



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

June 2, 2014

Agenda Item No. 6a (Public Hearing)

May 28, 2014

TO: Local Agency Formation Commission

FROM: Laura Snideman, Executive Officer

SUBJECT: Authorization for the City of Napa to Provide New Water Service to APN 039-320-008 (Multiple addresses including 1019, 1055 & 1075 Atlas Peak Road) and to Certify Review of the City's Determination that the Project is Categorically Exempt Under the California Environmental Quality Act (CEQA)

Authorization for the City of Napa to provide a new permanent public water service to a parcel outside of the City's boundaries and sphere of influence to respond to an impending threat to the health and safety of the public.

A. Recommendation

- a. Direct Staff to draft amendments to the Commission's Policy on Outside Service Agreements
- b. Adopt the resolution (Attachment 1) authorizing the City of Napa to provide new water service to APN 039-320-008

B. Project Origins & Description

LAFCO of Napa County ("Commission") received a written request on May 2, 2014 from the City of Napa to approve an outside service agreement to allow the City to provide new permanent public water service to one unincorporated parcel (Attachment 2). The parcel includes several buildings totaling at least 22,425 sq. ft. of buildings supporting a variety of uses including retail, commercial, and residential spaces. Uses (some of which are not yet approved) include two wineries/wine tasting rooms, an art gallery, and at least two residential units. The affected lot lies outside Napa's sphere of influence.

The City's application is part of a coordinated effort supporting the County of Napa's multi-step effort to bring multiple businesses into compliance with a variety of current regulations including valid use permits. A key component in the County's process is the requirement for the property owner to establish a public water system to ensure the health of all water users, including the public customers who visit the various businesses, as well as to provide adequate flow for fire protection. Safe drinking water and sanitary conditions increase in importance as you increase the number of people using the water system and when food and drinks are being served, especially when those visitors may be traveling from place to place and could potentially spread illnesses far from the original site.

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Representative of the General Public

Gregory Rodeno, Alternate Commissioner
Representative of the General Public

Laura Snideman
Executive Officer

Authorization for the City of Napa to Provide New Water Service to APN 039-320-008 (Multiple addresses including 1019, 1055 & 1075 Atlas Peak Road)

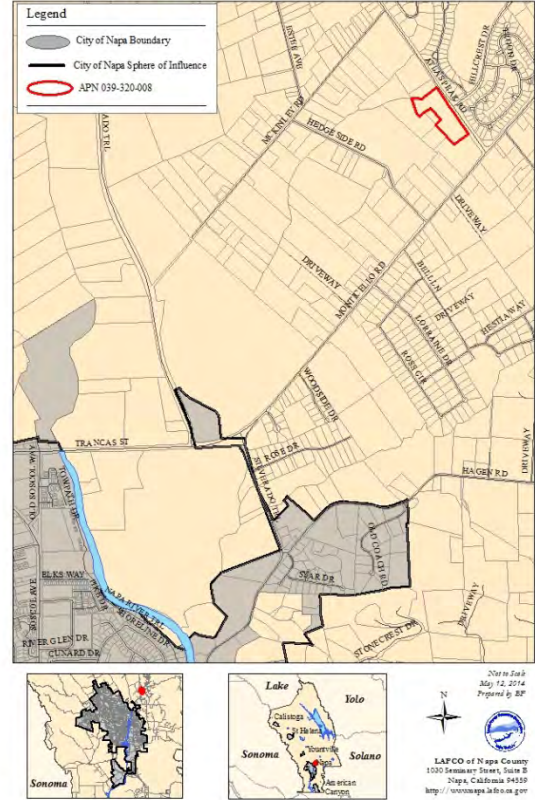
June 2, 2014

Page 2 of 6

Outside Water Service Agreement Involving the City of Napa and APN 039-320-008 (1019, 1055 & 1075 Atlas Peak Road)



Outside Water Service Agreement Involving the City of Napa and APN 039-320-008 (1019, 1055 & 1075 Atlas Peak Road)



C. Analysis

a. State Law

Local Agency Formation Commissions (LAFCOs) are responsible under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 for regulating 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 jurisdictions under California Government Code (G.C.) Section 56133 (Attachment 3). LAFCOs are authorized to condition approval for outside service agreements as long as the terms do not directly regulate land uses.

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. The code further specifies that LAFCOs may only approve outside service extensions beyond an agency's sphere of influence to respond to an "impending threat to the public health and safety of the residents...."

