

# MENDOCINO

## Local Agency Formation Commission

Ukiah Valley Conference Center | 200 South School Street | Ukiah, California 95482  
Telephone: (707) 463-4470 | E-mail: [eo@mendolafco.org](mailto:eo@mendolafco.org) | Web: [www.mendolafco.org](http://www.mendolafco.org)

### COMMISSIONERS

**Maureen Mulheren, Chair**  
County Member

**Gerald Ward,**  
**Vice Chair/Treasurer**  
Public Member

**Katharine Cole**  
Special District Member

**Gerardo Gonzalez**  
City Member

**Candace Horsley**  
Special District Member

**Glenn McGourty**  
County Member

**Mari Rodin**  
City Member

**Francois Christen, Alternate**  
Special District Member

**Douglas Crane, Alternate**  
City Member

**John Haschak, Alternate**  
County Member

**Vacant, Alternate**  
Public Member

### STAFF

**Executive Officer**  
Uma Hinman

**Clerk/Analyst**  
Larkyn Feiler

**Counsel**  
Marsha Burch

### REGULAR MEETINGS

First Monday of each month  
at 9:00 AM in the  
Mendocino County  
Board of Supervisors  
Chambers  
501 Low Gap Road, Ukiah

## A G E N D A

### Policies & Procedures Committee Meeting

Friday, May 17, 2024 at 1:00 p.m.

#### Location

Ukiah Valley Conference Center, Chardonnay Room  
200 S School Street, Ukiah, California

#### Hybrid Meeting

The Mendocino LAFCo will conduct this meeting in a **hybrid** format to accommodate both in-person and remote (video or telephone) participation by the public and staff pursuant to GOV 54953. Unless approved under the provisions of AB 2449, Commissioners will attend in-person at the meeting location identified above. The **hybrid** meeting can be accessed by the public in person, or remotely as described in the Instructions for Remote Participation Option, below.

#### Instructions for Remote Participation Option

**Join Meeting Live:** Please click the following Zoom link below to join the meeting or utilize the telephone option for audio only.

1. Zoom meeting link: <https://mendocinocounty.zoom.us/j/89042578468>
2. Telephone option (audio only):  
Dial: **(669) 900-9128** (*Please note that this is not a toll-free number*)  
Meeting ID: **890 4257 8468**

#### **Public Participation is encouraged and public comments are accepted:**

1. Live: via the Zoom meeting link or telephone option above
2. Via Email: [eo@mendolafco.org](mailto:eo@mendolafco.org) by 8:30 a.m. the day of the meeting
3. Via Mail: Mendocino LAFCo, 200 S School Street, Ukiah, CA 95482

#### **Meeting Participation**

To provide comments, please use the raise hand function in Zoom.

- a) For those accessing from a computer, tablet, or smartphone, the raise hand function may be selected by clicking or tapping it from the reactions options. When joining the Zoom meeting, please enter your name so that you can be identified to speak.
- b) For those utilizing the telephone option (audio only), please use the raise hand feature by pressing **\*9** on your keypad to raise your hand, and **\*6** to unmute yourself. When it is your turn to speak, you will be called on by the last four digits of your phone number, if available, and asked to identify yourself for the record.

All comments received will be conveyed to the Committee for consideration during the meeting.

**1. CALL TO ORDER & ROLL CALL**

Commissioners Gerardo Gonzalez, Maureen Mulheren, Mari Rodin

**2. PUBLIC EXPRESSION**

**3. MATTERS FOR DISCUSSION & POSSIBLE ACTION**

**3a) Approval of the March 11, 2024 Policies & Procedures Committee Meeting Minutes**

**3b) Draft Policy Amendment for Outside Agency Services**

The Committee will consider the Outside Agency Services Draft Policy Amendment for recommendation to the Commission.

**4. INFORMATION AND REPORT ITEMS**

**4a) Executive Officer Report**

**ADJOURNMENT**

The next Regular Commission Meeting is scheduled for  
Monday, June 3, 2024  
in the County Board of Supervisors Chambers

Notice: This agenda has been posted at least 72 hours prior to the meeting and in accordance with the Brown Act Guidelines and teleconferencing rules under AB 2449.

