

# **NAPA COUNTY GRAND JURY**

## **2011-2012**



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# **CONSOLIDATED**

# **FINAL REPORT**

**Napa County Grand Jury  
2011-2012**

**CONSOLIDATED FINAL REPORT**

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# NAPA COUNTY GRAND JURORS 2011-2012



Rear (L to R):	Jake Arcanin; Bob Bianco; Les Reinke; Dave Goleman; Jeff Hammond; Duane Wall; Vic Connell (pro-tem); Bernhold Rankenburg; Joe Savage.
Middle:	JJ Johnston; Kristi Pennington; Cap Lyons; Nick Niem; David Gilbreth (foreman); Richard Faenzi.
Front Row:	Pat Bardwell; Mary Weese; Maria Villegas; Beverly Brown.

## **NAPA COUNTY GRAND JURORS 2011-12**

<b>David B. Gilbreth (foreman)</b>	<b>Napa</b>
<b>Jacob S. Arcanin</b>	<b>Napa</b>
<b>Patricia L. Bardwell (secretary)</b>	<b>Napa</b>
<b>Robert L. Bianco</b>	<b>Calistoga</b>
<b>Beverly G. Brown</b>	<b>Napa</b>
<b>Victor J. Connell (pro-tem)</b>	<b>Napa</b>
<b>Richard A. Faenzi</b>	<b>Napa</b>
<b>David P. Goleman</b>	<b>Napa</b>
<b>Jeffrey G. Hammond</b>	<b>Napa</b>
<b>Edward M. Johnston</b>	<b>Napa</b>
<b>Richard B. Lyons</b>	<b>Napa</b>
<b>Klaus Niem</b>	<b>Napa</b>
<b>Kristi N. Pennington</b>	<b>St. Helena</b>
<b>Bernhold Rankenburg</b>	<b>Napa</b>
<b>Lester H. Reinke</b>	<b>Yountville</b>
<b>Joe M. Savage</b>	<b>Napa</b>
<b>Maria D. Villegas</b>	<b>St. Helena</b>
<b>Duane H. Wall</b>	<b>Napa</b>
<b>Mary M. Weese</b>	<b>Napa</b>



A Tradition of Stewardship  
A Commitment to Service

# NAPA COUNTY GRAND JURY

P.O. BOX 5397

NAPA, CALIFORNIA 94581

June 30, 2012

To the Citizens of Napa County:

In accordance with our Oath and a strong purpose to make a meaningful contribution to our community, the 2011-2012 Napa County Grand Jury is honored to present the final report of our published investigations during our one-year term of service for you.

The required nineteen members of this Grand Jury were sworn in on July 6, 2011. We served under Presiding Judge Diane M. Price and Supervising Judge Mark S. Boessenecker. Judge Boessenecker's and Deputy County Counsel, Silva Darbinian's, thoughtful and timely reviews of our proposed reports were important and very much appreciated. The Napa Superior Court Chief Executive, Richard Feldstein, and his assistant Connie R. Brennan, were very helpful and we appreciate their administration.

The Grand Jury is a civil grand jury and the members serve for a period of one year, a substantial commitment. We are proud of each other's commitment to provide time, talent and hard work to make a difference and improve our community. Each juror spent an average of over 40 hours per month. Our investigations included multiple interviews of public employees and private citizens, as well as site visits and facility tours. Additionally, countless hours were spent reviewing thousands of pages of documents and drafting and editing our published reports. In particular the material related to the Final Report on Measure A and the Final Report on the Reorganization of the Napa County Fire Department were complex, demanding and involved substantial monies.

We thought it important to provide serious, thoughtful oversight that might result in fiscally responsible use of public funds and other improvements of local governmental agencies and departments.

These efforts resulted in the Grand Jury releasing four reports as they were completed and approved by the Grand Jury, the Supervising Judge and the County Counsel.

All of the members greatly appreciate the educational experience and acknowledge the privilege and honor to serve the citizens of Napa County.

Very truly yours,

A handwritten signature in blue ink, appearing to read "David B. Gilbreth".

David B. Gilbreth

Foreman, on behalf of all the members of the  
2011-2012 Napa County Grand Jury





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**NAPA COUNTY GRAND JURY**  
**P.O. BOX 5397**  
**NAPA, CALIFORNIA 94581**

June 30, 2012

The Honorable Diane M. Price  
Presiding Judge, 2012  
County of Napa  
Superior Court of California  
825 Brown Street  
Napa, California 94559

The Honorable Mark S. Boessenecker  
Supervising Grand Jury Judge  
County of Napa  
Superior Court of California  
825 Brown Street  
Napa, CA 94559

Re: 2011-2012 Napa County Grand Jury Reports

Dear Judges Price and Boessenecker:

The 2011-2012 Napa County Grand Jury is pleased to present this Consolidated Final Report to the Presiding Judge and the Grand Jury's Supervising Judge of the Superior Court of California, County of Napa.

On behalf of the entire Grand Jury we wish to acknowledge and thank Judge Boessenecker's and Deputy County Counsel, Silva Darbinian's, thoughtful and timely reviews of our proposed reports. We also appreciate the Napa Superior Court Chief Executive, Richard Feldstein's, and his assistant Connie R. Brennan's, very helpful and efficient administration.

Very truly yours,

A handwritten signature in blue ink, appearing to read "David B. Gilbreth".

David B. Gilbreth  
Foreman  
2011-2012 Napa County Grand Jury

# **ACKNOWLEDGEMENTS**

**The 2011-2012 Napa County Grand Jury wishes to acknowledge the assistance, cooperation and cordiality of the following people:**

**Hon. Diane M. Price, Presiding Judge of the Napa Superior Court**

**Hon. Mark S. Boessenecker, Supervising Judge to the Grand Jury, Napa Superior Court**

**Gary Lieberstein, Napa County District Attorney**

**Robert Westmeyer, Napa County Counsel**

**Silva Darbinian, Chief Deputy County Counsel**

**Richard Feldstein, Napa Superior Court, Court Executive Officer**

**Connie Brennan, Administrative Assistant to Court Executive Officer**

**Joseph Peatman, President, Gasser Foundation**

**Terri Niles, Office Manager, Gasser Foundation**

**Nancy Watt, Napa County Executive Officer**

**Elizabeth Habkirk, Senior Management Analyst, Napa County Executive Office**

**News and Production Staff, *Napa Valley Register***

**Randy Guerrieri, owner, *The Copy Corner***

**Napa Chapter, California Grand Jurors Association**

**The Supportive Families of the Grand Jury Members**

# **INTRODUCTION**

## **NAPA COUNTY GRAND JURY**

The 2011-2012 Napa County Grand Jury served from July 1, 2011 to June 30, 2012. The following provides a broad overview of the Grand Jury, its history, what it is and how it functions.

### **HISTORY**

The Grand Jury has its historical roots in the old English grand jury system, the purpose of which was to protect citizens from the arbitrary power of the Crown. The American system continues to retain the goal of protecting residents from abuse by local government. The Grand Jury is an arm of the court system rather than the District Attorney's office and is not a law enforcement agency.

### **DEFINITIONS**

Section 888 of the California Penal Code provides that a Grand Jury be comprised of the required number of citizens charged and sworn to investigate into county matters of civil concern. Based upon its population, the required number of Grand Jurors for Napa County is 19.

### **FUNCTIONS**

The Grand jury functions as one independent body. All matters discussed are kept private and confidential. It is the responsibility of the Grand Jury to examine all aspects of county and local government to ensure that they are being operated honestly and efficiently. The Presiding Judge of the Superior Court, the District Attorney, the County Counsel and the State Attorney General can, and do, provide, advice, but they may not prevent the Grand Jury from acting within its jurisdiction except for legal cause.

A county Grand Jury does not have jurisdiction in state or federal matters and cannot investigate state or federal agencies, nor does it have any jurisdiction over the courts or a matter that is in litigation. For the most part, Grand Juries function as civil Grand Juries rather than criminal Grand Juries. The California Supreme Court has held that the Grand Jury does not have inherent powers to establish its own investigative apparatus for the detection of crime. Moreover, a Grand Jury does not engage in fishing expeditions, have hidden agendas, or meddle indiscriminately. Conflict must be avoided.

The scope of inquiry of a Grand Jury is limited to subjects founded upon knowledge which comes to the Grand Jury from the public, by information acquired from Grand Jury investigations or from individual Grand Jurors' own observations. For the most part, Grand Jurors are charged with investigating the operations, accounts and records of the officers and departments of local government and the method or system those officers and departments employ in performing their duties. In general, all non-State and non-Federal governmental agencies within Napa County, and events involving those agencies, can be investigated by the Grand Jury.



## **HOW INVESTIGATIONS ARE CONDUCTED**

Grand Jury members initially meet with the management and staff of an agency. The various records and the physical facilities of the agency are inspected, and representative public meetings, if any, are attended. Leads that might provide additional information are followed. Eventually, proposed findings and recommendations for the agency are developed and approved by at least 12 of the 19 Grand Jurors.

Grand Jurors are expected to be fair, to show sound judgment, to maintain absolute confidentiality, and to serve as representatives of the public. Therefore, the Grand Jury is not the forum from which to express narrow political ideals or viewpoints, but is the organization which seeks to better the present local governmental agencies/organizations.

## **GRAND JURY FINAL REPORTS**

The Grand Jury may choose to issue a final report on an investigation as it is completed. After the approval of the Presiding Judge and two working days prior to public release, the Grand Jury is required to provide a copy of the report to each affected agency or person. *No officer, agency, department, or governing body of a public agency shall disclose any contents of the Report prior to its public release.* Copies of the Grand jury final reports are maintained on file in the office of the Court Executive Officer and the Clerk of the Board of Supervisors, where they remain accessible to the public. Final reports are also available at County libraries, in local public newspapers and on the following website, [www.napa.courts.ca.gov](http://www.napa.courts.ca.gov).

Agencies or elected officials are required to make responses in writing to the Presiding Judge of the Superior Court of California, Napa County, within 60 days and 90 days respectively after submittal of the report to them. The responses must be placed on file with the clerk of the investigated agency/department and at the office of the Court Executive Officer and may be accessed by the public at those locations. They may also be accessed on the following website, [www.napa.courts.ca.gov](http://www.napa.courts.ca.gov). At the end of its term, the Grand Jury must publish a consolidated final report.

## **RESPONSE TO FINAL REPORT**

The legal requirement for response to Grand Jury findings and recommendations are set forth in California Penal Code, Section 933.05. Each respondent needs to become familiar with those legal requirements and, if, in doubt, consult with legal counsel before responding. For the assistance of respondents, Section 933.05 of the Penal Code is summarized below.

### How to Respond to Findings

The responding person or entity must respond in one of two ways:

- That they are in agreement with the finding or

- That they disagree, wholly or partially, with the finding. In which case, the respondent shall specify the portion of the finding that is disputed and shall include an explanation of the reasons for the disagreement.

### How to Report Action Taken in Response to a Recommendation

Recommendations by the Grand Jury require action. The responding person or entity must report action on each recommendation in one of four ways:

- The recommendation has been implemented, with a summary of action(s) taken.
- The recommendation has not been implemented, but will be implemented in the future, with a time frame for implementation.
- The recommendation requires further analysis. If a respondent replies in this manner, the law requires a detailed explanation of the analysis or study and a time frame not to exceed six months from the date of publication of the Grand Jury's final report by which time the recommendation will be discussed.
- The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation as to why it is not warranted or reasonable.

### Budgetary or Personnel Recommendations

If a finding or recommendation deals with budgetary or personnel matters of a county department headed by an elected officer, both the elected officer and the Board of Supervisors shall respond, if the Grand Jury so requests. While the response of the Board of Supervisors may be somewhat limited, the response by the department head must address all aspects of the findings and the recommendations.

### Time and to Whom to Respond

The Penal Code provides for two different response methods:

- Public Agency – The governing body (i.e. Board of Supervisors, a City Council, a Board of Directors, a Board of Governors of a Special District, a School Board, etc.) of the public agency must respond within 90 days of service of the final report. The response must be addressed to the Presiding Judge of the Superior Court.
- Elected officer or Agency Head – All elected officers or heads of agencies that are required to respond must do so within 60 days of service of the final report. The response must be addressed to the Presiding Judge of the Superior Court, with a copy to the Board of Supervisors.

## **REQUIREMENTS TO BECOME A NAPA COUNTY GRAND JUROR**

Grand Jurors must meet the following legal qualifications:

- Be at least 18 years of age
- A citizen of the United States
- A resident of Napa County for at least one year prior to the next July

- In possession of natural faculties, be of ordinary intelligence, sound judgment and of fair character
- Possess sufficient knowledge of the English language
- Not discharged as a Grand Juror in any California court within one year prior to the next July
- Never convicted of malfeasance in office or any felony or other high crime
- Not currently serving as an elected public officer

## **TERM OF SERVICE**

Each July, nineteen citizens of Napa County are sworn as Grand Jurors to serve for a period of twelve months. Grand Jury is considered to be, at minimum, a 20 hour per week commitment, with each Jury establishing its own work schedule. Everyone who is selected to serve must be fully cognizant of the time involved. Each prospective nominee should thoughtfully weigh any and all personal and business obligations before accepting the nomination.

The Superior Court Judges select persons who represent the cultural, ethnic and diverse life experience of residents of Napa County so that the Grand Jury may reflect the many interests and concerns of the citizens. In addition, the selection process for Grand Jurors involves a random choice of prospective jurors and alternates.

## **HOW TO APPLY FOR THE GRAND JURY**

All residents of Napa County are offered the opportunity to volunteer to be a member of the Grand Jury by filing an application ([www.napa.courts.ca.gov](http://www.napa.courts.ca.gov)). Judges and friends of the courts may also nominate County residents. Each Grand Jury is impaneled for one year from July 1, through the following June 30. Up to ten members, in their initial term of service, may volunteer to hold over for an additional year.

Applications for the next Grand Jury may be submitted at any time during the year prior to April 15<sup>th</sup>. Apply for the Grand Jury by filling out and submitting an online questionnaire or by contacting the Napa County Superior Court Administrative Assistant at the address listed below.

## **CITIZEN COMPLAINTS AND LETTERS TO THE GRAND JURY**

The Grand Jury is mandated by law to respond to letters of complaint by citizens and to inquire into the conditions of public detention facilities. Correspondence may be received from citizens expressing concern or requesting investigation of various city agencies, county agencies or special districts. Each complaint is reviewed by the Grand Jury and action is taken in one of the following ways:

- Investigate the matter and make a report
- Investigate the matter and make a decision not to follow up the complaint
- Make a decision not to follow up the complaint without investigation

It is desirable to submit a request at the beginning of the Jury's term so that the Grand Jury will have sufficient time to investigate the matter. Due to time constraints, a Grand Jury may refer



complaint to the subsequent year's Grand Jury. A Citizen Complaint form can be found at the end of this report.

**FOR AN APPLICATION, GENERAL QUESTIONS, COMMENTS,  
OR MORE INFORMATION, PLEASE WRITE, CALL OR EMAIL:**

Connie Brennan, CCLS Court  
Administrative Assistant  
Superior Court of California  
County of Napa  
825 Brown Street  
Napa, CA 94559  
Telephone: (707) 259-8305  
Fax: (707) 299-1250  
E-mail: [grandjury@napa.courts.ca.gov](mailto:grandjury@napa.courts.ca.gov)



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# **NAPA COUNTY GRAND JURY**

**2011-2012**

**April 26, 2012**

**Final Report on**

## **REORGANIZATION OF THE NAPA COUNTY FIRE DEPARTMENT**

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**NAPA COUNTY GRAND JURY**  
**P.O. BOX 5397**  
**NAPA, CALIFORNIA 94581**

April 18, 2012

The Honorable Mark S. Boessenecker  
Presiding Judge  
Superior Court of the State of California  
County of Napa  
825 Brown Street  
Napa, CA 94559

Re: 2011-2012 Grand Jury Final Report on the Napa County Fire Department

Dear Judge Boessenecker:

Pursuant of Section 933 (a) of the California Penal Code, the 2011-2012 Napa County Grand Jury submits to you its final report on the Napa County Fire Department. Our investigation of this subject was conducted in a manner consistent with the California Penal Code, this Court's Charge, and the historic role of the Grand Jury, to protect the interests of the residents of Napa County.

This is the first in a series of final reports we will be issuing before the term ends. I would like to acknowledge the hard work and dedication of the Grand Jurors, which our report reflects. It is a privilege and a pleasure to work with them.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David B. Gilbreth".

David B. Gilbreth  
Foreman  
2011-2012 Napa County Grand Jury



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# NAPA COUNTY GRAND JURY

P.O. BOX 5397

NAPA, CALIFORNIA 94581

To the Residents of Napa County:

In order to fulfill the Grand Jury's mandate to investigate local government agencies, to assure they are being administered efficiently, honestly, and in the best interest of Napa County residents, the 2011-2012 Grand Jury investigated the Napa County Fire Department.

The Grand Jury has carefully investigated this matter and developed a set of findings and recommendations with the objective of representing the public interest.

The Grand Jury has made seven recommendations. The first recommends that Napa County write a job description and employ a Napa County Fire Chief who will be independent and separate from CAL FIRE employment, before contracting CAL FIRE services for the agreement year 2013-2014. The second recommends that the Napa County Fire Chief immediately and actively support the local Volunteer Fire Department Chiefs, their Advisory Board, and governing boards. The third recommends the Napa County Fire Chief immediately and actively support the recruitment of new firefighter volunteers. The fourth recommends The Napa County Fire Chief immediately and actively assure the volunteer fire departments governing Boards include at least 1/3 representation of community (non-firefighter) members on their Boards. The fifth recommends replacing CAL FIRE Dispatch services for Napa County Fire/EMS with the existing Napa Central Dispatch services which will not alter CAL FIRE Dispatch of CAL FIRE units. The sixth recommends Napa County complete a Cost Benefit Analysis, by and independent firm, of all the fire protection services provided by CAL FIRE and Napa County Fire Department before contracting CAL FIRE services for the agreement year 2014-2015. The seventh recommends that within three years, or on the schedule outlined by the Cost Benefit Analysis, implement the Cost Benefit Analysis recommendations regarding the CAL FIRE Agreement.

The Napa County Office of County Counsel has reviewed this final report. The Napa County Superior Court Presiding Judge, pursuant to California Penal Code Section 933 (a), has found that this report complies with California Penal Code Part 2 Title 4. This report has been accepted and filed as a public document by the County Clerk.

Copies of this report are available for review in the Napa City-County Library and online at [www.napa.courts.ca.gov](http://www.napa.courts.ca.gov). Follow the link to Grand Jury.

We hope you find this report informative.

It is an honor and privilege to serve on the 2011-2012 Grand Jury.

The 2011-2012 Napa County Grand Jury

# **REORGANIZATION OF THE NAPA COUNTY FIRE DEPARTMENT**

## **SUMMARY**

Napa County's Board of Supervisors (BOS) approved an FY 2011-2012 annual budget of \$8,267,184 for fire protection services provided by California Department of Forestry and Fire Protection (CAL FIRE) (See Appendix I). Importantly, all or part of this expenditure may not be necessary because CAL FIRE is mandated to provide fire protection services statewide. Examples of limited, or no CAL FIRE budgeted services can be found in other counties like Sonoma, Colusa, Yolo and Lake.

In the opinion of this Grand Jury, because millions of dollars are involved, Napa County should do a Cost Benefit Analysis (CBA) to determine the appropriateness of its budget for \$8,267,184 for fire protection services provided by CAL FIRE. County staff stated to the best of their knowledge a CBA or critical financial analysis of Napa County fire protection expenses has not been done in the past.

In the opinion of this Grand Jury, the recommended CBA expense is justified because of the potential substantial savings of taxpayer moneys. Napa and Sonoma counties have greatly differing cost comparisons that can be understood through a CBA which should be used to help Napa County evaluate its fire protection expenses.

Currently, in Napa County the science and manpower necessary to stop and minimize fire damage is largely in the hands of CAL FIRE, and local volunteers. The cost, manpower, and structure of the Napa County fire protection program is the focus of this Grand Jury report.

Routine annual approval of previous CAL FIRE Agreements has resulted in Napa County having a fire protection organization structure and cost out-of-character with other compared counties in the State of California. As a result, Napa County has not developed a standalone Fire Chief or Fire Department.

This Grand Jury strongly recommends that Napa County complete a CBA with the intent to replace most, or all, of the CAL FIRE contracted services. By hiring an independent NAPA COUNTY FIRE CHIEF (NCFC) who would build the Napa County Fire Department (NCFD), and support the nine Volunteer Fire Departments, the CAL FIRE Agreement could be substantially limited or eliminated.

Within this report funds are identified for transition, volunteer departments and CAL FIRE relations are discussed, and specific expenses are reviewed.

## BACKGROUND

A wild land fire is one of the most destructive and feared events in nature. Wildfires are one of nature's oldest phenomena. Evidence of free-burning fires has been found in petrified wood and coal deposits formed as early as the Paleozoic Era, about 350 million years ago. Wild land fire is any fire burning in wild lands, including wildfires and all prescribed (controlled or managed) fires.

Wildfires are a powerful force of nature, and as natural as rain, wind, snow, or lightning. In fact, lightning is the spark that sets many natural wildfires. Summer tends to be the high season for wildfires, as heat and drought make vegetation dry and easier to ignite. The recent large fires of 1964, 1981 and 2008, as well as the February 23rd, 2012 "Soda Fire" that consumed 200 acres in the heart of winter, remind us of the rural risks of devastating wild land fires.

CAL FIRE is responsible for all the unincorporated State Responsibility Areas (SRA) in California of which Napa has 364,761 acres and 7,063 estimated housing units (See Appendix II). By State mandate, CAL FIRE is responsible for protecting all California watersheds from fire in all the SRA areas in California. The CAL FIRE mission is to protect the people of California from fires, respond to emergencies, and protect and enhance forest, range, and watershed values at no charge to counties for mandated services. CAL FIRE's mandated services are independent from Napa County contracted services.

Around 1930 Napa County began contracting with CAL FIRE to provide additional firefighters to the normal CAL FIRE services that exist throughout the year. These additional firefighters are contracted by the 2011-2012 Napa County/CAL FIRE Agreement (See Appendix III) that is renewed annually. Each year the Agreement is written by CAL FIRE, and then the Agreement is reviewed by the Napa County Chief Executive Officer (CEO), who presents the Agreement to the BOS for approval. Annually, this Agreement is approved with little analysis of the cost to the Napa County taxpayer compared to the benefit (See Appendix IV).

The cooperative effort of the NCFD, the Volunteer Fire Departments, and the services provided by CAL FIRE, have supplied sufficient fire protection service which has protected the rural areas of Napa County. Over a century ago the forested areas were decimated by unchecked fires and the landscape was more barren and fires resulted in erosion. These events resulted in the formation of our local Volunteer Fire Departments, CAL FIRE, and Napa County's creation of the NCFD.

During this Grand Jury's investigation, it reviewed the Grand Jury reports of 2001-02 and the 2007-08 concerning the fire protection services to Napa County. In the 2007-08 Grand Jury Report titled, NAPA COUNTY FIRE DEPARTMENT, the Grand Jury asked the NCFD and the BOS to respond to various Recommendations (See Appendix V). A number of their responses were similar to the following answer by the NCFD to that report's Recommendation 1 (See Appendix V):



The County Fire Department has invested in two recent studies - the Strategic Plan in 2005 and the Deployment Analysis in 2007. Both studies contain many of the same recommendations as the 2007-2008 Grand Jury Report. There would be no added value to additional review that would preclude or delay the Napa County Fire Department from implementing a number of necessary changes. Therefore, the recommendation will not be implemented because it is not warranted.

Response, Board of Supervisors: The Board of Supervisors concurs with the response of the Napa County Fire Chief.

This Recommendation was to "establish a central Napa County Fire Department." Neither of these two studies, nor the Grand Jury Recommendation, were "implemented" to create a central NCFD. The NCFC and BOS rejected the 2007-2008 Grand Jury Recommendation by stating they were following the two prior studies recommending similar actions.

The Fire Station Deployment Analysis and Master Plan Implementation for the Napa County Fire Department, Citygate report of 2007 (See Appendix VI), referred to as the "Deployment Analysis in 2007," is described by a principal of Citygate Associates, LLC, as follows:

The study we produced was a master plan and station location analysis for the organization as of 2006/07 and in of itself, **was not a cost analysis of CAL FIRE's contract versus other options.** (Emphasis Added)

Likewise this Grand Jury found that the CAL FIRE study titled FIRE MANAGEMENT PLAN 2005 (See Appendix VII) described by the NCFC as the "Strategic Plan" is basically a description of the Lake Napa Unit (LNU) various fire department operations, vegetation, assets at risk, historical fires, fire causes and fuel loads for the counties of Lake, Napa, Sonoma, Colusa, Yolo, and Solano.

These Responses do not answer the 2007-2008 Grand Jury Recommendations. These issues were brought to the attention of this Grand Jury which chose to investigate the Napa County Agreement with CAL FIRE and associated issues.

## **DISCUSSION**

This report addresses the Napa County/CAL FIRE Agreement, "Administration Charges/Fees," Cost Benefit Analysis (CBA), Volunteer Culture and CAL FIRE/Volunteer Interface. This Grand Jury report continues with Organization aspects of the CAL FIRE 6 County Unit Chief, NCFC, Access to the BOS, Dispatch Services, Transition of Services, and expectations. This report concludes with a suggested four step procedure to solving the issues this Grand Jury discovered.

## NAPA COUNTY/CAL FIRE AGREEMENT

Napa County has contracted supplemental fire protection services through CAL FIRE since circa 1930. Currently, that Agreement is titled Cooperative Fire Programs Fire Protection Reimbursement Agreement (See Appendix III). Through the decades, the County has continued this agreement which is renewed by both parties each ensuing year. No one in the County, who was interviewed by this Grand Jury, has any knowledge of an analytical review of this Agreement in the past.

All counties in the State, including Napa County, are provided State mandated fire protection services for all watershed lands by CAL FIRE. This service, to date, is provided at no charge to the counties. This fire protection service is independent and separate from any contracted services.

Through interviews and investigations, this Grand Jury reviewed the supplemental Napa County/CAL FIRE Agreement as well as similar agreements from a variety of other counties. Specifically, the investigation focused on the local CAL FIRE LNU Unit which includes Sonoma, Lake, Napa, Colusa, Yolo, and Solano Counties. Of these Counties, the investigation discovered that three of these Counties--Colusa, Yolo, and Solano--do not have any supplemental agreements with CAL FIRE at all, and the other two Counties--Sonoma and Lake--have specific location supplemental agreements that are very limited and are focused on areas that specifically need additional services to cover their County Fire and Emergency Medical Services (Fire/EMS) protection needs.

During the Fiscal Year 2011-12, Napa County approved a total fire protection budget of \$11,461,359 (See Appendix I) including the CAL FIRE supplemental Agreement for \$8,267,184, which leaves the NCFD with \$3,194,175 (See Appendix III). This Napa County/CAL FIRE Agreement includes labor and benefits and numerous specific expense categories that make up the total.

A significant contrast is shown in the total Sonoma County Fire Protection Budget (See Appendix VIII) of \$7,595,149 which includes \$1,033,954 that goes to CAL FIRE (See Figure 1).

Total Fire Protection budgets for the specific areas of Yolo County and Colusa County are \$3,755,011 and \$1,529,629 respectively as shown in Figure 1. Neither of these counties have a CAL FIRE Agreement, so their entire fire budgets are dedicated to their local fire departments. The following chart shows total budget and CAL FIRE contract costs in four counties of the LNU CAL FIRE Unit.

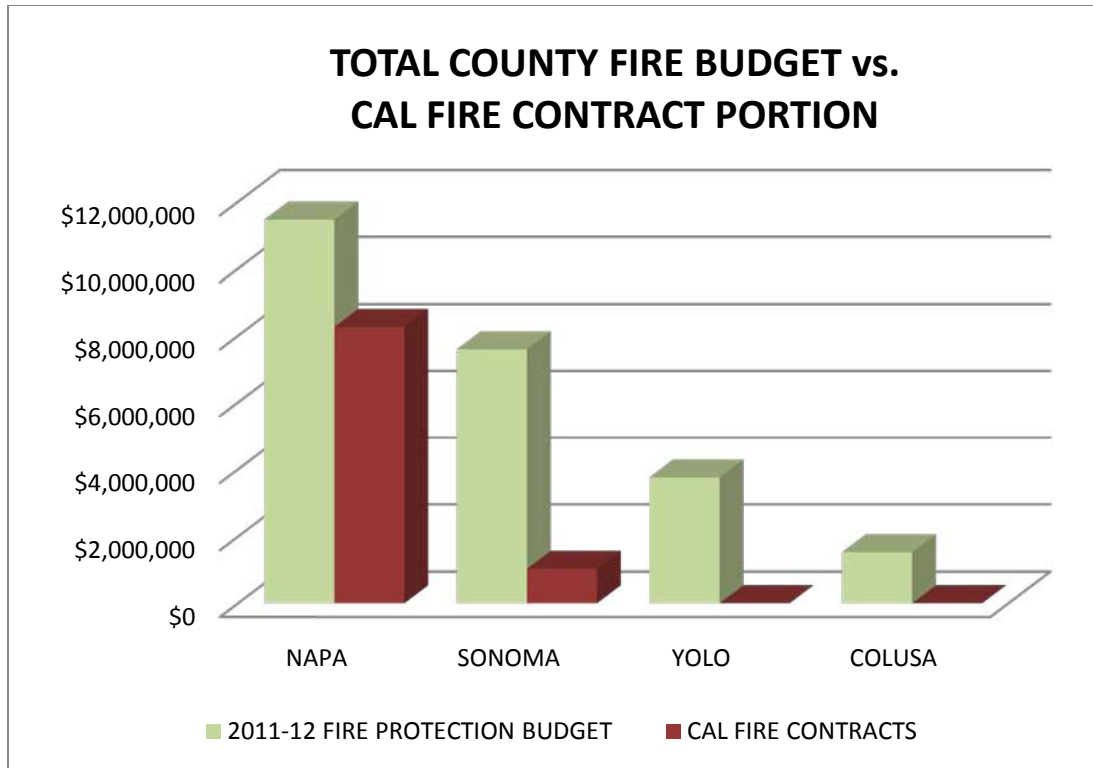


Figure 1

## ADMINISTRATIVE CHARGE/FEE

In most contracts with the State of California, including the Napa County/CAL FIRE Agreement, the State charges a fee for expenses incurred for administering the agreement and subsequent operations. This fee has increased over the years. In the FY 2010-11 the Administrative Charge was 11.06% of gross expenditures, and in the FY 2011-12 the charge increased to 11.96% of gross expenditures (See Table 1).

These Administrative Charges only apply when a State contract is in place. When CAL FIRE only provides the mandated statewide wildland fire protection services, no charges are incurred and thereby no Administrative Charge. CAL FIRE is mandated by the State to protect all State watersheds from fire at no cost to the County. Only when the State is charging for services under a supplemental agreement, such as the services provided by the Napa County/CAL FIRE Agreement, do these charges apply.

The Administrative Charge of 11.96% applies to all contracts in which the State engages, including the Napa County/CAL FIRE Agreement. Napa County understands these Administrative Charges for the Napa County/CAL FIRE Agreement are comprised of two components, Statewide Pro Rata and Indirect Rate, as follows:

## ADMINISTRATIVE CHARGE PERCENTAGES OF BUDGET

<u>Year</u>	<u>Statewide Pro Rata</u>	<u>Indirect Rate</u>	<u>Total</u>
2006-07	8.60	1.32	9.92
2007-08	7.07	3.58	10.65
2008-09	6.28	3.40	9.68
2009-10	6.50	4.50	11.00
2010-11	7.43	3.63	11.06
2011-12	7.43	4.53	11.96

Table 1

For detail of the Administrative Charge methodologies and components see Appendix IX.

With a budget amount of \$8,267,184, the CAL FIRE Administrative Charge in the Napa County contract is \$988,755. If all, or most, of the CAL FIRE Agreement was transferred to the NCFD, these savings could be retained by Napa County and allocated to the administration of the NCFD.

Some volunteer departments and Napa County Administrative Departments may have to add personnel to provide the support for an expanded NCFD that would assume the services now provided through the CAL FIRE Agreement. Furthermore, under this scenario, the \$988,755 would probably result in a significant amount of savings after the one time expansion costs were realized.

## COST BENEFIT ANALYSIS

A CBA is generally done to compare benefits to costs over a period of time. Although a CBA can be used for almost anything, it is often used by governments and businesses to evaluate the options within a given program or policy. After completion of a CBA, changing a program by choosing the best cost benefit ratio can improve efficiency by changing one aspect without altering another. Generally, an accurate CBA identifies choices that increase efficiency.

The contract with CAL FIRE has never been analyzed in a way to evaluate its cost and benefit. Expert testimony given to this Grand Jury stated that a professional firm specializing in fire protection organizations would need to be contracted to perform the recommended CBA for Napa County.

Analysis by this 2011-2012 Napa County Grand Jury found that during the fiscal year (FY) 2011-2012 the Napa County BOS approved the Fire Protection Budget (See Appendix I) of \$11,461,359, which includes \$8,267,184 to CAL FIRE by agreement and \$3,194,175 to the NCFD. This Agreement has been approved by the BOS every year since circa 1930 except for minor line item changes (See Appendix IV). The costs of providing services have steadily increased in accordance with the CAL FIRE 6 County Unit Chief/NCFD's agreement as submitted with some inquiry and minor modifications

by the County CEO's office. A CBA has never been done to determine if the taxpayers' benefits justify their costs.

The 2007-2008 Grand Jury Recommendations were deflected by reference to a study titled, Fire Station Deployment Analysis and Master Plan Implementation for the Napa County Fire Department (See Appendix VI), Citygate Associates, LLC in 2007, also referred to as the "2007 Deployment Analysis." However, Citygate said their report is "...not a cost benefit analysis of CAL FIRE's contract versus other options." This report merely addressed the organization of Napa County's fire protection. Costs versus benefits were not considered.

Sonoma County performed a cost benefit analysis in 2009, the County Service Area 40 Analytical Review, June 2009, and used the results to evaluate the participation of CAL FIRE in Sonoma County. In the FY 2011-12 Sonoma County's Fire Protection Budget is 66% of the Napa County's total Fire Protection Budget despite Sonoma County having 189% times the fire protection acreage and 460% times the unincorporated housing units of Napa County.

SONOMA COUNTY STATISTICS AS PERCENT OF NAPA COUNTY

County	Budget	Acreage	Estimated SRA Housing Units
Napa	\$11,461,359	432,102	7,063
Sonoma	\$ 7,595,149	818,258	32,520
Comparison	66%	189%	460%

Table 2

Figure 2 shows the considerable disparity between Napa and Sonoma County costs in the SRA only. The cost per acre for Sonoma County is \$9.28 and Napa per acre is \$26.52. Also, the cost per housing unit for Sonoma County is \$234 compared to the cost per housing unit for Napa County is \$1,623. Napa housing unit cost is 693.59% higher than Sonoma cost. This comparison begs the question, why are costs so high in Napa County?

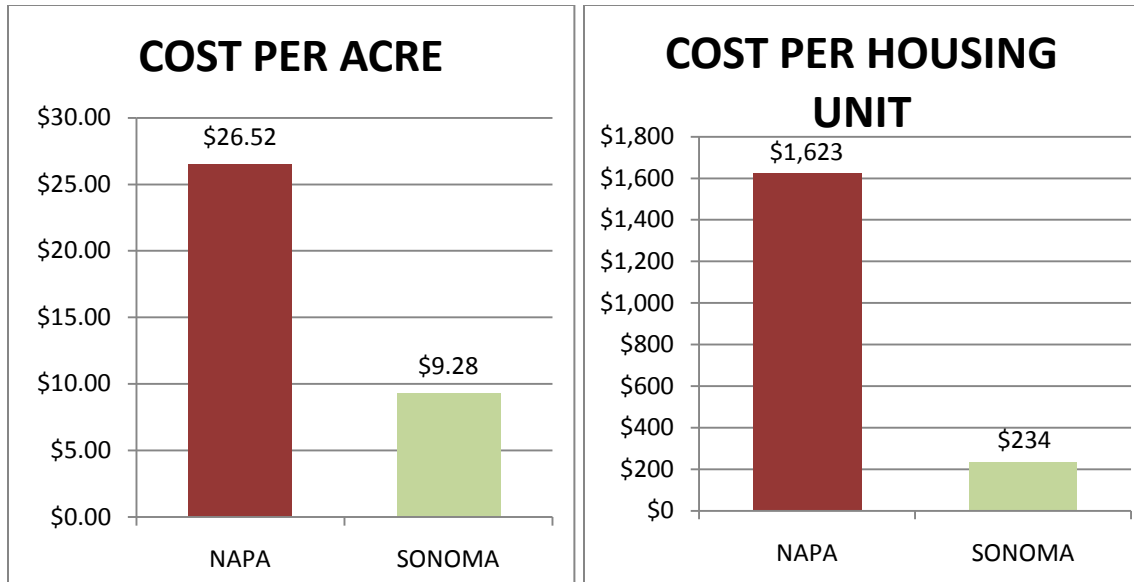


Figure 2

Obviously, Napa County's fire protection costs are high compared to Sonoma County. Considering the demography and topography of Napa and Sonoma Counties, the comparison of the two counties are more similar than not, both have mountains, valleys, urban areas, suburban areas, rural areas, tourist traffic, wineries, vineyards, forested areas, industrial areas, lakes, colleges, etc.

In conclusion, a CBA would open the door and bring full transparency to what Napa County residents are receiving for the very costly contract with CAL FIRE.

## VOLUNTEER CULTURE IN NAPA COUNTY

The nine (9) Volunteer Fire Departments of Napa County are the core of the NCFD. As an official of CAL FIRE stated, "Napa County cannot survive without Volunteers."

Volunteers provide a cost effective function and are often the first on the scene in rural areas. To provide such an extensive Fire/EMS protection network with only career staff, the County taxpayer cost would be prohibitive.

The hard work, dedication and loyalty exhibited by the Volunteer Fire Department Chiefs and all their personnel is remarkable--calls in the middle of the night are responded to without delay; risky fire environments are entered without hesitation; copious hours of training take valuable time away from families. And the compensation is nonexistent or meager at best.

A serious concern nationwide, as well as locally, is that the volunteer numbers are declining. As the old guard is retiring, it is harder and harder to replace them. As safety and training mandates in California require more time for certification, fewer volunteers complete the training and become certified. The commitment is to complete 80 to 120



hours of training each year. Years ago, those training requirements were minimal so becoming a volunteer firefighter was easier. Today, fewer people are motivated or able to join due to these requirements.

The demography of our residents has changed as well. In the 1960s one Napa County Volunteer Department consisted primarily of the women because they were available to answer a fire call. Now some volunteer fire departments are struggling to keep their firefighters and some Volunteer Fire Chiefs are resigning.

A Volunteer Fire Department with insufficient community involvement or County support loses its lifeblood. How well or long it can operate becomes a serious question. A few Volunteer Fire Departments have substantial community support and are thriving. Others are in decline.

Fundraising is the basic source for the local volunteer department operating expenses. Some funds come from the County for building support and essentials, but the routine cash flow for operations comes from the fundraisers. If the community does not support the fundraiser, that lack of support reduces resources that protect the community.

Sometimes a volunteer fire department community may have a well-oiled fund raising machine and still lacks sufficient involvement due to a disconnect between the local volunteer fire department and the community. Community involvement on the governing board and local events provide the ingredients for a vibrant fire department. One Volunteer Fire Department that is struggling to survive has a governing board made up of only firefighters without community involvement, and until recently, went many years without a community event to bring together residents interested in the success of the fire department and the fire department personnel.

Not having a dedicated NCFC to support the volunteer chiefs, firefighters, and boards, exacerbates the volunteer fire department difficulties. If a dedicated NCFC existed in Napa County whose focus was to support and build the volunteer departments, the roster of the volunteer departments should begin to rebuild. Some volunteer departments may not need this support, but others do. One Volunteer Fire Chief stated, "Napa County needs to take care of Napa County." This statement demonstrates the current need of change in the NCFD.

## CAL FIRE/VOLUNTEER FIRE DEPARTMENT INTERFACE

The Memorandum of Understanding, between Napa County and the nine (9) Volunteer Fire Departments establishes the Volunteer Departments, the Volunteer Chiefs and the Chiefs Advisory Board. The NAPA COUNTY FIRE DEPARTMENT's Organization Chart outlines the chain-of-command with the NCFC and the CAL FIRE 6 County Unit Chief filling the same position (See Appendix X).