Staff analysis: The current water quality serving the site at this time has not been questioned. However, the owner of the property is in violation of the Safe Drinking

Water Act for providing water to tenants and visitors without a valid water supply permit. As the technical, managerial, and financial capacity to operate such a system is difficult, according to the County Department of Planning, Building, & Environmental Services, “the California Department of Public Health Drinking Water Branch is increasingly asking their agents (in this case, the County) to pursue the consolidation of small water systems rather than permitting new ones”, thereby implying a possible impending threat to public health (Attachment 4).

b. Local Commission-adopted Policy

The Commission has a locally-adopted Policy on Outside Service Agreements, most recently approved in 2011 (Attachment 5). Several components are especially relevant to this application:

- 1) The Policy’s stated objective (Section III) is to ensure that the extension of services outside of jurisdictional boundaries “is logical and consistent with supporting orderly growth and development in Napa County.” It further states that the “Commission recognizes the importance of considering local conditions and circumstances in implementing these policies.”
Staff Analysis: Approval of a new water connection would support the State and County’s goal of consolidating public water systems in support of orderly development. One of the significant local factors in this application is the fact that most of the other development in the area, primarily the Silverado area, is already developed and is also served by the City of Napa for water services. Establishing an additional, new small water system when a clean, reliable source of water is readily available would be illogical.
- 2) In addition to referencing Government Code Section 56133(c), as described above, the Commission’s policy further clarifies in Section IV A 3 that water services “in support of existing and planned residential uses with reasonable access to existing infrastructure” will be subject to all of the following criteria:
 - a) The subject property is zoned for residential type uses by the affected land use authority
Staff Analysis: The General Plan designation is Rural Residential and the zoning is Commercial Limited, which allows accessory dwelling units with a variety of restrictions
 - b) The subject property comprises a legal lot of record as of January 1, 2001
Staff Analysis: This property was defined by the County through approval of a parcel merger application in 1985, which established the subject property as a legal lot of record.
 - c) The subject property is adjacent to a public right-of-way in which the affected service line is located
Staff Analysis: City of Napa staff has confirmed an existing water main is in the public right-of-way in Atlas Peak Road. The greater area, specifically the Silverado resort and

surrounding residential areas, have been historically served with water for over three decades by the City of Napa.

- d) The proposed service extension can be accommodated by an appropriate connection for single-family uses
The City of Napa intends for the connection to be one appropriate for commercial uses.

Staff Analysis: The policy as it currently stands makes many references to residential uses. These references were primarily added in 2011 when the Commission adopted amendments to the policy. According to the April 4, 2011 staff report, the references were in response to the Commission's interest in "establishing inclusive criteria relating to public health and safety threats in order to accommodate otherwise logical extensions of services beyond agency spheres of influence given local conditions" and "intended to address 'low-hanging fruit' in which the extension of services can be readily provided to a subject property while maintaining safeguards against sprawl." As the policy is silent for specific criteria for non-residential uses and, as the current Executive Officer has come to understand, was modified in response to a specific residential project, it is possible commercial uses were inadvertently omitted from the policy. Therefore, for better clarity in the future, Staff recommends the Commission direct Staff to bring modifications to the policy to the Commission at a future date. Recommended modifications may include the various parameters, considerations and constraints under which the Commission may wish to consider service connections outside of existing boundaries for commercial uses.

- 3) The policy requires an evaluation of the following three factors:

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

Staff Analysis: Based on the evaluation and recommendation of City of Napa Staff, the City Council approved this new connection, thereby indirectly affirming there is sufficient water available to serve the property.

2. The applications consistency with the policies and general plans of all affected local agencies

Staff Analysis: Since this property will remain in the County's jurisdiction, it makes the most sense to concentrate policy review on Napa County's policies and general plans. Napa County has over two dozen agricultural preservation goals and policies. Of particular note is Goal CON-11 in the Conservation Element of the County's General Plan which is to "prioritize the use of available groundwater for agricultural and rural residential uses..." The property is in the Milliken-Sarco-Tulocay area that, in 2003, according to the U.S. Geological Survey and Napa County, was found to have significant declines in groundwater and the County continues work with other

agencies to address the water supply issues. Supplying city water for these more urbanized uses including the tasting rooms and art gallery will reduce the draw on groundwater, thereby potentially preserving ground water for other agricultural uses in the area. In addition, approval of this application supports Goal AG/LU-2 to concentrate urban uses in existing urbanized areas (the site is in the existing urbanized Silverado area) and Goal AG/LU-5 which promotes various land uses in locations that are compatible with adjacent uses and agriculture. Tasting rooms are both supportive of and compatible with the dominant agricultural industry in the wider area. Moreover, as the City of Napa has historically provided water service to other urban uses in the area at Silverado, this is a logical and efficient extension of services where annexation is not practical.