Participation on LAFCo Matters: All persons are invited to testify and submit written comments to the Commission on public hearing items. Any challenge to a LAFCo action in Court may be limited to issues raised at a public hearing or submitted as written comments prior to the close of the public hearing.

Americans with Disabilities Act (ADA) Compliance: Commission meetings are held via a hybrid model – the in-person option held in a wheelchair accessible facility and also by teleconference. Individuals requiring special accommodations to participate in this meeting are requested to contact the LAFCo office at (707) 463-4470 or by e-mail to [eo@mendolafoo.org](mailto:eo@mendolafoo.org). Notification 48 hours prior to the meeting will enable the Commission to make reasonable arrangements to ensure accessibility to this meeting. If attending by teleconference, if you are hearing impaired or otherwise would have difficulty participating, please contact the LAFCo office as soon as possible so that special arrangements can be made for participation, if reasonably feasible.

Fair Political Practice Commission (FPPC) Notice: State Law requires that a participant in LAFCo proceedings who has a financial interest in a Commission decision and who has made a campaign contribution to any Commissioner in the past year must disclose the contribution. If you are affected, please notify the Commission before the hearing.

# MENDOCINO

## Local Agency Formation Commission

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### Agenda Item 3a

#### Policies and Procedures Committee

#### DRAFT Meeting Minutes

Hybrid Meeting of March 11, 2024, 10:30 a.m.  
Ukiah Valley Conference Center, Zinfandel Room  
200 S School Street, Ukiah, California

#### COMMISSIONERS

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County Member

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**Vice Chair/Treasurer**  
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#### REGULAR MEETINGS

First Monday of each month  
at 9:00 AM in the  
Mendocino County  
Board of Supervisors  
Chambers  
501 Low Gap Road, Ukiah

#### 1. CALL TO ORDER & ROLL CALL

The meeting was called to order by Chair Gonzalez at 10:30 a.m.  
Commissioners Present: Gerardo Gonzalez and Maureen Mulheren  
Commissioners Absent: Mari Rodin  
Staff Present: Executive Officer Uma Hinman, Clerk/Analyst Larkyn Feiler, and Legal Counsel Marsha Burch

#### 2. AB 2449 COMMISSIONER REQUEST

##### 2a) Commissioner Teleconference Request for "Just Cause"

Commissioner Rodin was not present for the Committee to consider a request to participate via videoconference under the "just cause" circumstance per AB 2449 and Mendocino LAFCo Policy 3.8.1.1.

#### 3. PUBLIC EXPRESSION

None

#### 4. MATTERS FOR DISCUSSION & POSSIBLE ACTION

##### 4a) Approval of the November 6, 2023 Policies & Procedures Committee Meeting Minutes

Upon motion by Commissioner Mulheren and second by Commissioner Gonzalez, the minutes of the November 6, 2023 Policies & Procedures Committee Meeting were approved. Ayes: Mulheren and Gonzalez. Absent: Rodin.

#### 5. WORKSHOPS

##### 5a) Workshop on a Draft Policy Amendment for Outside Agency Services

Analyst Feiler presented the workshop item regarding the Outside Agency Services Draft Policy Amendment. The following local agency staff participated in the workshop: Craig Schlatter, Community Development Director for the City of Ukiah; Wing-See Fox, Interim District Manager for the Ukiah Valley Sanitation District; and Joanna Gin, General Counsel for the Ukiah Valley Sanitation District. The following were discussion points:

1. The draft policy was revised based on feedback from the focus group to allow flexibility in the expiration date and clarify that approved applications are grandfathered in under the existing policy, there can be different interpretations of the law and it is beneficial to work together at a staff level in addressing different interpretations, and no further changes are requested at this time.