CAL FIRE career personnel, specifically middle management, often perceive Volunteer Fire Department Chiefs and firefighters as marginally trained at best, when in fact, they

train and work side by side in many cases. It is true the career teams have daily activities that build their experience base, but many veteran volunteers have a superb history in firefighting, education and training. Also, volunteers know topography, local winds, weather patterns, access roads, and where structures are located. Besides having local knowledge, some volunteer chiefs are fire technology trainers and/or have diverse education backgrounds that exceed career personnel in various Fire/EMS procedures.

Among the volunteer fire community there is a perception their contributions as concerned citizens who volunteer for the fire protection service are not sufficiently acknowledged or recognized. This creates a strained relationship. Often volunteers are treated with a lack of respect (which may be subtle) that impairs the effectiveness of a fire or EMS response where both career and volunteer personnel are present. A volunteer chief who is the first at a Fire/EMS emergency becomes the Incident Commander (IC). Occasionally, that volunteer IC is summarily replaced by career personnel irrespective of that IC's service, education and performance.

All the Volunteer Chiefs belong to a Chiefs Advisory Board where issues between the CAL FIRE organization and the Volunteer Departments are supposed to be discussed. Some Volunteer Chiefs have indicated that communications are often one-way from CAL FIRE to the Volunteer Chiefs. An incident was described where the Chiefs Advisory Board unanimously agreed that a proposed new \$250,000 item of equipment was not needed by Napa County because the existing equipment was fully satisfactory. Yet, CAL FIRE spent \$250,000 of Napa County funds for the new equipment against the advice of the Advisory Board without explanation or justification. A Volunteer Chief stated:

The Volunteer Advisory Board makes a decision on Tuesday and CAL FIRE makes a different decision on Wednesday.

Another stated,

The impression one gets when attempting to work with CAL FIRE on these issues is one of patronizing disregard to the impact of the issues at hand.

Another stated,

Volunteers are not employees. The Chiefs serve the communities and serve as the leaders and representatives of the volunteers. Napa County Fire deserves leadership and administration that recognizes and respects volunteers, not an administration that wants (paid) employees.

Another stated,

NAPA COUNTY FIRE DEPARTMENT needs to be cost effective and it needs to maintain the asset of a large professional organization of (trained) volunteers.

And a national Fire Consultant stated,

The more CAL FIRE is involved, the faster you run off volunteers. The attitude about volunteers starts at the top.

And a CAL FIRE employee stated,

The Unit Chief has too much to do to have responsibility for each Volunteer Chief.

In the opinion of this Grand Jury the position of NCFC and the position of LNU Chief, who supervises six counties, should be separated. Thereby a dedicated NCFC would have his/her primary allegiance to the taxpayers of Napa County, would support local volunteers and create an atmosphere of respect between CAL FIRE and the volunteer personnel. In Sonoma County the two positions are separate (See Appendix XI) and a similar organization structure should be considered by Napa County.

## ORGANIZATION

### CAL FIRE 6 COUNTY UNIT CHIEF

The CAL FIRE organizations in the State of California are divided into Northern and Southern Regions that provide year around State mandated fire protection services to all watershed lands at no cost to the counties. Those Regions combined are divided into 21 units. The LNU is one of those units which includes Lake, Napa, Sonoma, Colusa, Yolo and Solano Counties. Each Unit has a Unit Chief who manages the Unit's operations and personnel. The LNU 6 County Unit Chief has a job description from the State of California titled, Position Essential Functions Duties Statement (See Appendix XII). The LNU Unit headquarters is located at 1199 Big Tree Road, St. Helena, California. Year around CAL FIRE stations providing mandated services by the State in Napa County include Greenwood Ranch, Napa, Spanish Flat, St. Helena and Yountville. The Las Posadas and Gordon Valley stations operate only during fire season. These stations are financed and operated under the CAL FIRE agency of the State of California.

Historically, the Napa County/CAL FIRE Agreement originates with CAL FIRE. The billing to Napa County is authorized by the 6 County Unit Chief. It is then reviewed by the Napa County CEO's office and presented to the Napa County Auditor-Controller for payment.

## NAPA COUNTY FIRE CHIEF

The ultimate authority and responsibility for Fire/EMS protection in Napa County lies with the Napa County BOS. The BOS has assigned the CAL FIRE 6 County Unit Chief concurrently the position of NCFC.

The NCFC position has no job description and is filled by the CAL FIRE LNU 6 County Unit Chief who operates under a job description written by the State of California (See Appendix XII), not Napa County. The 6 County Unit Chief is a State employee. This organizational structure creates a less than full time commitment and attention to the fire protection needs of the Napa County taxpayers.

The nine (9) Napa County independent Volunteer Fire Departments, with their Chiefs and governing boards, operate under the chain of command of the CAL FIRE 6 County Unit Chief/NCFC. Under this arrangement the Volunteer Fire Department Chiefs and firefighters are treated as "second class" providers and are not respected by the management of CAL FIRE or the Battalion Chiefs. There is a strained relationship between the volunteers and CAL FIRE. Nationally, volunteer firefighters are decreasing in numbers and this strained relationship accelerates that volunteer decrease. A full time dedicated NCFC whose commitment and attention to the preservation and support of the Volunteer Fire Departments would reverse that decrease and shift commitment and attention back to the taxpayers of Napa County.

It is the opinion of this Grand Jury that the interests of the taxpayers of Napa County are best served by a dedicated NCFC, whether or not a CBA is undertaken, or whether there is efficiency in having one person hold the position of CAL FIRE 6 County Unit Chief and the NCFC at the same time.

## NAPA COUNTY FIRE CHIEF ACCESS TO BOARD OF SUPERVISORS

This Grand Jury urges the BOS to authorize and direct the Napa County CEO to create a job description and hire an individual to be independent from the CAL FIRE organization, as the NCFC. This person would answer to the CEO, the BOS, and ultimately to the taxpayers of Napa County.

To the knowledge of this Grand Jury there is no written policy or procedure for appeals of decisions made by the CAL FIRE 6 County Unit Chief/NCFC, or by the Volunteer Fire Department Chiefs or their governing boards to the Napa County BOS except as concerned citizens.

## DISPATCH SERVICES

Napa Central Dispatch Center (located in the city of Napa) is the Primary Safety Answering Point for 911 emergency calls for the city of Napa, American Canyon, Town of Yountville and all unincorporated areas of Napa County, however, some 911 calls in

the northern part of Napa County are routed through the California Highway Patrol (CHP) in Benicia which redirects applicable calls to Napa Central Dispatch.

Currently, all these 911 calls go through the Napa Central Dispatch which dispatches all law enforcement, ambulance, and calls for fire/EMS, but redirects the Fire/EMS calls to CAL FIRE. Currently, CAL FIRE then dispatches the Fire/EMS calls to the Volunteer Fire Departments and the CAL FIRE units. If Napa Central Dispatch dispatched the Napa County volunteer Fire/EMS calls directly, instead of redirecting the call to CAL FIRE, the response time and costs should be reduced. CAL FIRE would continue to receive applicable calls and dispatch their own CAL FIRE units.

As part of the ongoing CAL FIRE Agreement, and cost to Napa County, CAL FIRE has provided dispatch services for the CAL FIRE units as well as the Volunteer Fire Department personnel and equipment. The dispatch calls are about 95% for EMS medical calls, not fire, for the volunteer units. Unfortunately, on one occasion, CAL FIRE Dispatch did not call out a Volunteer Department for a fire that was fully within the boundaries of that Volunteer Department. And other times, due to lack of familiarity by CAL FIRE Dispatch, the calls went to one Volunteer Department instead of another that was closer and/or better equipped to respond to the needs described in the call.

As Napa Central Dispatch currently dispatches law enforcement, ambulance, etc. calls throughout the County, Napa Central Dispatch has an excellent understanding of Napa County territory and would provide Fire /EMS dispatch efficiently.

For the FY 2010-11 the Napa County CAL FIRE Dispatch Budget was \$230,000 (See Appendix XIII). In the opinion of this Grand Jury, that service could be reassigned to the existing Napa Central Dispatch which would reduce costs and reduce response times. Napa Central Dispatch management indicates, "...Napa Central Dispatch could provide direct call taking and dispatching services for Fire/EMS calls in the County areas." Due to limited space they would need to expand their facilities and add some personnel, but in time this change would result in long term savings.

## TRANSITION CAL FIRE SERVICES TO NAPA COUNTY FIRE DEPARTMENT

Some of the five counties in the LNU Unit, other than Napa, have already made a transition of Fire/EMS services to a dedicated county fire department. Others have not contracted with CAL FIRE at all. The counties of Colusa, Yolo and Solano do not have any contracts with CAL FIRE. Lake County contracts with CAL FIRE for one area, the South Lake County District which is budgeted for \$2,443,705. Sonoma County discontinued its county wide CAL FIRE coverage in the mid 1990s and has its own fire departments now. However, Sonoma County has a few specialized areas covered with CAL FIRE agreements utilized to supplement County services, such as The Sea Ranch (\$749,181), Monte Rio (\$124,055), Wilmar (\$129,302), and Cloverdale (\$31,416) totaling \$1,033,954 for all Sonoma County CAL FIRE agreements.

Within the LNU Unit, the Napa County Approved Budget (See Appendix I) for CAL FIRE is \$8,267,184 which is in contrast to the other five counties having a combined total CAL FIRE budget of \$3,477,659. This voices the question, why should Napa County pay \$4,789,525 more for CAL FIRE services than the combined total of all other five counties? A published CBA comparing costs would provide Napa County valuable information for future reductions in fire protection costs.

When Sonoma County discontinued the full county coverage with CAL FIRE, which was similar to Napa County's current full county coverage, their fire protection budget was reduced substantially. Now Sonoma County's 15 volunteer fire companies provide Fire/EMS protection for the residents throughout the county, except for the specialized areas listed above.

The CAL FIRE Mission Statement states, "...the protection of the State's grass, brush, and tree covered watersheds in SRA from wildland fire." This includes Napa County. In the event of a wildland fire in Napa County, CAL FIRE will respond as it responds in all the other counties of the State. A transition from the CAL FIRE Agreement services to the NCFD would not change how CAL FIRE responds to wildland fires in Napa County under the State mandate.

A transition of services from CAL FIRE to the NCFD will have unexpected costs. The Napa County Fire Protection Fund (account #52232700), which has accumulated over the years with budgeted funds that were not used, has a balance of \$10,231,461 at the end of the 2010-11 FY. If the current fiscal year required more funds, then that fund balance will decrease, and if less funds are used, that fund balance will increase. Nevertheless, there is a significant amount of money available for a transition from CAL FIRE to the NCFD.

The existing Memorandum of Understanding (MOU) between the COUNTY OF NAPA and VOLUNTEER FIRE DEPARTMENTS, states,

The purpose of this Agreement is to provide within the COUNTY OF NAPA, the highest level of fire suppression, fire prevention, emergency medical, specialized rescue and hazardous materials response in the most cost efficient manner for reduction of life or property loss and damage due to fires, illness, accidents and other disasters.

That purpose can be fulfilled under the NCFD without the expense of the CAL FIRE Agreement.

If the NCFD replaced the services, now provided by CAL FIRE at \$8,267,184, it would have to expand services throughout the year (similar to Sonoma County) that would work in tandem with the established nine Volunteer Fire Departments currently in Napa County. The next steps in that direction would be:

- do a cost benefit analysis,
- write a NCFD job description,



- hire a NCFC based on the job description, and then,
- the new Fire Chief would build the NCFD staff and operations to a level necessary to provide adequate fire protection for the residents of Napa County while reducing CAL FIRE services.

The Sonoma County Organization Chart (See Appendix XI) illustrates an operation independent of CAL FIRE, with minor exceptions. In that kind of organization the strained relationship between the volunteers and CAL FIRE is minimized. Also, the support of the Volunteer Departments is directly connected to the community and the County. In the opinion of this Grand Jury, the CAL FIRE Agreement with Napa County is not only very expensive, but also detrimental to the Volunteer Fire Chiefs and the Volunteer Fire Departments. These issues can be resolved by transitioning the existing CAL FIRE services to the NCFD, minimizing the County's dependence on CAL FIRE.

A recent CAL FIRE correspondence to the LNU 6 County Unit Chief states:

It is our belief that this ancient model (the current MOU) is being perpetuated by the Volunteer Chiefs themselves simply to maintain their own independent power base and control of their private "kingdoms".

And,

It is our opinion that the current proposal to have all nine Volunteer Chiefs report directly to you (Unit Chief) personally, and for you (Unit Chief) to supervise them is unrealistic and unworkable.

And,

While recognizing the value and necessity of a volunteer firefighting component within NCFD, and the fact that this MOU is an agreement between Napa County and the nine Volunteer Departments, it seems incredible that the future organization of NCFD hangs on decision made by individuals who work as a gardener, vintner, school teacher, fire extinguisher serviceman, etc.

The September 11, 2007 Agenda Letter from the County Fire Chief regarding the NAPA COUNTY FIRE DEPARTMENT/Citygate Associates states,

The Napa County Fire Department must continue to evolve with the changing demands for service...and a support organization adequate for the Department.

As stated above by some of the middle management at CAL FIRE, the existing model is not working, Volunteer Chiefs reporting to the LNU 6 County Unit Chief is unrealistic and unworkable, and the future of the NCFD depends on a dedicated leader. These statements, plus a statement by a national fire consultant that, "The more CAL FIRE is involved, the faster you run off volunteers," demonstrate the current system is not functional. A management model similar to Sonoma County is necessary for the future of the NCFD.

In the opinion of this Grand Jury, most or all the services now provided through the CAL FIRE Agreement should be reassigned to the NCFD with a dedicated NCFC.

## VALUE TO COMMUNITY CONCEPT OF SERVICE: EXPECTATIONS: WANT vs. AFFORD

The dilemma in Fire/EMS protection is cultural. Everyone expects an immediate, massive response when they dial 911--fire trucks, paramedics, ambulances, planes overhead, bulldozers, etc. The level of service in a community is linked to its financial ability and desire to provide resources. An analysis called the County Service Area 40 Analytical Review of Sonoma County states,

The decision to set a level of service is a policy choice. Often it is based on the consideration of two or more options. If a community chooses to have a major fire station, state-of-the-art apparatus, and a full complement of full-time paid personnel, the community has to be prepared to fund it accordingly. If the choice is to seek alternatives and options that are variations upon all of those attributes, then policy choices must be made to set a level of service that is consistent with the community's ability to pay.

And,

The cost of running individual volunteer fire stations is a variable that is going to increase, if for no other reason than inflation. The number of fire stations that are going to be required is a function of time, distance and growth. The number of staff assigned to those stations will be a function of the entity's ability to pay.

Volunteer fire fighters are usually the first responders in rural areas, particularly for medical aid. The tax payers of Napa County are paying for a lot of fire protection services through CAL FIRE but our volunteer fire fighters do a significant part of the work. Napa County could not provide the service the community expects without its volunteers. It is in the best interest of the County to maintain a good working relationship with its volunteer fire departments as it is the most cost effective way of delivering services to a rural area with low population densities.

It is the opinion of this Grand Jury, in light of the unprecedented high cost of CAL FIRE to Napa County taxpayers compared to other counties in the LNU Unit, that Napa County:

- needs a CBA to determine the efficiency of the CAL FIRE Agreement,
- needs a dedicated NCFC whose commitment and attention is focused on the issues of Napa County EMS and Fire Protection,
- local Volunteer Fire Departments need to be supported and rebuilt, and
- CAL FIRE services need to be transitioned to the NCFD as outlined by a CBA.

# FINDINGS

The 2011-2012 Grand Jury finds that:

- F1. The Fire Station Deployment Analysis and Master Plan Implementation for Napa County Fire Department, Citygate Report was not a cost benefit analysis.
- F2. Presently, there is no job description for the NCFC. The NCFC operates under the State CAL FIRE 6 County Unit Chief job description.
- F3. Having the CAL FIRE 6 County Unit Chief who, at the same time, is also the NCFC creates a less than full time commitment and attention to Fire and Emergency services for Napa County and its taxpayers.
- F4. An assessment of CAL FIRE services vs. cost of a full service NCFD as a result of a Cost Benefit Analysis has not been completed.
- F5. If Napa County had a standalone Fire Department, without the CAL FIRE Agreement, Napa County residents could experience similar services as to what is now provided, at a significant savings to the County as demonstrated in Sonoma County.
- F6. There is a reasonable probability of saving a major part of the \$8,267,184 CAL FIRE contract budget if Napa County transitions CAL FIRE services to the NCFD.
- F7. The transition from CAL FIRE to an independent Sonoma County Fire Department has resulted in reduced fire protection expenses in Sonoma County.
- F8. Currently dispatch of Fire/EMS is provided by CAL FIRE at \$230,000 annually. The existing Napa Central Dispatch could provide these fire dispatch services at a savings to the County.
- F9. The very complex economics and multifaceted fire protection services of Napa County need to be better understood by the Napa County residents.
- F10. The very complex economics and multi faceted fire protection services of Napa County need to be clearly understood by the leadership of the County.
- F11. The current CAL FIRE agreement with Napa County is \$8,267,184 which includes an "Administrative Charge" of 11.96% equaling \$988,755 in the 2011-12 FY. This \$988,755 savings could be allocated for administration of a NCFD.
- F12. CAL FIRE has made decisions which are self serving to CAL FIRE and not in the best interest of Napa County.

- F13. Substantial accumulated County Fire Protection funds, of approximately \$10,000,000, are available that could be used for transition from CAL FIRE services to a full service volunteer and career NCFD.
- F14. The Volunteer Departments in Napa County are very cost effective providers of Fire/EMS services.
- F15. In Napa County, CAL FIRE has discouraged the use of volunteers.
- F16. CAL FIRE has ignored volunteer chiefs' recommendations.
- F17. The NCFC does not sufficiently encourage volunteer recruitment.
- F18. Some volunteer fire departments need outreach to their community, and their community needs to be directly involved with the Volunteer Fire Department boards and operations.
- F19. A balanced volunteer fire department governing Board of Directors should require a significant community representation.

## **RECOMMENDATIONS**

The 2011-2012 Grand Jury recommends that:

- R1. Napa County write a job description and employ a NCFC who will be independent and separate from CAL FIRE employment, before contracting CAL FIRE services for the agreement year 2013-2014.
- R2. The NCFC immediately and actively support the local Volunteer Fire Department Chiefs, their Advisory Board, and governing boards.
- R3. The NCFC immediately and actively support recruitment of new firefighter volunteers.
- R4. The NCFC immediately and actively assure the volunteer fire departments governing Boards include at least 1/3 representation of community (non-firefighter) members on their Boards.
- R5. Replace CAL FIRE Dispatch services for Napa County Fire/EMS with the existing Napa Central Dispatch services which will not alter CAL FIRE dispatch of CAL FIRE units.
- R6. Napa County complete a CBA, by an independent firm, of all the fire protection services provided by CAL FIRE and NCFD before contracting CAL FIRE services for the agreement year 2014-2015.

R7. Within three years, or on the schedule outlined by the CBA, implement the CBA recommendations regarding the CAL FIRE Agreement.

## **REQUEST FOR RESPONSES**

Pursuant the California Penal Code section 933-05, this Grand Jury requests responses as follows:

From the following individuals:

- Napa County Chief Executive Officer: F1, F2, F3, F4, F5, F6, F8, F11, F13, F14, R1, R5, R6, R7
- NAPA COUNTY FIRE CHIEF: F1, F2, F3, F4, F5, F6, F7, F8, F11, F14, F15, F16, F17, F18, R1, R2, R3, R4, R5, R6, R7
- Public Safety Administrative Service Manager: F8, R5
- Napa County Auditor-Controller: F4, F6, F11, F13, F14, R6

From the following governing bodies:

- Napa County Board of Supervisors: F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11, F13, F14, R1, R2, R3, R4, R5, R6, R7

From the following administrative bodies:

- Napa County Fire Chief Advisory Board: F3, F5, F6, F12, F14, F15, F16, F17, F18, F19, R1, R2, R3

## **GLOSSARY**

BOS - Napa County Board of Supervisors

CEO - Napa County Chief Executive Officer

CAL FIRE - the California Department of Forestry and Fire Protection

CDF - California Department of Forestry and Fire Protection

CBA - Cost Benefit Analysis

DPA - Direct Protection Area

EMS - Emergency Medical Services

FRA - Federal Responsibility Area

FY - Fiscal Year

IC - Incident Commander

LRA - Local Responsibility Area, usually incorporated cities

NCFC - NAPA COUNTY FIRE CHIEF

NCFD - NAPA COUNTY FIRE DEPARTMENT

LNU Unit - also referred to as the Lake Napa CAL FIRE Unit which also includes Sonoma, Colusa, Yolo, and Solano Counties.

SRA - State Responsibility Area

Unit Chief - CAL FIRE 6 County Unit Chief

Units - refer to the fire truck and fire vehicles deployed to an emergency

Volunteers - about 200 positions held by volunteer fire fighters in Napa County

Wildland fire - any non-structure fire that occurs in the wildland

## **METHODOLOGY**

Information for this investigation was compiled through numerous interviews, document analysis, Internet research and a field trip.

Interviews conducted included:

- CAL FIRE Personnel
- State Fire Marshall Personnel
- Napa County Auditor-Controller Office personnel
- Napa County Board of Supervisors
- Napa County Volunteer Fire Chiefs
- Sonoma County Volunteer Fire Chief
- National Fire Consultant

Field trip taken to:



Napa Central Dispatch – the primary answer point for all 911 calls for the Cities of Napa, American Canyon, Town of Yountville, and all unincorporated areas of Napa County.

Documents and websites reviewed:

- California Public Resources Code Sections 4475-4490; 4740-4741; 55640-55642
- CAL FIRE Billing Documents for FY 2010/11
- Department of Forestry and Fire Protection, Sonoma-Lake-Napa Unit, Fire Management Plan, 2005
- County of Napa, Financing Sources and Financing Uses by Budget Unit by Object, FY2010/11
- County of Riverside, Detail of Financing Sources and Financing Uses, Governmental Funds, FY 2010/11
- County of Napa, Cooperative Fire Programs, Fire Protection Reimbursement Agreement for FY 2010/11, 2011/12
- County of Napa, Organizational Chart
- County of Sonoma, Cooperative Fire Programs, Fire Protection Reimbursement, CSA #40, FY 2010/11
- County of Sonoma, Cooperative Fire Programs, Fire Protection Reimbursement, Monte Rio Fire Protection District, FY 2011/12
- County of Sonoma, Adopted Budget, FY 2010/11
- County of Sonoma Fire and Emergency Services Organizational Chart
- County Service Area #40, Analytical Review, June 2009, by Emergency Services Consulting, Inc.
- Fire Station Deployment Analysis and Master Plan Implementation for the Napa County Fire Department by Citigate Associates, LLC, 2007
- Memorandum of Understanding, County of Napa and the Volunteer Fire Departments, February, 200
- Napa County Fire Department Organizational Chart
- Napa County Fire Department Policy and Procedure Manual
- Napa County Fire Department Training Requirements
- Napa County Statement of Revenues and Expenses, Budget vs. Actual
- Napa County Grand Jury Report, 2001/2002 Final Report, Municipal Fire
- Napa County Grand Jury 2007/2008 Final Report, Napa County Municipal Fire Departments including Responses

[www.co.lake.ca.us](http://www.co.lake.ca.us)

[www.countyofnapa.org](http://www.countyofnapa.org)

[www.fire.ca.gov](http://www.fire.ca.gov)

[www.sonoma-county.org](http://www.sonoma-county.org)

[www.uscensusbureau.countyofcolusa](http://www.uscensusbureau.countyofcolusa)

[www.uscensusbureau.countyofyolo](http://www.uscensusbureau.countyofyolo)  
[www.yolocounty.org](http://www.yolocounty.org)

also websites for the counties of Mariposa, Riverside, Marin, Amador, Tulare, Nevada, Placer, Eldorado, Shasta, Mendocino, Tehama, Butte, Merced, Monterey, San Benito, San Luis Obispo, and Santa Barbara.

## APPENDIX

- I. 2011-2012 Napa County Fire Protection Budget
- II. LNU Unit breakdown--Acres, Sq. Miles
- III. 2011-2012 Napa County/CAL FIRE Agreement
- IV. BOS --Board Agenda Letter 6/21/11
- V. 2007-08 Grand Jury Report Responses BOS, FIRE
- VI. Fire Station Deployment Analysis and Master Plan Implementation for Napa County Fire Department--Volumes 1, 2 and 3, Citygate Associates, LLC, 2007  
Summary- <http://services.countyofnapa.org/agendanetdocs/agendas/bos/9-11-2007/7134/cdfexecutivesummary.pdf>  
Part 1- <http://services.countyofnapa.org/agendanetdocs/agendas/bos/9-11-2007/7134/volume1napacountyreport.pdf>  
Part 2- <http://services.countyofnapa.org/agendanetdocs/agendas/bos/9-11-2007/7134/volume2napacountymapatlas3.pdf>  
Part 3- <http://services.countyofnapa.org/agendanetdocs/agendas/bos/9-11-2007/7134/volume3napacountystatsappendix.pdf>
- VII. Fire Management Plan 2005--LNU Unit--go to  
<http://cdfdata.fire.ca.gov/pub/fireplan/fpupload/fpppdf107.pdf>
- VIII. 2011-2012 Sonoma County Fire Protection Budget
- IX. Administrative Charge Description
- X. Napa County Fire Department Organization Chart Feb 2012
- XI. Sonoma County Organization Chart 2011
- XII. 6 County Unit Chief Job Description
- XIII. Dispatch Costs 2006-2011

State Controller Schedules  
 County Budget Act  
 January 2010

County Of Napa  
 Financing Sources and Uses by Budget Unit by Object  
 Fiscal Year 2011-2012

Schedule 9

MAIN EXPENDITURE OBJECTS:  
 SALARIES & EMPLOYEE BENEFITS  
 SERVICES & SUPPLIES  
 OTHER CHARGES  
 EXPENDITURE TRANSFERS & REIMBURSEMENTS  
 FIXED ASSETS

BUDGET # 25800  
 BUDGET UNIT: FIRE PROTECTION  
 FUNCTION: Public Protection  
 ACTIVITY: Fire Protection

Account No.	Expenditure Classification	Actual 2009-2010	Estimated 2010-2011	Proposed By The Board of Supervisors 2011-2012	Final Budget Approved by Supervisors 2011-2012	Fund No.
<b>Services &amp; Supplies</b>						
52060000	CLOTHING/PERSNAL SUPL	146,417.45	71,835.88	146,000.00	146,000.00	1080
52070000	COMMUNICATIONS	32,570.86	35,664.80	32,350.00	32,350.00	1080
52080000	CLIENT MEAL EXPENSES	1,827.12	934.07	5,000.00	5,000.00	1080
52090000	HOUSEHOLD EXPENSE	20,258.14	14,789.00	17,000.00	17,000.00	1080
52100000	INSURANCE - PREMIUMS	0.00	0.00	60,000.00	60,000.00	1080
52100300	INSURANCE:LIABILITY	58,523.00	50,072.00	35,239.00	35,239.00	1080
52100400	INSURANCE:DISABILITY	5,921.00	5,628.00	5,921.00	5,921.00	1080
52120000	MAINTENANCE:EQUIP	180,158.87	189,360.62	227,000.00	227,000.00	1080
52130000	MAINT:BLDG & IMP	22,323.50	24,591.62	24,000.00	24,000.00	1080
52140000	LABORATORY SUPPLIES	33,486.13	26,997.64	28,500.00	28,500.00	1080
52150000	MEMBERSHIPS	1,893.85	1,785.00	16,500.00	16,500.00	1080
52170000	OFFICE EXPENSE	41,345.18	33,634.35	46,450.00	46,450.00	1080
52170050	OFFICE SUPPLIES:FURNIT	0.00	0.00	1,000.00	1,000.00	1080
52170125	BOOKS/MEDIA/PERIODICAL	0.00	0.00	500.00	500.00	1080
52171200	OE:POSTAGE	0.00	0.00	500.00	500.00	1080
52180100	PSS:DOCTORS	32,545.44	23,896.56	37,500.00	37,500.00	1080
52180200	PSS:MGMT INFO SVCS	45,012.00	58,358.04	66,397.00	66,397.00	1080
52183500	PSS:SALES TAX REVIEW	0.00	0.00	38,322.00	38,322.00	1080
52183510	PSS:PROP TAX ADMIN FE	97,667.30	104,224.24	34,863.00	34,863.00	1080
52185000	PSS:OTHER	52,628.28	81,237.59	252,000.00	252,000.00	1080
52200000	RENTS/LEASES-EQUIP	12,442.49	12,184.72	11,600.00	11,600.00	1080
52210000	RENTS/LEASES:B/I	5,494.56	5,659.52	5,700.00	5,700.00	1080
52220000	SM TOOLS/INSTRUMENTS	4,596.03	1,966.96	8,000.00	8,000.00	1080
52232100	SDE:SPEC FIRE SUPL	346,326.75	461,531.34	497,000.00	497,000.00	1080

State Controller Schedules  
 County Budget Act  
 January 2010  
 County Of Napa  
 Financing Sources and Uses by Budget Unit by Object  
 Fiscal Year 2011-2012  
 Schedule 9

MAIN EXPENDITURE OBJECTS:  
 SALARIES & EMPLOYEE BENEFITS  
 SERVICES & SUPPLIES  
 OTHER CHARGES  
 EXPENDITURE TRANSFERS & REIMBURSEMENTS  
 FIXED ASSETS

BUDGET # 25800  
 BUDGET UNIT: FIRE PROTECTION  
 FUNCTION: Public Protection  
 ACTIVITY: Fire Protection

Account No.	Expenditure Classification	Actual 2009-2010	Estimated 2010-2011	Proposed By The Board of Supervisors 2011-2012	Final Budget Approved by Supervisors 2011-2012	Fund No.
52232500	SDE:FIRE CONTR CALIST	85,682.96	88,253.46	89,000.00	89,000.00	1080
52232600	SDE:FIRE CONTR ST HEL	66,529.48	67,514.88	69,000.00	69,000.00	1080
52232700	SDE:FIRE CONTR STATE	7,592,136.07	7,117,985.01	8,267,184.00	8,267,184.00	1080
52232800	SDE:FIRE CONTR SCHELL	5,390.00	5,390.00	5,400.00	5,400.00	1080
52235000	SDE:OTHER	62,801.91	57,365.64	81,500.00	81,500.00	1080
52235060	SDE:COMPTTR/PERIPHERAL	0.00	0.00	3,000.00	3,000.00	1080
52235080	COMPUTER SOFTWARE/LICE	0.00	0.00	108,000.00	108,000.00	1080
52235110	SDE:EMERGENCY REIMBURS	136,519.92	2,596.12	100,000.00	100,000.00	1080
52236500	SDE:EDU TRAINING PROG	29,847.34	22,020.68	53,000.00	53,000.00	1080
52243000	SDE:FIRE VOLUNTEER STI	152,150.00	174,450.00	400,000.00	400,000.00	1080
52245600	SDE: A 87 COST	127,493.00	232,649.00	254,151.00	254,151.00	1080
52250000	TRANSPORTATION & TRAV	15,484.02	11,288.69	73,500.00	73,500.00	1080
52250400	T/T:MILEAGE	24,412.54	30,440.42	0.00	0.00	1080
52260000	UTILITIES-PG&E	81,361.64	87,366.05	92,089.00	92,089.00	1080
Total Services & Supplies		\$ 9,521,246.83	\$ 9,101,671.90	\$ 11,193,166.00	\$ 11,193,166.00	
<b>Equipment</b>						
56600010	EQUIPMENT	778,560.60	1,251,414.99	107,324.00	107,324.00	1080
Total Equipment		\$ 778,560.60	\$ 1,251,414.99	\$ 107,324.00	\$ 107,324.00	
<b>Other Financing Uses</b>						
58005000	OPR TR OUT	40,484.40	20,175.00	0.00	0.00	1080
Total Other Financing Uses		\$ 40,484.40	\$ 20,175.00	\$ 0.00	\$ 0.00	
<b>*** TOTAL EXPENSES - FUND 1080 DEPT 25800:</b>		<b>\$ 10,416,285.83</b>	<b>\$ 10,492,678.46</b>	<b>\$ 11,461,359.00</b>	<b>\$ 11,461,359.00</b>	



# SONOMA-LAKE-NAPA UNIT

## UNIT TOTALS

### SONOMA-LAKE-NAPA

	ACRES	SQUARE MILES	PERCENTAGE
<b>TOTAL AREA:</b>	4,358,812	6,810	
<b>SRA:</b>	2,079,103	3,248	47.60%
<b>LRA:</b>	1,641,468	2,564	37.60%
<b>FRA:</b>	638,052	997	14.60%
<b>STATE DPA:</b>	2,319,663	3,624	53%
<b>FEDERAL DPA:</b>	403,632	630	9%
<b>LOCAL DPA:</b>	1,557,134	2,433	36%
<b>STATE LANDS IN FEDERAL DPA:</b>	44,972	70	11%
<b>FEDERAL LANDS IN STATE DPA:</b>	287,775	449	12%
<b>ESTIMATED HOUSING UNITS IN THE SRA:</b>	60,315		

COLUSA COUNTY

	ACRES	SQUARE MILES	PERCENTAGE
<b>TOTAL AREA:</b>	739,862	1,156	
<b>SRA:</b>	254,434	397	34%
<b>LRA:</b>	361,247	564	49%
<b>FRA:</b>	124,180	194	17%
<b>STATE DPA:</b>	292,250	456	40%
<b>FEDERAL DPA:</b>	73,181	114	9%
<b>LOCAL DPA:</b>	361,613	565	49%
<b>STATE LANDS IN FEDERAL DPA:</b>	5,396	8	7%
<b>FEDERAL LANDS IN STATE DPA:</b>	43,512	68	15%
<b>ESTIMATED HOUSING UNITS IN THE SRA:</b>	528		

LAKE COUNTY

	ACRES	SQUARE MILES	PERCENTAGE
<b>TOTAL AREA:</b>	850,443	1,329	
<hr/>			
<b>SRA:</b>	394,414	616	46%
<b>LRA:</b>	76,599	119	9%
<b>FRA:</b>	379,430	593	45%
<hr/>			
<b>STATE DPA:</b>	481,760	752	57%
<b>FEDERAL DPA:</b>	291,867	456	34%
<b>LOCAL DPA:</b>	76,813	120	9%
<hr/>			
<b>STATE LANDS IN FEDERAL DPA:</b>	39,576	62	14%
<b>FEDERAL LANDS IN STATE DPA:</b>	126,904	198	26%
<hr/>			
<b>ESTIMATED HOUSING UNITS IN THE SRA:</b>	17,074		

NAPA COUNTY

	ACRES	SQUARE MILES	PERCENTAGE
<b>TOTAL AREA:</b>	505,857	790	
<b>SRA:</b>	364,761	570	72%
<b>LRA:</b>	78,303	122	15%
<b>FRA:</b>	62,792	98	12%
<b>STATE DPA:</b>	432,102	675	85%
<b>FEDERAL DPA:</b>	28	0.004	< 1%
<b>LOCAL DPA:</b>	73,120	114	14%
<b>STATE LANDS IN FEDERAL DPA:</b>	0	0	0%
<b>FEDERAL LANDS IN STATE DPA:</b>	62,792	98	14%
<b>ESTIMATED HOUSING UNITS IN THE SRA:</b>	7,063		



SOLANO COUNTY

	ACRES	SQUARE MILES	PERCENTAGE
<b>TOTAL AREA:</b>	580,315	908	
<b>SRA:</b>	87,123	136	15%
<b>LRA:</b>	480,335	750	83%
<b>FRA:</b>	14,416	23	2%
<b>STATE DPA:</b>	89,229	139	15%
<b>FEDERAL DPA:</b>	15,765	24	3%
<b>LOCAL DPA:</b>	475,390	743	82%
<b>STATE LANDS IN FEDERAL DPA:</b>	0	0	0
<b>FEDERAL LANDS IN STATE DPA:</b>	2,110	3	2%
<b>ESTIMATED HOUSING UNITS IN THE SRA:</b>	2,359		

SONOMA COUNTY

	ACRES	SQUARE MILES	PERCENTAGE
<b>TOTAL AREA:</b>	1,025,703	1,602	
<b>SRA:</b>	797,188	1,245	78%
<b>LRA:</b>	200,957	314	20%
<b>FRA:</b>	27,557	43	3%
<b>STATE DPA:</b>	818,258	1,278	80%
<b>FEDERAL DPA:</b>	9,786	15	1%
<b>LOCAL DPA:</b>	197,659	309	19%
<b>STATE LANDS IN FEDERAL DPA:</b>	0	0	0
<b>FEDERAL LANDS IN STATE DPA:</b>	23,018	36	3%
<b>ESTIMATED HOUSING UNITS IN THE SRA:</b>	32,520		

YOLO COUNTY

	ACRES	SQUARE MILES	PERCENTAGE
<b>TOTAL AREA:</b>	653,165	1,020	
<b>SRA:</b>	179,236	280	27%
<b>LRA:</b>	443,266	692	68%
<b>FRA:</b>	30,662	48	5%
<b>STATE DPA:</b>	204,525	320	32%
<b>FEDERAL DPA:</b>	0	0	0%
<b>LOCAL DPA:</b>	448,639	701	68%
<b>STATE LANDS IN FEDERAL DPA:</b>	0	0	0
<b>FEDERAL LANDS IN STATE DPA:</b>	29,439	46	14%
<b>ESTIMATED HOUSING UNITS IN THE SRA:</b>	771		

**COOPERATIVE FIRE PROGRAMS  
FIRE PROTECTION REIMBURSEMENT AGREEMENT**  
LG-1 REV. 03/2011

Napa County Agreement No. 1049

Appendix III

AGREEMENT NUMBER **1CA01567**

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Local Agency named below:

STATE AGENCY'S NAME

California Department of Forestry and Fire Protection – (CAL FIRE)

LOCAL AGENCY'S NAME

County of Napa

2. The term of this Agreement is: **July 1, 2011** through **June 30, 2012**

3. The maximum amount of this Agreement is: **\$ 8,267,183.66**  
**Eight Million Two Hundred Sixty Seven Thousand One Hundred Eighty Three Dollars and Sixty-six Cents.**

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work – Includes page 2 (contact page) in count for Exhibit A	5	pages
Exhibit B – Budget Detail and Payment Provisions	2	pages
Exhibit C – General Terms and Conditions	5	pages
Exhibit D – Additional Provisions	18	pages
Exhibit E – Description of Other Services	0	pages

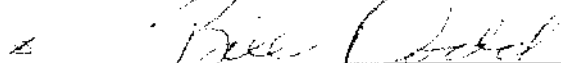
IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

**LOCAL AGENCY**

LOCAL AGENCY'S NAME

County of Napa

BY (Authorized Signature)



DATE SIGNED (Do not type)

6-30-11

PRINTED NAME AND TITLE OF PERSON SIGNING

Bill Dodd

ADDRESS

1195 Third Street, Napa, CA 94559

**STATE OF CALIFORNIA**

AGENCY NAME

California Department of Forestry and Fire Protection

BY (Authorized Signature)



DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Clare Frank, Assistant Deputy Director, Cooperative Fire Protection, Training & Safety

ADDRESS P.O. Box 944246 Sacramento, CA 94244-2460

*California Department of General  
Services Use Only*

Contractor Name: County of Napa

Contract No: ICA01567

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**EXHIBIT A  
COOPERATIVE FIRE PROGRAMS  
FIRE PROTECTION REIMBURSEMENT AGREEMENT**

The project representatives during the term of this agreement will be:

CAL FIRE Unit Chief:		Local Agency:	County of Napa
Name:	Tim Streblow	Name:	Bill Dodd
Phone:	707-967-1400	Phone:	707-253-4386
Fax:	707-967-1473	Fax:	707-253-4176

All required correspondence shall be sent through U.S. Postal Service by certified mail and directed to:

CAL FIRE Unit Chief:	Tim Streblow	Local Agency:	County of Napa
Section/Unit:	Sonoma-Lake-Napa	Section/Unit:	Board of Supervisors
Attention:	Stacie McCambridge	Attention:	Bill Dodd
Address:	1199 Big Tree Road St. Helena, CA 94574	Address:	1195 Third Street Napa, CA 94559
Phone:	707-967-1417	Phone:	707-253-4421
Fax:	707-967-1473	Fax:	707-253-4176

Send an additional copy of all correspondence to:

**CAL FIRE  
Cooperative Fire Services  
P.O. Box 944246  
Sacramento, CA 94244-2460**

**AUTHORIZATION**

As used herein, Director shall mean Director of CAL FIRE. This agreement, its terms and conditions are authorized under the Public Resources Code Sections 4141, 4142, 4143 and 4144, as applicable.