3. The application's effect on growth and development within and adjacent to the affected land

Staff Analysis: The action requested today supports existing uses some of which have been in operation for several decades. While provision of public water could potentially support future growth and development, any new or intensification of development requires additional and separate approvals from Napa County subject to all existing policies and limitations. In addition, the City of Napa is requiring recordation of a "Declaration of Covenants" document prior to the initiation of the service (Attachment 6). That document allows for two connections, one for domestic water use and one for fire suppression water use. It includes a restriction that the fire suppression connection "will be used only for existing permitted structures for fire suppression uses, and not for any other current/future development on the property, expansion of the described structures, commercial uses, residential uses, or irrigation uses. The existing permitted buildings and uses include one tasting room..., one winery..., and one gallery...." Therefore, this connection is not growth-inducing.

c. Environmental Review/CEQA

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.

The City of Napa serves as the lead agency given that the City has taken the first discretionary action to approve the project in its resolution of application to LAFCO for extension of water service to the affected territory. Napa has determined this

activity is a project under CEQA, but qualifies for an exemption from further review pursuant to CEQA Guidelines Section 15302(c), Replacement or Reconstruction, which exempts replacement and reconstruction of existing utility systems involving no expansion of capacity. The Commission serves as responsible agency. The determination of the City, as the lead agency, as to whether the project is exempt from CEQA or whether to prepare an environmental review shall be final and conclusive for all persons, including a responsible agency (Public Resources Code Section 21080; CEQA Guidelines Section 15050(c)). The Commission is bound by this determination of exemption.

D. Recommendation & Alternatives

Alternative One (Recommended):

- a. Direct Staff to draft amendments to the Commission's Policy on Outside Service Agreements
- b. Adopt the resolution authorizing the City of Napa to provide new water service to APN 039-320-008

Alternative Two:

Delay a decision and provide staff a series of questions that require additional study. The public hearing will need to be re-noticed. This has impacts on the businesses that have deadlines to meet for various County processes.

Alternative Three:

Interpret the State law and/or local policy more narrowly and deny authorization of the new water service. The affected property owners would need to find alternatives to provide a self-contained public water system. On-site water could be used subject to compliance with various state and requirements which would likely require construction of additional facilities such as a large holding tank to provide sufficient water pressure and volume to comply with fire suppression requirements.

E. Meeting Procedures

This item has been noticed as a public hearing as required under the Commission's adopted policy. The recommended course of action during the meeting is as follows:

- 1) Receive verbal report from staff
- 2) Open the public hearing and invite public testimony
- 3) Close the public hearing
- 4) Facilitate Commission questions and discussion
- 5) Take action

Attachments:

- 1) Resolution Authorizing the City of Napa to Provide New Water Service to APN 039-320-008
- 2) City of Napa Application Materials
- 3) California Government Code Section 56133
- 4) Letter from Napa County Planning, Building, and Environmental Services Director
- 5) LAFCO of Napa County Policy on Outside Service Agreements
- 6) City of Napa Declaration of Covenants

RESOLUTION NO. ____**RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY AUTHORIZING THE CITY OF NAPA TO PROVIDE NEW WATER SERVICE TO APN 039-320-008 ON ATLAS PEAK ROAD**

WHEREAS, the Local Agency Formation Commission of Napa County, hereinafter referred to as the “Commission,” administers California Government Code Section 56000 et seq., known as the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000; and

WHEREAS, the Commission is responsible for authorizing cities and special districts to enter into outside service agreements in accordance with California Government Code Section 56133; and

WHEREAS, the Commission received an application from the City of Napa requesting the approval of a permanent outside water service agreement involving unincorporated territory identified by the County of Napa Assessor’s Office as 039-320-008 on Atlas Peak Road, hereinafter referred to as the “proposal”; and

WHEREAS, the Commission has reviewed and considered the Executive Officer’s written report and verbal presentation; and

WHEREAS, the Commission heard and fully considered all the evidence presented on the proposal at a public hearing held on June 2, 2014;

NOW, THEREFORE, THE COMMISSION DOES HEREBY RESOLVE, DETERMINE, AND ORDER as follows:

1. In accordance with the applicable provisions of the California Environmental Quality Act (CEQA), the City of Napa, lead agency under CEQA, has determined that the proposal is categorically exempt from further environmental review under CEQA Guidelines Section 15302(c), Replacement or Reconstruction, which exempts replacement and reconstruction of existing utility systems involving no expansion of capacity and, therefore, the Commission finds that such determination is final and conclusive for the Commission, as the responsible agency under CEQA. The records upon which these findings are made are located at the Commission’s administrative office located at 1030 Seminary Street, Suite B, Napa, California 94559.
2. The Commission authorizes the City of Napa to provide new water service to APN 039-320-008 subject to the following conditions:

- a. The City and property owner of the affected parcel shall first enter into a recorded Declaration of Covenants and Agreement Regarding Water Service to include a provision that substantially provides that water service will be used only for the existing permitted structures on the affected parcel, and not for any other current/future development on the property nor for the expansion of the property's current structures or uses.
- b. The City and property owner shall each enter into an agreement, in a form satisfactory to Commission Counsel, to indemnify, hold harmless and defend the Commission, its officers, employees and agents from and against any actions, claims, losses, including attorney's fees and liabilities of any nature, that may be asserted against the Commission arising out of this authorization to provide water service to the subject parcel.

The foregoing resolution was duly and regularly adopted by the Commission at a regular meeting held on June 2, 2014, by the following vote:

AYES:	Commissioners	_____
NOES:	Commissioners	_____
ABSENT:	Commissioners	_____
ABSTAIN:	Commissioners	_____

ATTEST: _____
 Kathy Mabry
 Commission Secretary



LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY

**APPLICATION
OUTSIDE SERVICE AGREEMENT**

A. Applicant Information

- 1) Agency Name: City of Napa
- 2) Contact Person and Title: Joy Eldredge, Water General Manager
- 3) Contact Information: (707) 257-9319 Telephone jeldredge@cityofnapa.org E-Mail
- 4) Mailing Address: PO Box 660 Address Napa, CA 94559 City, State, Zip Code

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: 039-320-008-000
Size: 22,425 sf bldgs Current Use: retail and commercial spaces
- 2) Assessor Parcel Number: _____
Size: _____ Current Use: _____
- 3) Assessor Parcel Number: _____
Size: _____ Current Use: _____

RECEIVED

MAY 9 2014

**NAPA COUNTY
LAFCO**

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.

The City of Napa Water System provides both domestic and fire suppression water services in this area. The property fronts an existing main and the system has sufficient fireflow capacity up to 800 gpm. The 2-inch and 6-inch services will be tapped at the end of the main on Atlas Peak Road and not in the middle of the 14-inch steel line.

- 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.

The fire flow availability is 800 gpm and shall not be exceeded. The domestic uses are through a 2-inch meter and are to serve one tasting room at 2,925 sf, one winery at 9,500 sf (bottling, no production) and one gallery with retail at 10,000 sf.

- 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?

The City of Napa water system has sufficient flow and capacity to provide domestic fire suppression capacity up to 800 gpm to this property without adversely affecting existing customers.

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

Although no services are provided to the subject parcel, fire suppression and domestic water services are served to both commercial and residential services in the surrounding area including all of the surrounding Silverado Area.

E. Additional Information

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

Zone is CL commercial-limited and the General Plan Designation is RR rural residential.

There is no minimum parcel density requirements.

- 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.

The approved uses are for a tasting room, a winery (bottling, no production) and one gallery

with retail sales.

- 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.

The domestic service is to provide safe potable water that meets CA Dept of Public Health

Standards to employees and public visitors. The fire protection service is necessary to provide

a safe work place for employees and visitors to mitigate the threat of fire.

RESOLUTION R2014-44

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NAPA, STATE OF CALIFORNIA, AUTHORIZING THE PUBLIC WORKS DIRECTOR TO EXECUTE A DECLARATION OF COVENANTS AND AGREEMENT REGARDING WATER SERVICE TO 1075 ATLAS PEAK ROAD (APN 039-320-008-000)

WHEREAS, the Public Works Water Division has received an "Application" for water service at 1075 Atlas Peak Road in Napa County (APN 039-320-008-000) to serve the buildings on the property for the purposes of fire suppression (fire service) and domestic service to address an impending threat to the health and safety of the existing residents; and

WHEREAS, City Charter Section 180 prohibits extension of water service outside City limits and the City Rural Urban Limit Line (RUL) unless the extension is approved by a four-fifths (4/5) vote of the City Council (or under limited exceptions not applicable to this Application); and

WHEREAS, the property which is the subject of this Application, at 1075 Atlas Peak Road in Napa County (APN 039-320-008-000), is outside the RUL and requires four-fifths (4/5) vote of approval by City Council to be granted service; and