2. The proposed new policy is lengthy and too prescriptive, a collaborative process is the best approach, the existing policy worked well before, 56133 does not apply to emergencies, and there is not time in an emergency to stop and ask LAFCo for approval under to the new Water Hauling in an Emergency section.
3. The intent of the changes is not so much prescriptive as a framework for communication and to obtain information.
4. It would be good to memorialize the LAFCo intent for local agencies to notify and provide data related to outside agency services in an emergency and change the notice timeframe from 10-days to 30-days.
5. The collaborative relationships in place between LAFCo and agency staff are working well; however, some agencies avoid LAFCo involvement.
6. LAFCo is still trying to track down meaningful data from water hauling two years ago for MSR purposes.
7. The language in the new water hauling section can be modified to clarify the intent to provide a structure for communication and information collection and clarify that there is no penalty, just a letter for LAFCo records.
8. New legislation would supersede any local policy.
9. It would be good to expand the types of agencies that can declare an emergency (city, county, or state).
10. In an emergency, local agencies are already notifying and reporting to state and federal agencies; adding LAFCo to the list does not create a lot more work and it can be helpful to have LAFCo support for funding purposes.
11. Communication/coordination is a two-way street.
12. Butte LAFCo had a seat at the table in the post-emergency disaster recovery planning effort.
13. The City of Ukiah is often leading the way in addressing new and complex challenges and regulations.

The Committee recommended that LAFCo staff proceed with Commission consideration of the Outside Agency Services Policy Amendment as further amended based on discussion from the workshop.

## **6. INFORMATION AND REPORT ITEMS**

### **6a) Executive Officer Report**

EO Hinman had no items to report.

### **ADJOURNMENT**

There being no further business, the meeting was adjourned at 11:14 a.m. by Chair Gonzalez.

# MENDOCINO Local Agency Formation Commission

## Staff Report

MEETING May 17, 2024  
TO Mendocino Local Agency Formation Commission Policies & Procedures Committee  
FROM Uma Hinman, Executive Officer  
SUBJECT **Draft Policy Amendment for Outside Agency Services**

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### RECOMMENDATION

The Committee will consider the Outside Agency Services Draft Policy Amendment for recommendation to the Commission.

### BACKGROUND

The Commission may authorize a city or district to provide new or extended services by contract or agreement outside its jurisdictional boundary but within its sphere of influence in anticipation of a later change of organization (e.g., annexation), or in response to an existing or impending threat to health or safety pursuant to Government Code (GOV) Section (§) [56133](#).

This State law is further refined by local policy in the existing Mendocino LAFCo Policy 12.2 Extension of Services by Contract. Mendocino LAFCo local policies were comprehensively updated in early 2016 under the prior contract staff and warrant updates to modernize and address opportunities for improvement. The Fiscal Year 2023-24 Budget includes an allocation for policy amendment, development, and overhaul. This is the first proposed policy amendment ready for review.

### Draft Policy Amendment Revisions

Since the March 11, 2024 Policies and Procedures Committee meeting, LAFCo staff held a Focus Group meeting on May 1, 2024 to review proposed changes (Attachment 1), and no further changes were requested. Below is a list of the more significant changes made since the March Committee meeting.

1. Section 12.2.2 was modified to encourage agencies to provide notice to and coordination with LAFCo regarding OAS exemptions.
2. Section 12.2.3 was modified to remove repeat language in the “An impending threat to health or safety” definition.
3. Section 12.2.4.1 was modified to provide flexibility in addressing the requirements of “in anticipation of a later change of organization”.
4. Section 12.2.6.3 was modified to clarify that a significant expansion or intensification of outside agency services requires further LAFCo approval.
5. Section 12.2.7 was modified to clarify that a drought emergency can be declared by a city or the state, in addition to the county, and changed the requested LAFCo notice date for potable water hauling outside agency services from 10-days to 30-days as feasible under emergency conditions.