Contractor Name: County of Napa

Contract No: ICA 0196-7

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## **EXHIBIT A** **SCOPE OF WORK**

Under Public Resources Code Section 4114 and other provisions of law, STATE maintains fire prevention and fire suppression forces including the necessary equipment, personnel, and facilities required to prevent and extinguish forest fires.

The purpose of this agreement is to provide mutually advantageous fire and emergency services through an effective consolidated organization, wherein the STATE is primarily financially responsible for protecting natural resources from vegetation fires and the LOCAL AGENCY is primarily financially responsible for protecting life and property from fires and other emergencies. The LOCAL AGENCY shall have sole authority to establish the fire protection organization and structure needed to meet the determined level of service. This level of service may be based on the LOCAL AGENCY governing board's established fiscal parameters and assessment of risks and hazards. LOCAL AGENCY personnel providing services under this agreement may include any one or a combination of the following: regular employees, persons temporarily employed and commonly known as volunteers, paid-call firefighters, or others temporarily employed to perform any emergency work or emergency service including, but not limited to fire prevention, fire suppression and emergency medical response.

To comply with the STATE's mandate for full cost recovery of goods and services provided for others, the LOCAL AGENCY shall be responsible for all STATE costs, both direct and indirect, required to execute the terms of this agreement. These costs shall include, but not be limited to: required training and associated post coverage, employee uniform and Personal Protective Equipment (PPE) costs.

### **1. FIRE PROTECTION SERVICES TO BE PROVIDED BY THE STATE**

STATE provides a modern, full service fire protection and emergency incident management agency that provides comprehensive fire protection and other emergency incident response. STATE designs regional fire protection solutions for urban and rural communities by efficiently utilizing all emergency protection resources. Regional solutions provide the most effective method of protecting the citizens of California at local, county and state levels.

Fire protection services to be provided by STATE under this agreement shall include the following: (check boxes below that apply)

- 1) Emergency fire protection, emergency response and basic life support: services include commercial, residential, and wildland fire protection, prevention and investigation; hazardous materials incident response; emergency vehicle extrication; hazardous conditions response (flooding, downed power lines, earthquake, terrorist incident, etc.); Emergency Medical Technician (EMT) level emergency medical and rescue response; public service assistance. Also included are management support services that include fire department administration, training and safety, personnel, finance and logistical support.
- 2) Advanced Life Support Services: paramedic level emergency medical response providing early advanced airway management, intravenous drug therapy, and life support system stabilization until patients are transported to the nearest emergency care facility.
- 3) Dispatch Services: provide fire department 9-1-1 emergency dispatch by CAL FIRE Fire/Emergency Command Center (ECC). CAL FIRE will be responsible for fire/emergency dispatching emergency resource units covered under this agreement. The CAL FIRE ECC is

Contractor Name: County of Napa

Contract No: ICA 01567

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staffed with a Battalion Chief, three or more Fire Captains and Communications Operators to provide 24/7 year-round coverage. There is always an officer of Captain rank or higher to serve as the shift supervisor and command officer. CAL FIRE uses an integrated Computer Aided Dispatch (CAD) system using the latest technology, to direct the closest available resources to all emergency incidents.

- 4) Fire Code Inspection, Prevention and Enforcement Services: CAL FIRE has staff Fire Inspectors serving under the direction of the LOCAL AGENCY Fire Marshal to provide services to the area covered by this agreement. Fire Code Enforcement will normally be available five days per week, with emergency or scheduled enforcement inspections available seven days per week. Fire Prevention and Investigation services will be provided by CAL FIRE Prevention Officers trained in arson, commercial, and wildland fire investigation. Officers are available by appointment for site visits and consultations. Officers are trained at CAL FIRE's Peace Officer Standard Training (POST) certified law enforcement training academy and they cooperate effectively with all local, state and federal law enforcement agencies.
- 5) Land Use/ Pre-Fire Planning Services – CAL FIRE staff will provide community land use planning, administration of Pre-Fire project work, including community outreach, development of community education programs, project quality control, maintenance of project records and submittal of progress reports, completion of required environmental documentation, acquisition of required permits and completion of other associated administrative duties.
- 6) Disaster planning services (listed in Exhibit E, Description of Other Services, attached hereto and made a part of this agreement)
- 7) Specific service descriptions and staffing coverage, by station (listed in Exhibit E, Description of Other Services, attached hereto and made a part of this agreement)
- 8) Extended Fire Protection Service Availability (Amador)

## 2. ADMINISTRATION

Under the requirements of California Public Resources Code Section 4114 and other provisions of law, STATE maintains fire prevention and firefighting services as outlined in Exhibit D, Schedule B of this agreement.

- A. Director shall select and employ a Region Chief who shall, under the direction of the Director/Chief Deputy Director, manage all aspects of fire prevention and fire protection services and forestry-related programs.
- B. Director will select and employ a State Forest Officer referred to as Unit Chief who shall, under the supervision and direction of Director or a lawful representative, have charge of the organization described in Exhibit D, Schedules A, B and C included hereto and made a part of this agreement.
- C. LOCAL AGENCY may appoint, with the concurrence of the Region Chief, which concurrence shall not be unreasonably withheld, the Unit Chief as the LOCAL AGENCY Fire Chief pursuant to applicable statutory authority.
- D. The Unit Chief may dispatch personnel and equipment listed in Exhibit D, Schedules A, B and C from the assigned station or location under guidelines established by LOCAL AGENCY and approved by STATE. Personnel and/or equipment listed in Exhibit D, Schedule B may be dispatched at the sole discretion of STATE.

Contractor Name: County of Napa

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- E. The Unit Chief shall exercise professional judgment consistent with STATE policy and his or her employment by STATE in authorizing or making any assignments to emergencies and other responses, including assignments made in response to requests for mutual aid.
- F. Except as may be otherwise provided for in this agreement, STATE shall not incur any obligation on the part of LOCAL AGENCY to pay for any labor, materials, supplies or services beyond the total set forth in the respective Exhibit D, Schedules A and C, as to the services to be rendered pursuant to each Schedule.
- G. Nothing herein shall alter or amend or be construed to alter or amend any Collective Bargaining Agreement or Memorandum of Understanding between the State of California and its employees under the State Employer-Employee Relations Act.

### **3. SUPPRESSION COST RECOVERY**

As provided in Health and Safety Code (H&SC) Section 13009, STATE may bring an action for collection of suppression costs of any fire caused by negligence, violation of law, or failure to correct noticed fire safety violations. When using LOCAL AGENCY equipment and personnel under the terms of this agreement, STATE may, at the request of LOCAL AGENCY, bring such an action for collection of costs incurred by LOCAL AGENCY. In such a case LOCAL AGENCY appoints and designates STATE as its agent in said collection proceedings. In the event of recovery, STATE shall deduct fees and litigation costs in a proportional percentage amount based on verifiable and justifiable suppression costs for the fire at issue. These recovery costs are for services provided which are beyond the scope of those covered by the local government administrative fee.

In all such instances, STATE shall give timely notice of the possible application of H&SC Section 13009 to the representative designated by LOCAL AGENCY.

### **4. MUTUAL AID**

When rendering mutual aid or assistance as authorized in H&SC Sections 13050 and 13054, STATE may, at the request of LOCAL AGENCY, demand payment of charges and seek reimbursement of LOCAL AGENCY costs for personnel, equipment and operating expenses as funded herein, under authority given by H&SC Sections 13051 and 13054. STATE, in seeking said reimbursement pursuant to such request of LOCAL AGENCY, shall represent LOCAL AGENCY by following the procedures set forth in H&SC Section 13052. Any recovery of LOCAL AGENCY costs, less expenses, shall be paid or credited to LOCAL AGENCY, as directed by LOCAL AGENCY.

In all such instances, STATE shall give timely notice of the possible application of H&SC Sections 13051 and 13054 to the officer designated by LOCAL AGENCY.

### **5. PROPERTY PURCHASE AND ACCOUNTING**

LOCAL AGENCY shall be responsible for all costs associated with property required by personnel to carry out this agreement. Employee uniform costs will be assessed to the LOCAL AGENCY through the agreement billing process. Personal Protective Equipment (PPE) costs shall be the responsibility of the LOCAL AGENCY. By mutual agreement, PPE meeting the minimum specifications established by the STATE may be purchased directly by the LOCAL AGENCY. Alternately, the STATE will supply all PPE and the LOCAL AGENCY will be billed for costs incurred.



Contractor Name: County of Napa

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All property provided by LOCAL AGENCY and by STATE for the purpose of providing fire protection services shall be marked and accounted for by the Unit Chief in such a manner as to conform to the regulations, if any, established by the parties for the segregation, care, and use of the respective properties.

Contractor Name: County of Napa

Contract No: 1CA 01567

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**EXHIBIT B**  
**BUDGET DETAIL AND PAYMENT PROVISIONS**

**1. PAYMENT FOR SERVICES**

- A. LOCAL AGENCY shall pay STATE actual cost for fire protection services pursuant to this agreement an amount not to exceed that set forth in Exhibit D, Schedule A for each fiscal year. STATE shall prepare an Exhibit D, Schedule A each year, which shall be the basis for payment for the entire fiscal year for which services are provided.
- B. Any other funds designated by LOCAL AGENCY to be expended under the supervision of or for use by a Unit Chief for fire protection services shall be set forth in Exhibit D, Schedule C. This clause shall not limit the right of LOCAL AGENCY to make additional expenditures, whether under Exhibit D, Schedule C or otherwise.
- C. STATE shall invoice LOCAL AGENCY for the cost of fire protection services on a quarterly basis as follows:
- 1) For actual services rendered by STATE during the period of July 1 through September 30, by an invoice filed with LOCAL AGENCY on or after December 10.
  - 2) For actual services rendered by STATE during the period October 1 through December 31, by an invoice filed with LOCAL AGENCY on or after December 31.
  - 3) For actual services rendered by STATE during the period January 1 through March 31, by an invoice filed with LOCAL AGENCY on or after March 31.
  - 4) For the estimated cost of services during the period April 1 through June 30, by an invoice filed in advance with LOCAL AGENCY on or after March 1.
  - 5) A final statement shall be filed with LOCAL AGENCY by October 1 following the close of the fiscal year, reconciling the payments made by LOCAL AGENCY with the cost of the actual services rendered by STATE and including any other costs as provided herein, giving credit for all payments made by LOCAL AGENCY and claiming the balance due to STATE, if any, or refunding to LOCAL AGENCY the amount of any overpayment.
  - 6) All payments by LOCAL AGENCY shall be made within thirty (30) days of receipt of invoice from STATE, or within thirty (30) days after the filing dates specified above, whichever is later.
  - 7) The STATE reserves the right to adjust the frequency of billing and payment to a monthly cycle with a thirty (30) day written notice to the LOCAL AGENCY when:
    - a. The Director predicts a cash flow shortage, or
    - b. When determined by the Region Chief, after consulting with the Unit Chief and the LOCAL AGENCY Contract Administrator, that the LOCAL AGENCY may not have the financial ability to support the contract at the contract level.
- D. Invoices shall include actual or estimated costs as provided herein of salaries and employee benefits for those personnel employed, charges for operating expenses and equipment and the administrative charge in accordance with Exhibit D, Schedule A. When "contractual rates" are indicated, the rate shall be based on an average salary

Contractor Name: County of Napa

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plus all benefits. "Contractual rates" means an all-inclusive rate established in Exhibit D, Schedule A for total costs to STATE, per specified position, for 24-hour fire protection services during the period covered.

- E. STATE shall credit the LOCAL AGENCY, or cover behind at no cost, for the costs of Non-Post (e.g. Fire Marshal, Training Officer, etc.) positions and equipment assigned to STATE responsibility fires or other STATE funded emergency incidents. The STATE shall notify the LOCAL AGENCY when this occurs.

**2. COST OF OPERATING AND MAINTAINING EQUIPMENT AND PROPERTY**

The cost of maintaining, operating, and replacing any and all property and equipment, real or personal, furnished by the parties hereto for fire protection purposes, shall be borne by the party owning or furnishing such property or equipment unless otherwise provided for herein or by separate written agreement.

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**EXHIBIT C**  
**GENERAL TERMS AND CONDITIONS**

1. **APPROVAL**: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. STATE will not commence performance until such approval has been obtained.
2. **AMENDMENT**: This agreement may be amended by mutual consent of LOCAL AGENCY and STATE. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

If during the term of this agreement LOCAL AGENCY shall desire a reduction in STATE civil service employees assigned to the organization provided for in Exhibit D, Schedule A, LOCAL AGENCY shall provide 120 days written notice of the requested reduction. Notification shall include the following: (1) The total amount of reduction; (2) The firm effective date of the reduction; and (3) The number of employees, by classification, affected by a reduction. If such notice is not provided, LOCAL AGENCY shall reimburse STATE for relocation costs incurred by STATE as a result of the reduction. Personnel reductions resulting solely from an increase in STATE employee salaries or STATE expenses occurring after signing this agreement and set forth in Exhibit D, Schedule A to this agreement shall not be subject to relocation expense reimbursement by LOCAL AGENCY.

If during the term of this agreement costs to LOCAL AGENCY set forth in any Exhibit D, Schedule A to this agreement increase and LOCAL AGENCY, in its sole discretion, determines it cannot meet such increase without reducing services provided by STATE, LOCAL AGENCY shall within thirty (30) days of receipt of such Schedule notify STATE and designate which adjustments shall be made to bring costs to the necessary level. If such designation is not received by STATE within the period specified, STATE shall reduce services in its sole discretion to permit continued operation within available funds.

3. **ASSIGNMENT**: This Agreement is not assignable by the LOCAL AGENCY either in whole or in part, without the consent of the STATE in the form of a formal written amendment.
4. **EXTENSION OF AGREEMENT**:
  - A. One year prior to the date of expiration of this agreement, LOCAL AGENCY shall give STATE written notice of whether LOCAL AGENCY intends to extend or enter into a new agreement with STATE for fire protection services and, if so, whether LOCAL AGENCY intends to change the level of fire protection services from that provided by this agreement.
  - B. If LOCAL AGENCY fails to provide the notice, as defined above in (A), STATE shall have the option to extend this agreement for a period of up to one year from the original termination date and to continue providing services at the same or reduced level as STATE determines would be appropriate during the extended period of this agreement. Six months prior to the date of expiration of this agreement, or any extension hereof, STATE shall give written notice to LOCAL AGENCY of any extension of this agreement and any change in the level of fire protection services STATE will provide during the extended period of this agreement. Services provided and obligations incurred by STATE during an extended period shall be accepted by LOCAL AGENCY as services and obligations under the terms of this agreement.
  - C. The cost of services provided by STATE during the extended period shall be based upon the amounts that would have been charged LOCAL AGENCY during the fiscal year in

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which the extended period falls had the agreement been extended pursuant hereto. Payment by LOCAL AGENCY for services rendered by STATE during the extended period shall be as provided in Exhibit B, Section 1, B of this agreement.

5. **AUDIT:** STATE, including the Department of General Services and the Bureau of State Audits, and LOCAL AGENCY agree that their designated representative shall have the right to review and to copy any records and supporting documentation of the other party hereto, pertaining to the performance of this agreement. STATE and LOCAL AGENCY agree to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated, and to allow the auditor(s) of the other party access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. STATE and LOCAL AGENCY agree to a similar right to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
6. **INDEMNIFICATION:** Each party, to the extent permitted by law, agrees to indemnify, defend and save harmless the other party, its officers, agents and employees from (1) any and all claims for economic losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work services, materials or supplies to that party and (2) from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by that party, in the performance of any activities of that party under this agreement, except where such injury or damage arose from the sole negligence or willful misconduct attributable to the other party or from acts not within the scope of duties to be performed pursuant to this agreement; and (3) each party shall be responsible for any and all claims that may arise from the behavior and/or performance of its respective employees during and in the course of their employment to this cooperative agreement.
7. **DISPUTES:** LOCAL AGENCY shall select and appoint a "Contract Administrator" who shall, under the supervision and direction of LOCAL AGENCY, be available for contract resolution or policy intervention with the STATE's Region Chief when, upon determination by the designated STATE representative, the Unit Chief acting as LOCAL AGENCY's Fire Chief under this agreement faces a situation in which a decision to serve the interest of LOCAL AGENCY has the potential to conflict with STATE interest or policy. Any dispute concerning a question of fact arising under the terms of this agreement which is not disposed of within a reasonable period of time by the LOCAL AGENCY and STATE employees normally responsible for the administration of this agreement shall be brought to the attention of the Chief Executive Officer (or designated representative) of each organization for joint resolution. For purposes of this provision, a "reasonable period of time" shall be ten (10) calendar days or less. STATE and LOCAL AGENCY agree to continue with the responsibilities under this Agreement during any dispute.
8. **TERMINATION FOR CAUSE/CANCELLATION:** If LOCAL AGENCY fails to remit payments in accordance with any part of this agreement, STATE may terminate this agreement and all related services upon 60 days written notice to LOCAL AGENCY. Termination of this agreement does not relieve LOCAL AGENCY from providing STATE full compensation in accordance with terms of this agreement for services actually rendered by STATE pursuant to this agreement. This agreement may be cancelled at the option of either STATE or LOCAL AGENCY at any time during its term, with or without cause, on giving one year's written notice to the other party.

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9. **INDEPENDENT CONTRACTOR**: Unless otherwise provided in this agreement LOCAL AGENCY and the agents and employees of LOCAL AGENCY, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the STATE.
10. **TIMELINESS**: Time is of the essence in the performance of this agreement.
11. **COMPENSATION**: The consideration to be paid STATE, as provided herein, shall be in compensation for all of STATE's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.
12. **GOVERNING LAW**: This agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
13. **CHILD SUPPORT COMPLIANCE ACT**: "For any Agreement in excess of \$100,000, the LOCAL AGENCY acknowledges in accordance with Public Contract Code 7110, that:
- A. The LOCAL AGENCY recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
  - B. The LOCAL AGENCY, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."
14. **UNENFORCEABLE PROVISION**: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
15. **COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)**
- The STATE and LOCAL AGENCY have a responsibility to comply with the provisions of the 1996 Federal Health Insurance Portability and Accountability Act (HIPAA) and the 2001 State Health Insurance Portability and Accountability Implementation Act. HIPAA provisions become applicable once the association and relationships of the health care providers are determined by the LOCAL AGENCY. It is the LOCAL AGENCY'S responsibility to determine their status as a "covered entity" and the relationships of personnel as "health care providers", "health care clearinghouse", "hybrid entities", "business associates", or "trading partners". STATE personnel assigned to fill the LOCAL AGENCY'S positions within this Agreement, and their supervisors, may fall under the requirements of HIPAA based on the LOCAL AGENCY'S status. It is the LOCAL AGENCY'S responsibility to identify, notify, train, and provide all necessary policy and procedures to the STATE personnel that fall under HIPAA requirements so that they can comply with the required security and privacy standards of the act.
16. **LIABILITY INSURANCE**
- The STATE and LOCAL AGENCY shall each provide proof of insurance in a form acceptable to the other party at no cost one to the other, to cover all services provided and use of local government facilities covered by this agreement. If LOCAL AGENCY is insured and/or self-insured in whole or in part for any losses, LOCAL AGENCY shall provide a completed Certification of Self Insurance (Exhibit D, Schedule E) or certificate of insurance, executed by a duly authorized officer of LOCAL AGENCY. Upon request of LOCAL AGENCY the STATE

Contractor Name: County of Napa

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shall provide a letter from DGS, Office Risk and Insurance Management executed by a duly authorized officer of STATE. If commercially insured in whole or in part, a certificate of such coverage executed by the insurer or its authorized representative shall be provided.

Said commercial insurance or self-insurance coverage of the LOCAL AGENCY shall include the following:

- A. Fire protection and emergency services - Any commercial insurance shall provide at least general liability for \$5,000,000 combined single limit per occurrence.
  - B. Dispatch services -- Any commercial insurance shall provide at least general liability for \$1,000,000 combined single limit per occurrence.
  - C. The CAL FIRE, State of California, its officers, agents, employees, and servants are included as additional insured's for purposes of this contract.
  - D. The STATE shall receive thirty (30) days prior written notice of any cancellation or change to the policy at the addresses listed on page 2 of this agreement.
17. **WORKERS COMPENSATION**: (only applies where local government employees/volunteers are supervised by CAL FIRE, as listed in Exhibit D Schedule C. STATE contract employees' workers compensation is included as part of the contract personnel benefit rate).
- A. Workers' Compensation and related benefits for those persons, whose use or employment is contemplated herein, shall be provided in the manner prescribed by California Labor Codes, State Interagency Agreements and other related laws, rules, insurance policies, collective bargaining agreements, and memorandums of understanding.
  - B. The STATE Unit Chief administering the organization provided for in this agreement shall not use, dispatch or direct any non STATE employees, on any work which is deemed to be the responsibility of LOCAL AGENCY, unless and until LOCAL AGENCY provides for Workers' Compensation benefits at no cost to STATE. In the event STATE is held liable, in whole or in part, for the payment of any Worker's Compensation claim or award arising from the injury or death of any such worker, LOCAL AGENCY agrees to compensate STATE for the full amount of such liability.
  - C. The STATE /LOCAL AGENCY shall receive proof of Worker's Compensation coverage and shall be notified of any cancellation and change of coverage at the addresses listed in Section 1.
18. **CONFLICT OF INTEREST**: LOCAL AGENCY needs to be aware of the following provisions regarding current or former state employees. If LOCAL AGENCY has any questions on the status of any person rendering services or involved with the Agreement, the STATE must be contacted immediately for clarification.

Current State Employees (Public Contract Code §10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

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Former State Employees (Public Contract Code §10411):

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If LOCAL AGENCY violates any provisions of above paragraphs, such action by LOCAL AGENCY shall render this Agreement void. (Public Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Public Contract Code §10430 (e))

19. **LABOR CODE/WORKERS' COMPENSATION**: LOCAL AGENCY needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and LOCAL AGENCY affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)
20. **AMERICANS WITH DISABILITIES ACT**: LOCAL AGENCY assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
21. **LOCAL AGENCY NAME CHANGE**: An amendment is required to change the LOCAL AGENCY'S name as listed on this Agreement. Upon receipt of legal documentation of the name change the STATE will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
22. **RESOLUTION**: A county, city, district, or other local public body must provide the STATE with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.
23. **AIR OR WATER POLLUTION VIOLATION**: Under the State laws, the LOCAL AGENCY shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
24. **ENTIRE AGREEMENT**: This agreement contains the whole agreement between the Parties. It cancels and supersedes any previous agreement for the same or similar services.



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**EXHIBIT D**  
**ADDITIONAL PROVISIONS**

**EXCISE TAX:** State of California is exempt from federal excise taxes, and no payment will be made for any taxes levied on employees' wages. STATE will pay any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this agreement. The STATE may pay any applicable sales and use tax imposed by another state.

**Schedules**

The following Schedules are included as part of this agreement (check boxes if they apply):

- A. Fiscal Display, PRC 4142 AND/OR PRC 4144** - STATE provided LOCAL AGENCY funded fire protection services. STATE-owned vehicles shall be operated and maintained in accordance with policies of STATE at rates listed in Exhibit D, Schedule A.
- B. STATE Funded Resource** - A listing of personnel, crews and major facilities of the STATE overlapping or adjacent to the local agency area that may form a reciprocal part of this agreement.
- C. LOCAL AGENCY Provided Local Funded Resources** - A listing of services, personnel, equipment and expenses, which are paid directly by the local agency, but which are under the supervision of the Unit Chief.
- D. LOCAL AGENCY Owned STATE Maintained Vehicles** - Vehicle information pertaining to maintenance responsibilities and procedures for local agency-owned vehicles that may be a part of the agreement.

LOCAL AGENCY-owned firefighting vehicles shall meet and be maintained to meet minimum safety standards set forth in Title 49, Code of Federal Regulations; and Titles 8 and 13, California Code of Regulations.

LOCAL AGENCY-owned vehicles that are furnished to the STATE shall be maintained and operated in accordance to LOCAL AGENCY policies. In the event LOCAL AGENCY does not have such policies, LOCAL AGENCY-owned vehicles shall be maintained and operated in accordance with STATE policies. The cost of said vehicle maintenance and operation shall be at actual cost or at rates listed in Exhibit D, Schedule D.

Exhibit D, Schedule D is incorporated into this section if LOCAL AGENCY-owned vehicles listed in Exhibit D, Schedule D are to be operated, maintained, and repaired by STATE.

LOCAL AGENCY assumes full responsibility for all liabilities associated therewith in accordance with California Vehicle Code Sections 17000, 17001 et seq. STATE employees operating LOCAL AGENCY-owned vehicles shall be deemed employees of LOCAL AGENCY, as defined in Vehicle Code Section 17000. Except where LOCAL AGENCY would have no duty to indemnify STATE under Exhibit C, Section 6 for all LOCAL AGENCY-owned vehicles operated or used by employees of STATE under this agreement.

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LOCAL AGENCY employees who are under the supervision of the Unit Chief and operating STATE-owned motor vehicles, as a part of the duties and in connection with fire protection and other emergency services, shall be deemed employees of STATE, as defined in Vehicle Code Section 17000 for acts or omissions in the use of such vehicles. Except where STATE would have no duty to indemnify LOCAL AGENCY under Exhibit C, Section 6.

- E. Certification of Self Insurance** - (Provider Insurance Certification addressed under additional documentation below) and/or proof of Self-insurance for:

Workers' Compensation Benefits (State and Local Government Employees)

Tort Liability

Vehicle Liability

Contractor: **County of Napa**

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**EXHIBIT D, SCHEDULE A**

**LOCAL FUNDED – STATE RESOURCES**

**FISCAL DISPLAY**

**PRC 4142 and 4144**

**NAME OF LOCAL AGENCY:** County of Napa

**CONTRACT NUMBER:** 1CA01567

Index: 1400

PCA: 17300

Fiscal Year: 2011/2012

This is Schedule A of Cooperative Agreement originally dated July 1, 2011, by and between CAL FIRE of the State of California and LOCAL AGENCY.

(See Attached)

**EXHIBIT D, SCHEDULE A  
FISCAL DISPLAY  
PRC 4142**

NAME OF LOCAL AGENCY: COUNTY OF NAPA

INDEX 1400

PCA 17300

FISCAL YEAR 11/12

This is Schedule A of the Cooperative Agreement, originally dated July 1, 2011,  
by and between the California Department of Forestry and Fire Protection  
of the State of California and the County of Napa.

**PERSONNEL SALARIES**

	NO	CLASS	PERIOD	MON	RATE	TOTAL SALARY	BENEFITS 61.34%	SUB TOTAL
Non Sup B1407	1	BC	7/1-12/31	6	5,643	33,858.00	20,768.50	54,626.50
Battalion 16	1	FC	7/1-12/31	6	4,432	26,592.00	16,311.53	42,903.53
Battalion 14	1	FC	7/1-12/31	6	4,432	26,592.00	16,311.53	42,903.53
GWR	2	FC	7/1-12/31	12	4,582	54,984.00	33,727.19	88,711.19
Training	2	FC	7/1-12/31	12	4,423	53,076.00	32,556.82	85,632.82
ECC	1	FC	7/1-12/31	6	4,432	26,592.00	16,311.53	42,903.53
	19	FAE	7/1-12/31	114	3,849	438,786.00	269,151.33	707,937.33
Non Sup B1407	1	BC	1/01-6/30	6	5,756	34,536.00	21,184.38	55,720.38
Battalion 16	1	FC	1/01-6/30	6	4,521	27,126.00	16,639.09	43,765.09
Battalion 14	1	FC	1/01-6/30	6	4,521	27,126.00	16,639.09	43,765.09
GWR	2	FC	1/01-6/30	12	4,521	54,252.00	33,278.18	87,530.18
Training	2	FC	1/01-6/30	12	4,521	54,252.00	33,278.18	87,530.18
ECC	1	FC	1/01-6/30	6	4,521	27,126.00	16,639.09	43,765.09
	19	FAE	1/01-6/30	114	3,926	447,564.00	274,535.76	722,099.76
	12	FF I	11/1-5/31	84	3,061	257,124.00	157,719.86	414,843.86
						1,589,586.00	975,052.05	2,564,638.05

**SAFETY SALARIES** 2,564,638.05

	NO	CLASS	PERIOD	MON	RATE	TOTAL SALARY	BENEFITS 60.14%	SUB TOTAL
	2.5	OA	7/1-6/30	30	2,826	84,780.00	50,986.69	135,766.69
	1	OT	7/1-6/30	12	3,264	39,168.00	23,555.64	62,723.64
	1	SSA	7/1-6/30	12	3,841	46,092.00	27,719.73	73,811.73
	1	AO 1	7/1-6/30	12	4,622	55,464.00	33,356.05	88,820.05
	1	WW	7/1-6/30	12	3,505	42,060.00	25,294.88	67,354.88
						267,564.00	160,912.99	428,476.99

**NON-SAFETY SALARIES** 428,476.99

	NO	CLASS	PERIOD	MON	RATE	TOTAL SALARY	BENEFITS 50.53%	SUB TOTAL
	3.25	Comm Op	7/1-6/30	39	4,033	157,287.00	79,477.12	236,764.12
	3	HEM	7/1-6/30	36	4,209	151,524.00	76,565.08	228,089.08
						308,811.00	156,042.20	464,853.20

**NON-SAFETY SALARIES** 464,853.20

**EXTENDED DUTY WEEK COMPENSATION**

	NO	CLASS	PERIOD	MON	RATE	TOTAL POT	RETIRE 33.95%	SUB TOTAL
72 hr	1	BC	7/1-6/30	13	2,280	29,640.00	10,062.78	39,702.78
	7	FC	7/1-6/30	91	2,310	210,210.00	71,366.30	281,576.30
	19	FAE	7/1-6/30	247	2,010	496,470.00	168,551.57	665,021.57
	12	FF I	11/1-5/31	84	1,119	93,996.00	31,911.64	125,907.64
						830,316.00	281,892.28	1,112,208.28

**EXTENDED DUTY WEEK COM** 1,112,208.28

**UNPLANNED OVERTIME**

	NO	CLASS	PERIOD	MON	RATE	ANMOUNT	BENEFITS 1.45%	SUB TOTAL
						350,000.00	5,075.00	355,075.00

**UNPLANNED OT** 355,075.00

UNEMPLOYMENT NO	CLASS	PERIOD	MON	RATE	TOTAL POT	UNEMPL 17.51%	SUB TOTAL
12	FF I	11/1-5/31	84	3,061	257,124.00	45,022.41	
<b>UNEMPLOYMENT</b>							<b>45,022.41</b>

EDUCATIONAL BENEFIT NO	CLASS	PERIOD	MON	RATE	TOTAL ED. BENE	BENEFITS 61.34%	SUB TOTAL
27	PERM SAFETY	7/1 - 6/30	324	75	24,300.00	14,905.62	39,205.62
<b>EDUCATIONAL BENEFIT</b>							<b>39,205.62</b>

NIGHT SHIFT DIFFERENTIAL NO	CLASS	PERIOD	MON	RATE	TOTAL	50.53%	TOTAL
3.25	Comm Op	7/1 - 6/30	39	86	3,354.00	1,694.78	5,048.78
<b>NIGHT SHIFT DIFFERENTIAL</b>							<b>5,048.78</b>

COMMERICAL DRIVERS LICENSE NO	CLASS	PERIOD	MON	RATE	TOTAL	0.00%	TOTAL
3.00	HEM	7/1 - 6/30	36	205	7,380.00	-	7,380.00
<b>LICENSE DIFFERENTIAL</b>							<b>7,380.00</b>

FIRE MISSION DIFFERENTIAL NO	CLASS	PERIOD	MON	RATE	TOTAL	50.53%	TOTAL
3.00	HEM	6/1 - 11/31	36	398	14,328.00	7,239.94	21,567.94
<b>FIRE MISSION DIFFERENTIAL</b>							<b>21,567.94</b>

LONGEVITY PAY	AMOUNT
	36,000.00
<b>LONGEVITY PAY</b>	
	<b>36,000.00</b>

HAZARDOUS MATERIAL RESPONSE PAY	AMOUNT
11 Members	20,000.00
<b>HAZMAT PAY</b>	
	<b>20,000.00</b>

<b>TOTAL PERSONNEL SERVICES</b>	
	<b>5,099,476.27</b>

OPERATING EXPENSE

UTILITIES	TYPE	MONTHS	RATE	AMOUNT
Napa Station	1/2 ALL STATION UTILITIES	12	1200	14,400.00
<b>UTILITIES</b>				<b>14,400.00</b>

UNIFORMS	NO	MONTHS	RATE	AMOUNT	BENEFITS 33.95%	TOTAL
	27 PERM SAFETY	324	69.17	22,411.08	7,608.56	30,019.64
	10 SEASONAL	70	70.00	4,900.00	1,663.55	6,563.55
	3 HEM	36	37.50	1,350.00	-	1,350.00
	3.25 COMM OP	39	37.50	1,462.50	-	1,462.50
					9,272.11	39,395.69
<b>UNIFORMS</b>						<b>39,395.69</b>

PERSONAL CARE			MONTHS	RATE	AMOUNT	RETIREMENT		
NO								
3	HEM COVERALLS		36	9.00	324.00	-	324.00	
							<b>PERSONAL CARE</b>	<b>324.00</b>
TRAVEL AND TRAINING								
	COUNTY BUSINESS						5,000.00	
							<b>TRAVEL AND TRAINING</b>	<b>5,000.00</b>
VEHICLES								
NO	OWNER	TYPE		RATE			AMOUNT	
5	County	Command Vehicle		0.51	5,000 miles each		12,750.00	
3	County	3-B-2 Engine		607.00	per month		21,852.00	
							<b>VEHICLES</b>	<b>34,602.00</b>
MANDATORY DRUG TESTING								
	3 Heavy Equipment Mechanic			RATE			AMOUNT	
				368.00			1,104.00	
							<b>MISCELLANEOUS</b>	<b>1,104.00</b>
							<b>TOTAL OPERATING EXPENSES</b>	<b>94,825.69</b>
ADMINISTRATIVE CHARGE								
							11.96% of GROSS EXPENDITURES	
								5,194,301.96
							<b>ADMIN CHARGE</b>	<b>621,238.51</b>
							<b>GRAND TOTAL - SCHEDULE A</b>	<b>5,815,540.48</b>

Last Year = \$5,684,904.15

This Year = \$5,815,540.48

## CHANGES:

Benefit increase

61.32% to 61.3%

30.68% to 33.95%

1.45% added to Unplanned OT

Benefit Decrease

60.33% to 60.14%

51.68% to 50.53%

Admin Fee

11.06% to 11.96%

2/28/2011

EXHIBIT D, SCHEDULE A  
 FISCAL DISPLAY  
 PRC 4142

NAME OF LOCAL AGENCY: COUNTY OF NAPA (AMADOR)  
 INDEX 1400 PCA 17310 FISCAL YEAR 11/12

This is Schedule A of the Cooperative Agreement, originally dated July 1, 2011  
 by and between the California Department of Forestry and Fire Protection  
 of the State of California and the County of Napa.

EMERGENCY RESPONSE BONUS PAY					TOTAL	RETIRE	SUB
NO	CLASS	PERIOD	MON	RATE	POT	33.95%	TOTAL
2	FEM	11/1 - 5/31	14	290	4,060.00	1,378.37	5,438.37
						ERB	5,438.37

UNPLANNED OVERTIME		BENEFITS	SUB
AMOUNT	1.45%	TOTAL	
50,000.00	725.00	50,725.00	
		UNPLANNED OT	50,725.00

**TOTAL PERSONNEL SERVICES 56,163.37**

OPERATING EXPENSE

					TOTAL	SUB
NO	CLASS	PERIOD	MON	RATE	POT	TOTAL
	4	BC	11/1 - 5/31	28	949	26,572.00
Training	2	FC	11/1 - 5/31	14	787	11,018.00
					37,590.00	deletad Napa Training Capl

**AMADOR SUPPORT 37,590.00**

COMMUNICATIONS

Flat Rate	TYPE	UNITS	MONTHS	RATE/MO.	AMOUNT/YR	
	Mobile	9	7	13.70	\$863.10	
	Handie Talkies	9	7	7.42	\$467.46	
	Siren	7	7	8.29	\$406.21	
	Fixed Station	2	7	66.31	\$928.34	
					COMMUNICATIONS	\$2,665.11

UTILITIES

FACILITY	MONTHS	RATE/MO	AMOUNT	
NAPA STATION (1/2 Utilities)	7	\$1,200.00	\$8,400.00	
SPANISH FLAT	7	\$975.00	\$6,825.00	
EMERGENCY COMMAND CENTER	7	\$90.00	\$630.00	
			UTILITIES	\$15,855.00

VEHICLES

NO	OWNER	TYPE	RATE	MOS	AMOUNT	
6	STATE	COMMAND VEHICLE	2,000 MILES EACH		6,120.00	
2	STATE	ENGINE	1,431.00 PER MO	14	20,034.00	
					VEHICLES	\$26,154.00

**TOTAL OPERATING EXPENSES 82,264.11**

ADMINISTRATIVE CHARGE

11.96% of GROSS EXPENDITURES \$ 138,427.48

**ADMIN CHARGE \$ 16,555.93**

**GRAND TOTAL - AMADOR SCHEDULE A \$ 154,983.41**

Last Year - \$158,769.95  
 This Year - \$154,983.41

Changes

Benefit Increase

61.32% to 61.34%  
 30.68% to 33.95%  
 1.45% added to Unplanned OT

Benefit Decrease

60.33% to 60.74%  
 51.08% to 50.50%

Admin Fee

11.06% to 11.96%

2/26/2011

**EXHIBIT D, SCHEDULE A  
FISCAL DISPLAY  
PRC 4142**

Contractor: County of Napa  
Contract No.: 1CA01567  
Page No: 23

NAME OF LOCAL AGENCY: COUNTY OF NAPA (CFM)  
INDEX 1400                      PCA 17320                      FISCAL YEAR 11/12

This is Schedule A of the Cooperative Agreement, originally dated July 1, 2011  
by and between the California Department of Forestry and Fire Protection  
of the State of California and the County of Napa.

**PERSONNEL SALARIES****SAFETY**

NO	CLASS	PERIOD	MON	RATE	TOTAL SALARY	BENEFITS 61.34%	SUB TOTAL
1	BC	7/1 -12/31	6	5,643	33,858.00	20,768.50	54,626.50
1	FC	7/1 -12/31	6	4,432	26,592.00	16,311.53	42,903.53
1	BC	1/01 - 6/30	6	5,756	34,536.00	21,184.38	55,720.38
1	FC	1/01 - 6/30	6	4,521	27,126.00	16,639.09	43,765.09
					122,112.00	74,903.50	197,015.50

**SAFETY SALARIES                      197,015.50**

**NON-SAFETY**

NO	CLASS	PERIOD	MON	RATE	TOTAL SALARY	BENEFITS 60.14%	SUB TOTAL
1	OT	7/1-6/30	12	3,264	39,168.00	23,555.64	62,723.64
2	FPS II	7/1-12/31	12	4,131	49,572.00	29,812.60	79,384.60
2	FPS II	7/1-6/30	12	4,234	50,808.00	30,555.93	81,363.93
					139,548.00	83,924.17	223,472.17

**NON-SAFETY SALARIES                      223,472.17**

**EXTENDED DUTY WEEK COMPENSATION**

NO	CLASS	PERIOD	MON	RATE	TOTAL POT	RETIRE 33.95%	SUB TOTAL
1	BC	7/1-6/30	13	2,280	29,640.00	10,062.78	39,702.78
1	FC	7/1-6/30	13	2,310	30,030.00	10,195.19	40,225.19
					59,670.00	20,257.97	79,927.97

**EDWC                      79,927.97**

**UNPLANNED OVERTIME**

RATE	ANMOUNT	BENEFITS 1.45%	SUB TOTAL
	16,000.00	232.00	16,232.00

**UNPLANNED OT                      16,232.00**

**EDUCATIONAL BENEFIT**

NO	CLASS	PERIOD	MON	RATE	TOTAL ED. BENE	BENEFITS 61.34%	TOTAL
2	Safety	7/1 - 6/30	24	75	1,800.00	1,104.12	2,904.12

**EDUCATIONAL BENEFIT                      2,904.12**

**LONGEVITY PAY**

NO	CLASS	PERIOD	MON	RATE	TOTAL FF BENE	BENEFITS	SUB TOTAL
							5,800.00

**LONGEVITY PAY                      5,800.00**

**TOTAL PERSONNEL SERVICES                      525,351.75**

**OPERATING EXPENSE****UNIFORMS**

NO	CLASS	PERIOD	MON	RATE	AMOUNT	RETIRE 33.95%	TOTAL
4/20/2011	2009 17320 CFM		12	69.17	830.04	281.80	1,111.84



1	FC	12	69.17	830.04	281.80	1,111.84
2	FPS II	24	69.17	1,660.08	563.60	2,223.68
				3,320.16	1,127.19	4,447.35

**UNIFORMS 4,447.35**

**TRAVEL AND TRAINING**

COUNTY BUSINESS 4,000.00

**TRAVEL AND TRAINING 4,000.00**

**VEHICLES**

NO	OWNER	TYPE	RATE		AMOUNT
5	County	Command Vehicle	0.51	15996	79,980 40,789.80

**VEHICLES 40,789.80**

**TOTAL OPERATING EXPENSES 49,237.15**

**ADMINISTRATIVE CHARGE**

11.96% of GROSS EXPENDITURES 574,588.91

**ADMIN CHARGE 68,720.83**

**GRAND TOTAL - SCHEDULE A 643,309.74**

Last Year - \$707,631.77  
 This Year - \$643,309.74  
 Reduction of one FPS II  
 Changes

**Benefit increase**  
 61.32% to 61.34%  
 30.68% to 33.95%  
 1.45% added to Unplanned OT

**Benefit Decrease**  
 60.33% to 60.14%  
 51.68% to 50.53%

**Admin Fee**  
 11.06% to 11.96%

2/28/2011

EXHIBIT D, SCHEDULE A  
FISCAL DISPLAY  
PRC 4142NAME OF LOCAL AGENCY: COUNTY OF NAPA (YV)  
INDEX 1400 PCA 17330 FISCAL YEAR 11/12This is Schedule A of the Cooperative Agreement, originally dated July 1, 2011,  
by and between the California Department of Forestry and Fire Protection  
of the State of California and the County of Napa.