WHEREAS, under State LAFCO law (the Cortese-Knox-Hertzberg Local Government Reorganization Act), particularly California Government Code Section 56133, the Local Agency Formation Commission of Napa County ("LAFCO") is generally required to review and approve any proposed new or extended water service outside the City limits (subject to exceptions to this general rule that are not applicable to this Application); and

WHEREAS, pursuant to Government Code Section 56133, LAFCO can only approve an extension of City water service to property outside the City limits if the property is within the City's Sphere of Influence (which does not apply to this Application), or the water service is to respond to an existing or impending threat to the public health or safety of the residents of the affected property; and

WHEREAS, the applicant requested the City to allow use of the City water service to protect the health and safety of the residents; and

WHEREAS, City staff has evaluated the Application and concluded that the potential demand of the water service will have no adverse effect on water supply availability; and

WHEREAS, City staff has evaluated the Application and concluded that the City has sufficient treatment, storage, and conveyance capacity to accommodate the requested service; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meetings of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Napa, as follows:

1. The City Council hereby finds that the facts set forth in the recitals to this Resolution are true and correct, and establish the factual basis for the City Council's adoption of this Resolution.

2. The City Council hereby determines that the Recommended Action is exempt from CEQA pursuant to CEQA Guidelines Section 15302(c), Replacement or Reconstruction, which exempts replacement and reconstruction of existing utility systems involving no expansion of capacity.

3. The City Council hereby authorizes by at least 4/5 vote of the City Council, extension of outside-City water service to APN (APN 039-320-008-000) at 1075 Atlas Peak Road in Napa County to address an existing or impending threat to public health or safety to the existing residents of the property, subject to: (a) execution of a Declaration of Covenants and Agreement Regarding Water Service in a form satisfactory to the Public Works Director, and approved as to form by the City Attorney; and (b) authorization from LAFCO to extend the water service to respond to an existing or impending threat to public health or safety.

4. The City Council hereby authorizes the Public Works Director to execute a Declaration of Covenants and Agreement Regarding Water Service to 1075 Atlas Peak Road in Napa County (APN 039-320-008-000,) and to submit an application to LAFCO to authorize the extension of water service in accordance with this Resolution.

5. This Resolution shall take effect immediately upon its adoption.

I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the City Council of the City of Napa at a public meeting of said City Council held on the 1st day of April, 2014, by the following vote:

AYES: Inman, Pedroza, Mott, Techel

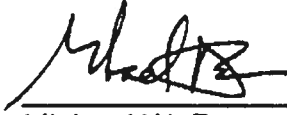
NOES: Sedgley

ABSENT: None

ABSTAIN: None

ATTEST: 
Dorothy Roberts
City Clerk

Approved as to form:


Michael W. Barrett
City Attorney

California Government Code

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.



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Planning, Building & Environmental Services

1195 Third Street, Suite 210
Napa, CA 94559
www.countyofnapa.org

Hillary Gitelman
Director

August 8, 2013

Joy Eldredge, P.E.
City of Napa Water Division
1340 Clay Street
Napa, CA 94559

RE: Buller Property, 1019 Atlas Peak Road, Napa APN 039-320-008

Dear Ms. Eldredge,

I am writing to support provision of City Water to the above referenced parcel, which is outside the City's Sphere of Influence. This letter is also intended to document "a threat to the health and safety of the public or the affected residents" pursuant to Government Code Section 56133(c)(1) – a threat that would be resolved by extension of City water service. As you know, Section 56133(c) permits the Local Agency Formation Commission (LAFCO) to approve new or extended services outside the City's Sphere of Influence if it is in response to "an existing or impending threat to the public health or safety" and Section 56133(c)(1) requires documentation of a threat.

The owner of the subject parcel is currently in violation of the Safe Drinking Water Act for providing water to tenants and visitors without a valid water supply permit. The Department of Planning, Building & Environmental Services has received an application from the owner for establishment of a small public water system serving existing uses on the parcel. While the Department may ultimately be able to find the application in conformance with State requirements, we believe the best course of action would be for the City to provide water to the parcel, thereby resolving the existing violation.

In order to permit a small public water system, the County is required to find that the applicant has demonstrated the technical, managerial and financial capacity to operate a public water system so as to avoid violations of the California Safe Drinking Water Act. This is extremely difficult, particularly for an absentee landlord, and the California Department of Public Health Drinking Water Branch is increasingly asking their agents (in this case, the County) to pursue the consolidation of small water systems rather than permitting new ones. Obviously there are many areas of the County where this will be impossible, and small water systems in those areas are faced with increasing scrutiny and costs in order to avoid violations and possible health and safety risks.

