



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

1700 Second Street, Suite 268
Napa, California 94559
Telephone: (707) 259-8645
Facsimile: (707) 251-1053
<http://napa.lafco.ca.gov>

December 5, 2011

Agenda Item No. 6a (Public Hearing)

November 28, 2011

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 1430 Rosewood Lane (038-160-030)

The Commission will consider ratifying an outside service agreement approved by the Chair authorizing the Napa Sanitation District to provide extraterritorial public sewer service to an unincorporated property at 1430 Rosewood Lane to address a public health threat. Staff recommends ratification approval along with waiving the application fee due to special circumstances as allowed under Commission policy.

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. Background

LAFCO of Napa County (“Commission”) received a written request on November 10, 2011 from the Napa Sanitation District (NSD) to approve an outside service agreement to allow the agency to immediately extend new public sewer service to an unincorporated single-family residence located at 1430 Rosewood Lane. The single-family residence is part of an approximate 0.9 acre lot and is 2,100 square feet in size with four bedrooms built in the 1920s. The single-family residence lies entirely within NSD’s sphere of influence.

As allowed under Commission policy, Chair Dodd conditionally approved the outside service agreement request on November 14th upon receipt of documentation stating the septic system serving the residence had failed, creating an urgent public health threat. The Chair’s approval was conditioned on the landowner first submitting an application with the Commission to annex the entire lot. This condition was satisfied on November 16th.

Lewis Chilton, Vice Chair
Councilmember, Town of Yountville

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

Brian J. Kelly, Commissioner
Representative of the General Public

Joan Bennett, Commissioner
Councilmember, City of American Canyon

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

Gregory Rodeno, Alternate Commissioner
Representative of the General Public

Juliana Inman, Alternate Commissioner
Councilmember, City of Napa

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

Keene Simonds
Executive Officer

The outside service agreement between NSD and the landowner of 1430 Rosewood Lane (Ralph Melligio) expires on September 1, 2012. The outside service agreement is intended to be succeeded through the referenced annexation of the entire affected lot. In the interim, Commission policy requires the Chair's approval be ratified by the Commission at the next regular meeting as part of a public hearing.



B. Discussion

Agency Profile

NSD was formed in 1945 as a dependent enterprise district to provide public sewer service for the City and the surrounding unincorporated area. NSD presently provides sewer service to most of the City along with several surrounding unincorporated areas, including Silverado, Napa State Hospital, and the Napa County Airport. NSD currently serves 31,283 residential customers with an estimated resident service population of 81,961.¹

NSD's current operating budget is \$19.462 million.² NSD anticipates collecting \$24.848 million in general revenues resulting in a year-end operating surplus/deficit of \$5.386 million. Moreover, NSD's undesignated fund balance as of the beginning of the fiscal year totaled \$3.119 million and available for use in operations or on capital. This amount is sufficient to cover nearly three months of operating expenses.³

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 verified by County Environmental Management. As a temporary measure, the landowner has 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. Permanent public sewer service 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 in the near

¹ The resident service projection based on the 2011 California Department of Finance population per household estimate (2.62) assigned to Napa County and multiplied by the number of residential sewer connections within NSD (31,283). NSD also serves 4,182 non-residential customers, including industrial and commercial users.

² The adopted operating expense amount is divided between operating expenses (\$12.743 million), debt service (\$2.750 million), and transfer to the capital projects fund (\$3.967 million).

³ Calculation based on NSD's adopted annual operating expense for 2011-12 in the amount of \$12.743 million.

future. Consideration of the annexation, however, is first subject to the Commission completing the necessary environmental review as lead agency as well as assessing the merits of reorganizing the action to include a concurrent annexation to the City of Napa.

C. Analysis

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 Dodd'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 charge for processing a request to approve an outside service agreement is \$2,568. The Commission policy permits the agency to waive any fee if it finds the payment would be detrimental to the public interest. Additionally, it is pertinent to note the annexation proposal filed with the Commission involving the affected territory is also subject to a base fee of \$4,068.

Staff believes it would be appropriate for the Commission to waive the \$2,568 application fee tied to the request to approve the outside service agreement. Collecting the fee would - arguably - be detrimental to the public by incentivizing other 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.

D. Alternatives for Commission Action

Staff has identified the following alternative actions for Commission consideration.

Alternative One: Adopt the draft resolution identified as Attachment Four ratifying the Chair's approval of the outside service agreement and waiving the application fee.

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

Alternative Three: Continue consideration of the outside service agreement approval request to the next regular meeting.

Alternative Four: Deny ratification approval of the outside service agreement. Denial would necessitate NSD discontinue service immediately.

E. Recommendation

Staff recommends Alternative One as outlined in the preceding section.

F. Procedures for Consideration

This item has been agendized for public hearing. The following procedures are recommended with respect to the Commission's consideration of this item:

- 1) Receive verbal report from staff;
- 2) Open the public hearing an invite public testimony;
- 3) Close the public hearing; and
- 4) Discuss item and consider action on recommendation.

Respectfully submitted,

Keene Simonds
Executive Officer

Brendon Freeman
Analyst

Attachments:

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