## PERSONNEL SALARIES

	NO	CLASS	PERIOD	MON	RATE	TOTAL SALARY	BENEFITS 61.34%	SUB TOTAL
Yountville Station	1	FC	7/1-6/30	6	4,432	26,592.00	16,311.53	42,903.53
	11	FAE	7/1-6/30	66	3,849	254,034.00	155,824.46	409,858.46
	1	FC	7/1-6/30	6	4,521	27,126.00	16,639.09	43,765.09
	11	FAE	7/1-6/30	66	3,926	259,116.00	158,941.75	418,057.75
						566,868.00	347,716.83	914,584.83
<b>SAFETY SALARIES</b>								<b>914,584.83</b>

## EXTENDED DUTY WEEK COMENSATION

NO	CLASS	PERIOD	MON	RATE	TOTAL POT	RETIRE 33.95%	SUB TOTAL
1	FC	7/1-6/30	13	2,310	30,030.00	10,195.19	40,225.19
11	FAE	7/1-6/30	143	2,010	287,430.00	97,582.49	385,012.49
					317,460.00	107,777.67	425,237.67
<b>EDWC</b>							<b>425,237.67</b>

## UNPLANNED OVERTIME

ANMOUNT	BENEFITS 1.45%	SUB TOTAL
75,000.00	1,087.50	76,087.50
<b>UNPLANNED OT</b>		<b>76,087.50</b>

## EDUCATIONAL BENEFIT

NO	CLASS	PERIOD	MON	RATE	TOTAL ED. BENE	BENEFITS 61.34%	SUB TOTAL
12	PERM SAFETY	7/1 - 6/30	144	75	10,800.00	6,624.72	17,424.72
<b>EDUCATIONAL BENEFIT</b>							<b>17,424.72</b>

## LONGEVITY PAY

AMOUNT  
5,000.00**LONGEVITY PAY 5,000.00**

## HAZARDOUS MATERIAL RESPONSE PAY

AMOUNT  
5,500.00**HAZMAT PAY 5,500.00****TOTAL PERSONNEL SERVICES 1,443,834.72**

## OPERATING EXPENSE

## UNIFORMS

NO	CLASS	MONTHS	RATE	AMOUNT	BENEFITS 33.95%	SUB TOTAL
12	PERM SAFETY	144	69.17	9,960.48	3,381.58	13,342.06

Contractor: County of Napa  
Contract No.: TCA01567

UNIFORMS 18,342.06

## TRAVEL AND TRAINING

COUNTY BUSINESS

3,500.00

TRAVEL AND TRAINING 3,500.00

## VEHICLES

NO	OWNER	TYPE	RATE		AMOUNT
1	County	4-B-2 Engine	731.00	per month	8,772.00
1	County	3-B-2 Engine	607.00	per month	7,284.00

VEHICLES 16,056.00

TOTAL OPERATING EXPENSES 32,898.06

## ADMINISTRATIVE CHARGE

11.96% of GROSS EXPENDITURES

1,476,732.78

ADMIN CHARGE 176,617.24

**GRAND TOTAL - SCHEDULE A 1,653,350.03**

Last Year = \$1,570,998.69

This Year = \$1,653,350.03

Changes;Benefit increase

61.32% to 61.34%

30.68% to 33.95%

1.45% added to Unplanned OT

Benefit Decrease

60.33% to 60.14%

51.68% to 50.53%

Admin Fee

11.06% to 11.96%

2/28/2011

Contractor: **County of Napa**

Contract No.: **1CA01567**

Page No.: 25

**EXHIBIT D, SCHEDULE B**  
**STATE FUNDED RESOURCES**

**NAME OF LOCAL AGENCY: County of Napa**

This is Schedule B of Cooperative Agreement originally dated July 1, 2011, by and between CAL FIRE of the State of California and LOCAL AGENCY.

**FISCAL YEAR: 2011/2012**

(See Attached)

Contractor: County of Napa

Contract No.:1CA01567

Page No: 26

**EXHIBIT D, SCHEDULE B****STATE FUNDED RESOURCES****NAME OF LOCAL AGENCY** COUNTY OF NAPA

Fiscal Year 11/12

**ADMINISTRATION**

1	Unit Chief	1	Forestry Logistics Officer
1	Deputy Chief	4	Fire Captains, ECC Officers
1	Division Chief, Administration	3	Fire Captains, Prevention
4	Division Chiefs, Operations	1	Fire Captain, Pre-Fire Management
1	Division Chief, Pre-Fire Suppression	2	Fire Prevention Specialists
2	Division Chiefs, Resource Management	.5	Office Assistant
10	Battalion Chiefs, Field Operations	3	Office Technicians
1	Battalion Chief, Delta Camp	1.5	Dispatch Clerks
1	Battalion Chief, Air Attack	2	Accounting Technicians
1	Battalion Chief, Prevention	2	Senior Personnel Services Specialists
1	Battalion Chief, Training	3	Heavy Equipment Mechanics
1	Battalion Chief, Emergency Command Ctr	1	Forester I's
2	Forestry Equipment Managers	0	Forestry Assistant

**FIELD OPERATIONS (Fire Season)**

	Sonoma Air Attack Base	2	Air Tankers, 1 Air Attack
	Boggs Mountain Helitack Base	1	Helicopter
	Healdsburg FFS	2	Engines, 1 Dozer
	St. Helena FFS	2	Engines, 1 Dozer
	Spanish Flat FFS	2	Engines, 1 Dozer
	Middletown FFS	2	Engines, 1 Dozer
	Clearlake Oaks FFS	2	Engines, 1 Dozer
	Glen Ellen FFS	2	Engines, 1 Dozer
	Napa FFS	2	Engines
	Cloverdale FFS	2	Engines
	Hilton FFS	2	Engines
	Occidental FFS	2	Engines
	Kelsey Cobb FFS	2	Engines
	Cazadero FFS	1	Engine
	Petaluma FFS	1	Engine
	Sea Ranch FFS	1	Engine
	Brooks FFS	1	Engine
	Las Posadas FFS	1	Engine
	Gordon Valley FFS	1	Engine
	Wilbur Springs FFS	1	Engine
	Leesville FFS	1	Engine
	Santa Rosa FFS	1	Engine
	Konocti Camp	5	Fire Crew
	Delta Camp	6	Fire Crew

Contractor: **County of Napa**

Contract No.: **1CA01567**

Page No.: 27

**EXHIBIT D, SCHEDULE C**

**LOCAL FUNDED LOCAL RESOURCES**  
**ASSIGNED TO THE CAL FIRE UNIT**

**NAME OF LOCAL AGENCY:** County of Napa

This is Schedule C of Cooperative Agreement originally dated July 1, 2011, by and between CAL FIRE of the State of California and LOCAL AGENCY.

**FISCAL YEAR:** 2011/2012

(See Attached)

Contractor: County of Napa

Contract No: ICA01567

Page: 25

EXHIBIT D, SCHEDULE CLOCAL FUNDED RESOURCESNAME OF LOCAL AGENCY County of Napa

Fiscal Year \_11/12\_

51301200	WORKER'S COMP	160,869
52060000	CLOTHING	146,000
52070000	COMMUNICATIONS	32,350
52080000	FOOD	5,000
52090000	HOUSEHOLD	17,000
52100000	INSURANCE	60,000
52100300	LIABILITY INSURANCE	35,239
52100400	DISABILITY INSURANCE	5,921
52120000	EQUIPMENT MAINTENANCE	227,000
52130000	BUILDING MAINTENANCE	24,000
52140000	MEDICAL SUPPLIES	28,500
52150000	MEMBERSHIPS	16,500
52170000	OFFICE EXPENSE	51,450
52180100	PHYSICALS	37,500
52180200	MGT INFO SERVICES	66,397
52183500	PROPERTY TAX ADMIN FEE - 0108	38,322
52183510	PROPERTY TAX ADMIN FEE - 0117	34,863
52185000	PROFESSIONAL SERVICES	252,000
52200000	LEASE OF EQUIPMENT	11,600
52210000	LEASE OF REPEATER SITE	5,700
52220000	SMALL TOOLS	8,000
52232100	SPECIAL FIRE SUPPLIES	455,000
52232500	CONTRACT - CALISTOGA	89,000
52232600	CONTRACT - ST. HELENA	69,000
52232800	CONTRACT - SCHELL VISTA	5,400
52235000	SPECIAL DEPT EXPENSE	81,500
52235080	CAD TO CAD PROJECT AT ECC	150,000
52235110	EMERGENCY REIMBURSEMENT	100,000
52236500	TRAINING/EDUCATION	53,000
52243000	VOLUNTEER STIPEND	400,000
52245600	A 87 CHARGES	254,151
52250000	TRANS/TRAVEL	13,500
52250400	MILEAGE	60,000
52260000	UTILITIES	92,089
54000200	APPROPRIATION FOR CONTINGENCIES	0.00
56600010	FIXED ASSETS	107,324
	TOTAL SCHEDULE C	3,194,175.34

**EXHIBIT D, SCHEDULE D** (page one)**LOCAL AGENCY OWNED  
STATE MAINTAINED VEHICLES****NAME OF LOCAL AGENCY:** County of Napa

This is Schedule D of Cooperative Agreement originally dated July 1, 2011, by and between CAL FIRE of the State of California and LOCAL AGENCY

**FISCAL YEAR:** 2011/2012

The current "Salary, Pay Differentials, and Operating Expense Schedule" Memorandum under Operating Expenses, Vehicle Maintenance includes the following description of maintenance responsibilities and procedures for LOCAL AGENCY-owned vehicles which are listed in the Exhibit D, Schedule A. Categories are "Flat Rate", "Mileage Rate", and "Actual Cost".

- (1) For all vehicles for which a monthly "Flat Rate" is shown, (this category excludes, all surveyed CAL FIRE vehicles, vehicles obtained through federal surplus, fire apparatus built on commercial chassis over 15 years old and fire apparatus built on custom chassis over 20 years old - age is based on chassis production year.)

State shall:

- a. Provide fuel, oil, lubrication, batteries, tires and tubes,
- b. Repair, exchange or replace when necessary accessory motors, hoses, pumps, spotlights, sirens, fire extinguishers and all other accessories affixed to or supplied when said vehicles were accepted by the STATE for operation under Schedule A, excepting equipment or accessories not common to the use of the STATE and radio, installations originally provided by the LOCAL AGENCY. All such equipment provided and installed by the STATE shall become the property of the LOCAL AGENCY and the replaced equipment removed shall become the property of the STATE.
- c. Make such reasonable repairs to said vehicles (not including painting.) as may be necessary to keep the vehicles in operating condition; provided, however, that the STATE may cease to make further repairs on any vehicles when the STATE determines that the repair costs during the period of this agreement shall exceed \$10,000 for any one occurrence, or will exceed the market value of the vehicle. In the event the STATE determines that a vehicle is not fit for further use because of obsolescence, deterioration or damage, the STATE shall not be required to repair the vehicle or maintain it in use. Upon such determination, the STATE shall immediately so advise the LOCAL AGENCY, and the LOCAL AGENCY shall have the option of replacing said vehicle or STATE shall discontinue the particular service.



**EXHIBIT D, SCHEDULE D** (page two)**LOCAL AGENCY OWNED  
STATE MAINTAINED VEHICLES**

(2) For all passenger and service vehicles for which a "Mileage Rate" is shown, STATE shall:

- a. Provide fuel, oil, lubrication, batteries and tires and tubes.
- b. Make such reasonable repairs to said vehicles as may be necessary to keep the vehicles in operating condition provided, however, that the STATE may cease to make further repairs on any vehicles when the potential repair costs are not reasonable considering the vehicle age, market value and other pertinent factors.

Upon such determination, the STATE shall immediately so notify the LOCAL AGENCY and the LOCAL AGENCY shall have the option of replacing said vehicle or STATE shall discontinue the particular service.

(3) For all vehicles listed under the heading "Flat Rate" or "Mileage Rate", LOCAL AGENCY shall assume accident repairs in excess of \$2,000 per occurrence.

(4) For all vehicles listed under the heading "Actual Cost", the STATE shall operate, maintain, and repair said vehicles at the STATE'S actual cost.

(5) LOCAL AGENCY-owned vehicles to be maintained pursuant to this section are listed below by category and are described by year model, "Rate Letter" type, and license number.

<u>Category</u>	<u>Year Model</u>	<u>Type</u>	<u>License Number</u>
Flat	2005 Pierce	3 B 2	E1208810 - E27
Flat	2000 Pierce	3 B 2	E287198 - E25
Flat	2006 Pierce	3 B 2	E1230134 - E26
Flat	2009 Pierce	3 B 2	E1230134 - E12
Flat	2005 Pierce	3 B 2	E1208811 - T12
Mileage	2010 Ford	Pick up	E1332356 - P1425
Mileage	2003 Chevrolet	Pick up	E1100350 - I1422
Mileage	2010 Ford	Pick up	E1304361 - T1438
Mileage	2008 Chevrolet	Tahoe	E1163844 - B1407
Mileage	2008 Chevrolet	Tahoe	E1163845 - B1421
Mileage	2004 Ford	Pick up	E1163714 - I1423
Mileage	2009 Chevrolet	Pick up	E1291679 - T1439
Mileage	2008 Chevrolet	Pick up	E1219566 - I1428

**EXHIBIT D, SCHEDULE E**

This is Schedule E of Cooperative Agreement originally dated July 1, 2011, by and between the CAL FIRE of the State of California and LOCAL AGENCY

**NAME OF LOCAL AGENCY: County of Napa**

The CAL FIRE, State of California and its officers, agents, employees, and servants are included as additional insureds for the purposes of this contract. The State shall receive thirty (30) days prior written notice of any cancellation or change to the policy at the addresses listed in LG1, Page 2.

**FISCAL YEAR: 2011/2012**

**SELF-INSURANCE CERTIFICATION BY LOCAL AGENCY FOR TORT LIABILITY**

This is to certify that LOCAL AGENCY has elected to be self-insured under the self-insurance provision provided in Exhibit C, Section 16.

By: \_\_\_\_\_  
Signature Printed Name

\_\_\_\_\_  
Title Date

**SELF-INSURANCE CERTIFICATION BY LOCAL AGENCY FOR WORKER'S COMPENSATION BENEFITS**

This is to certify that LOCAL AGENCY has elected to be self-insured for Workers' Compensation benefits which comply with Labor Code Section 3700 as provided in Exhibit C, Section 17.

By: \_\_\_\_\_  
Signature Printed Name

\_\_\_\_\_  
Title Date

**SELF-INSURANCE CERTIFICATION BY LOCAL AGENCY FOR LOCAL AGENCY-OWNED VEHICLES**

This is to certify that LOCAL AGENCY has elected to be self-insured for local agency-owned vehicles under the self-insurance provision provided in Exhibit D, Schedule D.

By: \_\_\_\_\_  
Signature Printed Name

\_\_\_\_\_  
Title Date

Contractor Name: County of Napa

Contract No: **1CA01567**

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**EXHIBIT E**  
**DESCRIPTION OF OTHER SERVICES**

N/A

Board of Supervisors

1195 Third St.  
Suite 310  
Napa, CA 94559  
www.co.napa.ca.us

Main: (707) 253-4421  
Fax: (707) 253-4176



A Tradition of Stewardship  
A Commitment to Service

CERTIFIED EXCERPTS FROM THE DRAFT SUMMARY OF PROCEEDINGS OF THE  
NAPA COUNTY - BOARD OF SUPERVISORS REGULAR MEETING  
COUNTY OF NAPA  
June 21, 2011

**Excerpt #1**

1. CALL TO ORDER; ROLL CALL

The Board of Supervisors of the County of Napa met in regular session on Tuesday, June 21, 2011 at 9:00 a.m. with the following members present: Chairman Bill Dodd, Supervisors Diane Dillon, Mark Luce, Brad Wagenknecht and Keith Caldwell. Chairperson Bill Dodd called the meeting to order.

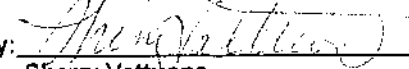
**Excerpt #2**

- 9L. County Fire Chief requests the following:
1. The Board receive an annual update on the Napa County Fire Department; and
  2. Approval of and authorization for the Chairman to sign renewal of Agreement No. 7049 with the California Department of Forestry and Fire Protection for a maximum of \$8,267,184 for the term July 1, 2011 through June 30, 2012 for fire protection services.

**Motion moved by Keith Caldwell, seconded by Mark Luce to approve item 9L  
Motion passed 4-0. Brad Wagenknecht was excused.**

The foregoing excerpts are true and correct copies of the original items on file in the draft summary of proceedings in this office.

Date : June 21, 2011

By:   
Sherry Vattione  
Deputy Clerk of the Board

BRAD WAGENKNECHT  
DISTRICT 1

MARK LUCE  
DISTRICT 2

DIANE DILLON  
DISTRICT 3

BILL DODD  
DISTRICT 4

KEITH CALDWELL  
DISTRICT 5



A Tradition of Stewardship  
A Commitment to Service

Agenda Date: 6/21/2011  
Agenda Placement: 9L  
Set Time: 10:45 AM  
Estimated Report Time: 15 Minutes

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Stacie McCambridge for Streblov, Tim - Fire Chief  
County Fire Department  
**REPORT BY:** Stacie McCambridge, Staff Services Analyst - 707-967-1417  
**SUBJECT:** Cooperative Agreement between the County and the California Department of Forestry and Fire

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### **RECOMMENDATION**

County Fire Chief requests the following:

1. The Board receive an annual update on the Napa County Fire Department; and
2. Approval of and authorization for the Chairman to sign renewal of Agreement No. 7049 with the California Department of Forestry and Fire Protection for a maximum of \$8,267,184 for the term July 1, 2011 through June 30, 2012 for fire protection services.

### **EXECUTIVE SUMMARY**

Since 1932, the County of Napa and the California Department of Forestry and Fire Protection (CAL FIRE) have been partners in cooperative fire protection. By Agreement, CAL FIRE provides management of the Napa County Fire Department which includes four paid stations, nine volunteer stations and a Fire Marshal Bureau.

### **FISCAL IMPACT**

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	County Fire Department
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	No

Future fiscal impact: Each year staff calculates the amount of the Agreement based upon staffing needs, labor agreements between the State and its firefighter employee groups and equipment needs. The maximum amount for the Fiscal Year 11/12 Agreement is \$144,879 higher than the prior year's contract. This increase primarily reflects an increase in the benefit rates and administrative rate, pursuant to the State's labor agreement with its firefighters. The administrative rate increased from 11.06% to 11.96% per the State rate letter issued in March. Staffing was reduced in the Fire Marshal Office to offset further increased costs. In addition, staff is working with other fire agencies in the county on future consolidation of fire prevention services. It is important to note that the Agreement maximum has not been reached in recent years and actual amounts billed are generally significantly less than the Agreement maximum.

Consequences if not approved: CAL FIRE will not provide fire protection.

Additional Information:

### **ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

### **BACKGROUND AND DISCUSSION**

The Napa County Fire Department consists of the California Department of Forestry and Fire Protection (CAL FIRE), under contract with the County for fire protection services, and nine volunteer fire departments. CAL FIRE'S Sonoma-Lake-Napa Unit Chief serves as the County's Fire Chief and is responsible for the direction and coordination of fire protection services on a countywide basis.

The annual Agreement with CAL FIRE includes \$5,815,540 for Schedule A fire protection services. These services include provisions for 39.75 fulltime fire control personnel, principally at the Napa, Greenwood Ranch and St. Helena stations plus ten support staff. The portion of the Agreement allocated to the Yountville station is calculated at \$1,653,350. This is the full cost of service for Yountville although the county is reimbursed for 2/3 of the cost by the Veterans Affairs (Veterans Home) and the Town of Yountville. The Agreement also includes \$643,310 for fire code enforcement by staff assigned to the Fire Marshal's office.

The "Amador" portion of the Agreement provides \$154,983 to keep the stations at Spanish Flat and the second engine at Napa, staffed and operating during the seven-month non-fire season.

The maximum amount for the Fiscal Year 11/12 Agreement is \$144,879 more than the prior year's Agreement. This increase primarily reflects the increases in the benefit rates and administrative rate, per the State rate letter issued in March. The Department is requesting \$107,324 in equipment replacement for this fiscal year as compared to \$1.3 million last fiscal year. Because the Agreement requires that the County only pay for actual services received, it is important to note that the Agreement maximum has not been reached in recent years and actual amounts billed are generally significantly less than the Agreement maximum.

The Agreement includes a "hold-over" clause, which allows for the contract terms to extend beyond the expiration date.

**SUPPORTING DOCUMENTS**

None

CEO Recommendation: Approve

Reviewed By: Molly Rattigan



# COUNTY of NAPA

BOARD OF SUPERVISORS

1195 Third Street, Suite 310, Napa, CA 94559  
Office (707) 253-4386 FAX (707) 253-4176

July 22, 2008

The Honorable Raymond Guadagni  
Presiding Judge  
Superior Court of California, County of Napa  
825 Brown Street  
Napa, CA 94559

# FILED

JUL 30 2008

Clerk of the Napa Superior Court  
By: C. B.  
Deputy

Dear Judge Guadagni:

As required by Penal Code Section 933(c), enclosed is the response to the 2007-08 Grand Jury Final Report on the Napa County Fire Department. Responses to findings and recommendations affecting local government entities other than the County are not included in the Board's response when those entities are not under the jurisdiction of the County Board of Supervisors.

Since the 1940s, local government entities such as cities, counties and districts have contracted with CAL FIRE to provide many forms of emergency services for their communities. CAL FIRE provides full-service fire protection to Napa County citizens and as such responds to wildland fires, structure fires, floods, hazardous material spills, swift water rescues, civil disturbances, earthquakes, and medical emergencies of all kinds. Assisting with this response are over 100 volunteer firefighters located throughout the County. We would like to take this opportunity to express the Board's gratitude to CAL FIRE and the volunteer firefighters for their tireless commitment to protecting our community. These individuals spend countless hours preparing and responding to events throughout the County.

Grand Jury activity takes place over the course of a number of months. As such, their findings and recommendations often address issues that county departments have already identified as problems and to which solutions are in the process of being developed. We note that a number of the Grand Jury's recommendations have been implemented or are in the process of being implemented at this time.

The Board acknowledges the members of the 2007-08 Grand Jury for the time they have devoted in preparing their report.

Received  
Napa Superior Court

JUL 22 2008

Court Executive Office

Enclosure

cc: Foreman, 2007-08 Grand Jury

Sincerely,

Brad Wagenknecht, Chair  
Napa County Board of Supervisors



## NAPA COUNTY FIRE DEPARTMENT GRAND JURY RESPONSE

Recommendation 1: The County Board of Supervisors establish a commission to review the overall operation of all Napa County fire departments with respect to the establishment of a central Napa County Fire Department.

Response, Napa County Fire Chief: This recommendation appears to be based on Finding 1.b - with which the Napa County Fire Chief disagrees. The County Fire Department has invested in two recent studies - the Strategic Plan in 2005 and the Deployment Analysis in 2007. Both studies contain many of the same recommendations as the 2007-2008 Napa County Grand Jury Report. There would be no added value to additional review that would preclude or delay the Napa County Fire Department from implementing a number of necessary changes. Therefore, the recommendation will not be implemented because it is not warranted.

Response, Board of Supervisors: The Board of Supervisors concurs with the response of the Napa County Fire Chief. The completed studies demonstrate the need for an integrated fire department combining the expertise of both the paid and volunteer firefighters.

Recommendation 2: The County Board of Supervisors consider the hire of a dedicated Napa County employee whose primary responsibility would be to focus on the coordination and support of the County Volunteer firefighters.

Response, Napa County Fire Chief: The Napa County Fire Department is committed to providing support and coordination for the volunteers and strongly believes it should be provided within the existing organizational framework. As discussed in more detail below, the Department has dedicated a full time position to provide this support and coordination.

The term "Napa County Fire Department" (NCFD) refers to a branch of County government responsible for reduction of life and property loss and damage due to fires, illness, accidents, and other disasters within the County. The Napa County Fire Department includes paid firefighters and volunteer firefighters. The NCFD is made up of:

- 4 Stations staffed 24 hours per day, seven days a week
- 3 additional stations staffed 24 X 7 between November and May
- 54 total paid staff
- 9 community based volunteer companies, authorized for up to 250 volunteer staff
- County Fire Marshal – Fire Prevention and Fire Investigation Services
- Emergency Dispatching Services
- Training Bureau and Fire Training Grounds
- Over 50 Fire Apparatus and Support Units (Fire Engines, Hazmat Unit, Rescue Units, Water Tenders, Utility Vehicles, etc.)

The Napa County volunteer firefighters serve a critical support role in the delivery of emergency services in Napa County, particularly in the rural areas. They are a well-trained and dedicated group of individuals who commit ever-increasing numbers of hours to support their communities.

Within the last year the organization of the Napa County Fire Department has changed to include a dedicated full time Chief Officer to function as the liaison for the volunteer chiefs and to provide support and coordination to them. Two independent analyses of the Napa County Fire Department -- the 2005-2010 Strategic Plan and the 2007 Deployment Analysis -- recommend fully integrating the Napa County Fire Department and the nine volunteer fire departments. According to the 2005 Strategic Plan, there is a vital need to "Create a solid unified identity for the Napa County Fire Department." The 2007 Deployment Analysis recommended: "The volunteer command, control and fiscal support system needs a complete overhaul into one integrated department that makes the volunteers wholly part of the Napa County Fire Department." Adding a position that is a County employee, outside of the NCFD would result in a further lack of coordination.

Based on the foregoing, the recommendation will not be implemented because it is not warranted.

Response, Board of Supervisors: The Board of Supervisors concurs with the response of the Napa County Fire Chief and supports an integrated department consisting of paid and volunteer firefighters in the existing organizational structure. The Board does not support the addition of a position outside of the existing organizational structure.

Recommendation 3: The MOU between the County of Napa and Volunteer Departments be amended to grant the County Fire Chief clear authority to establish and enforce volunteer department training and operating policies and procedures.

Response, Napa County Fire Chief: The recommendation is being implemented. The present MOU between the Napa County Board of Supervisors and the Volunteer Fire Departments is being revised, and will address these items while ensuring the Volunteer Departments will maintain their strong community identities.

Response, Board of Supervisors: The Board of Supervisors concurs in part with the recommendation and believes that more work should be done to improve operations of NCFD by continuing to work with paid and volunteer firefighters. Without further review, which will occur in the next six months, the Board of Supervisors cannot support the organization of this authority under the County Fire Chief at this time.

Recommendation 4: Recognizing that volunteer firefighters are effectively County employees while engaged in fire department activities, Napa County has a level of training that meets all applicable Federal, State, Cal OSHA, and County requirements. Non-compliance with the law is not a viable option and places the County at risk.

Response, Napa County Fire Chief: First, it is important to note that volunteer firefighters are not "effectively County employees." The Board of Supervisors has by resolution determined that pursuant to State statutes "each person registered as an active firefighting member of a

regular organized volunteer fire department having official recognition and full or partial support of the County.....are expressly designated and considered employees of the County of Napa **for the purposes of workers compensation.**” [Emphasis added] This resolution does not convey any additional employee benefits or status.

Second, the recommendations for training will be implemented and the minimum training requirements will meet all applicable Federal and State standards. In addition as part of the Final FY 08-09 budget, the County Fire Chief has requested and the Board of Supervisors has approved the addition of a fire captain position in the Training Bureau to provide additional support and coordination of volunteer firefighter training.

Title 29 (Code of Federal Regulations) and Title 8 (California Code of Regulations) require 182 hours of initial training for a firefighter to meet the minimum state and federal training requirements. With minor alterations to an “Academy” style format that the Napa County Fire Department Training Bureau is already presenting, volunteers will meet the state and federal minimum training requirements and the curriculum for the State Fire Marshal Volunteer Firefighter certification by the end of this fiscal year. These training standards will result in a minimum of 182 hours of initial training and 29 hours of annual refresher training.

The County Fire Chief, together with the County Risk Manager and County Human Resources Director, are continuing to work with the volunteers to ensure compliance with applicable laws.

Response, Board of Supervisors: The Board of Supervisors, while recognizing that the volunteer firefighters may not currently be in compliance with all training requirements, concurs with the response of the County Fire Chief and his efforts to provide the necessary training – as long as that compliance with applicable laws occurs by the end of the fiscal year.

Recommendation 5: All volunteer firefighters be trained and certified as Firefighter I/EMTs and the training be provided and paid for by the County.

Response, Napa County Fire Chief: The Napa County Fire Department supports the appropriate levels of required training for volunteers as outlined in the Federal and State regulations and the State Fire Marshal (SFM) Volunteer Firefighter Certification, which is a minimum of Public Safety First Aid. In total, meeting these minimum training requirements will require 182 initial hours of training and 29 hours of annual refresher training. This is the basic required training and does not account for more advanced or specialized training that is necessary for continuing education.

The amount of initial and ongoing training required to meet the certification for EMT I (120 hours) and State Fire Marshal Firefighter I (348 hours) is significant and requires far more of a time commitment from the volunteer firefighters than is reasonable to maintain a viable number of volunteer firefighters in the County. The recommendation will not be implemented because it is not reasonable. This level of mandated training would result in the loss of valuable volunteer firefighters.

However, although the Napa County Fire Department recommends a minimum training standard for volunteer firefighters that requires less training than the EMT and SFM Firefighter I certifications, the Napa County Fire Department is committed to supporting and paying for higher levels of training for those volunteers who may want to attend those courses.

Response, Board of Supervisors: The Board of Supervisors concurs with the response of the Napa County Fire Chief and would like to take this opportunity to express its appreciation for the amount of time and effort that volunteer firefighters contribute to the community.

Recommendation 6: All training of volunteer firefighters be provided by fully qualified instructors meeting all applicable standards.

Response, Napa County Fire Chief: Although this recommendation appears to be based on Finding 2.e, with which the Napa County Fire Chief disagrees, this recommendation has been implemented. Fire service training falls into two broad categories. The first is generally referred to as “drill” and consists of repetitive training to maintain basic skills such as operation of ladders, hoses, pumps and other fundamental tasks common to firefighters. Most volunteer training falls into this category. The second category consists of course work to gain state or nationally recognized certification in any of a number of public safety disciplines. This training is characterized by specific requirements for the number of hours of training required and often involves standardized written or manipulative tests. Fully qualified instructors are used for both categories of training. Drill instruction is presented by members of the Napa County Fire Department Training Bureau, Company Officers from the career Firefighters, or Napa County Fire Department Volunteer Training Officers. All courses presented for the purpose of issuing state or national certification are presented by instructors that meet the standard set by the organization that controls the course. For example, if California Specialized Training Institute (CSTI) certificates will be issued for a class, only CSTI accredited instructors are used to teach the course. Napa County Fire Department strives to ensure high quality training for all of its members.

Response, Board of Supervisors: The Board of Supervisors, while noting some of the volunteer firefighters have provided individualized certification programs, concurs in part with County Fire Chief. However, at the end of the fiscal year, the Board will ask for verification from the County Fire Chief that NCFD is in compliance with all training requirements. If that verification is not provided, the Board will ask the County Fire Chief to provide a corrective action plan that outlines reasons for non-compliance and a timeframe for correction.

Recommendation 7: The upgrading of the Napa County Fire Department Policies and Procedures Manual be addressed as a high priority with specific timeline goals established and monitored. Specific policies which must be implemented immediately are:

- a. A grievance procedure which provides a mechanism for the department personnel to raise and address issues which adversely affect their abilities to perform duties, personnel problems, and accusation of wrongdoing.
- b. Volunteer Firefighter Driver/Operator requirements be formally defined requirements, but not “grandfathered.”
- c. Minimum emergency response driver training standards for AEV drivers be established.
- d. All new AEV drivers be required to complete the training prior to operating their vehicles in a Code 3 response.
- e. Existing AEV drivers be given a reasonable time to complete the requisite training, but not be “grandfathered.”
- f. The County requires that the owners of private vehicles operating as an AEV provide written evidence that they either have an appropriate AEV rider on their vehicle

insurance or written documentation from their insurance company that the vehicle is covered while operating as an AEV.

- g. The County establish a policy that details equal accommodations for Volunteer firefighters who are part of a County deployed strike team to that of their paid counterparts.

Response, Napa County Fire Chief: The recommendation has not been implemented, but will be implemented within the second quarter of FY 08-09. An updated Policy & Procedures Manual will include a computerized system to account for specific recommendations, which will be Internet accessible.

- a. A grievance and complaint process will be a component of the Policy & Procedures System. Specifically this procedure will address work performance and personnel issues. The process will define how to initiate a grievance or complaint, timeframes for response, necessary documentation and the appeal process.
- b. A formalized training program will be developed utilizing the State Fire Marshal 1A/1B curriculum. These classes include emergency fire apparatus driving and pump operations.
- c.d.e. All AEV (authorized emergency vehicle) drivers are required to complete a defensive driving class approved by the State of California, with an emphasis on emergency vehicle operations. This training includes classroom instruction as well as field training. This training will be completed by new drivers prior to operating their vehicles in a code 3 response. All costs associated with this training will be borne by the Napa County Fire Department.
- f. All AEV drivers must show proof of appropriate insurance and meet licensing requirements, including California Vehicle Code requirements and annual CHP vehicle inspections by the California Highway Patrol. Written evidence will be maintained by the County Fire Department and the appropriate individual volunteer departments.
- g. Napa County Fire Department volunteers respond on strike team assignments as part of State agreements known as the "California Fire Assistance Agreement." There is language in this agreement that addresses incident off-shift rest and sleeping accommodations; it states the following: "The responsible Forest Agency will provide, when practical, shaded and/or climatically maintained conditions for off shift sleeping, rest and recuperation for local jurisdiction resources confined to Incident Base. If the Incident Command finds it operationally feasible (i.e. strike team remains available), to place local jurisdiction resources in a commercial sleeping accommodation, it may be provided by the Forest Agency. In this case the cost is borne by that agency. Situations may arise when the Forest Agency will not pay for commercial sleeping accommodations, yet will approve local jurisdiction resources to utilize them under certain conditions and that the local government resources are responsible for payment." The Napa County Fire Department does not have the authority to change the conditions established in this State agreement, but would offer the following: Currently, the Napa County Fire Department volunteers have no mechanism, other than personal funds, to make these payments. The Napa County Fire Department will work with the Auditor-Controller to determine if it is possible to avoid having volunteer firefighters expend

personal funds when participating on a strike team assignment. If that is not possible, then at a minimum, NCFD will develop a process to more quickly reimburse volunteers for expenses incurred, assuming all correct documentation is in order and follows State guidelines and procedures. The County Fire Chief will also draft a policy for Board consideration, no later than the end of the fiscal year, that will include equal accommodations for volunteer and paid firefighters on strike team assignments.

Response, Board of Supervisors: The Board of Supervisors concurs with the response of the Napa County Fire Chief.

Recommendation 8: The volunteer stipend be based on the number of emergency responses made by the volunteer while retaining the training requirement as an eligibility criteria. In addition, a tiered compensation system, which rewards advanced qualifications, be implemented.

Response, Napa County Fire Chief: The recommendation will be implemented. The stipend program will be based on the volunteer's rank, the number of required training sessions with verified attendance, and the number of responses to emergency incidents.

Response, Board of Supervisors: The Board of Supervisors concurs with the response of the Napa County Fire Chief.

Recommendation 9: The County fund the required emergency response driver training for volunteer firefighters.

Response, Napa County Fire Chief: Funding to provide the required training has been allocated in the FY 08-09 budget and will be provided. The recommendation will be implemented.

Response, Board of Supervisors: The Board of Supervisors concurs with the response of the Napa County Fire Chief.

Recommendation 10: The County reimburse individual volunteer firefighters for any additional insurance premium costs incurred for the operation of properly authorized AEVs.

Response, Napa County Fire Chief: The recommendation will not be implemented. The Napa County Fire Department policy requires that volunteers respond to emergency incidents in County owned and properly equipped and maintained emergency response vehicles. The California Vehicle Code, not County policy, allows volunteers to install emergency lighting on their personal vehicles. The County Fire Department does not support nor encourage the use of personal emergency vehicles and therefore will not reimburse for additional insurance premiums.

Response, Board of Supervisors: The Board of Supervisors concurs with the response of the Napa County Fire Chief.

Recommendation 11: The funds to pay a Volunteer firefighter who was part of a County deployed strike team be made available on a routine basis and in a timely manner to insure that they are promptly compensated for their time.

Response, Napa County Fire Chief: The recommendation will be implemented. County staff is working with staff from the Auditor-Controller's Office to finalize a system that will ensure

volunteer firefighters are paid as soon as possible, but no later than one month from their return from the assignment, if all required paperwork and procedures have been followed.

Response, Board of Supervisors: The Board of Supervisors concurs with the response of the Napa County Fire Chief.

Recommendation 12: Fire Stations:

- a. Relocate the Station #10 to a combined Napa City/County fire station in Browns Valley.
- b. The County install a road sign and light on the road at the entrance to the Capell Valley Volunteer Fire Station.
- c. The County rectify the restricted access/parking issue at the Soda Canyon Fire Station regarding new neighbor entrance gate.

Response, Board of Supervisors: The County Fire Chief and the Napa City Fire Chief are in the process of exploring options for a new fire station in Browns Valley. While the County supports the addition of a Napa City/County fire station to improve fire service in the western portion of the County, the Board of Supervisors does not agree that the existing Carneros Volunteer Fire Stations should be closed. Therefore, Recommendation 12.a will not be implemented as recommended.

Staff from the Public Works Department will work with the County Fire Chief and volunteers to determine the best course of action for the Capell Valley and Soda Canyon Fire Stations. Unless it is determined that these changes are warranted and reasonable, Recommendations 12.b and 12.c will not be implemented.

Recommendation 13: Apparatus:

- a. The county replace as soon as possible, all firefighting vehicles that predate 1991, with vehicles that are appropriate for the individual service area requirements.
- b. The County provide as soon as possible, a water tender to Gordon Valley Volunteer Fire Department.
- c. The County provide as soon as possible, a Type IV unit and a rescue vehicle with defibrillator that will fit into and be housed at Soda Canyon station.

