



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

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**November 3, 2008**  
**Agenda Item No. 7b**

October 24, 2008

**TO:** Local Agency Formation Commission

**FROM:** Keene Simonds, Executive Officer

**SUBJECT: Adoption of Proposed Policy on Outside Service Agreements (Action)**

The Commission will consider a proposed policy on outside service agreements. The proposed policy provides guidance to the Commission in reviewing requests from cities and special districts to provide new or extended services by agreement outside their jurisdictional boundaries in accordance with Government Code Section 56133.

Government Code (G.C.) Section 56133 became effective January 1, 2001 and requires cities and special districts to request and receive written approval from Local Agency Formation Commissions (LAFCOs) to provide new or extended services outside their jurisdictional boundaries with limited exemptions. LAFCOs may approve cities and special districts' requests to provide new or extended services outside their jurisdictional boundaries but within their spheres of influence in anticipation of subsequent changes of organization, such as annexations. LAFCOs may only approve cities and special districts' requests to provide new or extended services outside their jurisdictional boundaries and spheres of influence in response to existing or future threats to public health or safety.

**A. Discussion**

At the October 6, 2008 meeting, LAFCO of Napa County ("Commission") reviewed a proposed policy on outside service agreements in accordance with G.C. §56133. The proposed policy establishes principles and procedures to help guide the Commission in reviewing requests by cities and special districts to provide new or extended outside services. Most notably, this includes prescribing the form, review, and consideration of agency requests. A copy of the staff report on the proposed policy presented at the October meeting is attached.

At the direction of the Commission, staff circulated the proposed policy to local agencies on October 8<sup>th</sup> welcoming their review and comment. Written comments were received from the Napa Sanitation District and County of Napa and are attached. Counsel has also prepared the attached memorandum responding to a question raised at the October meeting regarding the Commission's obligation to administer G.C. §56133.

Jack Gingles, Commissioner  
Mayor, City of Calistoga

Juliana Inman, Commissioner  
Councilmember, City of Napa

Cindy Coffey, Alternate Commissioner  
Councilmember, City of American Canyon

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

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

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

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

Gregory Rodeno, Alternate Commissioner  
Representative of the General Public

Keene Simonds  
Executive Officer

The proposed policy is being presented today for Commission consideration. The proposed policy includes two substantive changes from its initial presentation at the October meeting. These changes are summarized below.

- Section IV (B) initially directed cities and special districts to file with the Executive Officer a completed application signed by the respective manager requesting Commission approval to provide new or extended outside services. This section has been revised to also require cities and special districts submit with their completed application an adopted resolution. This change was suggested by City of Napa at the October meeting and will help formalize the process while providing additional opportunities for public review and comment on the underlying project prior to Commission consideration.<sup>1</sup>
- Section IV (D) initially directed the Executive Officer to schedule a public hearing for the Commission to consider cities and special districts' requests to provide new or extended outside services within 90 days after deeming the application complete. This section has been revised to direct the Executive Officer to schedule a public hearing for the Commission to consider requests at its next regular meeting in which adequate notice can be given but no later than 90 days from the date the application is deemed complete. This change was suggested by the County of Napa in their October 23, 2008 letter to the Commission and helps clarify the Executive Officer will process requests in a timely manner.<sup>2</sup>

## **B. Analysis**

The proposed policy on outside service agreements provides measured guidance to the Commission in addressing its statutory duties under G.C. §56133. The proposed policy also provides needed direction to cities and special districts in complying with their own statutory responsibilities to request and receive approval from the Commission before providing new or extended outside services. The timing of the proposal policy is also appropriate given the City of Napa may soon request approval to provide water service to a property off of Montecito Boulevard in conjunction with a recently filed sphere of influence amendment. Markedly, in the absence of a policy, staff does not have any direction to help ensure its review of these types of requests is consistent with the preferences of the Commission.

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<sup>1</sup> The City of Napa also suggested at the October meeting the Commission revise Section IV (A), which authorizes the Chair to approve outside service agreements to respond to existing and urgent threats to public health and safety. The City suggested it would be appropriate to transfer this authority to the Executive Officer. Staff believes it is appropriate to retain this section as written to provide an additional check within LAFCO to help ensure the underlying event represents an urgent threat to public health or safety.

<sup>2</sup> The County of Napa also questioned in its October 23, 2008 letter to the Commission whether a countywide policy on G.C. §56133 is necessary given the specificity of the statute. Staff believes a policy is appropriate for reasons outlined in this report. Staff also respectfully disagrees with the County's comment the statute is too specific to create a countywide policy; the statute is a broad mandate and the proposed policy retains Commission discretion in considering outside service agreements.

As discussed at the October meeting, the proposed policy is intentionally broad and provides the Commission discretion in considering outside service agreements. This discretion is needed given the challenges associated with implementing policies on G.C. §56133. The primary implementation challenge is drawn from the restriction on the Commission to only approve new or extended services outside cities or special districts' spheres of influence in response to existing or future threats to public health or safety. This restriction is well-intended and reinforces the meaning of spheres of influence as the probable and future service areas of cities and special districts. The restriction, however, does not readily recognize there are exceptions when it is logical for cities and special districts to provide new or extended services outside their spheres of influence. With this in mind, staff believes it is reasonable for the Commission to have an inclusive view of threats to public health and safety. This framing will allow the Commission to accommodate logical service provision outside cities and special districts' spheres of influence when amendments are not appropriate given local conditions and circumstances.

### **C. Recommendation**

It is recommended the Commission take the following actions:

- 1) Adopt the attached proposed policy on outside service agreements with any desired changes; and
- 2) Direct the Executive Officer to provide notice of the adopted policy on outside service agreements to each city and special district in Napa County.