Attachment(s): (1) Outside Agency Services Draft Policy Amendment, with redline changes  
(2) Outside Agency Services Draft Policy Amendment, without redline changes

# Mendocino LAFCo Draft Policy Amendment

## 12.2 OUTSIDE AGENCY SERVICES

### 12.2.1 COMMISSION APPROVAL REQUIRED

A city or district, individually or as a member agency of a joint powers authority (JPA), shall not provide new or extended services to any party or property outside its jurisdictional boundaries unless it has obtained written approval from LAFCo, consistent with the CKH Act (G.C. §56133) and the policies described herein.

LAFCo prefers that this type of application be made by the local agency; however, if the city or district has declined to serve as the applicant, the affected landowner(s) may submit the application based on current (i.e.g., within 3 months) written proof from the local agency confirming both willingness and capacity to serve (i.e.g., will serve letter) the affected territory.

### 12.2.2 REQUIREMENT FOR EXEMPTIONS TO COMMISSION APPROVAL

Commission approval may not be required for cities or special districts to provide new or extended services outside their jurisdictional boundaries in accordance with the provisions of G.C. §56133(e).

Agency self-exemption under G.C. §56133(e) is not recommended due to the complexity involved and the potential for a difficult and/or costly process to unwind unauthorized services. Outside agency services may be allowed to address unique circumstances and are not intended to circumvent the LAFCo process by providing services by contract instead of through the annexation of territory. Agency self-determinations of exemption can lead to a communication breakdown and can prevent LAFCo from effectively fulfilling its mandates, such as conducting meaningful studies.

~~LAFCo is the sole authority strongly encourages advance notice and coordination with agencies in determining whether specific situations are exempted by G.C. §56133(e) to support LAFCo in efficiently performing its functions and to support agencies in providing valid outside agency services. A city or district, individually or as a JPA member agency, is required to receive written authorization from the LAFCo Executive Officer confirming that the proposed service to be provided outside the agency's jurisdictional boundary is subject to exemption. If an agency provides outside agency services based on a self-determination of exemption from LAFCo approval, the agency landowner contract or agreement for services shall be null and void.~~

For outside agency services that a city or district was providing on or before January 1, 2001 under G.C. §56133(e)(4), LAFCo encourages the city or district to request an Annexation Consent Agreement from each landowner ~~to continue service~~, unless it is not logical and orderly for the city or district to ever annex the subject property or area.

### 12.2.3 DEFINITIONS

**Services** – any municipal services provided by a city or special district.

**Outside Agency Services** – municipal services provided outside the jurisdictional boundary of a local government agency (city or special district) by contract or agreement.

**New** – the provision of municipal services to a previously unserved property or use.

**Extended** – the expansion or intensification of municipal services currently provided to a property or use.

**In anticipation of a later change of organization** – a reliable commitment from the serving agency and/or landowner(s) that outside agency services will become inside agency services within a near-term timeframe or based on a foreseeable event or change in circumstance.

**An existing threat to health or safety** – the non-functioning or failure of existing private utilities (i.e., on-site septic system or well), which cannot be readily remedied, and have resulted in a health hazard from inadequately treated wastewater or the loss of access to safe and reliable drinking water. The lack of fire protection and/or emergency medical services to existing development may also qualify as an existing safety threat.

**An impending threat to health or safety** – the stage before an existing threat to health or safety in which there is a known and measurable high risk ~~that will result in a threat to health or safety for non-functioning or failure of private utilities to occur soon~~ (i.e., within 36 months) ~~with the potential to result in a health hazard from inadequately treated wastewater or the loss of access to safe and reliable drinking water.~~

#### 12.2.4 NEW OR EXTENDED SERVICES

Annexation to cities and special districts involving territory located within the affected agency's sphere of influence (SOI) is preferred to providing outside agency services by contract or agreement, in support of logical and orderly growth and development. The Commission recognizes, however, that there may be special circumstances that justify approval of outside agency services by contract or agreement prior to annexation.

Such special circumstances most frequently involve the need for municipal services to address an existing threat to health or safety. A properly documented threat to health or safety for consideration in those cases is strongly encouraged, regardless of whether located within or outside the agency's SOI.