Response, Napa County Fire Chief: Responses regarding apparatus are as described below:

- a. The Napa County Fire Department has an apparatus replacement schedule that is evaluated annually with the intent of replacing apparatus as fiscally practical, while striving to meet National Fire Protection Association (NFPA) recommendations regarding years of service. While compliance with NFPA standards is not a requirement, it is recognized nationally as best practice. Many of the apparatus that predate 1991 have fewer than 15,000 miles, are safe and in good operational condition with replacement parts still readily available. All of the apparatus are inspected at a minimum annually by the County Fire Department certified fire mechanics at the automotive shop. Most industry experts would agree that the quality and timeliness of maintenance are perhaps the most significant factors in determining how well a fire apparatus agcs. Therefore, this recommendation will not be implemented.

- b. This recommendation appears to be based on Finding no. 12c, with which the Napa County Fire Chief disagrees. Water tenders and/or Type 2 fire engines with 1000+ gallon water tanks are assigned to those stations in rural areas that have the ability to staff and house them. This deployment strategy increases water delivery capability as well as providing apparatus that will carry the necessary firefighting equipment that is not carried on water tenders. Operational decisions on where to locate specific firefighting equipment is based on the operational needs of the community, the County, call volumes and the ability of the volunteer fire companies to staff and respond with the equipment. Based on the number of annual responses requiring a water tender, the average response time for calls in the Gordon Valley area, and the ability to house a water tender at the Gordon Valley station, this recommendation will not be implemented because it is not warranted.
- c. This recommendation appears to be based on Findings nos. 12d and 12e, and will be partially implemented. The recommended FY 08/09 budget includes the purchase of a Type IV unit that will be assigned to Soda Canyon; this unit will be equipped with a defibrillator and appropriate rescue equipment. This vehicle will be designed to fit in the apparatus bay at the Soda Canyon station. An additional rescue vehicle is not warranted and will not be provided.

Response, Board of Supervisors: The Board of Supervisors concurs with the response of the Napa County Fire Chief.

Recommendation 14: The NCFD continue the policy of consulting the Volunteer Chief or appointed representative from a given volunteer fire department when equipment is being selected for their use.

Response, Napa County Fire Chief: The recommendation has been implemented.

Response, Board of Supervisors: The Board of Supervisors concurs with the response of the Napa County Fire Chief.

Recommendation 15: All fire departments within Napa County have the same rapid entry system locks with a "universal" Key.

Response, Napa County Fire Chief: The recommendation requires further analysis. The County Fire Chief will explore with other agencies the possibility of utilizing one key. However, it is important to note that this recommendation was part of the Grand Jury Report on Municipal Fire Departments and St. Helena did not concur with the recommendation because of the cost associated in changing the current system. In Napa County there are currently four different keys used throughout the five jurisdictions in the County. Napa County Fire and Calistoga Fire use the same key, and American Canyon, St. Helena and Napa City fire departments each have their own key for access to secured buildings or gates within their own respective jurisdictions. Because fire department equipment frequently responds to calls across jurisdictional boundaries, all of the departments in the County have shared their respective keys with neighboring jurisdictions to ensure that first response equipment will have access to the incident regardless of jurisdiction.



Staff is unaware of any incident in the County in which the current key systems used throughout Napa County created an increased risk factor for citizens or caused a response delay that critically affected the outcome of an incident.

Response, Board of Supervisors: The Board of Supervisors concurs with the response of the Napa County Fire Chief.

Recommendation 16: Volunteer fire departments receive greater support from the County and in return, relinquish some of their long held independence.

Response, Napa County Fire Chief: This recommendation has been partially implemented. The Napa County Fire Department has a dedicated full time Chief Officer who serves as the volunteer liaison and is tasked with providing support and coordination for the volunteer firefighters.

Napa County has a long and proud tradition of a volunteer fire service and volunteer firefighters are an important component of fire protection in Napa County in the past, present and most importantly the future. As evidenced in the adopted FY 08-09 budget, the Napa County Fire Department is committed to improving support of the volunteers in the areas of training, administration, fleet management, facilities and equipment repairs and replacement in order to achieve desired levels of service to the County.

It is equally important that the County Fire Chief have both the authority and responsibility to manage and direct all aspects of the fire department in order to ensure success of this recommendation. The lack of authority of the County Fire Chief has created ten different fire departments within the Napa County Fire Department and made it difficult to unify the department, implement change, develop and adopt policies and procedures and training standards. Assigning responsibility and authority for operations of the Napa County Fire Department to the County Fire Chief is key to implementing recommendations of the Grand Jury Report, the Strategic Plan and the Deployment Analysis.

Response, Board of Supervisors: The Board of Supervisors concurs in part with the response of the Napa County Fire Chief. The Board of Supervisors believes that more work should be done to improve operations of NCFD by continuing to work with paid and volunteer firefighters. The Board acknowledges that two recent studies – the Strategic Plan (2005) and the Deployment Analysis (2007) – concluded that the volunteer program should be under a singular administrative and operational chain of command. Without further review, which will occur in the next six months, the Board of Supervisors cannot support the organization of this authority under the County Fire Chief at this time.

**FIRE AND EMERGENCY SERVICES**

Mark Aston, Director

**FINANCIAL SUMMARY**

<b>Budget Division/Fund</b>	<b>FY 10-11 Adopted</b>	<b>FY 11-12 Recommended</b>	<b>% Change</b>
<b>Fire and Emergency Services (General Fund)</b>			
Expenditures	3,185,015	689,968	(78.3)
Revenues & Reimbursements	2,612,638	246,873	(90.6)
Net Cost	572,377	443,095	(22.6)
<b>Hazardous Materials (Special Fund)*</b>			
Expenditures	0	1,326,936	100.0
Revenues & Reimbursements	0	1,326,936	100.0
Net Cost	0	0	0.0
<b>CSA#40 Fire Services</b>			
Expenditures	5,310,417	5,358,445	0.9
Revenues & Reimbursements	4,917,129	5,036,301	2.4
Net Cost	393,288	322,144	(18.1)
<b>CFD#7 Mayacamas</b>			
Expenditures	22,800	22,800	0.0
Revenues & Reimbursements	22,800	22,800	0.0
Net Cost	0	0	0.0
<b>CFD#4 Wilmar</b>			
Expenditures	89,000	89,000	0.0
Revenues & Reimbursements	89,000	89,000	0.0
Net Cost	0	0	0.0
<b>CFD#5 Dry Creek</b>			
Expenditures	108,000	108,000	0.0
Revenues & Reimbursements	108,000	108,000	0.0
Net Cost	0	0	0.0
<b>Total Expenditures</b>	<b>8,715,232</b>	<b>7,595,149</b>	<b>(12.9)</b>
<b>Total Revenues &amp; Reimbursement</b>	<b>7,749,567</b>	<b>6,829,910</b>	<b>(11.9)</b>
<b>Total Net Cost</b>	<b>965,665</b>	<b>765,239</b>	<b>(20.8)</b>

\*The FY 11-12 budget reflects moving the fee supported Hazardous Materials budget to a special revenue fund

**STAFFING SUMMARY**

<b>Staffing</b>	<b>FY 10-11 Adopted</b>	<b>FY 11-12 Recommended</b>	<b>FTE Change</b>	<b>% Change</b>
Permanent Positions	18.00	19.40	1.40	7.8

The department is converting extra-help to 1.6 FTE permanent materials handler positions to support volunteer fire companies. This increase in non-general fund permanent positions is partially offset by a .2 FTE reduction in the general fund supported deputy emergency coordinator allocation.

## **CAL FIRE Administrative Rate**

- **Administrative charge methodologies and components were developed at a statewide level using adopted federal standards.**
  - Ca Government Code – 11010 & 11270
  - Ca State Administrative Manual (SAM)
  - OMB (US Office of Management & Budget) circular A-87
- **CAL FIRE Administrative rate comprised of two components**
  - **Statewide Pro Rata**
    - Apportions the costs of providing central administrative services to all state departments. Uses a 5 year average of statewide pro rate charges, which is intended to remove volatility in the administrative charge and assists in a more constant number from year to year.
      - **Department of Finance**-maintains state accounting and financial reporting systems
      - **State Treasurer**-pays out state funds when spent by controller
      - **State Controller**- issues payroll
      - **State Personnel Board**- advertises state job openings, civil service exams responsible for administration of state employment system
      - **Legislature**- enacts annual spending plan, enacts new and strengthens enforcement of existing laws
      - **Department of Personnel Administration**- administration of civil service employment system, represents governor as in the employer in all labor relations issues, responsible for all issues related to salaries, benefits, classifications, training
      - **Other central service agencies**- PERS, Bureau of State Audits, Office of Administrative Law, Ca State Library, Office of Planning and Research, Governors Office, Legislative Counsel Bureau, Office of State Chief Information Officer.
  - **Indirect Rate**
    - **Includes the costs associated with administrative and operational support provided at the Region and Unit level**

- **Sacramento Headquarters administration** (Coop fire, Command and Control program management, telecommunication systems and includes overhead functions that support multiple programs such as the Office of the Director, Public Education, Public Information, etc)
- **Business Services-** Budgeting, accounting, purchasing functions
- **Information Technology-** program and system development, maintenance and support of the statewide computer network system
- **Human Resources-** includes costs associated with support provided by state funded personnel in HR including employment recruitment, testing, selection, disciplinary actions, time reporting, payroll and benefits, labor relations issues, etc.
- **Training-** indirect costs associated with administration of statewide training programs including curriculum development, administration of JAC program, support of CAL FIRE Academy
- **Legal, law enforcement and Code Development-** costs associated with legal counsel, legislative liaison, fire prevention law enforcement
- **Fleet management-** includes costs associated with fleet management, maintenance and repair.

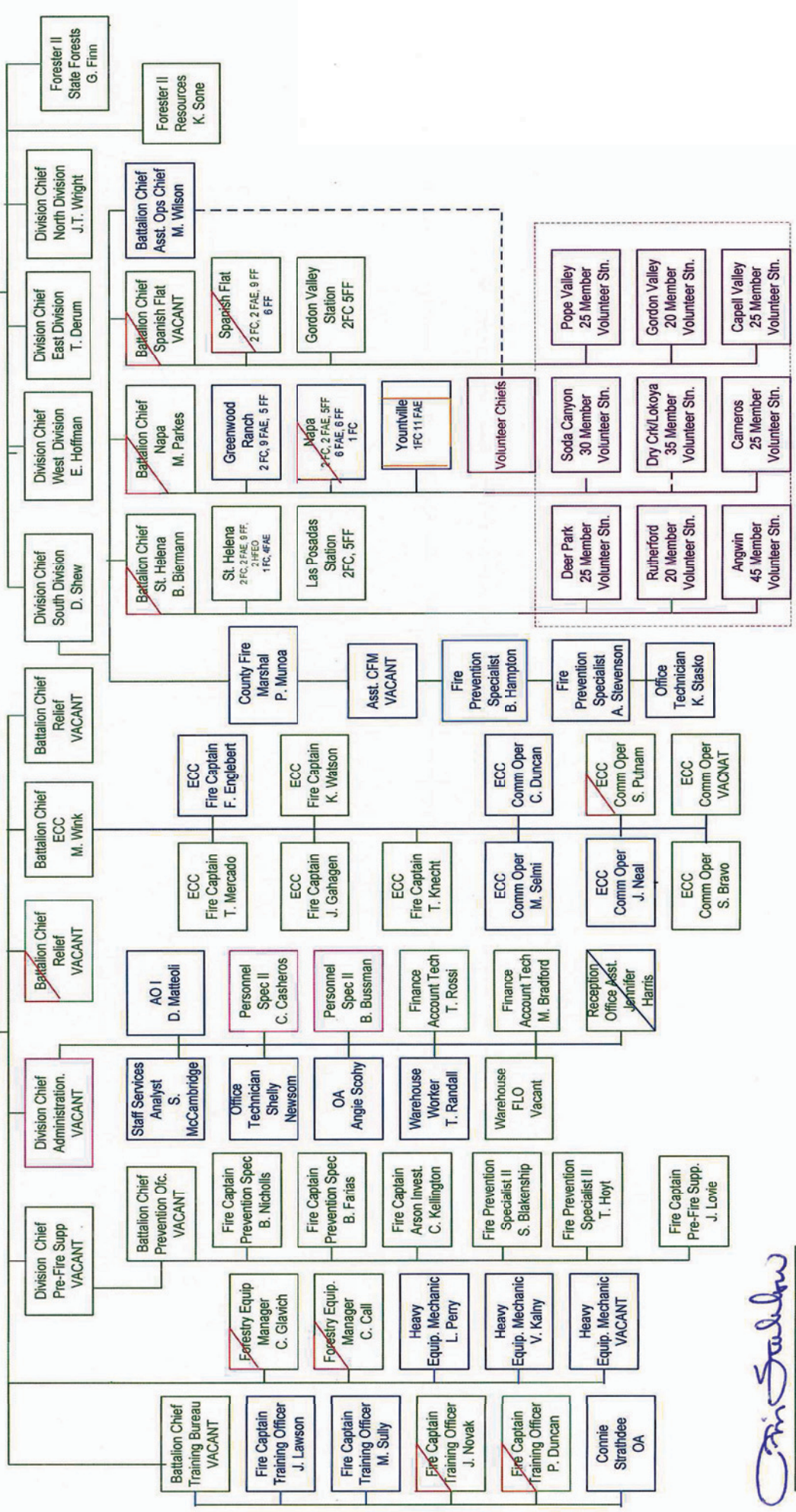


# NAPA COUNTY FIRE DEPARTMENT

February 2012

**Napa County Fire Chief  
Unit Chief  
Tim Streblov**

Deputy Chief  
Gabrielle Avina



- 99200 MONEY
- CONTRACTS
- VOLUNTEER
- AMADOR
- SCHEDULE A
- STATE
- 3-WAY COST SHARING

*Tim Streblov*

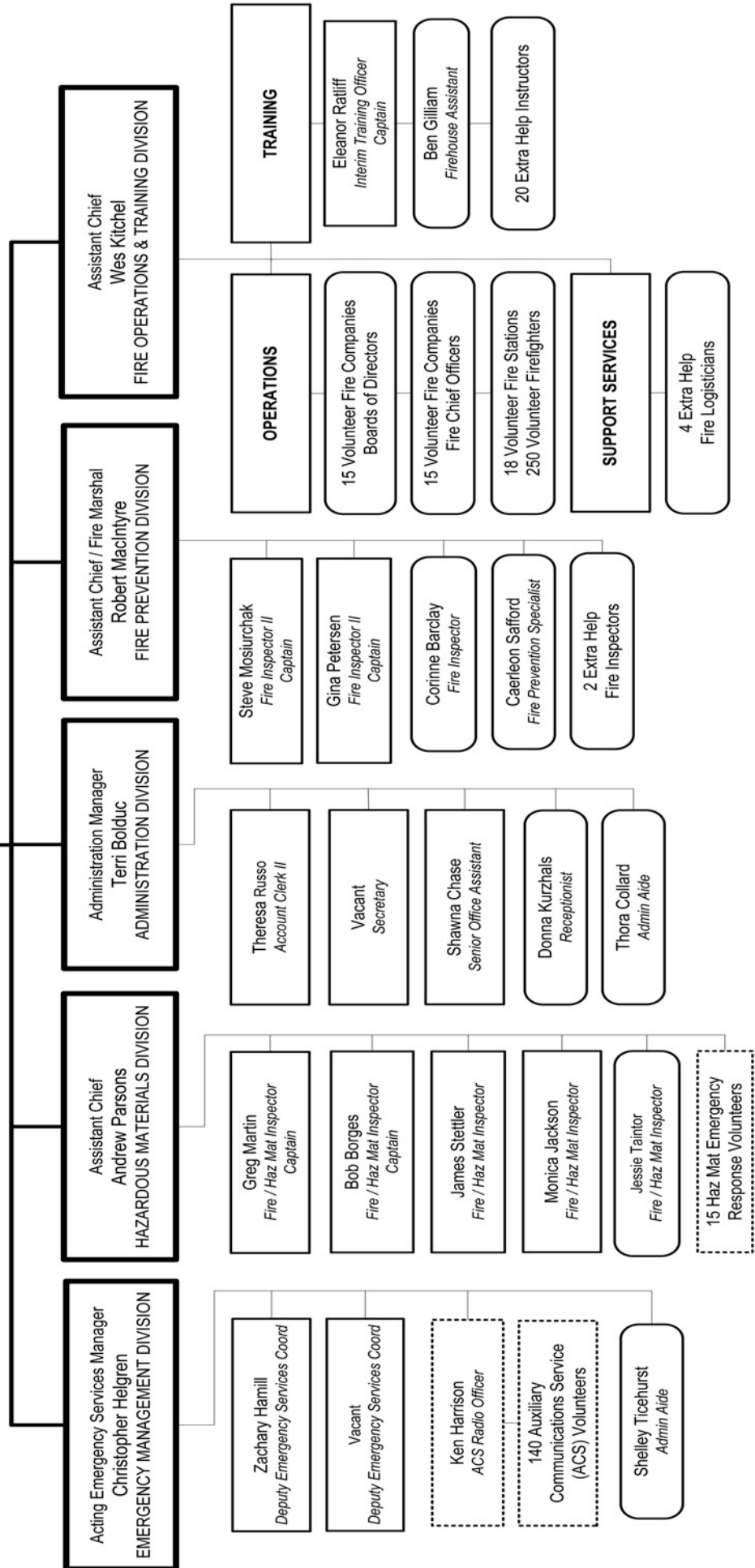
Tim Streblov

2300 County Center Drive, #221A  
 Santa Rosa, CA 95403-3010  
 707/565-1152  
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# COUNTY OF SONOMA FIRE AND EMERGENCY SERVICES DEPARTMENT



**DIRECTOR / FIRE CHIEF**  
 Mark Aston



STATE OF CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION <b>POSITION ESSENTIAL FUNCTIONS DUTIES STATEMENT</b> PO-199 (04/01)	Working Title of Position <b>Unit Chief</b>
	Division and/or Subdivision <b>Sonoma-Lake-Napa</b>
INSTRUCTIONS: The Director is required by Government Code Section 19818.12 to report (or to record) "...material changes in the duties of any position in his or her jurisdiction". The Position Essential Functions Duties Statement is used for this purpose. Enter identifying information and effective date at the right. Enter brief description of each of the important duties and responsibilities of the position below. Group related duties in numbered paragraphs and indicate the percentage of total time occupied. Indicate the "essential functions" of the position by placing an asterisk (*) in front of those individual duties you determine to be essential to the job. Discuss the duties with the employee assigned to the position. Both the employee and supervisor sign the document where indicated. The supervisor retains the original document and provides a copy to the employee.	Location of Headquarters <b>1199 Big Tree Rd., St. Helena 94574</b>
	Class Title of Position <b>Unit Chief</b>
	Position Number <b>542-114-1037-004</b>
	Effective Date <b>June 1, 2010</b>
Percentage of Time Required	Effective on the date indicated, the employee assigned to the position identified above performs the following duties and responsibilities.
35	Under the general direction of the Regional Chief, the Unit Chief is responsible for the overall analysis, planning, programming, organization, control and administration of the following functions:  * FIRE PROTECTION - Develops plans and procedures for prompt detection and suppression of fires occurring in the unit; develops and maintains a fire fighting force that is trained, equipped and located; ensures appropriate fire defense facilities and improvements are present and functional; maintains a dispatching and communications system; evaluates reports of fires and makes decisions concerning the deployment of personnel and equipment available in the unit as well as the need for assistance from other sources; maintains liaison with other emergency service organizations in the area; makes reports concerning fire losses, revegetation and the effectiveness of fire suppression methods; as provided by contract, provides or supervises fire prevention and fire control services to local jurisdictions; negotiates contracts for fire protection services.
30	*UNIT MANAGEMENT AND ADMINISTRATION: Establishes and maintains effective relationships with the public, external organizations, political bodies and local news media, both individuals and groups; makes decisions and recommendations concerning selection, assignment, performance, promotion, discipline and grievances of permanent, seasonal and volunteer employees; makes decisions and recommendations concerning the acquisition, use and maintenance of supplies, equipment, structures, land, communication and other facilities; develops budget requirements and expenditures for permanent personnel, temporary help, facilities and operating expenses; fulfills finance responsibility by operating within budgetary constraints; maintains records and prepares reports concerning unit operations; responsible for a safe working environment for both routine and emergency activities; ensures assigned employees well-being is appropriately considered and administered under various programs, including those required because of employee contracts, workers compensation laws and other departmental and regional needs; directs a well-rounded training program that meets departmental and employee needs.  *These are the essential functions for this position. Essential functions are those functions that the individual who holds the position must be able to perform unaided or with the assistance of a reasonable accommodation.
Job qualifications and/or conditions of employment:	
"We have discussed this document in its entirety and understand the duties of this position."	
Employee Signature _____	Date _____
Supervisor Signature _____	Date _____
Personnel use only <input type="checkbox"/> Posted to Directory _____	
Initials and date _____	



STATE OF CALIFORNIA  
DEPARTMENT OF FORESTRY AND FIRE PROTECTION  
**POSITION ESSENTIAL FUNCTIONS DUTIES STATEMENT**  
PO-199 (04/01) - **PAGE 2**

Working Title of Position  
Unit Chief

Percentage of Time Required      Effective on the date indicated, the employee assigned to the position identified above performs the following duties and responsibilities.

15      \* **FIRE PREVENTION:** Analyzes the nature, occurrence and causes of fires and develops a fire prevention program for the unit; promotes public interest and participation in fire prevention efforts through contacts with schools, service clubs, landowners, sportsmen and other groups or individuals; works with governmental agencies, public utilities; railroads, industries and others to encourage the removal or reduction of fire hazards; enforces forest and fire laws; investigates the causes of fires and identifies liability; coordinates planning with local government to ensure that fire safety is included in all planning activities.

10      \* **RESOURCE MANAGEMENT:** Assists and cooperates with landowners and specialists from CDF and other organizations to ensure program effectiveness in forest pest protection, reforestation, wildland, soil and watershed management, vegetation management CFIP and forest land management, forest practice rule enforcement, seed collection and nursery operation and other program assigned to unit level for implementation.

10      \* **OTHER LOCAL AND STATE EMERGENCIES:** Develops and maintains the ability to deploy trained personnel and equipment to meet rescue, flood, civil disturbance, radiological monitoring, war caused fire and other emergencies.

The incumbent is required to wear respiratory protection equipment (including self-contained breathing apparatus (SCBA)). The use of such equipment may place a physiological burden on the incumbent that varies with the type of equipment used, the job and workplace conditions in which the equipment is used, and the medical status of the incumbent. As such, Cal/OSHA requires that the incumbent be annually medically cleared to be fit-tested for respiratory protection equipment. This clearance process consists of a comprehensive medical evaluation including a review of the incumbent's medical history, a complete physical examination, and vision, hearing, pyrometer, and exercise treadmill test.

The incumbent typically is required to perform psychologically stressful and/or physically demanding duties consistent with firefighting, disaster response, and emergency medical response, including working in isolated areas, walking or running on uneven rough terrain, and remaining on duty 24 hours or longer without a break while performing these duties.

\*These are the essential functions for this position. Essential functions are those functions that the individual who holds the position must be able to perform unaided or with the assistance of a reasonable accommodation.

Job qualifications and/or conditions of employment:

"We have discussed this document in its entirety and understand the duties of this position."

\_\_\_\_\_  
Employee Signature      Date      \_\_\_\_\_      Date  
Supervisor Signature      Date  
Personnel use only       Posted to Directory      \_\_\_\_\_  
Initials and Date



Napa County Fire Department Operations

Fiscal Year	Dispatch Salaries	Dispatch-Benefits	Dispatch Overtime	Dispatch Uniform	Subtotal Dispatch
2006-2007	\$79,218.41	\$37,250.51	\$21,746.98	\$562.50	\$138,778.40
2007-2008	\$105,989.35	\$50,355.54	\$25,623.07	\$1,331.25	\$183,299.21
2008-2009	\$126,490.76	\$60,462.60	\$36,247.45	\$1,350.00	\$224,550.81
2009-2010	\$128,974.02	\$62,320.22	\$37,520.12	\$1,434.33	\$230,248.69
2010-2011	\$132,294.10	\$63,183.66	\$33,471.92	\$1,462.44	\$230,412.12



A Tradition of Stewardship  
A Commitment to Service

# **NAPA COUNTY GRAND JURY**

**2011-2012**

**May 1, 2012**

**Final Report on**

**MEASURE A**

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A Tradition of Stewardship  
A Commitment to Service

**NAPA COUNTY GRAND JURY**  
**P.O. BOX 5397**  
**NAPA, CALIFORNIA 94581**

May 1, 2012  
The Honorable Mark S. Boesseneker  
Presiding Judge  
Superior Court of the State of California  
County of Napa  
825 Brown Street  
Napa, California 94559

Re: 2011-2012 Grand Jury Final Report on Measure A

Dear Judge Boesseneker,

Pursuant of Section 933 (a) of the California Penal Code, the 2011-2012 Napa County Grand Jury submits to you its final report on Measure A. Our investigation of this subject was conducted in a manner consistent with the California Penal Code, this Court's Charge, and the historic role of the Grand Jury, to protect the interests of the residents of Napa County.

This is second in a series of final reports we will be issuing before the term ends. I would like to acknowledge the hard work and dedication of the Grand Jurors, which our report reflects. It is a privilege and a pleasure to work with them.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David B. Gilbreth".

David B. Gilbreth  
Foreman  
2011-2012 Napa County Grand Jury





A Tradition of Stewardship  
A Commitment to Service

# NAPA COUNTY GRAND JURY

P.O. BOX 5397

NAPA, CALIFORNIA 94581

To the Residents of Napa County:

In order to fulfill the Grand Jury's mandate to investigate local governmental agencies to assure they are being administered efficiently, honestly, and in the best interests of Napa County residents, the 2011-2012 Grand Jury investigated the use of the tax funds generated by Measure A, the Ordinance passed by the voters in 1998 which imposed a ½ cent sales tax throughout Napa County for 20 years to fund certain flood protection and watershed improvement projects in the County.

Initially, the Grand Jury investigated three recent projects for which the City of Calistoga applied and was granted Measure A sales tax funds. These were 1) the Mt. Washington Water tank, 2) projects relating to the development of Solage Resort, and 3) the expenses of defending a lawsuit over whether the City of Calistoga violated its public trust by improperly diverting water from its natural flow to the Napa River, to the detriment of the river's health and wildlife.

After investigation, the Grand Jury developed findings and recommendations in furtherance of the public interest. The Grand Jury found that Measure A funds should not have been granted for all or part of each of the City of Calistoga projects listed above. This finding led the Grand Jury to examine the approval process by which the granting of sales tax funds occurs, and whether the financial oversight protections written into Measure A Ordinance are being observed. The Grand Jury found that the procedures in place for project/expenditure approval are both inadequate and contrary to the letter and spirit of the Ordinance.

The Grand Jury recommends that the approval process be restructured; that the Financial Oversight Committee vigorously assume its responsibilities; and that greater care be exercised by all those charged in the approval process to assure the proper expenditure of funds.

The Napa County Office of County Counsel has reviewed this final report. The Napa County Superior Court Presiding Judge, pursuant to California Penal Code Section 933(a), has found that this report complies with California Penal code Part 2 Title 4. This report has been accepted and filed as a public document by the County Clerk.

Copies of this report are available for review in the Napa City-County Library and online at [www.napa.courts.ca.gov](http://www.napa.courts.ca.gov) (follow the link to the Grand Jury).

We hope you find this report informative. It is an honor and privilege to serve you during the 2011-2012 Grand Jury tenure.

Respectfully submitted,

The 2011-2012 Napa County Grand Jury.





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# MEASURE A

## SUMMARY

The Grand Jury received multiple complaints arising from expenditures of Measure A tax revenue in Calistoga. After extensive investigation, the Grand Jury finds that millions of dollars have been utilized on Calistoga projects and expenses that do not fit within the parameters of Measure A, and which could not have reasonably been contemplated by voters in approving this Ordinance. The Grand Jury urges the Napa County Flood Protection and Water Improvement Authority (Napa County Board of Supervisors) to enhance the pre-approval review process as described in this report.

Napa County voters adopted Measure A in 1998. It imposes a ½ percent sales tax for a 20-year period, to fund twelve specifically described flood protection and watershed improvement projects. These are referred to as “approved projects.” If any of these projects proves infeasible, Measure A dictates a strict procedure whereby a replacement project may be allowed if explicit criteria are met.

There are several prohibitions on the manner in which Measure A proceeds may be spent. Like all special taxes, Measure A tax revenue may not be spent for general governmental purposes. By the terms of the Ordinance, Measure A funds may not be spent to expand water capacity for growth or development beyond 1998 levels. None of the originally approved Measure A projects contain North Bay Aqueduct (NBA) water or other water imported from outside the county, and replacement projects containing NBA water or out-of-county water are expressly prohibited. Projects funded by Measure A must comply with “Living River Guidelines.” Finally, a city or other jurisdiction requesting Measure A money must have already paid that money on an approved Measure A project or have a binding legal obligation to pay that money on an approved Measure A project.

Calistoga has two approved projects. They are (1) to stabilize and enhance Kimball Reservoir for flood protection and water supply reliability, and (2) to improve drainage and flood control in critical areas to protect from flooding.

The Calistoga expenditures questioned by citizens in complaints to the Grand Jury are (1) \$2.7 million spent on the Mt. Washington water storage tank, (2) over \$1 million given Solage Resort for drainage improvements and a water pipe, and (3) approximately \$700,000 for legal expenses incurred defending against a valid public interest lawsuit over the City’s complete blockage of Kimball Creek in violation of “Living River Guidelines.”

Measure A funds should not have been spent on any of these matters.

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The Mt. Washington tank project does not comply with Measure A procedurally or substantively. The Mt. Washington tank was not identified in the Ordinance before the voters, and so was not a voter “approved project.” It should have been processed as a “replacement project.” And even if the Mt. Washington tank had been presented as a replacement project, it should not have received Measure A funding because (1) it is a facility that will hold NBA water, and (2) it increases Calistoga’s water capacity by 125% thereby supporting an increased population and development.

Solage Resort should not have been given Measure A money for its drainage improvements because the City of Calistoga never had a legal obligation to pay this cost. By agreement between Solage and the City of Calistoga, the City agreed to ask the Napa County Flood Protection and Water Improvement Authority (FPWIA) for Measure A money for Solage’s drainage project. But if the FPWIA, which is comprised of the County Board of Supervisors, did not approve giving Measure A tax revenue to Solage, Calistoga did not have to pay Solage for these improvements. Solage would absorb the cost. The City of Calistoga was never obligated for this expense. Nevertheless, the City did submit a request for Solage’s drainage to the FPWIA and the FPWIA approved it. Calistoga thereby acted as a conduit wrongfully funneling taxpayer money to Solage.

The Solage water pipe does not qualify for Measure A revenue because this pipeline (1) is not one of Calistoga’s approved projects; it is neither an enhancement of Kimball Reservoir nor a drainage project, and (2) its purpose is to carry NBA water.

Finally, the City of Calistoga’s legal expenses should not have been paid with Measure A tax proceeds. Expenditures for a city’s legal expenses are generally expenditures for governmental purposes. They are not to be paid with special tax funds. Moreover, these costs and fees were not expended in furtherance of Measure A objectives. They did not facilitate flood control or watershed improvement. In fact, they were incurred fighting Measure A objectives. They were incurred fighting compliance with “Living River” guidelines: Opposing a public interest lawsuit to allow some of the water from Kimball Creek to bypass Kimball dam, to preserve fish and wildlife habitat downstream. The city eventually abandoned its position rendering the suit moot.

It is difficult to conceive how inappropriate expenditures of this magnitude could have occurred. Had an effective procedure for reviewing, verifying, and approving Measure A proposals been in place, they would not have been allowed. Measure A represents an infusion of over \$150 million into Napa County. The funding approval process must to be critically reviewed, county level checks and balances must be added, and citizen oversight strengthened.

The Grand Jury recommends:

1. The FPWIA (Board of Supervisors) must more carefully evaluate Measure A proposals. In furtherance of this, the FPWIA should revise the “organizational chart”

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to ensure (a) that proposed expenditures are in absolute legal and technical compliance with the Ordinance, and (b) that the Financial Oversight Committee (FOC) be given full documentation regarding proposals prior to the FPWIA's decision on them.

2. Before a requested expenditure is presented to the FPWIA for approval, County Counsel certify that proposed expenditures fit within Measure A from a legal standpoint, as well as the director of Public Works certifying that expenditures fit Measure A from an engineering standpoint.

3. The alarming number of vacancies on the FOC should be filled and the lack of effective leadership remedied. Currently, only 9 of the 17 positions for citizen representatives are filled and the leadership is entrenched.

4. The FOC review "planned and approved" expenditures earlier in the process, before proposals go to the FPWIA for consideration. It is the duty of the FOC to report to the public on questionable proposals as well as expenditures. Measure A Section 9(A)(2)(c). This is much more effective when citizens are made aware and given the opportunity to speak out before those proposals are approved and the tax revenue spent.

5. The FOC review invoices and itemized billings from cities and jurisdictions with projects being funded by Measure A, and administrators from these cities and jurisdictions be available as support and resource staff for the FOC as required in the Joint Powers Agreement Section 9(e).

6. The FOC itself prepare its annual audit as required in Section 9(A)(2) of Measure A, rather than rely on the County Auditor to do this audit for it, and the County Auditor prepare its own separate audit as required in Section 23 of Measure A. The current single joint annual audit by the County Auditor does not provide dual insight and objectivity, and violates the specific dictates of the Ordinance.

7. As for Calistoga, pursuant to FPWIA Agreement No. 19, Section 3(b), any further requests by Calistoga for Measure A funds for the Mt. Washington tank and Solage projects must be denied and the Calistoga should be required to return any unspent Measure A tax revenue forwarded to it for these matters.

## **BACKGROUND**

### **MEASURE A**

The Napa County Flood Protection Sales Tax, known as Measure A, was passed by a two-thirds majority of Napa voters in 1998. The purpose of Measure A is to fund flood control projects in Napa County for twenty years. This is being accomplished by a

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Countywide sales and use tax of a half percent. The estimated revenue is over \$150,000,000.

Measure A mandates the tax proceeds be used to construct a dozen specifically designated flood protection and watershed improvement projects throughout the county. These are referred to in the Ordinance as “approved projects.” These projects were designed to protect against flooding, improve water quality, preserve the integrity of ground water resources and/or stabilize water supply reliability for the existing Napa County population as of the effective date of the Ordinance. None of these projects were intended or designed to expand water capacity for growth and new development. All of the projects were planned in accordance with the “Living River Guidelines contained in the Community Coalition’s Flood Management Plan and the Napa River Watershed Owner’s Manual of the Napa County Resource Conservation District. It is important to note that none of these “approved projects” provided any facilities for, or purchase of, North Bay Aqueduct or other water imported from outside Napa County. (Measure A Ordinance, Appendix I.)

The election ballot expressly provided:

Revenues from the sales tax shall only be used for flood protection and watershed improvements.

The “Impartial Analysis By The Napa County Counsel” which accompanied the ballot and upon which voters relied in their decision-making stated:

...sales tax proceeds (are) restricted to financing/constructing/maintaining/monitoring the flood control and watershed improvement projects identified in the Ordinance.

Moreover, Measure A is classified as a “Special Tax.” The “Impartial Analysis By The Napa County Counsel” admonished:

Special tax proceeds, including Measure A tax proceeds, cannot be utilized for general governmental purposes. (Appendix II.)

If any of the designated “approved” projects is later determined to not be feasible, either for economic or environmental reasons, a replacement project may be recommended. Like the original designated projects, replacement projects must meet explicit criteria. To qualify for Measure A tax money a replacement project is required to:

1. (a) Protect against flooding, and/or  
(b) Improve water quality, and/or  
(c) Preserve the integrity of ground water resources, and/or

- 
- d) Stabilize water supply reliability for Napa County at its 1998 population level; and
  2. Be planned in accordance with “Living River” guidelines; and
  3. NOT expand water capacity for growth or new development; and
  4. NOT involve purchase of, or facilities for, North Bay Aqueduct or other water imported from outside Napa County.

The FPWIA, which is comprised of the Napa County Board of Supervisors, was created by Measure A to administer the sales tax ordinance.

With the prospect of substantial revenue to be raised by the special tax, it was crucial that a procedure be put in place that would insure the proceeds be spent appropriately on the required and essential projects. Thus, the Ordinance for Measure A established the FOC.

The Ordinance required that the FOC be comprised of 17 Napa County citizens appointed by the Napa County Board of Supervisors. As summarized on the Napa County website, the charge of the FOC is to ensure that the local sales tax money raised from Measure A is used only for the flood protection and watershed improvement projects listed in the Ordinance.

([www.countyofnapa.org/Pages/DepartmentContent.aspx?id=4294974207](http://www.countyofnapa.org/Pages/DepartmentContent.aspx?id=4294974207) click on “Financial Oversight Committee Guidelines”)

Measure A states that the FOC shall:

1. Provide the public with information regarding the manner in which Measure A tax proceeds have been spent;
2. Prepare an annual audit regarding the use of Measure A proceeds;
3. Review the financial impact of each project and advise the public whether it is consistent with the purpose, spirit, intent, and language of Measure A;
4. Inform the public of any expenditure which is inconsistent with the purpose and intent of Measure A;
5. Make recommendations to the Napa County Flood Control and Water Conservation District regarding proposed replacement projects if a project identified in Measure A is determined not feasible.

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Since there has never been a replacement project proposed in the 14 years Measure A has existed, the FOC has never acted in this capacity.

In addition to the creation of the FOC, the Ordinance mandated one additional financial review mechanism in Section 23:

**SECTION 23. Napa County Auditor-Controller Audit.**

In addition to the audit required pursuant to Section 9(A)(2)(b) (*the above-mentioned FOC audit*), the Napa County Auditor-Controller shall annually conduct an audit of how the new transactions and use tax revenues are spent by the County of Napa. The audit shall be published in at least two County newspapers and copies of the audit shall be provided to, and must be available at, every public library located in the County.

There are no other financial oversight provisions in the Ordinance.

Nor are there provisions in the Ordinance setting forth the formal procedure by which a city may obtain Measure A funds. In absence of any such mandated procedure, a process was put in place for moving proposed Measure A expenditures from formulation at city level through FPWIA approval and funding. This process is illustrated on the attached County of Napa flowchart depicting the process for obtaining approval for proposed Measure A expenditures. (Appendix III.)

As shown in the flowchart, a city formulates a project and makes a funding request to the County Auditor. The County Auditor verifies that city has sufficient Measure A funds to cover its proposed project. The proposal then goes to the County Public Works Director to “certify” that the proposed project meets Measure A requirements. Next, County Counsel prepares a “Funding Agreement” between the city and the FPWIA. The Funding Agreement goes back to the city for approval and to the FPWIA for consideration. After the Funding Agreement is approved by the FPWIA, the city proceeds with the proposed work. When the work is completed the city requests reimbursement of its expenditures from the County Auditor. The County Public Works department is then responsible to review the completed work and approve or disapprove reimbursement to the city. (Appendix III.)

## CALISTOGA

With the passage of Measure A, the Napa voters approved two projects requested by the City of Calistoga. These two designated approved projects were:

1. Stabilization and enhancement of Kimball Reservoir, which shall be for the purpose of flood protection and water supply reliability.

- 
2. Flood protection and drainage improvements in the Grant Street area and other critical areas to protect residents and businesses from flooding.

During the drafting of the Ordinance each City was asked to recommend certain critical projects for inclusion. The process of inclusion is described in the Joint Powers Agreement (JPA), which was entered into by all the entities affected by Measure A on November 1, 1998. (Appendix IV.) It states, in Section 2(d):

The County, the District and the Municipalities prior to the March 3, 1998, election conducted study sessions and deliberations regarding the unmet flood protection needs throughout the County and **identified critical projects which would greatly reduce and/or eliminate the destructive flood damage which regularly occurs in the County.** (Emphasis Added.)

These projects were then included in the Ordinance, which was subsequently approved by Napa County voters on March 3, 1998.

The above-referenced “study sessions” were held to insure that any project deemed by a municipality to be “critical” to the reduction and/or elimination of flood damage was not only needed but also was a project which in every way conformed to the spirit and language of the Ordinance. This was of paramount concern to the drafters of the Ordinance because the adherence of all projects to the spirit and language insured the best chance of the passage of the Ordinance by the electorate. Therefore, none of the twelve projects included as “approved” projects were designed to expand water capacity for growth and new development beyond the population census of the County as it existed in 1998 and it is important to note, that none were designed to encourage or facilitate the utilization of water imported from outside Napa County. Since Calistoga’s two projects did neither, they were both included in the Ordinance for approval by the Napa County voters.

