

OUT OF AGENCY SERVICE CONTRACTS

BACKGROUND

Beginning January 1, 1994 the Local Agency Formation Commission was charged with the responsibility for reviewing and taking action on a city or district contract to extend service outside its jurisdiction under the provisions of Government Code Section 56133. These are unique actions not directly related to the processing of other types of proposals as defined in the Cortese-Knox-Hertzberg Local Government Reorganization Act.

IMPLEMENTING POLICIES

LAFCO has adopted policy declarations which affect the implementation of its obligations under Government Code Section 56133. They are:

A. **DEFINITIONS:**

The definition of terms that follows has been developed to assist in the implementation of Government Code Section 56133 since its terminology, in some areas, is not reflective of current statutory definitions or has no statutory definition within Cortese-Knox-Hertzberg:

1. "New or extended services" shall mean for Cities, the provision of those services authorized a city under its enabling legislation; and for Special Districts, service shall remain as defined in Government Code Section 56074. It is important to note that a District would be precluded from providing a "new service" unless it has been first authorized that service under existing special district regulations regarding activation of latent functions or services.
2. "Contract or agreement" shall mean a contract, agreement, or other legal instrument, which requires or agrees to the delivery of service to property.
3. "Written approval of the Commission" shall mean for development related contracts, the adoption of a resolution of the Commission approving the service agreement/contract at a noticed public hearing; for non-development related contracts written approval of the Commission shall mean the document signed by the Executive Officer authorizing the completion of the contract.
4. "Affected County" shall be defined in the same manner as Govt. Code Section 56012 but relating to the area to which contractual service will be delivered.

5. "Anticipation of a later change of organization." The inclusion of an area to be served within the sphere of influence of the serving agency may be sufficient to comply with this provision.
6. "Public Agency" shall be defined in compliance with Government Code Section 56070. The statutory definition of Public Agency is "the state or any state agency, board or commission, any city, county, city and county, special district or other political subdivision, or any agency, board or commission of the city, county, city and county, special district, or other political subdivision".

The definition of public agency does not include a private or mutual water company. Any contract by a city or district to extend service to these types of service companies would require approval from the Commission prior to contract execution.

7. "Health and safety emergency concern" shall mean the extension of service to alleviate an immediate health and/or safety problem. Such connections would be limited to the provision of water and/or sewer service to an existing structure, the connection to a failing mutual or private water system requiring auxiliary service, the provision of fire protection and/or paramedic services as supplemental or alternative source for service, and other similar threats related to health and safety.

B. OPERATING POLICIES:

At the May 18, 1994 hearing the Commission adopted policies related to implementation of the provision of Government Code Section 56133. On December 20, 2000, the Commission amended its policies to address unique issues of implementation. Those amendments included: (a) an operating policy that delegates authority to the Executive Officer to approve or conditionally approve health and safety related service agreements/contracts and/or non-development related service extension; and (2) a policy which relates to the acquisition of a private water system by a public jurisdiction. This acquisition would require the city or district to continue the service and allow additional connections to the infrastructure without regard to the question of spheres of influence. In order for cities and districts to utilize this special policy it requires that they provide the Commission with documentation of the certificated service area of the system acquired. This documentation will be maintained on file by LAFCO for future reference.

The following are the adopted LAFCO policies:

OUT-OF-AGENCY SERVICE CONTRACTS OR AGREEMENTS (Adopted May 18, 1994; Amended December 20, 2000.)

1. The Commission has determined that the Executive Officer shall have the authority to approve, or conditionally approve, proposals to extend services outside jurisdictional boundaries in cases where the service extension is proposed to remedy a clear health and safety concern. In addition, the Executive Officer shall have the authority to approve or conditionally approve service extensions where the services in question will not facilitate development (for example, an inter-agency contract for fire protection services). In cases where the Executive Officer recommends denial of a proposed service extension, that proposal shall be placed on the next agenda for which notice can be provided. After the public hearing, the Commission may approve, conditionally approve, or deny the contract.

2. In the case where a city or district has acquired the system of a private or mutual water company prior to the enactment of this legislation, those agencies shall be authorized to continue such service and provide additional connections within the certificated service area of the private or mutual water company defined by the Public Utilities Commission or other appropriate agency, at the time of acquisition without LAFCO review or approval as outlined in Government Code Section 56133. The continuation of service connections under this policy shall not be constrained by the sphere of influence of that local agency at the time.

Proposals to extend service outside this previously defined certificated area would come under the provisions of Govt. Code Section 56133 for the review and approval by the Commission prior to the signing of a contract/agreement for the provision of the service.

C. PROCEDURES

Unlike the normal initiation process for proposals for jurisdictional change, Government Code Section 56133 provides that only a city or district may request LAFCO review of an out-of-agency service agreement/contract.

Government Code Section 56133 gives LAFCO the authority to review and approve, approve with conditions, or deny these agreements/contracts. For all development-related applications for service, the item will be considered by the Commission at a noticed public hearing. The authority for action for non-development-related agreements/contracts has been delegated to the LAFCO Executive Officer by the Commission, pursuant to policies adopted on December 20, 2000.