In reviewing requests for outside agency services, LAFCo will apply the same general substantive policies as for annexation proposals. The following will be addressed in the Executive Officer's written report:

- 1) The ability of the agency to provide the subject service(s) to the affected territory, without detracting from current service levels.
- 2) ~~Any d~~Documentation with substantial evidence to support a finding by the Commission of an existing or impending threat to the health or safety of the public or the affected residents.
- 3) ~~The application's c~~Consistency with the policies and general plans of all affected local agencies.
- 4) ~~The application's e~~Effect on growth and development within and adjacent to the affected territory.
- 5) ~~The application's p~~otential impacts on prime agricultural or open space lands.
- 6) ~~The application's c~~Consistency with the Commission's adopted municipal service review determinations and recommendations.
- 7) The applicant's statement, with specificity, of the nature and timing of the anticipated later change of organization for the affected territory.



#### 12.2.34.1 Within SOI

The Commission strongly discourages the use of outside agency services for the purpose of providing municipal services to new development, which can result in unintended consequences, such as inducing growth or resulting in the premature conversion of agricultural or open space lands to urban use. The Commission will approve such requests only under extraordinary circumstances and will apply strict limitations on such services.

G.C. §56133(b) authorizes the Commission to approve outside agency services “in anticipation of a later change of organization”. ~~The Commission does not consider t~~The standard condition for landowners to record a LAFCo Annexation Consent Agreement ~~as may not necessarily~~ satisfying the qualification for an anticipated later change of organization. Further, the inclusion of the land to be served within the SOI of the serving agency ~~is also~~ may not be sufficient because the SOI boundary can change over time, and placing territory within a sphere does not guarantee that annexation will occur (Policy 10.1.8). The Commission may include a condition to address this component of the CKH Act, such as requiring that an annexation application be submitted prior to, or within a specified timeframe (~~i.e.g.~~ 1-2 years) of, the outside agency services approval.

Any outside agency services approved by the Commission prior to the date this policy is approved by the Commission shall not be subject to this policy, but the policy in effect at the time said application is approved by the Commission.

#### 12.2.34.2 Outside SOI

The Commission recognizes the importance of promptly addressing threats to public health and safety, especially in considering outside agency services related to water and sewer services.

The Commission shall authorize a city or special district’s request to provide new or extended services outside their jurisdictional boundary and outside their SOI only in response to an existing or impending threat to the health or safety of the public or affected residents in accordance with G.C. §56133(c).

For water and sewer services, the affected agency and/or landowner(s) shall provide the Commission with documentation consistent with the public health and safety criteria for water and sewer services below.

An existing on-site sewage disposal system may be deemed a threat to the health and safety of the public or the affected residents if it meets one or more of the following criteria, as determined by Mendocino County Environmental Health or another qualified professional:

- i. There is ponding or accumulation of wastewater or septic tank effluent at or above the surface of the ground.
- ii. There is a lack of an unsaturated vertical soil separation between the bottom of a disposal field and seasonal high groundwater.
- iii. There is a failure of the disposal field or septic tank to accept, treat, and dispose of wastewater in quantities discharged by the structure served, and additional capacity cannot adequately or reasonably be developed.



- iv. Any other condition associated with the operation or use of an on-site sewage system that could permit the exposure, either directly or indirectly, of individuals or domestic animals to inadequately treated wastewater.

An existing water source used for domestic purposes may be deemed a threat to the health and safety of the public or the affected residents if it meets one or more of the following criteria, as determined by Mendocino County Environmental Health or another qualified professional:

- i. The water supply is impacted by biological, chemical, or radiological constituents that cannot be adequately or reasonably treated or removed to levels deemed safe for human consumption or contact.
- ii. The quantity of the water supply is constantly or periodically inadequate (less than one gallon per minute) to meet the domestic needs for which its use is intended, and additional quantities cannot adequately or reasonably be developed.
- iii. Any other condition in which the continued use of an existing water supply could result in negative impacts to human health.