Generally, pursuant to the Measure A Ordinance, all the tax proceeds collected in a city are to be spent within that city. Calistoga’s share of Measure A funding is approximately 3 percent of all Napa County Measure A tax revenue. As of June 30, 2010, as published in the FOC’s latest annual report to date, Calistoga had been allocated \$4,217,788 in Measure A revenues.

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## DISCUSSION

### CALISTOGA PROJECTS

In connection with its investigation and analysis of the administration of Measure A, the Grand Jury examined several recent applications of the City of Calistoga for use of the special tax funds on certain municipal projects. In each case the FPWIA without dissent approved the funding.

#### Kimball Reservoir

Calistoga's first application for Measure A revenue was to fund a study on the feasibility of dredging Kimball Reservoir, which over the years had lost some capacity due to silting. This action was the result of the City having been for some time under a Compliance Order issued by the California Department of Health Services to dredge Kimball. This is no doubt why Kimball Reservoir stabilization and enhancement was included as one of the City's two projects. The study was begun in 2003 and completed in 2005. As a consequence of the findings, the Department of Public Works officials in Calistoga determined that project to be "infeasible".

#### Mt. Washington Water Tank Project

The city of Calistoga has recognized its need to expand its water supply and water infrastructure since the 1990's. The State of California Health Department issued a report in 1997 noting that the city was "failing to meet its infrastructure needs". A letter dated May 19, 1997 from the Department of Health and Safety (DHS) to the City of Calistoga:

...requir(ed) that the city demonstrate significant progress in securing an additional storage tank or in having the Feige tank recoated.

The city's water supply was found to be marginal to the point that if a major fire should arise during the dry season, it might not be possible to keep the pressure up in the fire hydrants. In light of the State report, the city began to search for a location to build an additional water storage tank. A site evaluation team composed of staff "reviewed, screened and ranked 13 potential tank location sites" Ultimately the city officials decided on a 9.63-acre site at 335 Silverado Trail called Mt. Washington.

The site was chosen for three reasons:

1. Its location was within the city limits.



- 
2. It had a close proximity to the NBA pipeline that travels up the valley and provides Calistoga with water it purchases from the State Water Project outside the county.
  3. It had the proper elevation, which assured that the water pressure would be consistent with that of the Feige water tank.

The tank is also adjacent to an extensive new development, the Solage Resort, which is widely expected to contribute substantial Transit Occupancy Tax (TOT) revenue to the City.

The City of Calistoga responded to a previous report issued by the Napa County Grand Jury in 2011 by stating the 2 water sources for the city are (1) Kimball Reservoir and (2) its share of NBA water that is treated by the city of Napa.

It noted:

Calistoga elected to increase water supplies through the purchase of additional water allocations through the NBA system.

A staff report of 2007 stated that currently Calistoga purchases approximately 50% of its water from outside the county. It is apparent that the city needed to comply with the State of California Department of Health Compliance Order #02-03-096CO-003 and this water storage tank was intended for the basic infrastructure of the city, expanding the city's water supply and keeping adequate pressure to the fire hydrants. This land was purchased for \$1.9 million in 2005. The tank was originally scheduled to be constructed in FY 2003/2004 as noted in a letter from DHS and operating by 2007. At no time prior to 2007 did it appear that the city considered or intended to use Measure A funds to build this project.

As indicated above Measure A states:

The ultimate goal of the Plan is to provide flood protection, save lives, protect property, and restore the Napa River, Napa Creek, and other tributaries.

At the time of the original drafting of Measure A, the City of Calistoga was well aware of its critical need to expand its water infrastructure and increase its water storage capacity. The City was informed that once the projects were written into the language of Measure A they could not be changed unless they were declared environmentally or economically unfeasible, then any additional project would have to be considered a "Replacement Project" under the Ordinance and go through a new and separate approval process (see below). The Public Works Director and staff for the City of Calistoga at the time that Measure A was being written did not ask that the water storage tank be considered an approved flood control project. The only

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projects requested by the City of Calistoga were the Kimball Reservoir and Grant St. projects.

Nevertheless, on June 23, 2009, Calistoga City Council requested the amount of \$2,700,000 from Measure A funds to partially fund the construction of the water storage tank as stated in Amendment #6 of the FPWIA Agreement #19. (Appendix V.) The FPWIA approved this request without dissent. The total cost of the water storage tank construction exceeds \$6 million. However, the amount earmarked through Measure A funding for this project is \$2,700,000. The Mt. Washington project is expected to be completed in 2012.

This Grand Jury finds that Measure A funds were inappropriately utilized for The Mt. Washington water storage tank project for the following reasons:

1. The water tank substantially increases the storage capacity of the City, hence supports growth and new development.
2. The City's rationale to support the use of Measure A funds, that the tank was "stabilization and enhancement of Kimball Reservoir," is unfounded. What the City officials fail to point out is the storage tank constitutes a new addition to the City water infrastructure, which increases the City's water capacity by 125% and had been mandated years before by the State of California. It is several miles from Kimball Reservoir and can hardly be considered an adjunct thereto.
3. It will hold imported NBA water. Not one of the twelve "approved projects" in Measure A provides facilities for the importation of water from the NBA. Nor could it have been approved by the FPWIA as a "Replacement" project under the wording of the Ordinance.
4. It is not intended for flood control or watershed protection.

The Grand Jury believes that explains why the City did not and could not include Mt. Washington tank as an Approved Project under the guidelines set forth in Measure A.

While clearly the Mt. Washington tank is an enhancement to the city, it does not qualify for funding through the flood tax imposed by Measure A. It is not one of Calistoga's two approved projects because it is not integral to the Kimball Reservoir. No voter could have foreseen such a stretch of the meaning of "stabilization and enhancement of Kimball Reservoir."

If Measure A money was to be obtained, the tank would have to qualify as a "replacement project" subject to the higher level of scrutiny attendant to replacement projects, including FOC approval and recommendation. Even so, the Mt. Washington tank would not qualify for Measure A funds because it increases the

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City's water capacity by 125% supporting population growth, a consequence forbidden by the Ordinance. And, it would not qualify for funding through the flood tax imposed by Measure A for the further reason that it will hold NBA water. Funding facilities for NBA water as "replacement projects" is expressly forbidden in Measure A, Section 8.

While the Mt. Washington water storage tank is a commendable and necessary water expansion project for Calistoga, it does not fit Measure A criteria and is not an acceptable use of Measure A tax money.

## SOLAGE RESORT PROJECTS

In 2001, the City Council of Calistoga approved the proposed Solage Resort, and in 2004 entered into a developer's agreement that required the resort, in the words of a recent article (March 9, 2012) in the *Calistoga Tribune*, "to make improvements to the municipal infrastructure to not only service the Resort but fix the city's aging and deficient systems in sewer, water and drainage lines."

The City of Calistoga, as a public entity, is guided by extensive rules in public works contracting. Among these rules is that formal competitive bidding is required for projects over a certain monetary value. Formal competitive bidding assures both the public and competing contractors the price paid for construction is the lowest price and the work is completed as described in the billing documentation. However, there is a way a municipality might bypass the rules. Instead of putting out a public bid for the project, it can have a private entity accomplish the work and then reimburse the private entity. The City of Calistoga did exactly this.

The City of Calistoga presently requires all public works projects over \$75,000 to be publicly bid and executed under public works contracting regulations and documents. The Solage water pipe and drainage projects, \$405,000 and \$600,000 respectively, each greatly exceeded the sum of \$75,000. Calistoga avoided competitive public bidding in the Solage projects on the theory that completing these projects before building the resort would avoid dust and confusion. This is a deviation from established public works rules.

The City of Calistoga, like many other cities, is struggling to find income to support municipal expenses. The main source of income in Napa Valley is the TOT. Cities are motivated to have more hotels for the additional income they produce. When a developer proposes a project and negotiates with the city for the permit entitlement, it can become an intense process. The city wants the project to increase the TOT and property tax base, and the developer wants the project at the least cost. Generally, the builder pays for all the onsite and offsite improvements such as utilities extensions and streets that are required to service the project.

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## Solage Pipeline Project

The Solage Resort installed a 2,400-foot pipeline along the east boundary of the Resort abutting Silverado Trail and the Mt. Washington water storage tank site. This pipeline was built for the purpose of connecting the Mt. Washington water storage tank to the existing City water infrastructure. For this work Solage billed the City of Calistoga \$405,000 as per the development agreement. The constructed water line is a 12-inch pipe, even though a 3-inch line would have been sufficient for the needs of the resort. Obviously, the size of the pipeline, beyond what was required for the needs of the resort constitutes an additional build out of the City's water infrastructure. This was not an appropriate use of flood control funds. Solage was given much more access to water than it required. The City requested the funds under Amendment #6 of Agreement #19 of Measure A, using as a pretext the argument that this was for the purpose of enhancing the stabilization of Kimball Reservoir. Additionally, the pipeline connects the Mt. Washington tank and Solage Resort to North Bay Aqueduct water. Measure A is essentially a flood control tax and it does not contemplate facilities for the storage or transmission of North Bay Aqueduct water.

## Solage Drainage Project

Solage Resort also took on an enhanced drainage project, partly to mitigate the 14 acres of hardscape they created, at the cost of \$600,000. Solage billed the \$600,000 to the City of Calistoga as per their Development Agreement. This payment was improper; payment through Measure A should not have been approved.

Measure A funds may only be used for projects that legally require payments from a given jurisdiction, in this case the City of Calistoga. The basic agreement between the FPWIA and the City of Calistoga is Agreement #19. This Agreement controls the funding of Measure A monies to the City. Under Section 3. Disbursal of Funds provides:

City may request reimbursement even if no City funds have been expended **if it has entered in agreements or other legally binding documents (the "Contract") committing City to expend City funds...** (Emphasis added.)

The Solage-Calistoga agreement obligated the city to request funds from Measure A, but if the city failed to receive the funds from Measure A it was not obligated to pay for the project. The City's "Reimbursement Agreement" with the resort says:

### 1. Reimbursement

(A) The City shall make timely and good faith efforts to obtain funds for the reimbursement of the Drainage Improvements from the Napa Measure A Storm Drainage and Water Supply Reliability Program unless and until the

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County of Napa states Measure A funds will not be paid, for any reason, or may not be used for to (sic) reimburse developer for the Drainage Improvements.

- (B) If the City does not receive sufficient Measure A funds to reimburse Developer for the Drainage Improvements, City shall have **no obligation to reimburse Developer the \$600,000 from the City's general fund.** (Emphasis added.)

The Grand Jury notes with acute disappointment that all of those interviewed, involved in the approval process in the County of Napa, failed to notice that the City had no obligation to repay Solage Resort. Nor, apparently, did the City bother to inform them.

## LEGAL FEES AND EXPENSES

The City of Calistoga's most recent application for a grant of Measure A funds included a substantial amount for legal fees, expert witness fees and other expenses incurred by the City in defending a lawsuit which was filed on March 18, 2009, against the City by an individual seeking private damages in connection with the City's diversion of water from Kimball Creek. The suit also asserted a "public trust" claim to require the City to halt its practice of diverting the full flow of Kimball Creek into Kimball Reservoir and to allow some water to by-pass the Reservoir and freely flow downstream for the benefit of fish and wildlife downstream.

The City actively contested the litigation and succeeded in persuading the Napa Superior Court to dismiss the aspects of the lawsuit involving private water rights. As a consequence of the Court's action all that remained of the original suit was the claim that the City had violated its "public trust" for its failure to allow some by-pass of water.

In early 2010, the State Water Resources Control Board (SWRCB) and the Department of Fish and Game (DFG) through the California Attorney General, filed a "friend of the court" brief in the public trust litigation. In that brief, SWRCB and DFG essentially reminded the City of Calistoga that it had an independent and ongoing responsibility to insure that its use of water from Kimball Creek complied with the public trust doctrine, which included allowing some downstream flow to support the well-being of the Napa River and its habitat. The City has taken the position in public documents that it was not until that intervention by the Attorney General that it realized it might have a public trust duty with regards to the diversion of the water of Kimball Creek. The Grand Jury finds this legal stance disingenuous. On September 7, 2007, nineteen months **before** the commencement of litigation, and over two years before the Attorney General's intervention, the City of Calistoga received official notice from the SWRCB that the City's Amended License for Diversion and Use of

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Water at Kimball Creek contained a public trust provision controlling, among other things, “unreasonable method of diversion of said water.”

During the time the City of Calistoga was aware of, but refused to acknowledge its public trust responsibility, it incurred costly legal fees and expenses. To avoid these expenses the City should have taken the most prudent course and applied to the Court for a stay of the proceedings pending a proposed resolution. However, it was not until September of 2011, shortly before the trial was to commence, that the Calistoga City Council members approved a plan to allow the bypass of a certain amount of water. The action effectively ended the lawsuit and the Superior Court dismissed the plaintiff's action as moot. Though some parties might consider it a smaller flow than they expected, the release of water would occur during the crucial winter and spring months when salmon and steelhead trout spawn in the Napa River gravel beds.

This suit against the City essentially forced Calistoga to acknowledge its duty to protect fish and other downstream wildlife. The Grand Jury considers it irresponsible for the City of Calistoga to incur the unnecessary attorney fees, costs and expenses by failing to properly understand its legal responsibilities in the first place, and then compounding its error by failing to promptly acknowledge its responsibilities and remedy the situation. These failings have cost the City hundreds of thousands of dollars in wasted Measure A funds.

In the paperwork submitted to support its application for a grant of funds from the Measure A sales tax to pay for the fees and costs incurred in contesting the “public trust” aspect of the lawsuit, the City used the tortured rationale that the expenditure of these legal fees and litigation witness fees constituted a “stabilization and enhancement of Kimball Reservoir.” The Grand Jury finds it an unfortunate irony that a major purpose of this flood protection law is to preserve the environment of the Napa River and that compliance with “Living River” principles is mandatory under the Ordinance, yet the City of Calistoga used Measure A revenue funds to defend itself against its own breach of public trust in failing to protect the river.

After consulting with the County Counsel and the County Director of Public Works, the Calistoga Director of Public Works composed a Request for Measure A Funds, which was then approved by the City Counsel and forwarded to the FPWIA. Having been reviewed by the County Counsel, the request was certified as an appropriate expenditure for Measure A money by the County Public Works Director and forwarded to the FPWIA for final approval.

On August 9, 2011, The Executive Director of the FPWIA presented to the Governing Board a recommendation as follows:

Executive Director requests approval of and authorization for the Chairman to sign Amendment No. 9 to Agreement No. 19 (FPWIA) with the City of Calistoga to provide for an additional expenditure of \$1,100,000 over a period

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of three years for the Kimball Dam Intake Tower, Drain valve, Bypass Structure, and **Water Rights Protection** ... (Emphasis added.)

The “Discretionary Justification” for the requested funds was:

Amendment No. 9 commits additional funding for a project specifically listed in Section 8(C)(1) of the Measure A Ordinance.

The Grand Jury notes that somewhat obscured within the wording of the application dealing with valves, bypass structure, and intake tower are the words “Water Rights Protection.” This term is used by the City for the legal fees and consultant expenses incurred relating to the lawsuit, which comprises the majority of the requested funds. A detailed examination of the records provided to the Grand Jury from the City of Calistoga and which were provided to the FPWIA, indicates that almost \$700,000 of the requested allocation of \$1,100,000 was for legal fees and other costs expended to defend the lawsuit against the City and to prepare the by-pass plan.

The rationale of the City and of the FPWIA’s Executive Director was:

This project will support the water supply reliability for Kimball Reservoir and is consistent with section 8(C)(1) of the Measure A Ordinance...City water rights for Kimball Reservoir have also been challenged, requiring hydrology studies, fishery biologist studies, and legal support costs.

An inspection of the detail provided to the FPWIA in support of this claim included payments to at least three law firms. These payments occurred during a period of thirteen months, from August 19, 2010 through September 30, 2011. They include:

Somach, Simmons & Dunn, 2/28/11 to 9/30/11	\$60,969.19
McDonough, Holland & Allen, 8/19/10 to 9/22/10	\$15,108.62
Burke, Williams & Sorenson, 10/29/10 to 9/16/11	\$486,821.14

In addition, the attorneys retained expert witnesses to assist them with the technical aspects of the public trust claim. These bills were sent to the attorney’s offices for reimbursement by the City. They include:

MBK Engineers, 5/13/11 to 10/12/11	\$64,910.92
Mike Podlech, Aquatic Biologist, 7/4/10 to 11/1/11	\$31,117.00
TOTAL:	\$658,926.87

Upon examining the billings these firms provided to support their charges, obtained by the Grand Jury at its request from both the City of Calistoga and the FPWIA, it became apparent to the Grand Jury that there was virtually no description of the work actually performed. The billings consisted only of the hours spent, the initials of the attorney, and the hourly billing rate. It was obvious that at some point the description

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of the work performed had been redacted on most invoices. On others, there was absolutely no description of the work at all. Obviously, these provide no way of ascertaining whether the work claimed to be done was actually needed or whether the amounts charged for the services were reasonable.

It is proper procedure in the private sector for businesses that receive counsel from outside legal offices to require a complete itemization of each service provided and the amount of time expended as well as the identification the lawyer(s) who performed the service. The Grand Jury finds that the citizens of Calistoga and the taxpayers of Napa County should receive no less than what is routine practice in the private sector. Certainly, those charged with the responsibility to evaluate the reasonableness of such charges could discern nothing from the proffered billings. The Grand Jury is at a loss to understand how these expenditures could have been approved, based upon such inadequate documentation.

The Grand Jury finds that the payment for these legal fees and expenses taken from Measure A sales tax funds was improper for the reasons enumerated below.

1. The costs of defending a lawsuit brought by a concerned citizen alleging resource misappropriation and breach of public trust by the City of Calistoga, is not a proper use of Measure A funds. The defense of lawsuits such as the one involved here by a City is a general governmental function commonly engaged by cities everywhere. As was clearly stated in the “Independent Analysis” written by the Napa County Counsel and provided to the voters in March of 1998, the funds of Measure A cannot be used for “general governmental purposes.”
2. The costs of defending a breach of public trust lawsuit is not an “approved project” and bears no relationship to the stated purpose of Calistoga’s approved project: “Stabilization and enhancement of Kimball Reservoir which shall be for the purpose of flood protection and water supply reliability;”
3. These expenses were incurred fighting compliance with “Living River” guidelines, in the face of Measure A’s mandate that any expenditure must be “in accordance with Living River Guidelines,” which admonish, “The end result is a living river that can sustain migrating fish and wildlife...” Napa County Flood Control and Water Conservation District Webpage, ([www.countyofnapa.org/pag#AA9D1A](http://www.countyofnapa.org/pag#AA9D1A))



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4. The copies of the bills provided to the Grand Jury in response to its request for all documentation which the FPWIA used to support the validity of its payout of Measure A Funds lacked crucial detail to justify payment.

After aggressively contesting all the issues for two years, the suit was concluded on the eve of the trial when the City finally conceded to the environmental demands sought by the plaintiff. The City resolved the suit by agreeing to allow some flow from Kimball Reservoir downstream to the Napa River for the benefit of fish and other wildlife. If the City had properly analyzed its legal position and acknowledged its responsibility earlier, most if not all of the legal costs and expenses could have been avoided. Those Measure A tax funds would not have been improperly diverted and may have been available to Calistoga for purposes of which Measure A money is intended.

## FLAWED APPROVAL PROCESS

The Grand Jury is not without sympathy for the efforts of Calistoga authorities to seek funding from whatever sources they deem potentially available to assist in these much needed infrastructure projects. The Grand Jury does not find that these projects are unnecessary. What the Grand Jury does find is that however meritorious the projects are, they do not meet Measure A criteria and it is clearly improper to employ funds that the voters specifically designated for other purposes.

The constraint of time has only allowed the Grand Jury to examine recent Calistoga Measure A projects and not those of other jurisdictions. However, the Grand Jury has examined the application process applicable to all municipalities in Napa County, and has found that process wanting. Napa County has spent over \$100,000,000 on Measure A projects. This is an enormous amount of money. It also has finite limits. The FPWIA (Board of Supervisors) must take steps to ensure that requests for disbursements are evaluated thoroughly at all levels, with utmost professional care.

## Inadequate County-Level Scrutiny

The Measure A Ordinance does not set forth the precise manner in which the approval process for the expenditure of Measure A revenue is to operate. The Ordinance in Section 4 states that a “Joint Powers Agreement” shall be developed which shall specify “allocations and methods of distribution” of Measure A tax revenues to fund the projects described in the Ordinance. The JPA, in turn, provides simply:

All disbursements of the...revenues will be accomplished through contracts between the Authority and the individual municipalities...Jurisdictions wishing to access such funds shall submit to the Authority a request for disbursement...(which) shall state the amount of funds requested, describe the

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project for which the funds are sought and specify how the proposed project is a permissible use of Flood Protection Sales Tax revenues.

JPA, Section 9(c).

The manner by which a municipality's "request for disbursement" is reviewed for technical and legal compliance with Measure A criteria is not addressed by the Ordinance or by the JPA. Instead, an ostensibly de facto "approval process" exists for proposed expenditures of Measure A funds.

As outlined on the County's flowchart in Appendix III, a municipality (Calistoga) formulates a project that it contends meets Measure A criteria. It then makes a funding request to the County Auditor-Controller. The County Auditor-Controller checks that Calistoga has sufficient Measure A funds to cover its proposed project. The Auditor then requests the County Public Works Director to "certify" that Calistoga's proposed project meets Measure A requirements. If the Public Works Director concludes that the proposal (1) conforms to Measure A criteria and (2) is one of the two designated Calistoga projects, County Counsel prepares a "Funding Agreement" between Calistoga and the FPWIA. The FPWIA is comprised of the Napa County Board of Supervisors. The Funding Agreement goes to Calistoga City Council for approval. It is then presented by the County Public Works Department to the FPWIA for consideration. If the FPWIA Board approves the Funding Agreement, Calistoga proceeds with the proposed work. When the work is completed Calistoga requests reimbursement of its expenditures from the County Auditor-Controller. The County Public Works Department then reviews the completed work and approves or disapproves reimbursement to Calistoga.

The Grand Jury finds that this process is inadequate. It has resulted in Measure A revenue being expended (1) on projects and expenses not within the plain or reasonably expected meaning of the Ordinance, and (2) has resulted in tangential projects being funded as part of an original approved project rather than being treated as "replacement projects" subject to the checks and balances incorporated into Measure A for "replacement projects." In Calistoga's case, the current process has resulted in Measure A revenue being expended on projects which are related tenuously at best to its two designated approved projects, and even then only by disingenuous, contrived reasoning.

As indicated, under the current scheme, after the County Auditor-Controller reviews Calistoga's proposed project to ensure there is sufficient funding, the County Public Works Director reviews the proposed project for engineering feasibility and for any potential link, however remote, to one of Calistoga's two approved projects. County Counsel's sole duty is to draft funding agreements after the County Public Works Director "certifies" proposed projects. However, no one with legal expertise is charged with reviewing the proposal to ensure it fits within reasonable legal interpretation of the Ordinance. The Grand Jury was told that Napa County Counsel occasionally

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reviews and provides input on proposed expenditures if requested to do so. Unfortunately, it is neither required nor is it standard procedure to obtain legal analysis. Moreover, while County Counsel is sometimes consulted informally by the Public Works Department on whether a city's requested expenditure fits within the legal parameters of the Measure A Ordinance, County Counsel renders no formal opinion as to the suitability of the project.

A proposed project qualifies for funding only if, as expressed in the JPA, it "is a permissible use of the Flood Protection Sales Tax revenue". To be a "permissible use" a proposed expenditure must (1) fit technical engineering criteria, and (2) fit within the legal scope of the Ordinance. Thus, determining whether and "how a proposed project is a permissible use of (Measure A) revenue" requires engineering expertise and legal expertise, JPA Section 9(c). Clearly, both the Director of Public Works and County Counsel should be required to "certify" that a proposed project fits within Measure A before a proposal is presented to the FPWIA (County Board of Supervisors) for approval, thereby providing one more layer of accountability and assuring the public of professional review of the legal aspects of compliance with Measure A as well as the engineering aspects. The current process, requiring certification only from the Director of Public Works, is not sufficient.

## Financial Oversight Committee: The Sleeping Watchdog

The Grand Jury, in accordance with its duty, has conducted an extensive review of the procedures used by the FOC in fulfilling its responsibility to study all flood protection projects and inform the public. The Grand Jury regrets to report the FOC so far has not carried out its responsibilities to the level Napa citizens and taxpayers are entitled. As the initial phase of original projects becomes complete and replacement projects are proposed, it becomes even more crucial that the Committee competently carry out its responsibility.

One aspect of the Committee not fulfilling its expected role in safeguarding funds from being spent inappropriately is the same problem addressed in a previous Grand Jury Report (2008/2009). Namely, the FOC is improperly constituted.

In order to enhance the likelihood of the Ordinance being approved by an overwhelming majority of Napa voters in 1998, the Ordinance included the establishment of a Committee to represent the numerous diverse interests of Napa Valley's citizens. The FOC was originally to be composed of the following representatives to meet at least each once each quarter:

- 1 recommended from each city or town council and the Napa County Board of Supervisors who are not professionally involved with a city, town or the county of Napa (total of 6)
- 2 recommended by the Business Community
- 1 recommended by Local Media

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1 recommended by Napa County Taxpayers Association  
2 recommended by the Environmental Community  
1 recommended by Friends of Napa River  
2 recommended by the Agricultural Industry  
1 Certified Public Accountant recommended by the above  
(With the exception of the public accountant, all are required to be Napa County residents.)

The Financial Oversight Committee Guidelines were amended in 2006 to include a representative of Health and Human Services, which resulted in a total of 17 members. However, there has never been a complete contingent of members on the Committee. The current roster of 9 representatives is barely above 50% of the requirement, and this underrepresentation has existed for a disturbingly long period of time. The important Napa constituencies that lack full representation are:

Board of Supervisors  
Business Community (2)  
Local Media  
Napa County Taxpayers  
Environmental Community  
Agricultural Industry  
Health and Human Services

Napa County citizens are not well served by a reduced and underrepresented board, which is required to effectively oversee more than \$150,000,000 tax dollars.

The Grand Jury is not only disturbed by the Committee's lack of members, but is also disappointed in its lack of initiative and lack of leadership. Since 1998 there has been approximately \$114,000,000 expended on projects, yet the Committee has rarely criticized any expenditure during its existence.

This lack of initiative, leadership and membership is manifested in the Committee's failure to:

1. Routinely interview those persons responsible for projects.
2. Actively solicit community input.
3. Conduct on-site inspections to assure the propriety of completed work
4. Vigorously examine project documents.
5. Demand and review the complete files, including detailed invoices on each project and not merely rely on the summary materials provided to it by the County Auditor.
6. Until recently, formulate subcommittees to independently study specific aspects of projects.

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The Committee's lack of effectiveness might also be attributed to procedural issues. First, members are required to meet at least four times a year. They seldom meet more than the required number.

Second, the cities or the unincorporated areas having flood control projects may come to a meeting to provide updates on their progress. However, the Committee cannot compel the attendance of any of these jurisdictions. To be effective, the FOC needs ready access and direct communication with representatives of each of these jurisdictions. The lack of ready access and unreliable availability of representatives from these jurisdictions is at odds with the directives of the JPA. The JPA requires that, "the Authority's Auditor, the County Auditor-Controller, **and the appropriate administrator from each Municipality**, the County and the District" will form the "financial system technical advisory committee" and "will provide assistance and support to the (FOC) to carry out its oversight mission." JPA Section 9(e). (Emphasis added.)

Third, the system does not provide an effective organization of checks and balances. For example, all of the input on expenditures that the Committee receives comes directly through the County Auditor-Controller who has her own particular connection with the approval process. (See Appendix III.) The Ordinance specifically provided for a paid position of a CPA on the FOC in order to give independence, substance and expertise to the Committee's financial review function.

The Measure A Ordinance states the responsibility of the FOC regarding replacement projects in Section 8:

In the event any project described in this Section is not economically or environmentally feasible, the legislative body having jurisdiction over the lands involved shall recommend to the Napa County Flood Control and Water Conservation District a **replacement project**. Only replacement projects that meet the criteria set forth in the first two paragraphs of this Section shall qualify and may be approved provided, however, that **facilities for, or purchase of North Bay Aqueduct or other water imported** from outside Napa County **shall not qualify as replacement projects**. The Napa County Flood Control and Water Conservation District shall consider recommending approval of a replacement project to the Authority **only after obtaining the recommendation of the Financial Oversight Committee...**(Emphasis added.)

During the next six years before the Ordinance expires in 2018, it is essential that the FOC successfully perform its duties and responsibilities since the special undertakings called "Replacement Projects" will be paid by the funds that remain and the FOC has a critical role in determining whether these projects will be allowed.

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## FINDINGS

The 2011-2012 Napa County Grand Jury finds the following:

- F1.** Construction of the Mt. Washington water storage tank is a build out of the City's water infrastructure. It supports growth and will store NBA water, both of which are counter to the letter and spirit of Measure A.
- F2.** Construction of the Mt. Washington water storage tank should have been listed in the 1998 Ordinance as an "approved project" or should have gone through the "replacement project" process.
- F3.** Solage Resort Drainage Project should not have been paid with Measure A funds as the City of Calistoga had no duty to pay that \$600,000 cost.
- F4.** As the defense of a lawsuit by a municipality is a general governmental function, the legal fees paid by the City of Calistoga for the Kimball Creek Bypass litigation was an improper use of Measure A funds.
- F5.** The invoices for the fees paid by the City of Calistoga for the Kimball Creek Bypass litigation provided inadequate information to allow the FPWIA to make an informed determination as whether the billings were reasonable and appropriate.
- F6.** The City of Calistoga should have acknowledged its breach of public trust much earlier in the bypass litigation .
- F7.** The Measure A Ordinance did not explicitly describe how the approval process should operate and as a result the Organizational Chart was arbitrarily drawn. To the degree the chart is used as a schematic model for Measure A projects, its flaws are transferred into the approval process.
- F8.** The County Public Works Director improperly certified the legality of several Calistoga Measure A projects.
- F9.** County Counsel is on the Flood Protection Funding Flow Chart to put agreements into proper form, but has no formal role reviewing proposals for compliance with Measure A. In practice County Counsel sometimes reviews proposals but does not review all proposals, and even as to reviewed proposals, County Counsel renders no formal opinion as to compliance with Measure A.
- F10.** The approval process is ineffective since the Flood Protection Water Improvement Authority (Board of Supervisors) has approved projects that lack compliance to Measure A requirements. Greater care should be taken to examine in reasonable detail the compliance of projects and their expenses.
- F11.** The Financial Oversight Committee exemplifies the disability of the system by being placed at the end of the approval process. The Ordinance intended the Financial Oversight Committee to "Ensure **ongoing community input** in the finalization of **all projects...**" (Emphasis added.)

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- F12.** The Financial Oversight Committee is the community “watchdog” for Measure A projects and should constantly monitor the projects in all stages, instead of only after the termination of those projects.
- F13.** The Financial Oversight Committee is improperly constituted and has passively performed its role.

## **RECOMMENDATIONS**

The 2011-2012 Napa County Grand Jury recommends the following:

- R1.** Flood Protection and Water Improvement Authority (Board of Supervisors) more carefully evaluate Measure A proposals and take steps to ensure that all proposals for the expenditure of Measure A tax revenue meet Measure A requirements from a legal standpoint as well as from a technical standpoint.
- R2.** Flood Protection and Water Improvement Authority redefine the approval process and the corresponding County flow chart, so that after “the Auditor/Controller ensures adequate Measure A funds exist to meet request” and before “County Counsel prepares funding agreement,” both the Director of Public Works and County Counsel certify that the requested expenditure meets Measure A requirements, rather than just the Director of Public Works so certifying.
- R3.** Flood Protection and Water Improvement Authority redefine the approval process and the corresponding County flow chart, so that after “the Auditor/Controller ensures adequate Measure A funds exist to meet request” and before the proposal is “presented at meeting of Flood Protection and Water Improvement Authority,” the Financial Oversight Committee be given a copy of the proposal to, pursuant to their charge, review and “advise the public whether it is consistent with the purpose, spirit, intent, and language of Measure A.”
- R4.** County Counsel certify every proposed expenditure as in compliance with Measure A.
- R5.** Financial Oversight Committee receives the information on proposed expenditures prior to approval by the Flood Protection and Water Improvement Authority.
- R6.** Immediate, concerted and ongoing effort to fill Financial Oversight Committee vacancies by Financial Oversight Committee and Board of Supervisors; specifically, the vacancies for representatives from:
- Board of Supervisors
  - Business Community
  - Local Media
  - Napa County Taxpayers

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Environmental Community

Agricultural Industry

Health and Human Services

- R7.** Auditor-Controller prepare an annual audit as per Section 23 of Ordinance in addition to the annual Financial Oversight Committee audit.
- R8.** Financial Oversight Committee be granted authority to require jurisdictions requesting Measure A funds to present proposed expenditures to that Committee prior to final approval by Flood Authority.
- R9.** Financial Oversight Committee receive and examine itemized invoices billed to Measure A projects in addition to the summarized data currently provided it.
- R10.** Financial Oversight Committee establish subcommittees in order to more effectively fulfill its responsibilities under the Ordinance, namely:
- a. Provide the public with information regarding the manner in which Measure A tax proceeds have been spent;
  - b. Prepare an annual audit regarding the use of Measure A proceeds;
  - c. Review the financial impact of each project and advise the public whether it is consistent with the purpose, spirit, intent and language of Measure A;
  - d. Inform the public of any expenditure which is inconsistent with the purpose and intent of Measure A;
  - e. Make recommendations to the Napa County Flood Control and Water Conservation District regarding proposed replacement projects if a project identified in Measure A is determined not feasible.
- R11.** Any further requests by the City of Calistoga for Measure A funds for the Mt. Washington tank and Solage projects be denied and the City be required to return any unspent Measure A tax revenue forwarded to it for these matters.

## **REQUEST FOR RESPONSES**

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses from the following individuals:

- Napa County Counsel: **F1, F3, F9, R4.**
- Napa County Public Works Director: **F3, F8, R2.**
- Napa County Auditor-Controller: **F5, R7, R9.**



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Pursuant to Penal Code Section 933.05, the Grand Jury requests responses from the following governing bodies:

- Napa County Board of Supervisors/Flood Protection and Water Improvement Authority: **F1, F3, F4, F5, F9, F10, F11, F12, F13, R1, R2, R3, R4, R5, R6, R7, R8, R9, R11.**
- Financial Oversight Committee: **F11, F12, F13, R5, R6, R8, R9, R10.**
- Calistoga City Council: **F3, R11.**

## GLOSSARY

Agreement # 19 - The “Funding Agreement” between the Napa County Flood Protection and Watershed Improvement Authority and the City of Calistoga for Calistoga’s Measure A expenditures.

“Approved Projects” - The twelve flood protection and watershed improvement projects specifically described in Measure A, sanctioned by Napa County voters in passing the Measure A Ordinance.

*Calistoga Tribune* - A weekly newspaper published primarily for Up-Valley residents

“Certify” - Formally assure, verify and vouch for.

DFG - The State department of Fish and Game

FOC: The Financial Oversight Committee, charged by the Measure A Ordinance to oversee the proper expenditure of sales tax funds and to report its findings to the public on an ongoing basis.

“Friend of the Court” - A person or entity who is not a party to legal proceedings but has an interest in the outcome, and is allowed to present his/her position in those proceedings to help the Court resolve issues raised by the parties.

FPWIA - The Napa County Flood Protection and Water Improvement Authority. It is comprised of the sitting members of the Napa County Board of Supervisors.

JPA - The “Joint Powers Agreement”: The agreement between the FPWIA, the County Flood Control District, the County, and all municipalities in the County, for the purpose of implementing projects sanctioned by Measure A.

Living River Guidelines - Guidelines to “protect, restore, defend and preserve watersheds in natural harmony with the people and wildlife that depend on healthy water,” the stated goals of which include “prevent(ing) riparian habitat

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destruction,” and “maintain(ing) instream flows.” For more detail, see Living Rivers Council website.

Measure A - An Ordinance imposing a ½ cent sales tax throughout Napa County for 20 years to fund sanctioned flood protection and watershed improvement projects in Napa County.

NBA - The North Bay Aqueduct. A system of pipelines and waterways designed to transport out of county water to and through Napa County.

“Public Trust Doctrine” - Traceable to Roman law, Institutes of Justinian, 534 CE, holding that the air, the rivers, the sea and the seashores are incapable of private ownership; they are dedicated to the use of the public.

“Replacement Project” - Under Measure A, if any “approved project” is determined not to be feasible, a “replacement project” may be proposed. Because such projects were not before the voters when Measure A passed, replacement projects must meet explicit criteria set out in the body of the Ordinance for substitute projects, including review by the FOC.

“Stay of proceedings” - A Court order putting legal proceedings “on hold” for a period of time.

SWRCB - The State Water Resources Control Board

TOT - Transient Occupancy Tax

## **METHODOLOGY**

### **On-site Inspections:**

The Grand Jury conducted on-site inspections of Kimball Reservoir and adjacent facilities; the Solage Resort drainage project; the Calistoga Public Works Office; the Calistoga wastewater treatment facilities as well as attending a meeting of the Financial Oversight Committee.

### **Interviews Conducted:**

- Concerned citizens
- Former State of California personnel
- City of Calistoga elected officials

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- City of Calistoga appointed personnel
  - City of Calistoga employees
  - County of Napa elected officials
  - County of Napa appointed officials
  - County of Napa employees

## **Documents Reviewed:**

- Agendas and Minutes of the Calistoga City Council
- Agendas and Minutes of the Financial Oversight Committee
- Agendas and Minutes of the Napa County Flood Protection and Water Improvement Authority (NCFPWIA)
- Measure A Ordinance
- Agreement # 19 between the NCFPWIA and the City of Calistoga
- The Joint Powers Agreement Regarding the Use and Equitable Distribution of Flood Protection Sales Tax Revenues dated Nov. 1, 1998.
- The March, 1998 Napa County Official Ballot regarding measure A
- The “independent analysis” of Measure A provided by County Counsel and appended to the Official ballot
- Court filings of the Napa County Superior Court
- Annual Reports of the Financial Oversight Committee
- Extensive documents provided to the Grand Jury at its request by concerned citizens who had obtained extensive material from public entities under the Freedom of Information Act; the County Auditor-Controller, The City of Calistoga, The Napa County Director of Public Works and the Flood Control District.
- Newspapers: The Weekly Calistogan; The Calistoga Tribune; the St. Helena Star and the Napa Register.

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- Websites Reviewed: The City of Calistoga; The County of Napa; The Financial Oversight Committee and the Flood Authority.

## **APPENDIX**

- I.** Measure A Ordinance
  
- II.** Measure A Ballot including voter information sheet “Impartial Analysis By The Napa County Counsel”
  
- III.** Napa County’s “Flood Protection Funding Flow Chart”
  
- IV.** Measure A “Joint Powers Agreement”
  
- V.** Agreement #19 between Napa Valley Flood Protection and Water Improvement Authority and City of Calistoga

## ORDINANCE NO. 1 (NCFPWIA)

AN ORDINANCE OF THE NAPA COUNTY FLOOD PROTECTION AND WATERSHED IMPROVEMENT AUTHORITY, IMPOSING A 1/2% NAPA COUNTY FLOOD PROTECTION TRANSACTIONS (SALES) AND USE TAX PURSUANT TO THE PROVISIONS OF REVENUE AND TAXATION CODE SECTION 7285.5, ESTABLISHING A NAPA FLOOD PROTECTION AND WATERSHED IMPROVEMENT EXPENDITURE PLAN, ESTABLISHING A FINANCIAL OVERSIGHT COMMITTEE AND TECHNICAL ADVISORY PANEL, REQUIRING ANY FUNDS GENERATED AS A RESULT OF THE IMPOSITION OF THE NAPA COUNTY FLOOD PROTECTION TRANSACTIONS (SALES) AND USE TAX TO BE SPENT ON THE PROJECTS IDENTIFIED IN THE EXPENDITURE PLAN, AUTHORIZING THE ISSUANCE OF BONDS OR OTHER OBLIGATIONS TO FINANCE THE PROJECTS IDENTIFIED IN THE EXPENDITURE PLAN PAYABLE FROM THE REVENUES GENERATED BY THE TRANSACTIONS (SALES) AND USE TAX AND ESTABLISHING AN APPROPRIATIONS LIMIT.