Planning Division
(707) 253-4417

Building Division
(707) 253-4417

Engineering & Conservation
(707) 253-4417

Environmental Health
(707) 253-4471

Parks & Open Space
(707) 259-5933

In the case of Ms. Buller's property, there is a clear alternative to permitting a small public water system that would avoid the health and safety risks that are of concern to State regulators and resolve the current violation. It would also address the water needs associated with fire safety, an issue that the County Fire Marshall could speak to more specifically.

We would appreciate your support to help this parcel's tenants obtain City of Napa water, and would be happy to answer any questions you have. Please feel free to call me or Christine Secheli, the County's Environmental Health Officer, at 259-8326.

Regards,

Hillary Gitelman

Hillary Gitelman
Director

cc. Supervisor Bill Dodd
Keene Simonds
Christine Secheli
Ms. Buller
Ms. Whetstone



LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY

Policy on Outside Service Agreements

Adopted: November 3, 2008

Amended: June 6, 2011

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 either an (a) existing or (b) impending threat to public health or safety in accordance with Government Code Section 56133(c).

- 3) The Commission recognizes the importance of proactively addressing impending threats to public health and safety in considering requests for outside water and sewer services in support of existing and planned residential uses with reasonable access to existing infrastructure. Accordingly, the Commission will consider outside water and sewer service requests for purposes of addressing an impending public health or safety threat if all of the following criteria is applicable:
 - (a) The subject property is zoned for residential type uses by the affected land use authority.
 - (b) The subject property comprises a legal lot of record as of January 1, 2001.
 - (c) The subject property is adjacent to a public right-of-way in which the affected service line is located.
 - (d) The proposed service extension can be accommodated by an appropriate connection for single-family uses.
- 4) The Commission authorizes the Chair to approve a city or special district's request for an outside service agreement if there is an existing or impending public health or safety emergency. The Commission shall ratify the Chair's determination at the next regular scheduled meeting.
- 5) All requests for outside service agreements are subject to the applicable provisions of the California Environmental Quality Act.
- 6) 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 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 an authorized representative of the city or special district.

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.

Upon Recordation, Return to:

City of Napa
P.O. Box 660
Napa, CA 94559
Attn: City Clerk

(For Recorder's Use Only)

**DECLARATION OF COVENANTS AND AGREEMENT
REGARDING WATER SERVICE**

PROPERTY OWNERS: Buller Family Trust APN: **039-320-008-000**
PO Box 737
Railroad Flat, CA 95248-0737

This DECLARATION OF COVENANTS AND AGREEMENT REGARDING WATER SERVICE (hereinafter "2013 Agreement") is made and entered into this ____ day of _____ 2014, by and between the City of Napa, a municipal corporation (hereinafter referred to as the "City") and Buller Family Trust the fee simple owner ("Owner"), of that certain real property located within the County of Napa, State of California, described in Exhibit "A" attached hereto and made a part hereof (the "Property").

RECITALS

- A. Owner is the fee simple owner of that certain real property located outside the City limits, outside the Rural Urban Limit Line (RUL), and outside the City Sphere of Influence, within the County of Napa, State of California, APN 039-320-008-000 as described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Property").
- B. Whetstone Wine Cellars, proprietor of a retail wine shop with wine-related products and a public wine tasting room located on the Property ("User"), completed an Outside Water Service Application requesting authorization for a 6-inch commercial water service to serve fire sprinklers in June 2013; and
- C. Owner has responsibility for payment of all services provided by City under this Agreement. User may occupy a portion or all of the property and has a contractual relationship with the Owner, and has agreed to cooperate with the City for inspections but is not a party to this Agreement; and

- D. On March 7, 2014, the Outside Water Service Application was denied; and
- E. Pursuant to City Charter Section 180, a City water service may be allowed outside the RUL by a four-fifths (4/5) vote of the City Council; and
- F. On April 1, 2014, the City Council approved, by ___-___ vote, authorization to submit an application to Local Agency Formation Commission of Napa County ("LAFCO"), and upon LAFCO approval, the installation of a new water service line, 2 inches in size for domestic purposes and 6 inches in size for fire suppression purposes to protect the facilities on the Property, pursuant to the terms and conditions of this 2014 Agreement to serve the commercial uses on the Property.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