#### **12.2.5 ADMINISTRATIVE APPROVAL UNDER URGENT CIRCUMSTANCES**

The Commission authorizes the Executive Officer, in accordance with G.C. §56133(d), to administratively approve a city or special district's request for new or extended outside agency services by contract or agreement if there is an existing and urgent public health or safety emergency as identified in writing from the local public health officer and/or environmental health director, or in the case of fire services, the applicable Fire Chief. The Commission shall ratify the Executive Officer's determination at the next regularly scheduled meeting.

#### **12.2.6 CONDITIONS OF APPROVAL**

##### **12.2.6.1 Annexation Consent Agreement**

The Commission will condition the approval of all outside agency services upon a requirement that the landowner(s) sign a LAFCo agreement consenting to annexation of the territory to the public service provider, which agreement shall bind current and future owners and registered voters of the property. The standard agreement shall be prepared by LAFCo legal counsel and provided to all landowners for execution and recording. Proof of recordation of the Annexation Consent Agreement will be required before the LAFCo outside agency services approval becomes final and effective.

##### **12.2.6.2 Expiration of LAFCo Approval**

Unless specified otherwise in the Commission's resolution approving a particular outside agency services application, the Commission's approval of outside agency services shall expire within one year of approval unless the agency-landowner contract has been executed and the construction of any needed infrastructure improvements has commenced. A one-time extension may be requested by the applicant, prior to the one-year expiration date, for a period of time that is necessary to complete the Commission's conditions. If the provision of outside agency services has not commenced within three years of the Commission's approval, the approval is terminated and a new application is required.

##### **12.2.6.3 Further LAFCo Review - Expansion or Intensification of Services**

The Commission's approval of outside agency services shall be limited to the existing structures and uses on the subject property, and not to any other properties. Any significant expansion or intensification of the approved services (e.g. upsize the connection for a subdivision or major conversion of use type) shall be considered a new request, subject to LAFCo review.

### 12.2.7 Temporary Water Hauling During a Local Emergency

During a Mendocino city, County, or state issued drought emergency proclamation affecting potable water supply, a city or special district may provide potable water outside its jurisdictional boundaries through water hauling on a temporary basis to address impacts to health and safety arising from dry wells or other temporary limitations on regular water supply. In these situations, LAFCo approval ~~shall will~~ not be required pursuant to G. C. §56133 due to the temporary and emergency nature of the service.

While LAFCo approval will not be required during the temporary emergency, LAFCo does require notice of and data reporting for the temporary outside agency water service to support LAFCo in efficiently performing its functions. Either the city/district providing the potable water service or the County Office of Emergency Services shall should notify LAFCo within ~~130~~ 30 days of commencing such service, as feasible under emergency conditions. Notification ~~shall should~~ include the address and/or assessor's parcel number (APN) for each property receiving water service and reference the emergency proclamation. The city or special district shall cease providing temporary water service outside jurisdictional boundaries within 30 days of ~~Mendocino County's~~ termination of the emergency proclamation. Within 90 days of the end of the emergency, ~~either the city/district providing the potable water service or the County Office of Emergency Services shall should~~ provide LAFCo a detailed summary of how much water was provided to each property per month during the emergency water hauling.

Absent a Mendocino city, County, or state issued emergency proclamation, G. C. §56133 specifies that a city or special district must apply for and obtain LAFCo approval before providing new or extended services outside its jurisdictional boundaries, including potable water hauling.

# Mendocino LAFCo Draft Policy Amendment

## 12.2 OUTSIDE AGENCY SERVICES

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LAFCo prefers that this type of application be made by the local agency; however, if the city or district has declined to serve as the applicant, the affected landowner(s) may submit the application based on current (e.g. within 3 months) written proof from the local agency confirming both willingness and capacity to serve (e.g. will serve letter) the affected territory.

### 12.2.2 REQUIREMENT FOR EXEMPTIONS TO COMMISSION APPROVAL

Commission approval may not be required for cities or special districts to provide new or extended services outside their jurisdictional boundaries in accordance with the provisions of G.C. §56133(e).

