



**Local Agency Formation Commission**  
**LAFCO of Napa County**

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**October 6, 2008**  
**Agenda Item No. 8b**

September 25, 2008

**TO:** Local Agency Formation Commission

**FROM:** Keene Simonds, Executive Officer

**SUBJECT: Proposed Policy on Outside Service Agreements (Discussion)**

The Commission will review a proposed policy regarding outside service agreements. The proposed policy provides guidance to the Commission in reviewing city and special district requests to provide new or extended services by agreement outside their jurisdictional boundaries in accordance with California Government Code Section 56133. The proposed policy is being presented to the Commission for discussion.

California Government Code (G.C.) §56133 requires cities and special districts to request and receive written approval from Local Agency Formation Commissions (LAFCOs) before providing new or extended services by agreements outside their jurisdictional boundaries with limited exemptions. LAFCOs may approve a city or special district's request to provide new or extended service outside their jurisdictional boundary but within their sphere of influence in anticipation of a subsequent change of organization, such as an annexation. LAFCO may only approve a city or special district's request to provide new or extended service outside their jurisdictional boundary and sphere of influence to address an existing or future threat to the public health or safety.

As mentioned, exemptions to G.C. §56133 are limited and include agreements between two or more public agencies where the contracted service is a substitute for a service already being provided. Agreements involving the transfer of non-potable or non-treated water as well as surplus water to agricultural lands are exempt. Agreements involving an extended service a city or special district was providing on or before January 1, 2001 are also exempt.

**A. Discussion**

G.C. §56133 was enacted on January 1, 1994 to expand LAFCOs ability to effectively manage cities and special districts' service areas by requiring these agencies to receive approval before providing new or extended services outside their jurisdictional boundaries. Markedly, prior to this enactment, it was not uncommon for a city or special district to provide service outside its jurisdictional boundary after having been denied the annexation of the affected territory. Towards this end, the legislative intent of G.C. §56133 is to further empower LAFCOs in fulfilling their mandate to coordinate orderly growth and development while protecting agricultural and open-space resources.

Jack Gingles, Commissioner  
Mayor, City of Calistoga

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

Brian J. Kelly, Vice Chair  
Representative of the General Public

Juliana Inman, Commissioner  
Councilmember, City of Napa

Bill Dodd, Commissioner  
County of Napa Supervisor, 4th District

Gregory Rodeno, Alternate Commissioner  
Representative of the General Public

Cindy Coffey, Alternate Commissioner  
Councilmember, City of American Canyon

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

Keene Simonds  
Executive Officer

As previously discussed, it has been the general practice of LAFCO of Napa County (“Commission”) not to require cities or special districts to request and receive approval before providing new or extended services outside their jurisdictional boundaries. However, as a result of the inaugural round of municipal service reviews, the Commission has begun reviewing its role in administering G.C. §56133. This review recently resulted in the Commission adopting a policy establishing terms for the City of American Canyon to provide new or extended water and sewer services within certain unincorporated lands; a policy predicated on recognizing the City’s role as successor agency to an extinguished special district.<sup>1</sup>

It is appropriate for the Commission to continue its review and consider a policy addressing its role in administering G.C. §56133 as it relates to the remaining cities and special districts in Napa County. The need for this type of policy is underscored by the expectation the City of Napa will soon be submitting a request to provide water service to a planned unincorporated single-family residence off of Montecito Boulevard as part of a concurrent sphere of influence amendment.<sup>2</sup> Staff has also been informed a planned unincorporated single-family residence off of Bentley Drive will be seeking outside water service from the City of Calistoga. Markedly, a policy is needed to provide guidance in reviewing and processing these types of requests to help ensure consistency with the goals and objectives of the Commission.

With the preceding context in mind, staff has prepared the attached proposed policy on outside service agreements for Commission review and discussion. The proposed policy includes general policy statements regarding the application of G.C. §56133 ranging from listing exemptions to empowering the Chair to approve outside service agreements if there is an existing and urgent public emergency. The proposed policy also establishes basic procedures with respect to the form, review, and consideration of requests for outside service agreements, including the creation of a standard application.

### **C. Analysis**

The proposed policy on outside service agreements is intentionally broad and intended to provide general guidance to the Commission in considering requests by cities and special districts to provide new or extended services outside their jurisdictional boundaries. The proposed policy does not include definitions with regard to describing the constitution of “new” or “extended” service. The absence of definitions for new and extended service is consistent with previous statements by Commissioners to retain discretion in assessing the application of G.C. §56133 on an individual basis given the often unique circumstances underlying the established service practices of cities and special districts in certain unincorporated areas. Nevertheless, the proposed policy does provide sufficient and needed direction to the Commission as well as cities and special districts in complying with one another’s responsibilities under G.C. §56133.

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<sup>1</sup> This policy was adopted in October 2007 and establishes extraterritorial water and sewer service areas for the City of American Canyon. The policy specifies American Canyon must receive Commission approval before providing new or extended services within the extraterritorial service areas with the exception of lands are part of the County of Napa’s Airport Industrial Area Specific Plan.

<sup>2</sup> A review of the proposed sphere amendment is provided as part of today’s meeting in Agenda Item No. 10a.