The Napa County Flood Protection and Watershed Improvement Authority (hereafter "Authority") does ordain as follows:

### SECTION 1. Title

This Ordinance shall be known as the "Napa County Flood Protection Sales Tax Ordinance" (the "Ordinance") which establishes and implements a transactions and use tax (hereafter "Flood Protection Sales Tax") and establishes a Napa County Flood Protection and Watershed Improvement Expenditure Plan (hereafter "Plan") describing the specific projects for which the revenues received as a result of the imposition of the tax may be expended, all pursuant to Revenue and Taxation Code Section 7285.5. The transactions and use tax provisions of this Ordinance shall be applicable in the incorporated and unincorporated territory of the County of Napa. The County of Napa shall hereinafter be referred to as "District".

### SECTION 2. Findings

The Authority finds that:

A. Since 1862, more than 27 major floods have plagued the Napa Valley, resulting in a significant loss of life and damage to property. Among the most damaging was the flood of 1986 which caused more than \$140 million in damage and led to the evacuation of 7,000 residents. The 1995 flood damaged an estimated 227 businesses and residences at a cost of over \$100 million.

B. In addition to these major and extremely serious floods, damage from the more common annual flooding—like the recent floods of January 1997—cost an annual average of \$6 million in repairs and cleanup.

C. A Plan has been developed and is designed to protect the residents and businesses of Napa County from all floods up to and including a 100-year storm event.

D. The Plan is an integrated approach which applies to all the Napa County watersheds.

E. The Plan was developed by a unique and broad-based coalition of Napa County residents, including local community water experts, engineers, architects, environmentalists, business owners, government officials and other leaders.

F. The Plan relies on natural processes to protect Napa County residents and their properties, takes into account the Napa River's overall watershed, and envisions wetlands, open space, bypass channels, set-back levees, river widening by establishing flood plain terracing, elevation and relocation of homes and bridge replacements as its main weapons against flooding.

G. None of the projects in the Plan are intended or designed to encourage population growth in Napa County. All of the projects are for flood protection, preserving ground water integrity, reducing sediment in the Napa River system, and for maintaining the reliability of the water supply for the existing Napa County population as of the effective date of this Ordinance.

H. The majority of the Plan will be paid for by federal money as well as state and existing local resources.

I. The ultimate goal of the Plan is to provide flood protection, save lives, protect property, restore the Napa River, Napa Creek, and other tributaries, maintain Napa County's economic vitality, and enhance riparian environments.

J. The allocation of the Flood Protection Sales Tax revenues that will be generated as a result of the passage of this 1/2% transactions and use tax by the Authority and the subsequent approval by the People with a 2/3rds vote, shall be based on the amount of Flood Protection Sales Tax revenue generated by the various geographic areas within the County, subject to Section 20 of this Ordinance.

### **SECTION 3. Purpose and Intent**

The Authority declares that, in passing this Ordinance, it is its intent to fund a Plan which will:

A. Minimize the County's vulnerability to major floods that have plagued Napa County, resulting in a significant loss of life and substantial damage to property;

B. Manage flood waters throughout Napa County, thereby providing benefits to Napa, Calistoga, St. Helena, Yountville, American Canyon, Angwin/Deer Park, and the unincorporated County areas;

C. Provide flood protection from all floods up to and including the 100-year storm event while avoiding environmentally damaging channelization and excessive dredging, and utilizing environmentally beneficial methods such as wetlands and open space, as well as bypass channels, set-back levees and floodwalls, river widening by establishing flood plain terracing, elevation and/or relocation of homes, floodproofing of businesses, and bridge replacements;

D. Minimize flood damage, save lives, protect property, safeguard the environment, maintain the economic viability of Napa County and avoid to the greatest extent possible the need for flood insurance;

E. Provide for water reliability and wastewater treatment, using accepted watershed management practices, to maintain water quality in the Napa River;

F. Ensure ongoing community input in the finalization of all projects necessary for flood protection and water supply reliability for the existing Napa County population as of the effective date of this Ordinance.; and

G. Ensure ongoing involvement of all municipalities of Napa County in the implementation of the Plan by execution of a Joint Powers Agreement (JPA) between the Authority, Napa County, the Flood Control and Water Conservation District, and the incorporated Cities and Towns of Napa County. This agreement shall contain specific allocations and methods of distribution of the Flood Protection Sales Tax revenues based on the tax revenues generated by each of the incorporated and unincorporated areas in Napa County subject to section 20 of this Ordinance.

#### **SECTION 4. Use of Flood Protection Sales Tax Revenues**

A. The revenues generated by the Flood Protection Sales Tax shall be used to fund the projects included in the Plan. The revenues shall also be utilized to fund reasonable costs incurred in the administration of the Napa County Financial Oversight Committee and the Technical Advisory Panel which are established by this Ordinance.

B. The Napa County Auditor-Controller shall deposit all revenues received from the Flood Protection Sales Tax and all earnings thereon into the general fund of the Authority and the proceeds shall be used only for the projects identified in Sections 7 and 8 of this Ordinance, the administration costs identified in subparagraph (A) of this section, and the payment of bonds or other obligations issued to finance such projects and related financing costs.

#### **SECTION 5. Equitable Distribution of the Flood Protection Sales Tax Revenues to County-Wide Projects**

The distribution of the Flood Protection Sales Tax revenues to fund the projects described in this Ordinance, over the life of the tax, shall occur in a manner which is proportional to the Flood Protection Sales Tax revenues generated by each of the incorporated and unincorporated areas in Napa County. The portion of the distributions representing the share of the revenues allocated to the unincorporated area may be used to assist in paying for the flood protection projects involving incorporated areas that are described in this Ordinance.

Specific allocations and methods of distribution based on the amount of Flood Protection Sales Tax revenues generated by each of the incorporated and unincorporated areas in Napa County shall be specified in a Joint Powers Agreement which shall be developed following the enactment of the Flood Protection Sales Tax.

#### **SECTION 6. Napa County Flood Protection and Watershed Improvement Expenditure Plan**

The Plan involves the following two interrelated components which are described in greater detail in Sections 7 and 8 of this Ordinance:

A. The Napa River and Napa Creek Project for the City of Napa which will provide the City of Napa with flood protection from all floods up to and including a 100 year storm event; and

B. Countywide flood protection and watershed improvement projects for the communities of Calistoga, Yountville, St. Helena, Angwin/Deer Park, American Canyon, and the unincorporated areas

of Napa County.

**SECTION 7. Approved Projects: City of Napa: Napa River and Napa Creek Flood Protection Project**

The following component of the Plan involves the City of Napa:

The Napa River and Napa Creek Project as detailed and designed by the Community Coalition for Napa Flood Management and the Army Corps of Engineers. This project, approximately 50% of which is expected to be paid for by the Army Corps of Engineers, is designed to protect the City of Napa against all floods up to and including a 100-year storm event such as the floods of February, 1986 and January 1997. This environmentally restorative project includes the following components:

- A. A dry bypass channel with a weir will be constructed to divert flood waters around the Oxbow (the extreme bend in the Napa River near First Street);
- B. A tidal and floodplain terrace will be created;
- C. Wetlands will be created on the east and west banks of the Napa River;
- D. Toxics throughout the project area, including the Oil Company Road area, will be cleaned up and excavated to improve flood water conveyance and improve the water quality of the Napa River;
- E. New bridges will be constructed so they do not act as obstructions during flooding;
- F. Maintenance roads/recreation trails will be extended from Kennedy Park through downtown Napa to Trancas Street;
- G. Set-back levees and floodwalls will be constructed;
- H. Properties will be purchased and/or relocated if necessary to implement the Plan; and
- I. Capital improvement maintenance of the project.

**SECTION 8. Approved Projects: County-Wide Flood Protection and Watershed Improvement Projects Not Involving the City of Napa**

The component of the Plan that involves the rest of the County must include the following projects which are designed to protect against flooding, improve water quality, preserve the integrity of ground water resources and/or stabilize water supply reliability for the existing Napa County population as of the effective date of this Ordinance. None of these projects are intended or designed to expand water capacity for growth and new development.

All of these projects shall be planned in accordance with the "Living River Guidelines" contained in the Community Coalition's Flood Management Plan and the Napa River Watershed Owners Manual of the Napa County Resource Conservation District.

The Technical Advisory Panel, which is established by Section 9(B) of this Ordinance, will be available to assist each municipality in project planning, upon request by the municipality or jurisdiction.

A. Community of Angwin/Deer Park

1. Stabilization and enhancement of existing water reservoirs which shall be for the purpose of flood protection and water reliability;  
and



2. Stabilize water quality.
- B. City of American Canyon
1. Implement the adopted Flood Control and Storm Drain Master Plan to protect existing development; and
  2. Restore wetlands by replacing the existing wastewater treatment facility.
- C. City of Calistoga
1. Stabilization and enhancement of Kimball Reservoir which shall be for the purpose of flood protection and water supply reliability; and
  2. Flood protection and drainage improvements in the Grant Street area and other critical areas to protect residents and businesses from flooding.
- D. City of St. Helena
1. Flood management measures for the Napa River, Sulpher Creek, York Creek, and other tributaries to prevent flooding; and
  2. Construct urban stormwater run-off facilities at Fulton, McCorkle, Mills and other areas; and
  3. Stabilization and enhancement of Bell Canyon Reservoir, or other existing reservoirs, which shall be for the purpose of flood protection and water supply reliability.
- E. Unincorporated Areas of Napa County:
1. County unincorporated area flood damage reduction projects including elevating/relocating structures, including bridges, in the floodway and floodplain; and
  2. Agricultural watershed and stormwater runoff management improvements planned jointly by the agricultural industry, the County, the Napa County Resource Conservation District and the Department of Fish and Game, including projects which will:
    - Reduce the amount of storm runoff and sediment in the Napa River System from agricultural lands; and
    - Increase flood storage of the River system by the setback of active land uses from river and tributary banks.
- F. Town of Yountville
1. Flood protection for the Town's mobilehome parks and surrounding areas; and
  2. Hopper Creek and Beard Ditch improvements and restoration for flood protection.

In the event any project described in this Section is not economically or environmentally feasible, the legislative body having jurisdiction over the lands involved shall recommend to the Napa County Flood Control and Water Conservation District a replacement project. Only replacement projects that meet the criteria set forth in the first two paragraphs of this Section shall qualify and may be approved provided, however, that facilities for, or purchase of, North Bay Aqueduct or other water imported from outside Napa County shall not qualify as replacement projects. The Napa County Flood Control and Water Conservation District shall consider recommending approval of a replacement project to the Authority

only after obtaining the recommendation of the Financial Oversight Committee and the Technical Review Committee. Approval by the Authority shall be in the form of an amendment to this Ordinance. Changes meeting the above criteria, to the extent permitted by law, shall not need a vote of the People ratifying the amendment.

## **SECTION 9. Napa County Financial Oversight Committee and the Technical Advisory Panel**

### **A. Financial Oversight Committee.**

1. Establishment. A Napa County Financial Oversight Committee is hereby established and shall remain in existence for as long as the Flood Protection Sales Tax is in effect. The Financial Oversight Committee's purpose and charge is to inform the public regarding the expenditure of the Flood Protection Sales Tax proceeds that will be generated as a result of the approval of this Ordinance by the Authority and the electorate.

#### **2. Responsibilities.**

The Financial Oversight Committee shall be responsible for:

a. Providing the public with information regarding the manner in which the expenditure of the Flood Protection Sales Tax proceeds that will be generated as a result of the approval of this Ordinance by the Authority and the electorate has occurred;

b. Reviewing the expenditure of the Flood Protection Sales Tax proceeds that will be generated as a result of the approval of this Ordinance by the Authority and the electorate, and the proceeds received as a result of the issuance of any bonds or other obligations payable from the Flood Protection Sales Tax proceeds, and causing to be prepared an annual audit regarding the use of these proceeds;

c. Reviewing the financial impact of all projects, planned and approved, utilizing the Flood Protection Sales Tax proceeds that will be generated as a result of the approval of this Ordinance by the Authority and the electorate, and advising the public whether such projects are consistent with the purpose, spirit, intent and language of this Ordinance;

d. Informing the public if there is an expenditure of the Flood Protection Sales Taxes that will be generated as a result of the approval of this Ordinance by the Authority and the electorate which is inconsistent with the purpose and intent of this Ordinance.

e. Meet not less than once each calendar quarter, pursuant to the Ralph M. Brown Open Meeting Act and invite public participation and comment with respect to any expenditure or the implementation of any project envisioned by this Ordinance.

#### **3. Membership.**

a. The Financial Oversight Committee shall consist of the following individuals:

i. One representative recommended by each of the five Napa County City/Town Councils, and one representative recommended by the Board of Supervisors of the County of Napa. However, the representatives shall not be officers, agents, employees, or elected officials of any City in Napa County or the County;

ii. Two representatives each of whom must be recommended by the business community;

iii. One representative who must be recommended by the local media;

iv. One representative who must be recommended by the Napa County Taxpayers Association;

v. Two representatives each of whom must be recommended by the environmental community;

vi. One representative who must be recommended by the Friends of the Napa River; and

vii. Two representatives who must be recommended by the agricultural industry; and

viii. A certified public accountant, whose practice includes auditing public agencies, but who is

not currently acting as an independent auditor in the case of any incorporated area within the County of Napa or the County of Napa, who must be recommended by the representatives and appointees identified in subparagraphs (i) through (vii).

b. All representatives shall be appointed by the Board of Supervisors. However, no appointments shall be made by the Board of Supervisors other than from the recommended list of the public agencies or organizations identified in subdivision (A)(3)(a) above.

c. In addition to the sixteen members described above, the Financial Oversight Committee may recommend to the Board of Supervisors that it appoint up to two additional members if in the opinion of the Committee additional representation of individuals and groups located in Napa County is necessary.

d. No member of the Committee shall receive any salary or compensation for serving on the Committee. However, the Committee may, in the case of the Certified Public Accountant, upon the unanimous vote of the other members of the Committee, compensate said individual in an amount not to exceed the rate of compensation commonly charged by Certified Public Accountants in the City of Napa.

e. All members of the Committee, except for the Certified Public Accountant, shall be individuals who live in the incorporated or unincorporated areas of Napa County. The panel shall have resources sufficient to carry out their duties.

#### B. Technical Advisory Panel

1. Establishment. A Technical Advisory Panel is established and shall remain in existence for as long as the Flood Protection Sales Tax is in effect.

2. Membership. The Napa County Flood Control and Water Conservation District Board of Directors shall appoint the Technical Advisory Panel whose purpose and charge is to provide technical expertise in reviewing the Corps of Engineers proposed project which is located within the City of Napa to ensure consistency with the Community Coalition Project Plan. The Panel shall consist of no more than nine members. Members of the Panel shall have expertise in one or more of the following disciplines: (1) architecture, (2) landscape architecture, (3) civil engineering, (4) hydrology/hydraulics, (5) urban planning or design, (6) water and wastewater engineering (7) geotechnical engineering and/or (8) environmental sciences/natural resource management. All members shall demonstrate a thorough knowledge of and commitment to the "Living River Guidelines" and the "Urban Design Criteria" of the Community Coalition Flood Management Plan and the watershed management guidelines contained in the Napa River Watershed Owner's Manual of the Napa County Resource Conservation District, as well as sound engineering flood protection principles.

3. The Panel may provide technical expertise to review and comment on the planning of other Countywide projects.

4. The Panel is advisory to the Napa County Flood Control and Water Conservation District.

5. The Napa County Flood Control and Water Conservation District Board of Directors shall appoint the Panel to ensure its ongoing input and recommendations regarding the following Army Corps of Engineers documents prior to executing same:

- a. The General Design Memorandum and related Environmental Impact Statement (EIS);
- b. The Project Cooperation Agreement;
- c. All preliminary plans and construction contracts, final plans and specifications related to the City of Napa Corps of Engineers project.

6. All members of the Panel shall be individuals whose domicile is in Napa County.

7. The panel shall have resources sufficient to ensure continuous onsite review of Army Corps of Engineers construction activities.

**SECTION 10. Expiration of Tax; Extension of Tax.**

A. The transactions and use tax imposed by this Ordinance shall expire June 30, 2018; provided, that if the Authority shall not have contracted with the State Board of Equalization on or before July 1, 1998, and as a result the operative date is the beginning of a calendar quarter subsequent to July 1, 1998, the expiration date shall be extended, for a period of time equal to the delay. Notwithstanding the preceding sentence, this tax may be extended beyond the twenty-year period if the question of extending the tax is placed on the ballot and approved by the legally required percentage of qualified voters voting on the extension.

B. This transactions and use tax may be reduced or rescinded by a majority vote of the Governing Board of the Authority; provided, however that such modification or rescission shall not occur if to do so would violate any law, including but not limited to Article I, §10 of the United States Constitution and Article I, §16 of the California Constitution or if prohibited by any covenant made with the holders of any bonds or obligations payable from this transactions and use tax. The Governing Board of the Authority shall take such action only after receiving a recommendation regarding such rescission or modification from the Financial Oversight Committee and, subsequent to such receipt, conducting a noticed public hearing. Such action shall be subject to California law pertaining to the cancellation of prior contractual obligations and the rules and regulations of the State Board of Equalization.

**SECTION 11. Purpose.**

This Ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a one half of one percent retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.5 of Part 1.7 of Division 2 which authorizes the Authority to adopt this tax Ordinance which shall be operative only if two-thirds of the electors voting on this Ordinance approve same at an election called for that purpose.

B. To adopt a retail transactions and use tax Ordinance which incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax Ordinance which imposes a tax and provides a measure therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California Sales and Use Taxes.

D. To adopt a retail transactions and use tax Ordinance which can be administered in a manner which will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of recordkeeping upon persons subject to taxation under the provisions of this Ordinance.

E. To establish an expenditure limit for the Authority as required by Article XIII B of the California Constitution.

F. To authorize bonds and other obligations to be issued for the purpose of financing projects in the expenditure plan with said bonds or other obligations to be payable from the transaction and use tax proceeds.

**SECTION 12. Operative Date; Contract with the State.**

The operative date of this Ordinance, at which time collection of the tax imposed by this Ordinance shall commence, is July 1, 1998. Prior to July 1, 1998, the Authority shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this Transactions and Use Tax Ordinance; provided, that if the Authority shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such contract.

**SECTION 13 Transactions Tax Rate.**

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated and unincorporated territory of the District at the rate of one-half of one percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this Ordinance. The tax shall be imposed for a period of twenty years.

**SECTION 14. Place of Sale.**

For the purposes of this Ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under the rules and regulations to be prescribed and adopted by the State Board of Equalization.

**SECTION 15. Use Tax Rate.**

An excise tax is hereby imposed on the storage, use or other consumption in the incorporated and unincorporated area of the District of tangible personal property purchased from any retailer on and after the operative date of this Ordinance for storage, use or other consumption in said territory at the rate of one-half of one percent of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made. The tax shall be imposed for a period of twenty years.

## **SECTION 16. Adoption of Provisions of State Law.**

Except as otherwise provided in this Ordinance, and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this Ordinance as though fully set forth herein.

## **SECTION 17. Limitations On Adoption of State Law and Collections of Use Taxes.**

In adopting this provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this Authority shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this Authority or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.

3. In those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code; or

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "District" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

## **SECTION 18. Permit Not Required.**

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this Ordinance.

## **SECTION 19. Exemptions and Exclusions.**

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county,

or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the County in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the District which is shipped to a point outside the District, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the district shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with section 9840) of the Vehicle Code by registration to an out-of-District address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-District and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this Ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this Ordinance.

5. For the purposes of subsections (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this Ordinance, the storage, use or other consumption in this district of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax Ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this Ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time

for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this Ordinance.

5. For the purposes of subsections (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the District shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the District, or participates within the District in making the sale of the property, including, but not limited to, soliciting or receiving the order either directly or indirectly, at a place of business of the retailer in the district or through any representative, agent, canvasser, solicitor, subsidiary or person in the District under the authority of the retailer.

7. "A retailer engaged in business in the District" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the District.

D. Any person subject to use tax under this Ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for, a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code, with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

## **SECTION 20. Bonds and Other Obligations.**

Upon voter approval of this Ordinance, the Authority shall have the authority to issue bonds or other obligations (including, without limitation, lease or installment sales agreements) to finance any of the projects included in the Plan as it may be amended from time to time (including reserves and other financing costs), which bonds or other obligations shall be payable from the revenues of the Flood Protection Sales Tax. In allocating Flood Protection Sales Tax revenues all debt service requirements and other financing costs of such bonds and other obligations shall be met prior to allocating funds for any other purposes or projects.

## **SECTION 21. Amendments.**

All amendments subsequent to the effective date of this Ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to transactions and use taxes and which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 of Division 2 of the Revenue and Taxation Code, shall automatically become part of this Ordinance, provided, however, that no such amendment shall operate so as to increase the rate of tax imposed by this Ordinance or extend the period of time the tax will remain in effect.



**SECTION 22. Enjoining Collection Forbidden.**

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the Authority, or against any officer of the State or the Authority, to prevent or enjoin the collection under this Ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

**SECTION 23. Napa County Auditor-Controller Audit.**

In addition to the audit required pursuant to Section 9(A)(2)(b), the Napa County Auditor-Controller shall annually conduct an audit of how the new transactions and use tax revenues are spent by the County of Napa. The audit shall be published in at least two County newspapers and copies of the audit shall be provided to, and must be available at, every public library located in the County.

**SECTION 24. Severability.**

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.

**SECTION 25. Effective Date; Approval of the Voters.**

This Ordinance shall take effect on March 3, 1998, but only if 2/3rds of the electors voting on the Ordinance at an election held on March 3, 1998, vote to approve this Ordinance.

**SECTION 26. Annual Appropriation Limit.**

The maximum annual appropriation limit for the Authority is \$20,000,000.00, subject to such adjustments or increases as are provided for by law.

**SECTION 27. Implementation Subsequent to Vote.**

Upon approval of this Ordinance by 2/3rds of the voters, the Authority may adopt policies and take such actions as may be necessary for the implementation of the one-half of one percent (1/2%) transactions and use tax authorized by this Ordinance. Such actions shall include, but not be limited to, the Authority amending this Ordinance without being required to secure a ratification by the electorate to provide for use of additional federal, state or local funds; to account for unexpected revenues, or to take into consideration unforeseen circumstances, or if such amendments are deemed necessary and recommended by the Authority's general counsel, bond counsel, or legal counsel for the State Board of Equalization; provided, however, that no amendments that will increase the rate of the transactions and use tax rate or extend the term beyond twenty years may be

made without securing the approval of the amendment by the legally required percentage of qualified voters voting on the amendment.

**SECTION 28. Publication of Ordinance.**

This Ordinance shall be published at least once before the expiration of 15 days after its passage in the Napa Valley Register, a newspaper of general circulation published in the County of Napa, together with the names of the Directors voting for and against the same.

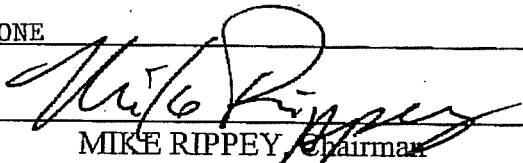
The foregoing Ordinance was introduced and read at a special meeting of the Napa County Flood Protection and Watershed Improvement Authority, held on the 28th day of October, 1997 and passed at a special meeting of the Napa County Flood Protection and Watershed Improvement Authority, held on the 4th day of November, 1997, by the following vote:

**AYES: DIRECTORS** VARRELMAN, LUCE, FERRIOLE, WINTER and RIPPEY

**NOES: DIRECTORS** NONE

**ABSTAIN: DIRECTORS** NONE

**ABSENT: DIRECTORS** NONE

  
MIKE RIPPEY, Chairman  
Board of Directors

ATTEST:

MARY JEAN McLAUGHLIN  
Clerk of the Board

By Teri Sisson  
Deputy

APPROVED AS TO FORM  
Office of County Counsel  
By: [Signature]  
Date: 10/30/97

**APPROVED** NOV 04 1997  
BOARD OF SUPERVISORS  
COUNTY OF NAPA

MARY JEAN McLAUGHLIN  
CLERK OF THE BOARD

BY Michelle Price Deputy



**OFFICIAL BALLOT  
SPECIAL  
FLOOD CONTROL ELECTION  
COUNTY OF NAPA  
TUESDAY, MARCH 3, 1998**

**Precinct Voter:** This ballot stub shall be removed and retained by the voter.  
**Absent Voter:** Please remove this ballot stub before returning your ballot to the elections office. Be sure to sign the ballot return envelope or your ballot will not be counted.

**MEASURE SUBMITTED TO THE VOTERS**

**COUNTY**

**NAPA COUNTY  
MEASURE A**

**A** Shall the People approve Ordinance No. 1 (NCFPWIA), to provide countywide flood protection by increasing the sales/use tax by one-half percent. Projects include:

- A plan for the City of Napa that will provide flood protection up to and including 100 year flood events;
- Flood Protection/watershed improvements for all Napa County communities and unincorporated areas.

Revenues from the sales tax shall only be used for flood protection and watershed improvements. The County Auditor and a citizen's Financial Oversight Committee will publish yearly audits and a Technical Advisory Panel will oversee environmental quality.

YES	+
NO	+

Sample Ballot

Sample Ballot



**MEASURE A  
NAPA COUNTY  
SPECIAL TAX MEASURE**

FULL TEXT OF ORDINANCE NO. 1 (NCFPWIA)

AN ORDINANCE OF THE NAPA COUNTY FLOOD PROTECTION AND WATERSHED IMPROVEMENT AUTHORITY, IMPOSING A 1/2% NAPA COUNTY FLOOD PROTECTION TRANSACTIONS (SALES) AND USE TAX PURSUANT TO THE PROVISIONS OF REVENUE AND TAXATION CODE SECTION 7285.5, ESTABLISHING A NAPA FLOOD PROTECTION AND WATERSHED IMPROVEMENT EXPENDITURE PLAN, ESTABLISHING A FINANCIAL OVERSIGHT COMMITTEE AND TECHNICAL ADVISORY PANEL, REQUIRING ANY FUNDS GENERATED AS A RESULT OF THE IMPOSITION OF THE NAPA COUNTY FLOOD PROTECTION TRANSACTIONS (SALES) AND USE TAX TO BE SPENT ON THE PROJECTS IDENTIFIED IN THE EXPENDITURE PLAN, AUTHORIZING THE ISSUANCE OF BONDS OR OTHER OBLIGATIONS TO FINANCE THE PROJECTS IDENTIFIED IN THE EXPENDITURE PLAN PAYABLE FROM THE REVENUES GENERATED BY THE TRANSACTIONS (SALES) AND USE TAX AND ESTABLISHING AN APPROPRIATIONS LIMIT.

The Napa County Flood Protection and Watershed Improvement Authority (hereafter "Authority") does ordain as follows:

**SECTION 1. Title**

This Ordinance shall be known as the "Napa County Flood Protection Sales Tax Ordinance" (the "Ordinance") which establishes and implements a transactions and use tax (hereafter "Flood Protection Sales Tax") and establishes a Napa County Flood Protection and Watershed Improvement Expenditure Plan (hereafter "Plan") describing the specific projects for which the revenues received as a result of the imposition of the tax may be expended, all pursuant to Revenue and Taxation Code Section 7285.5. The transactions and use tax provisions of this Ordinance shall be applicable in the incorporated and unincorporated territory of the County of Napa. The County of Napa shall hereinafter be referred to as "District".

**SECTION 2. Findings**

The Authority finds that:

A. Since 1862, more than 27 major floods have plagued the Napa Valley, resulting in a significant loss of life and damage to property. Among the most damaging was the flood of 1986 which caused more than \$140 million in damage and led to the evacuation of 7,000 residents. The 1995 flood damaged an estimated 227 businesses and residences at a cost of over \$100 million.

B. In addition to these major and extremely serious floods, damage from the more common annual flooding—like the recent floods of January 1997—cost an annual average of \$6 million in repairs and cleanup.

C. A Plan has been developed and is designed to protect the residents and businesses of Napa County from all floods up to and including a 100-year storm event.

D. The Plan is an integrated approach which applies to all the Napa County watersheds.

E. The Plan was developed by a unique and broad-based coalition of Napa County residents, including local community water experts, engineers, architects, environmentalists, business owners, government officials and other leaders.

F. The Plan relies on natural processes to protect Napa County residents and their properties, takes into account the Napa River's overall watershed, and envisions wetlands, open space, bypass channels, set-back levees, river widening by establishing flood plain terracing, elevation and relocation of homes and bridge replacements as its main weapons against flooding.

G. None of the projects in the Plan are intended or designed to encourage population growth in Napa County. All of the projects are for flood protection, preserving ground water integrity, reducing sediment in the Napa River system, and for maintaining the reliability of the water supply for the existing Napa County population as of the effective date of this Ordinance.

H. The majority of the Plan will be paid for by federal money as well as state and existing local resources.

I. The ultimate goal of the Plan is to provide flood protection, save lives, protect property, restore the Napa River, Napa Creek, and other tributaries, maintain Napa County's economic vitality, and enhance riparian environments.

J. The allocation of the Flood Protection Sales Tax revenues that will be generated as a result of the passage of this 1/2% transactions and use tax by the Authority and the subsequent approval by the People with a 2/3rds vote, shall be based on the amount of Flood Protection Sales Tax revenue generated by the various geographic areas within the County, subject to Section 20 of this Ordinance.

**SECTION 3. Purpose and Intent**

The Authority declares that, in passing this Ordinance, it is its intent to fund a Plan which will:

A. Minimize the County's vulnerability to major floods that have plagued Napa County, resulting in a significant loss of life and substantial damage to property;

B. Manage flood waters throughout Napa County, thereby providing benefits to Napa, Calistoga, St. Helena, Yountville, American Canyon, Angwin/Deer Park, and the unincorporated County areas;

C. Provide flood protection from all floods up to and including the 100-year storm event while avoiding environmentally damaging channelization and excessive dredging, and utilizing environmentally beneficial methods such as wetlands and open space, as well as bypass channels, set-back levees and floodwalls, river widening by establishing flood plain terracing, elevation and/or relocation of homes, floodproofing of businesses, and bridge replacements;

D. Minimize flood damage, save lives, protect property, safeguard the environment, maintain the economic viability of Napa County and avoid to the greatest extent possible the need for flood insurance;

E. Provide for water reliability and wastewater treatment, using accepted watershed management practices, to maintain water quality in the Napa River;

F. Ensure ongoing community input in the finalization of all projects necessary for flood protection and water supply reliability for the existing Napa County population as of the effective date of this Ordinance.; and

G. Ensure ongoing involvement of all municipalities of Napa County in the implementation of the Plan by execution of a Joint Powers Agreement (JPA) between the Authority, Napa County, the Flood Control and Water Conservation District, and the incorporated Cities and Towns of Napa County. This agreement shall contain specific allocations and methods of distribution of the Flood Protection Sales Tax revenues based on the tax revenues generated by each of the incorporated and unincorporated areas in Napa County subject to section 20 of this Ordinance.

**SECTION 4. Use of Flood Protection Sales Tax Revenues**

A. The revenues generated by the Flood Protection Sales Tax shall be used to fund the projects included in the Plan. The revenues shall also be utilized to fund reasonable costs incurred in the administration of the Napa County Financial Oversight Committee and the Technical Advisory Panel which are established by this Ordinance.

B. The Napa County Auditor-Controller shall deposit all revenues received from the Flood Protection Sales Tax and all earnings thereon into the general fund of the Authority and the proceeds shall be used only for the projects identified in Sections 7 and 8 of this Ordinance, the administration costs identified in subparagraph (A) of this section, and the payment of bonds or other obligations issued to finance such projects and related financing costs.

**SECTION 5. Equitable Distribution of the Flood Protection Sales Tax Revenues to County-Wide Projects**

The distribution of the Flood Protection Sales Tax revenues to fund the projects described in this Ordinance, over the life of the tax, shall occur in a manner which is proportional to the Flood Protection Sales Tax revenues generated by each of the incorporated and unincorporated areas in Napa County. The portion of the distributions representing the share of the revenues allocated to the unincorporated area may be used to assist in paying for the flood protection projects involving incorporated areas that are described in this Ordinance.

Specific allocations and methods of distribution based on the amount of Flood Protection Sales Tax revenues generated by each of the incorporated and unincorporated areas in Napa County shall be specified in a Joint Powers Agreement which shall be developed following the enactment of the Flood Protection Sales Tax.

**SECTION 6. Napa County Flood Protection and Watershed Improvement Expenditure Plan**

The Plan involves the following two interrelated components which are described in greater detail in Sections 7 and 8 of this Ordinance:



A. The Napa River and Napa Creek Project for the City of Napa which will provide the City of Napa with flood protection from all floods up to and including a 100 year storm event; and

B. Countywide flood protection and watershed improvement projects for the communities of Calistoga, Yountville, St. Helena, Angwin/Deer Park, American Canyon, and the unincorporated areas of Napa County.

**SECTION 7. Approved Projects; City of Napa: Napa River and Napa Creek Flood Protection Project**

The following component of the Plan involves the City of Napa:

The Napa River and Napa Creek Project as detailed and designed by the Community Coalition for Napa Flood Management and the Army Corps of Engineers. This project, approximately 50% of which is expected to be paid for by the Army Corps of Engineers, is designed to protect the City of Napa against all floods up to and including a 100-year storm event such as the floods of February, 1986 and January 1997. This environmentally restorative project includes the following components:

- A. A dry bypass channel with a weir will be constructed to divert flood waters around the Oxbow (the extreme bend in the Napa River near First Street);
- B. A tidal and floodplain terrace will be created;
- C. Wetlands will be created on the east and west banks of the Napa River;
- D. Toxics throughout the project area, including the Oil Company Road area, will be cleaned up and excavated to improve flood water conveyance and improve the water quality of the Napa River;
- E. New bridges will be constructed so they do not act as obstructions during flooding;
- F. Maintenance roads/recreation trails will be extended from Kennedy Park through downtown Napa to Trancas Street;
- G. Set-back levees and floodwalls will be constructed;
- H. Properties will be purchased and/or relocated if necessary to implement the Plan; and
- I. Capital improvement maintenance of the project.

**SECTION 8. Approved Projects; County-Wide Flood Protection and Watershed Improvement Projects Not Involving the City of Napa**

The component of the Plan that involves the rest of the County must include the following projects which are designed to protect against flooding, improve water quality, preserve the integrity of ground water resources and/or stabilize water supply reliability for the existing Napa County population as of the effective date of this Ordinance. None of these projects are intended or designed to expand water capacity for growth and new development.

All of these projects shall be planned in accordance with the "Living River Guidelines" contained in the Community Coalition's Flood Management Plan and the Napa River Watershed Owners Manual of the Napa County Resource Conservation District.

The Technical Advisory Panel, which is established by Section 9(B) of this Ordinance, will be available to assist each municipality in project planning, upon request by the municipality or jurisdiction.

**A. Community of Angwin/Deer Park**

1. Stabilization and enhancement of existing water reservoirs which shall be for the purpose of flood protection and water reliability; and
2. Stabilize water quality.

**B. City of American Canyon**

1. Implement the adopted Flood Control and Storm Drain Master Plan to protect existing development; and
2. Restore wetlands by replacing the existing wastewater treatment facility.

**C. City of Calistoga**

1. Stabilization and enhancement of Kimball Reservoir which shall be for the purpose of flood protection and water supply reliability; and
2. Flood protection and drainage improvements in the Grant Street area and other critical areas to protect residents and businesses from flooding.

**D. City of St. Helena**

1. Flood management measures for the Napa River, Sulpher Creek, York Creek, and other tributaries to prevent flooding; and
2. Construct urban stormwater run-off facilities at Fulton, McCorkle, Mills and other areas; and

3. Stabilization and enhancement of Bell Canyon Reservoir, or other existing reservoirs, which shall be for the purpose of flood protection and water supply reliability.

**E. Unincorporated Areas of Napa County:**

1. County unincorporated area flood damage reduction projects including elevating/relocating structures, including bridges, in the floodway and floodplain; and
2. Agricultural watershed and stormwater runoff management improvements planned jointly by the agricultural industry, the County, the Napa County Resource Conservation District and the Department of Fish and Game, including projects which will:
  - Reduce the amount of storm runoff and sediment in the Napa River System from agricultural lands; and
  - Increase flood storage of the River system by the setback of active land uses from river and tributary banks.

**F. Town of Yountville**

1. Flood protection for the Town's mobilehome parks and surrounding areas; and
2. Hopper Creek and Beard Ditch improvements and restoration for flood protection.

In the event any project described in this Section is not economically or environmentally feasible, the legislative body having jurisdiction over the lands involved shall recommend to the Napa County Flood Control and Water Conservation District a replacement project. Only replacement projects that meet the criteria set forth in the first two paragraphs of this Section shall qualify and may be approved provided, however, that facilities for, or purchase of, North Bay Aqueduct or other water imported from outside Napa County shall not qualify as replacement projects. The Napa County Flood Control and Water Conservation District shall consider recommending approval of a replacement project to the Authority only after obtaining the recommendation of the Financial Oversight Committee and the Technical Review Committee. Approval by the Authority shall be in the form of an amendment to this Ordinance. Changes meeting the above criteria, to the extent permitted by law, shall not need a vote of the People ratifying the amendment.

**SECTION 9. Napa County Financial Oversight Committee and the Technical Advisory Panel**

**A. Financial Oversight Committee.**

1. **Establishment.** A Napa County Financial Oversight Committee is hereby established and shall remain in existence for as long as the Flood Protection Sales Tax is in effect. The Financial Oversight Committee's purpose and charge is to inform the public regarding the expenditure of the Flood Protection Sales Tax proceeds that will be generated as a result of the approval of this Ordinance by the Authority and the electorate.

2. **Responsibilities.**

- The Financial Oversight Committee shall be responsible for:
- a. Providing the public with information regarding the manner in which the expenditure of the Flood Protection Sales Tax proceeds that will be generated as a result of the approval of this Ordinance by the Authority and the electorate has occurred;
  - b. Reviewing the expenditure of the Flood Protection Sales Tax proceeds that will be generated as a result of the approval of this Ordinance by the Authority and the electorate, and the proceeds received as a result of the issuance of any bonds or other obligations payable from the Flood Protection Sales Tax proceeds, and causing to be prepared an annual audit regarding the use of these proceeds;
  - c. Reviewing the financial impact of all projects, planned and approved, utilizing the Flood Protection Sales Tax proceeds that will be generated as a result of the approval of this Ordinance by the Authority and the electorate, and advising the public whether such projects are consistent with the purpose, spirit, intent and language of this Ordinance;
  - d. Informing the public if there is an expenditure of the Flood Protection Sales Taxes that will be generated as a result of the approval of this Ordinance by the Authority and the electorate which is inconsistent with the purpose and intent of this Ordinance.
  - e. Meet not less than once each calendar quarter, pursuant to the Ralph M. Brown Open Meeting Act and invite public participation and comment with respect to any expenditure or the implementation of any project envisioned by this Ordinance.





### 3. Membership.

a. The Financial Oversight Committee shall consist of the following individuals:

i. One representative recommended by each of the five Napa County City/Town Councils, and one representative recommended by the Board of Supervisors of the County of Napa. However, the representatives shall not be officers, agents, employees, or elected officials of any City in Napa County or the County;

ii. Two representatives each of whom must be recommended by the business community;

iii. One representative who must be recommended by the local media;

iv. One representative who must be recommended by the Napa County Taxpayers Association;

v. Two representatives each of whom must be recommended by the environmental community;

vi. One representative who must be recommended by the Friends of the Napa River; and

vii. Two representatives who must be recommended by the agricultural industry; and

viii. A certified public accountant, whose practice includes auditing public agencies, but who is not currently acting as an independent auditor in the case of any incorporated area within the County of Napa or the County of Napa, who must be recommended by the representatives and appointees identified in subparagraphs (i) through (vii).

b. All representatives shall be appointed by the Board of Supervisors. However, no appointments shall be made by the Board of Supervisors other than from the recommended list of the public agencies or organizations identified in subdivision (A)(3)(a) above.

c. In addition to the sixteen members described above, the Financial Oversight Committee may recommend to the Board of Supervisors that it appoint up to two additional members if in the opinion of the Committee additional representation of individuals and groups located in Napa County is necessary.

d. No member of the Committee shall receive any salary or compensation for serving on the Committee. However, the Committee may, in the case of the Certified Public Accountant, upon the unanimous vote of the other members of the Committee, compensate said individual in an amount not to exceed the rate of compensation commonly charged by Certified Public Accountants in the City of Napa.

e. All members of the Committee, except for the Certified Public Accountant, shall be individuals who live in the incorporated or unincorporated areas of Napa County. The panel shall have resources sufficient to carry out their duties.