A. Application for Review:

The filing requirements for review of an out-of-agency service contract/agreement shall consist of:

1. Official Request from Applying Agency. A written request signed by the City Manager/District Manager requesting approval for an out-of-agency service agreement/contract or an adopted resolution from the city/district proposing to serve outside its boundaries must be submitted.
2. Payment of Appropriate Filing Fees. The applying agency must submit as part of the application the appropriate filing fees as outlined in the LAFCO Fee Schedule in effect at the time of application. In addition, these types of applications are also subject to the following deposits: legal counsel, environmental review, and individual notice. Applicants shall be required to reimburse the Commission for all charges and costs in excess of the deposits outlined above or will be refunded the balance at the close of the application.
3. A completed application form including the submission of a copy of the proposed agreement/contract that has been signed by the property owner(s) and, if necessary, the agency extending service(s), and maps showing the location of the property to be served, existing agency boundaries, the location of the existing infrastructure, and the proposed location of the infrastructure to be extended.
4. Any other information deemed appropriate by the Executive Officer in order to review the service extension request based upon its special circumstances.

B. Environmental Review Requirements:

The review of a service agreement/contract request will be subject to the review procedures defined in the California Environmental Quality Act (CEQA) and the San Bernardino LAFCO CEQA Guidelines. LAFCO will act as the Lead Agency under CEQA for its environmental review of any service extension request.

If an environmental assessment/analysis was prepared for the project associated with the service extension request (i.e. the County or agency's environmental analysis for a proposed Tentative Tract, Conditional Use Permit, etc.) and LAFCO Staff was afforded the opportunity to evaluate and comment during the Lead Agency's environmental review process,

then LAFCO can act as a Responsible Agency under CEQA for its environmental review of a service extension request. A complete set of the adopted environmental documents prepared for the project, a copy of the filed Notice of Determination/Notice of Exemption, and a copy of the Department of Fish and Game fee receipt must be submitted as part of the application.

D. REVIEW PROCEDURES

- A. Development-related agreements/contracts associated with the development of tracts, subdivisions, a single-family dwelling unit, a commercial/industrial development on a parcel, or other types of development-related projects will require the following review:
1. The city or district proposing to provide service(s) outside its boundaries shall submit to LAFCO a completed application, with all its component parts as previously defined, for review and consideration. Within 30 days, the LAFCO Executive Officer shall notify the entity whether or not the application filing is complete. If incomplete, the applying agency will be notified of the specific insufficiencies within 30 days, as required by law.
 2. The LAFCO staff shall forward a copy of the application to various County Departments for their review and comment.
 3. The LAFCO staff shall also forward the application for service extension to the Commission's environmental consultant for review. The Commission shall act as the Lead Agency under CEQA and shall prepare the appropriate environmental analysis for the application proposal. If an environmental assessment/analysis has been prepared for a project associated with the service extension request, and LAFCO has been afforded the opportunity to evaluate and comment during the Lead Agency's environmental review process, then the Commission may act as a Responsible Agency under CEQA and shall prepare the appropriate environmental analysis for the application proposal.

Completion of the CEQA review process will be required prior to placement on the Commission's agenda.

4. If necessary, a meeting with the applying agency and/or the various departments may be held dependent upon the circumstances and/or issues related to the service agreement/contract. The determination of whether or not to hold the meeting shall be made by the LAFCO Executive Officer.

5. Once these required elements have been completed, the item will be placed on a Commission Agenda. Surrounding property owners/registered voters will be notified of the proposed service extension request through individual notification. At a noticed public hearing, the Commission will consider the staff's presentation and presentations, if any, by interested and affected parties, and make a determination.
 6. The Commission has the authority to approve, approve with conditions, or deny the request for out-of-agency service extension. The Commission's determination and any required findings will be set out in a resolution which specifies the area to be served, the services to be provided, and the authority of the agency to provide its services outside its boundaries.
- B. Non-development related agreements/contracts (Administrative Review by LAFCO Executive Officer) that are related to providing service to an existing dwelling unit, commercial building, etc. or those contracts between public agencies for such items as fire protection mutual aid, etc. will be processed as follows:
1. Prior to the execution of an agreement/contract for service outside their boundaries, the city/district proposing to provide the service shall submit to LAFCO a completed application, with all its component parts as previously defined, for review and consideration.
 2. Completion of the CEQA review process will be required prior to action by the Executive Officer. If there has been no environmental determination made by the applying agency, LAFCO will be the Lead Agency and will prepare the required environmental analysis. Such a determination will be required prior to authorization of the service extension.
 3. The Executive Officer's administrative review will include the following determinations:
 - a. The proposed service extension is either nondevelopment-related and/or involves health and safety concerns as defined by Commission policy.
 - b. The area to be served is within the sphere of influence of the agency requesting to provide service outside its boundaries.
 - c. The environmental analysis/assessment, as required by CEQA, has been completed.

4. The Executive officer can approve, approve with conditions, or deny the request for service extension. If the Executive Officer's recommendation is denial, that determination will be placed on the next available Commission agenda for which notice can be provided for discussion of the determination.