**D. Commission Review**

Staff respectfully requests the Commission review and provide input regarding the proposed policy on outside service agreements. Staff anticipates returning to the Commission with the proposed policy, with or without modifications, at a future meeting.

Attachment:

- 1) Proposed Policy on Outside Service Agreements (Draft)
- 2) G.C. §56133



**LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY**  
*Policy on Outside Service Agreements*

Adopted: \_\_\_\_\_

**I. Background**

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 includes provisions requiring cities 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 (Government Code Section 56133). The Commission may authorize a city or special district to provide new or extended service outside their jurisdictional boundary in anticipation of a subsequent change of organization, such as an annexation. The Commission may also authorize a city or special district to provide new or extended service outside their jurisdictional boundary and sphere of influence to address an existing or future threat to the public health or safety.

**II. Purpose**

The purpose of these policies is to guide the Commission in reviewing city 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 and special districts outside their jurisdictional boundaries is logical and consistent with supporting orderly growth and development in Napa County. The Commission recognizes the importance of considering local conditions and circumstances in implementing these policies.

**IV. Outside Service Agreement Policies**

**A. General Statements**

- 1) Annexations to cities and special districts involving territory located within the affected agency's sphere of influence is generally preferred to outside service agreements. The Commission recognizes, however, there may be instances when outside service agreements involving territory within the affected agency's sphere of influence is appropriate given local circumstances.
- 2) The Commission shall authorize a city or special district's request to provide new or extended services outside their jurisdictional boundary and sphere of influence only in response to an existing or future threat to public health or safety in accordance with Government Code Section 56133(c).

- 3) The Commission authorizes the Chair to approve a city or special district's request for an outside service agreement if there is an existing and urgent public emergency. The Executive Officer shall provide a report to the Commission at the next meeting addressing any emergency approvals.
- 4) All requests for outside service agreements are subject to the applicable provisions of the California Environmental Quality Act.
- 5) Commission approval is not required for cities or special districts to provide new or extended services outside their jurisdictional boundaries if any of the following conditions apply in accordance with Government Code Section 56133(e):
  - (a) The agreement involves two or more public agencies where the contracted service is an alternative or substitute for public services already provided.
  - (b) The agreement involves the transfer of non-potable or non-treated water.
  - (c) The agreement involves the provision of surplus water to agricultural lands for conservation projects or to directly support agricultural industries.
  - (d) The agreement involves an extended service that a city or special district was providing on or before January 1, 2001.

The Commission encourages cities and special districts to work with the Executive Office in determining when the above exemptions apply.

## **B. Form of Request**

Requests to authorize an outside service agreement shall be filed with the Executive Officer by the affected city or special district. Requests shall be made in writing with a cover letter accompanying a completed application using the form provided in Attachment A. Requests shall also include a check in the amount prescribed under the Commission's adopted fee schedule along with a copy of the proposed service agreement. The application shall be signed by the city or special district manager.

## **C. 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.

#### **D. Consideration of Request**

Once a request is deemed complete, the Executive Officer will prepare a written report with a recommendation and schedule a public hearing for the Commission to consider the application within 90 days. The Executive Officer's written report will be made available to the public for review prior to the scheduled hearing and include an evaluation of the following three factors:

- 1) The ability of the applicant to extend the subject service to the affected land.
- 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 land.

The Commission may approve the request with or without conditions. If denied, the affected city or special district can ask for reconsideration within 30 days.



**LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY**

**APPLICATION  
OUTSIDE SERVICE AGREEMENT**

**A. Applicant Information**

- 1) Agency Name: \_\_\_\_\_
- 2) Contact Person and Title: \_\_\_\_\_
- 3) Contact Information: \_\_\_\_\_  

Telephone	E-Mail
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- 4) Mailing Address: \_\_\_\_\_  

Address	City, State, Zip Code
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**B. Type of Outside Service Agreement**

- 1) New  Extended
- 2) Water  Sewer  Other: \_\_\_\_\_

**C. Location of Territory to be Served**  
(attach additional sheets if necessary)

- 1) Assessor Parcel Number: \_\_\_\_\_  
Size: \_\_\_\_\_ Current Use: \_\_\_\_\_
- 2) Assessor Parcel Number: \_\_\_\_\_  
Size: \_\_\_\_\_ Current Use: \_\_\_\_\_
- 3) Assessor Parcel Number: \_\_\_\_\_  
Size: \_\_\_\_\_ Current Use: \_\_\_\_\_

**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 future threat to public health and safety or to the residents in support of the application.

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**California Government Code Section 56133**

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

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

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

- (1) The entity applying for the contract 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, or sewer system corporation as defined in Section 230.6 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 of a contract 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 those requests to the executive officer. The commission or executive officer shall approve, disapprove, or approve with conditions the contract for extended services. If the contract is disapproved or approved with conditions, the applicant may request reconsideration, citing the reasons for reconsideration.

(e) This section does not apply to contracts or agreements solely involving 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. This section does not apply to contracts for the transfer of nonpotable or nontreated water. This section does not apply to contracts or agreements solely involving 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. This section does not apply to an extended service that a city or district was providing on or before January 1, 2001. This section does not apply to 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 boundaries.