temporary measure, the landowners have entered into an outside service agreement with NSD to allow immediate connection to the agency's public sewer system given annexation proceedings take a minimum of three months to process before Commission consideration. The agreement provides temporary sewer service to the affected territory through May 1, 2010. The agreement was executed on November 18, 2009 and was approved by the Chair on December 1, 2009 as allowed under Commission policy due to the existence of a public health threat. The Commission is required under policy to ratify the Chair's approval.

Permanent public sewer service for the affected territory is intended to be established through a separate annexation process. An annexation application has been submitted by the landowner and is expected to be presented to the Commission at its next regular meeting subject to completing the necessary environmental review as lead agency.

C. Analysis

Outside Service Agreement

G.C. Section 56133 requires cities and special districts to request and receive written approval from LAFCO before entering into agreements to provide new or extended services outside their jurisdictional boundaries. LAFCOs are delegated broad discretion in considering outside service extensions with the caveat of complying with two geographic requirements. First, LAFCO may only approve outside service extensions within the affected agency's sphere of influence in anticipation of a future annexation. Second, LAFCO may only approve outside service extensions beyond an agency's sphere of influence to respond to an existing or impending public health or safety threat.

Required Factors for Review

Commission policy requires it to consider three specific factors in reviewing outside service agreement approval requests. An analysis of all three factors as it relates to the outside service agreement between NSD and the landowners of the affected territory is included in Chair Kelly's letter of approval, which is attached for Commission review. This analysis is incorporated into this staff report for purposes of the Commission considering the ratification of the Chair's approval.

Environmental Review

Discretionary actions by public agencies are subject to the California Environmental Quality Act (CEQA) any time an underlying activity will result in a direct or indirect physical change to the environment. A lead agency has the principal responsibility for carrying out or approving the underlying activity consistent with the provisions of CEQA. This includes determining whether the underlying activity qualifies as a “project.” If the activity is determined to be a project, the lead agency must determine if an exemption applies or if additional environmental review is needed, such as preparing an initial study. A responsible agency is accountable for approving an associated aspect of the underlying activity and must rely on the lead agency’s determination in making its own CEQA finding.

NSD serves as the lead agency given it is principally responsible for approving the underlying activity: extending sewer service to the affected territory. NSD has determined this activity is a project under CEQA, but qualifies for an exemption from further review under Public Resources Code Section 21080(b)(4). The statute provides categorical exemptions for “specific actions necessary to prevent or mitigate an emergency.” The Commission serves as responsible agency. Staff believes NSD has made an adequate determination the underlying activity is categorically exempt from further review given it mitigates a public health threat.

Waiver of Application Fee

The Commission’s adopted fee schedule states the application fee for processing a request to approve an outside service agreement is \$2,417. The Commission is statutorily authorized to waive any fee if it finds the payment would be detrimental to the public interest. With this in mind, the Commission may consider waiving the fee for considering approval of the outside service agreement given the pending annexation proposal associated with the affected territory, which includes its own fee of \$4,326. The collection of the outside service agreement fee could be detrimental to the public by incentivizing future applicants to continue to use a failing septic system rather than seek an outside service agreement approval as a temporary measure until annexation proceedings can be completed due to costs.

D. Alternatives for Commission Action

Staff has identified the following alternative actions for Commission consideration with respect to considering ratification of the outside service agreement approval at the close of the public hearing.

Option A: Adopt the draft resolution identified as Attachment Four ratifying the Chair’s approval of the outside service agreement and waiving the application fee.

Option B: Adopt the draft resolution identified as Attachment Five ratifying the Chair's approval of the outside service agreement without waiving the application fee.

Option C: Continue consideration of the outside service agreement approval request to the next regular meeting.

Option D: Deny ratification approval of the outside service agreement.

E. Recommendation

Staff recommends the Commission ratify the Chair's approval of the outside service agreement authorizing NSD to immediately extend public sewer service to 2047 Big Ranch Road while waiving the application fee. This recommendation is identified in the preceding section as Option A.

Respectfully submitted,

Keene Simonds
Executive Officer

Brendon Freeman
Analyst

Attachments:

- ~~1) NSD Application Materials~~
- ~~2) Letter from County of Napa Environmental Management~~
- ~~3) Chair Kelly's Letter Approving the Outside Service Agreement~~
- ~~4) Draft Resolution Ratifying Approval While Waiving Application Fee (Option A)~~
- ~~5) Draft Resolution Ratifying Approval Without Waiving Application Fee (Option B)~~