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LAFCo strongly encourages advance notice and coordination with agencies in determining whether specific situations are exempted by G.C. §56133(e) to support LAFCo in efficiently performing its functions and to support agencies in providing valid outside agency services.

For outside agency services that a city or district was providing on or before January 1, 2001 under G.C. §56133(e)(4), LAFCo encourages the city or district to request an Annexation Consent Agreement from each landowner, unless it is not logical and orderly for the city or district to ever annex the subject property or area.

### 12.2.3 DEFINITIONS

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**An existing threat to health or safety** – the non-functioning or failure of existing private utilities (e.g. on-site septic system or well), which cannot be readily remedied, and have resulted in a health hazard from inadequately treated wastewater or the loss of access to safe and reliable drinking water. The lack of fire protection and/or emergency medical services to existing development may also qualify as an existing safety threat.

**An impending threat to health or safety** – the stage before an existing threat to health or safety in which there is a known and measurable high risk that will result in a threat to health or safety (e.g. within 6 months).

#### **12.2.4 NEW OR EXTENDED SERVICES**

Annexation to cities and special districts involving territory located within the affected agency's sphere of influence (SOI) is preferred to providing outside agency services by contract or agreement, in support of logical and orderly growth and development. The Commission recognizes, however, that there may be special circumstances that justify approval of outside agency services by contract or agreement prior to annexation.

Such special circumstances most frequently involve the need for municipal services to address an existing threat to health or safety. A properly documented threat to health or safety for consideration in those cases is strongly encouraged, regardless of whether located within or outside the agency's SOI.

In reviewing requests for outside agency services, LAFCo will apply the same general substantive policies as for annexation proposals. The following will be addressed in the Executive Officer's written report:

- 1) The ability of the agency to provide the subject service(s) to the affected territory, without detracting from current service levels.
- 2) Documentation with substantial evidence to support a finding by the Commission of an existing or impending threat to the health or safety of the public or the affected residents.
- 3) Consistency with the policies and general plans of all affected local agencies.
- 4) Effect on growth and development within and adjacent to the affected territory.
- 5) Potential impacts on prime agricultural or open space lands.
- 6) Consistency with the Commission's adopted municipal service review determinations and recommendations.
- 7) The applicant's statement, with specificity, of the nature and timing of the anticipated later change of organization for the affected territory.

##### 12.2.4.1 Within SOI

The Commission strongly discourages the use of outside agency services for the purpose of providing municipal services to new development, which can result in unintended consequences, such as inducing

growth or resulting in the premature conversion of agricultural or open space lands to urban use. The Commission will approve such requests only under extraordinary circumstances and will apply strict limitations on such services.

G.C. §56133(b) authorizes the Commission to approve outside agency services “in anticipation of a later change of organization”. The standard condition for landowners to record a LAFCo Annexation Consent Agreement may not necessarily satisfy the qualification for an anticipated later change of organization. Further, the inclusion of the land to be served within the SOI of the serving agency also may not be sufficient because the SOI boundary can change over time, and placing territory within a sphere does not guarantee that annexation will occur (Policy 10.1.8). The Commission may include a condition to address this component of the CKH Act, such as requiring that an annexation application be submitted prior to, or within a specified timeframe (e.g. 1-2 years) of, the outside agency services approval.

Any outside agency services approved by the Commission prior to the date this policy is approved by the Commission shall not be subject to this policy, but the policy in effect at the time said application is approved by the Commission.

#### 12.2.4.2 Outside SOI

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An existing on-site sewage disposal system may be deemed a threat to the health and safety of the public or the affected residents if it meets one or more of the following criteria, as determined by Mendocino County Environmental Health or another qualified professional:

- i. There is ponding or accumulation of wastewater or septic tank effluent at or above the surface of the ground.
- ii. There is a lack of an unsaturated vertical soil separation between the bottom of a disposal field and seasonal high groundwater.
- iii. There is a failure of the disposal field or septic tank to accept, treat, and dispose of wastewater in quantities discharged by the structure served, and additional capacity cannot adequately or reasonably be developed.
- iv. Any other condition associated with the operation or use of an on-site sewage system that could permit the exposure, either directly or indirectly, of individuals or domestic animals to inadequately treated wastewater.