- 1. The recitals set forth above are true and correct.
- 2. "Water Service" under the terms of this Agreement shall mean a piped connection to the City of Napa's public water system that serves potable water to a property.
- 3. "Domestic Service" under the terms of this Agreement shall mean a water service granted to the Owner for the purposes of domestic use.
- 4. "Fire service" under the terms of this Agreement shall mean a water service granted to the Owner for the sole purpose of supplying water to fire sprinklers and fighting fires, but is not to be used for domestic use.
- 5. **Requirements for Water Service Lines.** Owner shall use a 2-inch water service line for domestic purposes and a 6-inch water service line for fire suppression purposes per current City of Napa Public Works Standards and Specifications, and per the following:
 - a. User shall provide water fixture information to confirm to Water Division staff that the water service line size is appropriately sized to serve the facilities, and must obtain a written approval from the City's Water Division to proceed with installation. Oversizing the water service line to provide for future uses or under-sizing the water service to minimize cost will not be permitted.
 - b. User shall provide fire sprinkler calculations to confirm to Water Division staff that the water service line size is appropriately sized to serve fire sprinklers at the facilities, and must obtain a written approval from the City's Water Division to proceed with installation. Oversizing the water service line to provide for future uses or under-sizing the water service to minimize cost will not be permitted.
 - c. Prior to installation of the water service lines, Owner shall pay all fees required for the water service (including hot taps, meter sets, 2-inch connection fees and 6-inch fire service connection fees) to the Water Division office at 1340 Clay Street, Napa, California.
 - d. Prior to installation of water service lines, Owner shall pay system contributions for the water service for cathodic protection testing, water quality sampling

stations, and water supply in the amount of \$61,700 to the Water Division office at 1340 Clay Street, Napa, California.

- e. Owner shall pay for the installation and replacement of the water service line and appurtenances from the existing public water main up to the meter that remains a public facility and will be maintained by the City.
 - f. The water service line shall be installed off the existing tee at the end of the water main on Atlas Peak Road in a location approved by the City of Napa Water Division. The water service line shall not be tapped off of the middle of the City of Napa 14-inch transmission main.
 - g. Owner shall obtain encroachment permits to install the water service line within County right-of-way. Within County right-of-way the Owner shall construct the water service line or pay city forces time and materials to construct the line. The hot tap for the water service shall be performed by City forces at the expense of the Applicant.
 - h. Owner shall install a 2-inch meter, owned by City, complete with an electronic radio transmitter (ERT) as specified by the City Water Division and compatible with the City's ERTs shall be installed on the water system per the City's installation standards.
 - i. Owner shall purchase and install an AWWA approved backflow device for the domestic water service line and install it immediately on the private side of the meters at the edge of Atlas Peak Road right-of-way. Prior to activation of the water service, the Owner shall install the backflow device, have it tested by an AWWA certified tester from a list of testers provided by the City, and submit the test results to the City of Napa Water Division.
 - j. Owner shall install a 6-inch ultrasonic octave meter, owned by City, that is manufactured by Master Meter Inc. with an electronic radio transmitter (ERT) as specified by the City Water Division and compatible with the City's ERTs shall be installed on the water system per the City's installation standards.
 - k. Owner shall purchase and install an AWWA approved backflow device for the fire water service line and install it immediately on the private side of the meter at the edge of Atlas Peak Road right-of-way. The fire service backflow device shall be an above ground reduced pressure backflow device. Prior to activation of the water service, the Owner shall install the backflow device, have it tested by an AWWA certified tester from a list of testers provided by the City, and submit the test results to the City of Napa Water Division.
6. **Conditions of Water Service.** Upon completion of the requirements of Agreement paragraph 5 to the satisfaction of the City Public Works Director, City agrees to serve water to a 6-inch water service line for the Property for the purposes of fire sprinkler protection subject to the following conditions and standards:
- a. The water service may not be used to serve outside sources or properties, and City water may not be sold, given, or traded to outside sources or properties.