Respectfully submitted,



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Keene Simonds  
Executive Officer

#### Attachments:

- 1) Proposed Policy on Outside Service Agreements
- 2) Written Comments: Napa Sanitation District
- 3) Written Comments: County of Napa
- 4) Memorandum from Commission Counsel
- ~~5) October 6, 2008 Staff Report~~



**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 health or safety emergency. The Commission shall ratify the Chair's determination at the next regular scheduled meeting.
- 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 may 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 by resolution of the affected agency 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.

## **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. 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 regular 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 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. For extended service, please estimate the difference in comparison to existing demand.

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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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**Simonds, Keene**

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**From:** Healy, Tim  
**Sent:** Wednesday, October 22, 2008 11:56 AM  
**To:** Simonds, Keene  
**Cc:** Herrick, Todd; Abramson, Michael; Thomas, Brian  
**Subject:** LAFCO Policy on Outside Service Agreements

Keene:

District Staff has reviewed the proposed policy on Outside Service Agreements. Based on our review of the document, it appears that the policy is in compliance with Government Code Section 56133. Noting the Napa Sanitation District currently only has three Outside Service Agreements for sanitary sewer service outside of our jurisdictional boundaries, and that none of the three was entered into in the last twenty years, executing Outside Service Agreements for sanitary sewer service is generally not a practice of the District.

The District does provide recycled water to customers outside of our jurisdictional boundaries. It does not appear that this policy will adversely affect our ability to continue this practice.

Noting the comments above, the District does not propose any changes to the policy and supports its adoption.

Tim Healy  
Assistant General Manager/District Engineer

## Conservation, Development and Planning

1195 Third Street, Suite 210  
Napa, CA 94559  
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Main: (707) 253-4417  
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**Hillary Gitelman**  
Director



A Tradition of Stewardship  
A Commitment to Service

October 23, 2008

Keene Simonds, Executive Director  
LAFCO of Napa County  
1700 Second Street, Suite 268  
Napa, CA 94559

RE: Proposed Policy on Outside Service Agreements

Dear Keene,

Thank you for the opportunity to comment on LAFCO's draft policy regarding outside service agreements. As we learned during discussions about CGC Section 56133's application towards the County's Airport Industrial Area, this is a significant and complex issue that requires careful consideration. County staff questions whether a County-wide policy is necessary given the specificity of the statute and the Napa County Board of Supervisors has not taken a position on the proposed policy. Nonetheless, should the Commission wish to proceed, we would offer the following comments and suggestions:

First, we believe that the definition of "new or extended services" is critical to practical application of CGC Section 56133. For example, there are areas of the County which lie outside of city or district boundaries but lie within adopted or contractually established service areas. New hook-ups in these areas may not be considered "new or extended services" as envisioned by the statute.

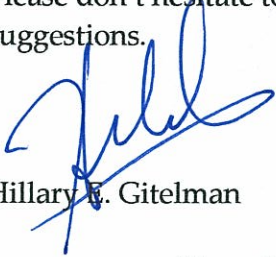
For this reason, we recommend that any County-wide policy adopted by LAFCO acknowledge the existence of site-specific circumstances (such as historical service areas and pre-existing contractual agreements) that may result in local agency decisions that are not subject to Section 56133. In these instances, local agencies should be requested to notify LAFCO staff in writing that their proposed service is not subject to Section 56133, and provide a specific rationale.

Also, local agencies requesting authorization under Section 56133 should be asked to provide any pre-existing contractual agreements related to their proposal and the Commission should have an opportunity to determine whether Section 56133 even applies before it considers whether the extension would address a threat to public health or safety.

Finally, if the Commission is going to continue its practice of meeting on a monthly basis, requests for authorization under Section 56133 should be calendared for consideration by the Commission within

30 rather than 90 days of being deemed complete by the Executive Officer. Alternately, requests that are deemed complete should be placed on the agenda for consideration at the Commission's next regularly scheduled meeting.

Please don't hesitate to contact me if I can answer any questions about these comments and suggestions.



Hillary A. Gitelman

- cc. Napa County Board of Supervisors
- Nancy Watt, Napa County CEO
- Robert Westmeyer, County Counsel



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**Attachment Four**

**MEMORANDUM**

November 3, 2008

**TO:** Local Agency Formation Commission

**FROM:** Jacqueline Gong, Commission Counsel

**SUBJECT: Government Code Section 56133**  
**(Supplement to Agenda Item No. 7b)**

This memorandum addresses a question raised at the October 6, 2008 meeting regarding LAFCO's obligation to administer Government Code Section 56133.

LAFCO is legally responsible for administering the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. This includes exercising its regulatory powers and duties to ensure the efficient extension of services, which goes hand-in-hand with its duty to promote orderly growth and development. Concerned that cities and districts were providing public services outside their boundaries without first annexing the served territory, the Legislature enacted Government Code Section 56133 to expand LAFCO's oversight of these services, finding they amounted to "de facto annexation". Section 56133 mandates a city or special district to first obtain LAFCO's approval before it may provide new or extended services outside its boundaries, with limited exceptions. LAFCO must oversee these services, whether by an agency seeking annexation approval or permission for extraterritorial services. (Government Code Section 56375 (a) & (p)) In administering Section 56133, LAFCO determines new and extended services. Carrying out Section 56133 is in furtherance of LAFCO's duty to determine the agency that "can best provide government services". Ignoring the mandate of Section 56133 exposes LAFCO and the provider agency to the risk of legal challenge.

Jack Gingles, Commissioner  
Mayor, City of Calistoga

Juliana Inman, Commissioner  
Councilmember, City of Napa

Cindy Coffey, Alternate Commissioner  
Councilmember, City of American Canyon

Brad Wagenknecht, Chair  
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Keene Simonds  
Executive Officer