An existing water source used for domestic purposes may be deemed a threat to the health and safety of the public or the affected residents if it meets one or more of the following criteria, as determined by Mendocino County Environmental Health or another qualified professional:

- i. The water supply is impacted by biological, chemical, or radiological constituents that cannot be adequately or reasonably treated or removed to levels deemed safe for human consumption or contact.
- ii. The quantity of the water supply is constantly or periodically inadequate (less than one gallon per minute) to meet the domestic needs for which its use is intended, and additional quantities cannot adequately or reasonably be developed.
- iii. Any other condition in which the continued use of an existing water supply could result in negative impacts to human health.

### **12.2.5 ADMINISTRATIVE APPROVAL UNDER URGENT CIRCUMSTANCES**

The Commission authorizes the Executive Officer, in accordance with G.C. §56133(d), to administratively approve a city or special district's request for new or extended outside agency services by contract or agreement if there is an existing and urgent public health or safety emergency as identified in writing from the local public health officer and/or environmental health director, or in the case of fire services, the applicable Fire Chief. The Commission shall ratify the Executive Officer's determination at the next regularly scheduled meeting.

### **12.2.6 CONDITIONS OF APPROVAL**

#### **12.2.6.1 Annexation Consent Agreement**

The Commission will condition the approval of all outside agency services upon a requirement that the landowner(s) sign a LAFCo agreement consenting to annexation of the territory to the public service provider, which agreement shall bind current and future owners and registered voters of the property. The standard agreement shall be prepared by LAFCo legal counsel and provided to all landowners for execution and recording. Proof of recordation of the Annexation Consent Agreement will be required before the LAFCo outside agency services approval becomes final and effective.

#### **12.2.6.2 Expiration of LAFCo Approval**

Unless specified otherwise in the Commission's resolution approving a particular outside agency services application, the Commission's approval of outside agency services shall expire within one year of approval unless the agency-landowner contract has been executed and the construction of any needed infrastructure improvements has commenced. A one-time extension may be requested by the applicant, prior to the one-year expiration date, for a period of time that is necessary to complete the Commission's conditions. If the provision of outside agency services has not commenced within three years of the Commission's approval, the approval is terminated and a new application is required.

#### **12.2.6.3 Further LAFCo Review - Expansion or Intensification of Services**

The Commission's approval of outside agency services shall be limited to the existing structures and uses on the subject property, and not to any other properties. Any significant expansion or intensification of the approved services (e.g. upsize the connection for a subdivision or major conversion of use type) shall be considered a new request, subject to LAFCo review.

### **12.2.7 Temporary Water Hauling During a Local Emergency**

During a city, county, or state issued drought emergency proclamation affecting potable water supply, a city or special district may provide potable water outside its jurisdictional boundaries through water

hauling on a temporary basis to address impacts to health and safety arising from dry wells or other temporary limitations on regular water supply. In these situations, LAFCo approval will not be required pursuant to G. C. §56133 due to the temporary and emergency nature of the service.

While LAFCo approval will not be required during the temporary emergency, LAFCo does require notice of and data reporting for the temporary outside agency water service to support LAFCo in efficiently performing its functions. The city/district providing the potable water service should notify LAFCo within 30 days of commencing such service, as feasible under emergency conditions. Notification should include the address and/or assessor's parcel number (APN) for each property receiving water service and reference the emergency proclamation. The city or special district shall cease providing temporary water service outside jurisdictional boundaries within 30 days of termination of the emergency proclamation. Within 90 days of the end of the emergency, the city/district providing the potable water service should provide LAFCo a detailed summary of how much water was provided to each property per month during the emergency water hauling.

Absent a city, county, or state issued emergency proclamation, G. C. §56133 specifies that a city or special district must apply for and obtain LAFCo approval before providing new or extended services outside its jurisdictional boundaries, including potable water hauling.

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