- b. Owner shall pay the City the full cost of service rate for outside City commercial water service as calculated by Cost of Service Analysis and approved by resolution of the City Council. The Current Rate is \$7.61 per 1,000 gallons.
 - c. The fire water service shall be limited to a 6-inch water service line to serve fire sprinklers for the existing structure for a maximum flow rate of 800-gpm per the calculated flow rate provided. Due to the limited flow capacity of the existing 14-inch water main on Atlas Peak Road, the addition of hydrants or exceedance of this flow rate will require modification of the water service, including but not limited to a new water service application to the City of Napa Water Division, the installation of a fronting distribution water main within County right-of-way of Atlas Peak Road.
 - d. If the 6" water service line is determined to be used for purposes other than fire sprinklers, fire suppression or testing of fire system, Owner will be charged for the water at the then-current outside water rate. In the event City determines that the water service is being used for purposes not authorized under this Agreement, and Owner fails to pay the Water Division for the water service after 60 days from initial written notice, the water service will be shut off until payment is made.
 - e. The City shall not be liable for damage to facilities caused by fire or any associated reason including but not limited to the service being turned off for failure of payment.
 - f. Owner shall pay the City a bi-monthly (on a schedule set by the City) "Fire Service Rate" as defined by this Agreement at an amount equal to the full cost of fire service rate for "outside City water rates" as calculated by Cost of Service Analysis and approved by resolution of the City Council. The Fire Service Rate is currently \$189.91.
 - g. The 6-inch service line that is for fire suppression purposes will be used only for the existing permitted structures, and not for any other current/future development on the property, expansion of the described structures, commercial uses, residential uses, or irrigation uses. The existing permitted buildings and uses include one tasting room at 2,925 square feet (sf), one winery (bottling, no production) at 9,500 sf, and one gallery with retail uses at 10,000 sf.
 - h. The City does not guarantee pressure or flow through the water service line. Owner shall be responsible for making any improvements necessary to account for insufficiencies in the pressure or flow to the site. Improvements made, if any, shall be installed after the backflow device and may not exceed the flow capacities of the water service line.
7. **City Access to Property.** Owner hereby grants City the right to access the Property to inspect the Property and public water facilities during normal business hours, and the right to access the water service line located on the Property for the purposes of confirming that City water service is not being provided to other properties and is not being used for purposes other than those specified in this agreement after providing 24-hour prior notification to the Owner and allowing the Owner the opportunity to accompany the City representative.

8. **Testing of Backflow Device.** Owner shall test the backflow device once a year for the life of the water service.
9. **Indemnification.** To the full extent permitted by law, Owner shall indemnify, hold harmless, release and defend City, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs and liabilities of any nature that may be asserted by any person or entity including Owner, in whole or in part, arising out of the water service provided under this Agreement, excepting liabilities due to the admitted or adjudicated willful misconduct of City. If the adjudicated or admitted willful misconduct of City has contributed to a loss, Owner shall not be obligated to indemnify City for the proportionate share of such loss caused by such willful misconduct.
10. **Future Annexation.** Owner hereby agrees not to file an objection to any future requests to annex the property into the City. The Parties agree that this Agreement shall serve as a petition to annex, which the City may pursue by proposing a boundary change or reorganization to LAFCO by submitting a resolution adopted by the City Council in the event that there is a voter-approved modification of the City's RUL.
11. **Agreement to Run with the Land.** It is the intention of the parties hereto that this Agreement shall run with the land and shall be binding upon all parties having any right, title, and interest in the real Property, or any part thereof, and their heirs, successors, and assigns. This Agreement shall be recorded to provide notice of such intention.
12. **Default.** In the event of Owner's default, City reserves to itself all remedies available to law and equities. Owner agrees that City has full discretion in choosing any remedy or remedies to pursue, and that the waiver of City to take enforcement action shall not be construed as a waiver of that or any subsequent default or breach. In addition to all the remedies available at law and in equity, City may also hold or revoke any and all building, zoning, and occupancy permits issued and may take such actions as are necessary to terminate water service to the Property until such time as the violation has been remedied.
13. **Damages for Breach.** Any material breach of this agreement not explicitly described in this Agreement will result in a time and materials charge for any staff time incurred to address the breach, at the fully encumbered hourly rate for each City employee, and may result in termination of water service.
14. **Notices.** All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

To City: City of Napa, Public Works - Water Division
 P.O. Box 660
 Napa, CA 94559-0660

To Owner: Buller Property Trust
Attn: Delores Buller
PO Box 737
Railroad Flat, CA 95248-0737

To User: Whetstone Wine Cellars
1075 Atlas Peak Road
Napa, CA 94558

15. General Provisions.

- a. Headings. The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
- b. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
- c. Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement shall be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Napa.
- d. Assignment and Delegation. This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Owners' duties be delegated without the written consent of City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.
- e. Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- f. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- g. Time. Time is of the essence in carrying out the duties hereunder.
- h. Entire Agreement. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

- i. Each Party' Role in Drafting the Agreement. Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.
- j. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Owners and the City.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF NAPA:

(Signature)
Jacques R. LaRochelle, Public Works Director
(Type name and title)

OWNER:

By: _____
(Signature)
Buller Property Trust, Owner

ATTEST:

(Signature)
Dorothy Roberts, City Clerk
(Type name and title)

COUNTERSIGNED:

(Signature)
Desiree Brun, City Auditor
(Type name and title)

APPROVED AS TO FORM:

(Signature)
Michael W. Barrett, City Attorney
(Type name and title)

ATTACH NOTARY ACKNOWLEDGEMENT