#### B. Technical Advisory Panel

1. Establishment. A Technical Advisory Panel is established and shall remain in existence for as long as the Flood Protection Sales Tax is in effect.

2. Membership. The Napa County Flood Control and Water Conservation District Board of Directors shall appoint the Technical Advisory Panel whose purpose and charge is to provide technical expertise in reviewing the Corps of Engineers proposed project which is located within the City of Napa to ensure consistency with the Community Coalition Project Plan. The Panel shall consist of no more than nine members. Members of the Panel shall have expertise in one or more of the following disciplines: (1) architecture, (2) landscape architecture, (3) civil engineering, (4) hydrology/hydraulics, (5) urban planning or design, (6) water and wastewater engineering (7) geotechnical engineering and/or (8) environmental sciences/natural resource management. All members shall demonstrate a thorough knowledge of and commitment to the "Living River Guidelines" and the "Urban Design Criteria" of the Community Coalition Flood Management Plan and the watershed management guidelines contained in the Napa River Watershed Owner's Manual of the Napa County Resource Conservation District, as well as sound engineering flood protection principles.

3. The Panel may provide technical expertise to review and comment on the planning of other Countywide projects.

4. The Panel is advisory to the Napa County Flood Control and Water Conservation District.

5. The Napa County Flood Control and Water Conservation District Board of Directors shall appoint the Panel to ensure its ongoing input and recommendations regarding the following Army Corps of Engineers documents prior to executing same:

a. The General Design Memorandum and related Environmental Impact Statement (EIS);

b. The Project Cooperation Agreement;

c. All preliminary plans and construction contracts, final plans and specifications related to the City of Napa Corps of Engineers project.

6. All members of the Panel shall be individuals whose domicile is in Napa County.

7. The panel shall have resources sufficient to ensure continuous onsite review of Army Corps of Engineers construction activities.

#### SECTION 10. Expiration of Tax; Extension of Tax.

A. The transactions and use tax imposed by this Ordinance shall expire June 30, 2018; provided, that if the Authority shall not have contracted with the State Board of Equalization on or before July 1, 1998, and as a result the operative date is the beginning of a calendar quarter subsequent to July 1, 1998, the expiration date shall be extended, for a period of time equal to the delay. Notwithstanding the preceding sentence, this tax may be extended beyond the twenty-year period if the question of extending the tax is placed on the ballot and approved by the legally required percentage of qualified voters voting on the extension.

B. This transactions and use tax may be reduced or rescinded by a majority vote of the Governing Board of the Authority; provided, however that such modification or rescission shall not occur if to do so would violate any law, including but not limited to Article I, §10 of the United States Constitution and Article I, §16 of the California Constitution or if prohibited by any covenant made with the holders of any bonds or obligations payable from this transactions and use tax. The Governing Board of the Authority shall take such action only after receiving a recommendation regarding such rescission or modification from the Financial Oversight Committee and, subsequent to such receipt, conducting a noticed public hearing. Such action shall be subject to California law pertaining to the cancellation of prior contractual obligations and the rules and regulations of the State Board of Equalization.

#### SECTION 11. Purpose.

This Ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a one half of one percent retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.5 of Part 1.7 of Division 2 which authorizes the Authority to adopt this tax Ordinance which shall be operative only if two-thirds of the electors voting on this Ordinance approve same at an election called for that purpose.

B. To adopt a retail transactions and use tax Ordinance which incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax Ordinance which imposes a tax and provides a measure therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California Sales and Use Taxes.

D. To adopt a retail transactions and use tax Ordinance which can be administered in a manner which will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of recordkeeping upon persons subject to taxation under the provisions of this Ordinance.

E. To establish an expenditure limit for the Authority as required by Article XIII B of the California Constitution.

F. To authorize bonds and other obligations to be issued for the purpose of financing projects in the expenditure plan with said bonds or other obligations to be payable from the transaction and use tax proceeds.

#### SECTION 12. Operative Date; Contract with the State.

The operative date of this Ordinance, at which time collection of the tax imposed by this Ordinance shall commence, is July 1, 1998. Prior to July 1, 1998, the Authority shall contract with the State Board



of Equalization to perform all functions incident to the administration and operation of this Transactions and Use Tax Ordinance; provided, that if the Authority shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such contract.

**SECTION 13 Transactions Tax Rate.**

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated and unincorporated territory of the District at the rate of one-half of one percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this Ordinance. The tax shall be imposed for a period of twenty years.

**SECTION 14. Place of Sale.**

For the purposes of this Ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under the rules and regulations to be prescribed and adopted by the State Board of Equalization.

**SECTION 15. Use Tax Rate.**

An excise tax is hereby imposed on the storage, use or other consumption in the incorporated and unincorporated area of the District of tangible personal property purchased from any retailer on and after the operative date of this Ordinance for storage, use or other consumption in said territory at the rate of one-half of one percent of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made. The tax shall be imposed for a period of twenty years.

**SECTION 16. Adoption of Provisions of State Law.**

Except as otherwise provided in this Ordinance, and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this Ordinance as though fully set forth herein.

**SECTION 17. Limitations On Adoption of State Law and Collections of Use Taxes.**

In adopting this provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this Authority shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this Authority or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.

3. In those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code; or

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "District" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

**SECTION 18. Permit Not Required.**

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this Ordinance.

**SECTION 19. Exemptions and Exclusions.**

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the County in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the District which is shipped to a point outside the District, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the district shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with section 9840) of the Vehicle Code by registration to an out-of-District address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-District and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this Ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this Ordinance.

5. For the purposes of subsections (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this Ordinance, the storage, use or other consumption in this district of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax Ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this Ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this Ordinance.



5. For the purposes of subsections (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the District shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the District, or participates within the District in making the sale of the property, including, but not limited to, soliciting or receiving the order either directly or indirectly, at a place of business of the retailer in the district or through any representative, agent, canvasser, solicitor, subsidiary or person in the District under the authority of the retailer.

7. "A retailer engaged in business in the District" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the District.

D. Any person subject to use tax under this Ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for, a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code, with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

**SECTION 20. Bonds and Other Obligations.**

Upon voter approval of this Ordinance, the Authority shall have the authority to issue bonds or other obligations (including, without limitation, lease or installment sales agreements) to finance any of the projects included in the Plan as it may be amended from time to time (including reserves and other financing costs), which bonds or other obligations shall be payable from the revenues of the Flood Protection Sales Tax. In allocating Flood Protection Sales Tax revenues all debt service requirements and other financing costs of such bonds and other obligations shall be met prior to allocating funds for any other purposes or projects.

**SECTION 21. Amendments.**

All amendments subsequent to the effective date of this Ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to transactions and use taxes and which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 of Division 2 of the Revenue and Taxation Code, shall automatically become part of this Ordinance, provided, however, that no such amendment shall operate so as to increase the rate of tax imposed by this Ordinance or extend the period of time the tax will remain in effect.

**SECTION 22. Enjoining Collection Forbidden.**

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the Authority, or against any officer of the State or the Authority, to prevent or enjoin the collection under this Ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

**SECTION 23. Napa County Auditor-Controller Audit.**

In addition to the audit required pursuant to Section 9(A)(2)(b), the Napa County Auditor-Controller shall annually conduct an audit of how the new transactions and use tax revenues are spent by the County of Napa. The audit shall be published in at least two County newspapers and copies of the audit shall be provided to, and must be available at, every public library located in the County.

**SECTION 24. Severability.**

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.

**SECTION 25. Effective Date; Approval of the Voters.**

This Ordinance shall take effect on March 3, 1998, but only if 2/3rds of the electors voting on the Ordinance at an election held on March 3, 1998, vote to approve this Ordinance.

**SECTION 26. Annual Appropriation Limit.**

The maximum annual appropriation limit for the Authority is \$20,000,000.00, subject to such adjustments or increases as are provided for by law.

**SECTION 27. Implementation Subsequent to Vote.**

Upon approval of this Ordinance by 2/3rds of the voters, the Authority may adopt policies and take such actions as may be necessary for the implementation of the one-half of one percent (1/2%) transactions and use tax authorized by this Ordinance. Such actions shall include, but not be limited to, the Authority amending this Ordinance without being required to secure a ratification by the electorate to provide for use of additional federal, state or local funds, to account for unexpected revenues, or to take into consideration unforeseen circumstances, or if such amendments are deemed necessary and recommended by the Authority's general counsel, bond counsel, or legal counsel for the State Board of Equalization; provided, however, that no amendments that will increase the rate of the transactions and use tax rate or extend the term beyond twenty years may be made without securing the approval of the amendment by the legally required percentage of qualified voters voting on the amendment.

**SECTION 28. Publication of Ordinance.**

This Ordinance shall be published at least once before the expiration of 15 days after its passage in the Napa Valley Register, a newspaper of general circulation published in the County of Napa, together with the names of the Directors voting for and against the same.

The foregoing Ordinance was introduced and read at a special meeting of the Napa County Flood Protection and Watershed Improvement Authority, held on the 28th day of October, 1997 and passed at a special meeting of the Napa County Flood Protection and Watershed Improvement Authority, held on the 4th day of November, 1997, by the following vote:

<b>AYES: DIRECTORS</b>	<b>VARRELMAN, LUCE, FERRIOLE, WINTER and RIPPEY</b>
<b>NOES:</b>	<b>NONE</b>
<b>ABSTAIN:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>NONE</b>

s/ Mike Rippey, Chairman  
Board of Directors

**ATTEST:**  
MARY JEAN McLAUGHLIN  
Clerk of the Board

By/ Teri Sisson, Deputy





## IMPARTIAL ANALYSIS BY THE NAPA COUNTY COUNSEL

Measure "A" proposes the voters approve an ordinance relating to flood protection which would impose a 1/2% sales tax. The tax proposed would be a **special tax** to be used to construct over a dozen flood protection and watershed improvement projects in various locations throughout the county.

Special taxes cannot be imposed without securing the consent of 2/3rds of the voters and can **only** be utilized for those purposes identified in the Ordinance imposing the tax. Therefore the special tax proceeds herein involved **cannot** be utilized for general governmental purposes. A Napa County Flood Protection and Watershed Improvement Authority (NCFP&WIA) was created to receive/control the spending of the special tax proceeds. This should ensure the special taxes will only be utilized for the purposes/projects identified in the Ordinance (See sections §§4,7 & 8 of the ordinance which is reproduced in this Booklet).

Measure "A", if approved by 2/3rds of the voters voting on March 3, 1998, will result in:

- The sales tax in Napa County being increased by one-half of one percent (1/2%). This sales tax increase automatically ends in 20 years unless repealed earlier by the NCFP&WIA.
- The sales tax proceeds being restricted to financing/constructing/maintaining/monitoring the flood control and watershed improvement projects identified in the Ordinance. The projects must comply with the "Living River Guidelines" contained in the Community Coalition's Flood Management Plan and the Napa River Watershed Owners Manual of the Napa County Resource Conservation District.
- All special tax proceeds collected within a city being spent within that city. Special tax proceeds collected in the county may be spent on city or county projects.
- Two citizen committees being created. The Financial Oversight Committee is responsible for monitoring the expenditures of the sales tax proceeds. No governmental officers, employees or elected officials are permitted to serve on this Committee. The Technical Advisory Committee provides technical expertise in reviewing the Corps of Engineers' proposed project located within the City of Napa.
- The County Auditor conducting an annual audit and publishing findings regarding the use of the special tax proceeds.
- Bonds or other obligations being authorized to finance the identified projects if necessary. It appears bond financing will be necessary in the case of the City of Napa project but may not be required for projects in other Napa communities.
- An appropriations limit being established equal to the maximum special tax proceeds projected to be collected during any twelve month period the sales tax is in effect. This is required by a voter approved state law. Without it the sales tax can be collected but not spent.

**A YES VOTE MEANS** you want to impose a 1/2% special sales tax, limit the use of those proceeds to the above described flood control projects and approve the related actions described above.

**A NO VOTE MEANS** you do not want to impose a 1/2% increase in the sales tax or construct the flood control projects identified above if new taxes are required to do so.

s/ Robert Westmeyer  
County Counsel

**THE ABOVE STATEMENT IS AN IMPARTIAL ANALYSIS OF ORDINANCE NO. 1 (NCFPWIA) MORE COMMONLY KNOWN AS MEASURE "A". IF YOU DESIRE A COPY OF THE ORDINANCE, PLEASE CALL THE NAPA COUNTY ELECTION DEPARTMENT AT 253-4321 AND A COPY WILL BE MAILED TO YOU AT NO COST TO YOU.**



## ARGUMENT IN FAVOR OF MEASURE A

t's time!

t's time to end the annual threat of flooding - flooding that endangers our safety, security and long-term prosperity.

t's time to stop paying the high cost of flooding - \$542 million has been spent on flooding in the past 36 years.

t's time to pass Measure A - the common sense, cost-effective, countywide solution to flooding.

Measure A protects families, senior citizens, mobilehome residents, businesses, farm land and our communities from flooding by increasing the sales tax 1/2-percent.

- Money raised can be used only for flood protection and watershed improvement projects as spelled out in Measure A - no money can be spent on any other purpose.
- All flood protection and watershed improvement projects must be built in strict accordance with Measure A's fiscal, environmental and design standards.
- Measure A creates a special Citizen's Financial Oversight Committee to monitor expenses and publish annual audits to ensure money is used as intended - no money can be spent on general government/administrative salaries.
- Measure A is fair and equitable - revenues generated in each city and community will go directly to meet that community's flood protection needs.

Most important, the flood protection plan authorized by Measure A works! The U.S. Army Corps of Engineers certifies "the Napa project will protect us against floods 30% larger than any flood in Napa County recorded in history." The Sierra Club supports the plan because it "significantly improves the environmental health of the Napa River and watershed."

Measure A is clearly our best - and probably last - chance to stop the human suffering and economic loss caused by flooding. If Measure A fails, we lose the \$80 million in federal funding already approved.

Measure A is supported by an unprecedented countywide coalition of agricultural, business, environmental, homeowner and public safety organizations.

On March 3, vote Yes on Measure A.

Jim Lincoln  
President, Napa County Farm Bureau  
Jean Phillips  
President, City of Napa Mobilehome Owners Association  
Moir Johnston Block  
President, Friends of the Napa River  
Sandi Perlman  
President, Napa Chamber of Commerce  
Gary L. Simpson  
Sheriff-Coroner, Napa County

## REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE A

As always, the supporters of more and higher taxes want you to believe some ridiculous assertions:

They say they will protect us all from flooding. Sure they will: the same way government programs protect us from illegal drugs; the same way they protected us from demon rum during prohibition.

They say we will "stop paying the high cost of flooding..." No, we will only pay the higher cost of taxation - up to twenty million dollars a year for twenty years. And do you really think it will stop then? Have bridge tolls been lowered? Does any new tax ever go away?

They say a "Financial Oversight Committee" will "monitor expenses": a committee that will have no voice and no power; a committee that they will select. Remember the so-called Measure Y School Bond Committee? That one is a pathetic joke. I happen to know; I'm a member.

This massive tax increase is just an excuse for another downtown parking garage. Haven't we learned? They have no chance if you will get out and vote; if the turnout is high this will not pass!

Local government types tell you this is "fair and equitable." Their idea of fair: you pay. A few wealthy property owners will benefit from raised values. Bureaucrats will get higher salaries and more power. Don't be fooled; cast a ballot to keep your own money and spend it as you see fit! Don't give it to con-men.

William H. Crain  
Chair, Libertarian Party of Napa County Central Committee

## ARGUMENT AGAINST MEASURE A

County Ordinance 1128: "The Board finds that: The County of Napa is in need of raising additional revenues..."

Surprised? The supervisors want more of your money? When has a politician *not* wanted more money? What government agency found it needed *lower* taxes?

But this time they've gone too far. They want us to pay an extra half percent sales tax for a huge boondoggle that will benefit only a few and cause positive harm to many others.

There are offices, businesses, residences located in the flood plain. They exist there because individuals have *chosen* to bear the risk of flooding; because the property is accordingly less expensive. For low income residents and small businesses the flood plain is desirable because it's cheaper - if they *themselves* decide to assume the risk.

Now comes the Board of Supervisors to tell us we are not free to locate where we will. Buildings will be condemned and destroyed; expensive dredging, channeling, and artificial "wetlands" will replace them. All this for the good of the "community" with money taken by force. Make no mistake; this will be no voluntary contribution. Like all government projects, the cost will be excessive and you will pay it whether you live on a hilltop or a mudflat. The justification: we are too irresponsible to live as we wish. We must give more to our elected officials and let them spend it on our behalf - on a project that could never pass in a high-turn-out general election, that could never pass if the costs were imposed *only* on the parcels affected.

There has been occasional flooding along the Napa River for centuries; this will not end it. Government meddling will do what it always does: only bureaucrats will profit.

Just say no to Measure A.

s/ William H. Crain

Chair, Napa County Libertarian Party Central Committee

s/ Mike Rodrigues

Candidate: State Assembly, Seventh District

## REBUTTAL TO ARGUMENT AGAINST MEASURE A

The argument against Measure A trivializes the significant human suffering and damage caused by flooding. The 1986 flood killed three people, led to the evacuation of 7,000 residents and caused \$100-million in damages. The 1995 flood cost families and businesses another \$90-million.

It's time to stop flooding. It's time to pass Measure A:

- Measure A is a community plan. It was designed and written by a broad coalition of Napa County residents, business leaders, environmentalists, farmers and other community members. It's not a politicians' plan.
- Measure A is Napa County's only chance to secure \$80-million in federal funding for flood protection. If Measure A fails, this federal money will go to protect other communities from flooding.
- Measure A will end flooding. The Army Corps of Engineers certifies Measure A protects Napa against floods greater than any recorded in history. Communities throughout Napa County will finally be able to solve their urgent flooding and watershed needs.
- Flooding impacts us all. We pay the evacuation, emergency, repair and cleanup costs. Without Measure A, flooding will cost Napa County taxpayers a projected \$400-million in the next 25 years-almost twice the cost of Measure A's flood protection plan.
- Measure A is a wise investment. Napa County residents will pay only one-third the cost of the flood protection plan. The federal government will pay 40-percent and tourists 15-percent.

Never before has such a broad coalition of Napa community leaders agreed on one common objective: we must pass Measure A. We must stop the human suffering and economic loss caused by flooding once and for all.

s/ Jim Lincoln

President, Napa County Farm Bureau

s/ Jean Phillips

President, City of Napa Mobilehome Owners Association

s/ Moira Johnston Block

President, Friends of the Napa River

s/ Sandi Perlman

President, Napa Chamber of Commerce

s/ Gary L. Simpson

Sheriff-Coroner, Napa County

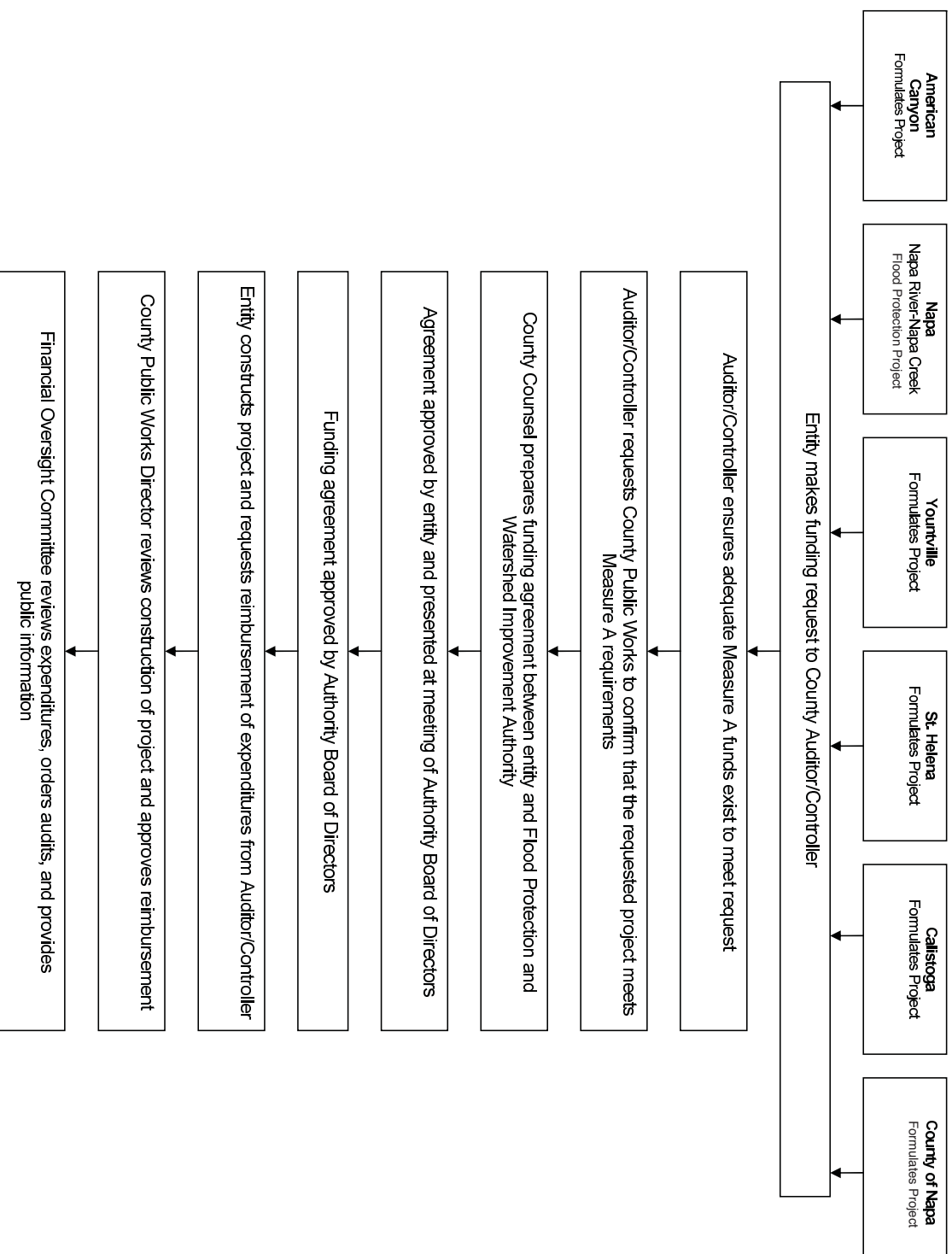


## Answers to common questions

### 1. Who is responsible for seeing that Measure A funds are spent appropriately?

“Chart 1: Flood Protection Funding Flow Chart” illustrates the process of approving expenditures. The Napa County Flood Protection and Watershed Improvement Authority (NCFPIWA or Authority), which is made up of the Napa County Board of Supervisors, was created by Measure A to administer the sales tax ordinance.

**Chart 1: Flood Protection Funding Flow Chart**



Napa County Agreement No. 4102  
NCFPWIA Agreement No. 8  
NCFC&WCD Agreement No. 34(FC)  
American Canyon Agreement No. \_\_\_\_\_  
City of Napa Agreement No. \_\_\_\_\_  
St. Helena Agreement No. \_\_\_\_\_  
Calistoga Agreement No. \_\_\_\_\_  
Yountville Agreement No. \_\_\_\_\_

**JOINT POWERS AGREEMENT  
REGARDING THE USE AND EQUITABLE DISTRIBUTION  
OF FLOOD PROTECTION SALES TAX REVENUES**

THIS JOINT POWERS AGREEMENT (the "Agreement") is made and entered into as of this 1<sup>st</sup> day of November, 1998, between and among the County of Napa, a political subdivision of the State of California (the "County"), the Napa County Flood Protection and Watershed Improvement Authority, a public authority established pursuant to section 7285.5 of the Revenue and Taxation Code (the "Authority"), the Napa County Flood Control and Water Conservation District, a flood control district organized under the laws of the State of California (the "District") and the Cities of American Canyon, Napa, St. Helena and Calistoga and the Town of Yountville, municipal corporations (the "Municipalities").

The parties hereby agree as follows:

**SECTION 1. Purpose**

On March 3, 1998, the electorate of the County approved the Authority's Ordinance No. 1 (the "Ordinance") which, among other things, imposed a one-half of one percent transactions and use tax in the County (the "Flood Protection Sales Tax") and established a Flood Protection and Watershed Improvement Expenditure Plan which describes the projects authorized to be funded with the proceeds of the Flood Protection Sales Tax (the "Plan").

In anticipation of the approval of the Ordinance by the electorate, the parties, in early 1998, entered into a Memorandum of Understanding regarding the use and equitable distribution of sales tax revenues generated by the enactment of the Napa County Flood Protection Sales Tax Ordinance (the "MOU").

The MOU contained operating policies and criteria regarding the equitable distribution of Flood Protection Sales Tax revenues by the Authority to the County, the District and the Municipalities, debt financing for projects contained in the Plan, project substitution, fund

accounting, contract relationships and administrative support to the Financial Oversight Committee established by the Ordinance.

The parties now intend to update and replace the MOU with this formal joint powers agreement as contemplated by Sections 3(g) and 5 of the Ordinance.

This Agreement is intended to be a joint powers agreement authorized by section 6500 *et seq.* of the California Government Code and is entered into for the purpose of implementing the flood protection, watershed improvement and related projects sanctioned by the Ordinance.

## SECTION 2. Recitals

- (a) The Ordinance has imposed a Flood Protection Sales Tax in Napa County equal to one-half of one percent with the resultant revenues to be used only for projects contained in the Plan or substitute projects approved in accordance with the provisions contained in the Ordinance relating to substitute projects.
- (b) County-wide, a minimum of \$6 million per year is expected to be generated by the Flood Protection Sales Tax, based upon 1995-96 actual sales tax receipts in the County (see Table 1). Tax revenues for purposes of this Agreement will be calculated on a July 1-June 30 fiscal year basis commencing July 1, 1998 (the "Tax Year").
- (c) The term of the Flood Protection Sales Tax is for a maximum period of 20 years. The Flood Protection Sales Tax revenues are required to be placed in the General Fund of the Authority. The Auditor has indicated her intent to then allocate these revenues to the various subfunds that will be established for the benefit of the County, the District and the Municipalities (hereafter collectively "Tax Fund").
- (d) The County, the District and the Municipalities prior to the March 3, 1998, election conducted study sessions and deliberations regarding the unmet flood protection needs throughout the County and identified critical projects which would greatly reduce and/or eliminate the destructive flood damage which regularly occurs in the County. These projects were then included in the Ordinance which was subsequently approved by the voters on March 3, 1998.
- (e) The County, the District, the Authority and the Municipalities agree the funding structure for the Napa River and Napa Creek Project, as detailed and designed by the Community Coalition for Napa Flood Management and the Army Corps of Engineers (as further described in the Ordinance and hereafter referred to as the "Napa Project"), must be given special consideration because of the standing federal authorization granted to the Napa community in 1965. Despite the existence of this standing federal authorization, during 1996 and again in 1997, the Corps of Engineers and the United States Congress sent a series of messages to the Napa Community that not only project planning and design but also the local funding for the Napa Project must be in place by Spring 1998 in order for Congress to

continue appropriating money for the Napa Project. As a result of these series of messages it became clear that without action by the Napa Community the Napa Project standing federal authorization would be terminated and appropriations no longer approved on an annual basis for the reason that sufficient local funding did not exist to actually carry out the Napa Project.

(f) The County, the District, the Authority and the Municipalities have studied and understand the urgent need to commit sufficient Flood Protection Sales Tax revenues on a countywide basis to enable the local share of costs for the Napa Project to be generated, and that such contribution must be sufficient to enable the Napa Project to be completed within seven (7) years.

(g) The Authority has retained Leifer Capital as its financial advisor. The County, the District, the Authority and the Municipalities have studied the financial analysis provided by Leifer Capital (the "Leifer Report") which provides guidelines for long term debt financing structures that are feasible using Flood Protection Sales Tax revenues. The Leifer Report contains criteria for such financing assuring that the County's General Fund is not placed at risk. A copy of the Leifer Report is on file with the Clerk of the Board of Supervisors of the County of Napa and is incorporated herein by reference as though set out in full.

(h) The County, the District, the Authority and the Municipalities understand that, after completion of the projects contained in the Plan (including any substitute projects approved in accordance with section 8 of the Ordinance) and the establishment and capitalization of the long term capital improvement maintenance fund(s) authorized by the Ordinance, any remaining Flood Protection Sales Tax revenues, and any State Subventions as defined in Section 5(a) that accrue to the Tax Fund that has been established to enable the County, District and Municipalities to better track the distribution of the Flood Protection Sales Tax revenues will be used to retire the related debt early, in order to terminate or reduce the Flood Protection Sales Tax at the earliest possible time.

**SECTION 3: Equitable Distribution of Sales Tax Revenues to Finance the Projects Contained in the Ordinance**

(a) The Ordinance contains the following provisions which provide for the distribution of Flood Protection Sales Tax revenues:

(1) Section 2 (J): *"The allocation of the Flood Protection Sales Tax revenues that will be generated as a result of the passage of this 1/2% transaction and use tax by the Authority and the subsequent approval by the People with a 2/3rds vote, shall be based on the amount of Flood Protection Sales Tax revenue generated by the various geographic areas within the County, subject to Section 20 of this Ordinance."*

(2) Section 5: *"The distribution of the Flood Protection Sales Tax revenues to fund the projects described in this Ordinance, over the life of the tax, shall occur in a manner*

which is proportional to the Flood Protection Sales Tax revenues generated by each of the incorporated and unincorporated areas in Napa County. The portion of the distributions representing the share of the revenues allocated to the unincorporated area may be used to assist in paying for the flood protection projects involving incorporated areas that are described in this Ordinance."

"Specific allocations and methods of distribution based on the amount of Flood Protection Sales Tax revenues generated by each of the incorporated and unincorporated areas in Napa County shall be specified in a Joint Powers Agreement which shall be developed following the enactment of the Flood Protection Sales Tax."

(b) The sales tax generated during the 1995-96 year shall be used as the base year for Flood Protection Sales Tax allocation purposes (the "Base Tax"). The sales tax generated in the County by jurisdiction during the base year was as follows:

**TABLE 1**

	<u>Amount</u>	<u>Percentage</u>
(1) City of Napa:	\$3,124,000	52.0%
(2) Napa Vicinity:	\$ 876,000	14.6%
(3) City of American Canyon:	\$ 400,000	6.7%
(4) City of Calistoga:	\$ 198,000	3.3%
(5) City of St. Helena:	\$ 691,000	11.5%
(6) Town of Yountville:	\$ 137,000	2.3%
(7) County Unincorporated (excluding Napa Vicinity):	<u>\$ 574,000</u>	<u>9.6%</u>
<b>Total 1995-96 Actual Receipts</b>	<b>\$6,000,000</b>	<b>100%</b>

(c) The County, the District, the Authority and the Municipalities agree that for the life of the Flood Protection Sales Tax the entire share of the Tax generated within the City of Napa will be allocated to the Napa Project sub-fund account. Additionally, the entire share of the Flood Protection Tax generated in the unincorporated areas surrounding the City of Napa (the Napa Vicinity)<sup>1</sup> will also be allocated to the Napa Project sub-fund account. Therefore, each Tax Year \$4 million or 66.6% of the revenues generated by the Flood Protection Sales Tax in Napa County, whichever is greater, will be appropriated for this purpose. Notwithstanding the previous two sentences, the revenues from the Flood Protection Sales

<sup>1</sup> For purposes of this agreement, the "Napa Vicinity" is intended to include the areas of unincorporated County lands adjacent to the City of Napa including but not limited to the Silverado Country Club and Resort, the Coombsville area, all property included within Airport Industrial Area Specific Plan, Browns Valley, and the Carneros area.

Tax generated in the Napa Vicinity during the period July 1, 2005, until the termination or expiration of the Tax, that have been allocated to the Napa Project sub-fund account shall be reallocated to the County Unincorporated sub-fund account if it is determined by the Auditor of the Authority that payments received from the State pursuant to section 12748 of the California Water Code are in excess of the amount needed to complete the Napa Project, including but not limited to Napa Project financing and Cost Overruns (as defined in Section 6); provided further, however, that the amount of the reallocation shall not exceed the total Flood Protection Sales Tax the Napa Vicinity has contributed to the Napa Project sub-fund account for the period July 1, 2005 through the expiration or early termination of the Flood Protection Sales Tax.

(d) The remaining annual Flood Protection Sales Tax revenues generated throughout the County, in the proportions listed below, will be appropriated into sub-fund accounts maintained for projects in each of the below listed Municipalities and the County (the "County-wide Projects"), but not to exceed the Base Tax amounts set forth below:

**TABLE 2**

	<u>Base Tax</u>	<u>1<sup>st</sup> Seven year Sharing %</u>
(1) City of American Canyon: <sup>2</sup>	\$ 400,000	6.7%
(2) City of Calistoga:	\$ 198,000	3.3%
(3) City of St. Helena:	\$ 691,000	11.5%
(4) Town of Yountville:	\$ 137,000	2.3%
(5) County Unincorporated (excluding Napa vicinity): <sup>3</sup>	<u>\$ 574,000</u>	<u>9.6%</u>
<b>Total 1995-96 actual receipts</b>	<b><u>\$ 2,000,000</u></b>	<b><u>33.4%</u></b>

(e) Adjustment to County-wide Annual Allocations during Construction of the Napa Project:

<sup>2</sup> Flood Protection Sales Tax revenues from enactment of the Ordinance within the City of American Canyon city limits are difficult to predict due to State Board of Equalization regulations regarding local transactions and use taxes like the Flood Protection Sales Tax. Approximately 50% of American Canyon's sales tax revenues are from businesses with sales contract exports out of the County which are subject to the State Sales Tax, but will not be subject to the Flood Protection Sales Tax. Therefore, it is agreed that the projected distribution to American Canyon will be set at the historical level for purposes of this Agreement but will be reviewed and adjusted after the first year of actual collections (1998-99) are analyzed. Any adjustment to the American Canyon share will analyze and take into account one-time anomalies in the year used for the adjustment. Actual 1/2 cent 1995-96 State Sales Tax revenues collected in the City of American Canyon were \$400,000. Actual shares for American Canyon may equal 50% or \$200,000 or less. Each jurisdiction shall be debited or credited, as the case may be, in year 2 of the Flood Protection Sales Tax for any over- or underpayment in year 1 based on any adjustments in their percentage allocation required as a result of the American Canyon analysis.

<sup>3</sup> The County Unincorporated (excluding Napa Vicinity) allocation will be placed in sub-accounts for the following geographic areas within the County:

Angwin/Deer Park:	\$ 100,000	17.0%
Berryessa Watershed:	\$ 40,000	7.0%
Balance of County:	\$ 434,000	76.0%



The Napa Project requires a front end cash flow from Flood Protection Sales Tax revenues greater than its equitable share during the first seven (7) years of the Flood Protection Sales Tax term. While the equitable share for County-wide Projects should be \$2.0 million per year, or 33% of the total sales tax received during any given tax year, whichever is greater (see Table 2), only \$1 million per year will be committed in the first seven (7) years of the Flood Protection Sales Tax term because of the financing needs of the Napa Project. These adjustments are reflected in Table 3<sup>4</sup>

(f) Except for the percentage adjustments resulting from the City of American Canyon review (see footnote No. 2), the above percentage equitable allocations will be fixed until June 30, 2005. The Authority's Auditor on or about October 1, 2005, will conduct a review of the percentage allocations and issue a report and one or more recommendations (the "Report and Recommendation") regarding adjustments to those allocations for the Tax Year commencing July 1, 2006, in a manner that will ensure that at the time the Flood Protection Sales Tax expires, or is terminated prior to its scheduled expiration, each jurisdiction's allocation will approximate the Flood Protection Sales Tax revenues generated within that jurisdiction due to the existence of said Tax. On or about October 1<sup>st</sup> of each subsequent year, and for the remaining life of the Flood Protection Sales Tax, the Auditor shall issue additional Reports and Recommendations regarding adjustments of the Flood Protection Sales Tax revenues to take effect the July 1<sup>st</sup> following the issuance of said Report and Recommendation based upon a review of the cumulative actual Flood Protection Sales Tax receipts collected in each jurisdiction up to that point in time. Each such Report and Recommendation must recommend adjustments ensuring that at the time the Flood Protection Sales Tax expires, or is terminated prior to its scheduled expiration, each jurisdiction's allocation will approximate the additional Flood Protection Sales Tax revenues generated within that jurisdiction due to the existence of said Tax. The aforementioned Reports and Recommendations, which must set forth the revised allocations and the basis for same, shall be submitted to each affected jurisdiction not later than January 15<sup>th</sup> of each calendar year. Unless an objection is received from the jurisdiction within 30 days of the mailing of the Report and Recommendation by the Auditor, any objections to the proposed allocation shall be deemed waived and the proposed revised allocation shall be implemented on the July 1<sup>st</sup> next following the issuance of the Report and Recommendation. Objections shall be resolved in the manner set forth in subparagraph (f)(3) of section 9 of this Agreement.

g) Project Maintenance Contribution:

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<sup>4</sup> If the Flood Protection Sales Tax revenues during the term of the Flood Protection Sales Tax exceeds \$6 million annually (hereafter "Growth Tax Revenues"), it shall be allocated as set forth in Section 5 so that when the Flood Protection Sales Tax expires, or is terminated prior to its scheduled expiration, each jurisdiction's allocation will approximate the additional sales tax revenues generated within that jurisdiction due to the existence of the Flood Protection Sales Tax.

(1) Napa Project: The equitable distribution of Flood Protection Sales Tax revenues to County-wide projects will be adjusted to reflect a contribution by the upper Napa River watershed communities and the County unincorporated area (excluding the Napa vicinity) to the long term maintenance cost of the Napa Project which must be periodically cleared of sedimentation which occurs due to erosion in the upper Napa River watershed. No adjustment shall be required during the first seven years of the existence of the Flood Protection Sales Tax. During the remainder of the life of the Flood Protection Sales Tax the adjustment shall total \$1,900,000. This adjustment applies only to the upper Napa River watershed and therefore will not be applied to the City of American Canyon share of the Flood Protection Sales Tax. This adjustment is reflected in Table 3 entitled "The Base Year Allocation of Flood Protection Sales Tax Revenues" and will be reflected in the allocations required by subparagraphs (d), (e) and (f) above. A cost component of the Napa Project shall be the creation of a \$10,000,000 Maintenance Trust Fund which will be dedicated to providing Napa Project maintenance in perpetuity. Neither the upper Napa River communities nor American Canyon shall be required to contribute any portion of its Flood Protection Sales Tax revenues to this fund.

(2) County-wide Projects Maintenance. To the extent that Growth Tax Revenues allow it, maintenance trust funds will be established for County-wide Projects as set forth in Section 5 with contributions on a pro-rata basis among the County, the District and the Municipalities (but not including the City of Napa). Such maintenance trust funds will not exceed the lesser of (1) actual maintenance needs, (2) 10% of the actual project cost for which the trust fund is being established, or (3) 30% of the County-wide projects share of the Growth Tax Revenues over the term of the Tax.

These limits on maintenance funding are intended to maximize the possibility that a portion of the Flood Protection Sales Tax revenues, and particularly the Growth Tax Revenue component of the Flood Protection Sales Tax revenues, will be available for the purpose of reducing the term of the Flood Protection Sales Tax.

(next page is page 8)

(h)

**TABLE 3:**

**BASE YEAR ALLOCATION OF FLOOD PROTECTION SALES TAX REVENUES**

	Total-20 yrs	Annual Revenue Year 1-7	Annual Revenue Year 8-20	Napa Project Yearly Maintenance Debit: Year 8-20 <sup>5</sup>	Annual Revenue After Maintenance Year 8-20
City of Napa (and Napa vicinity)	\$80,000,000	\$5,000,000	\$3,461,539	\$205,000	\$3,461,539
St. Helena	\$ 13,820,000	\$ 345,500	\$ 877,038	\$ 64,308	\$ 812,730
Yountville	\$ 2,740,000	\$ 68,500	\$ 173,885	\$ 13,154	\$ 160,731
American Canyon	\$ 8,000,000	\$ 200,000	\$ 507,692	0	\$ 507,692
Calistoga	\$ 3,960,000	\$ 99,000	\$ 251,308	\$ 19,000	\$ 232,308
County-Balance	\$ 8,480,000	\$ 217,000	\$ 535,461	\$ 49,692	\$ 485,769
County-Angwin	\$ 2,000,000	\$ 50,000	\$ 126,923	0	\$ 126,923
County-Berryessa	\$ 1,000,000	\$ 20,000	\$ 66,154	0	\$ 66,154
<b>TOTAL</b>	<b>\$120,000,000</b>	<b>\$6,000,000</b>	<b>\$6,000,000</b>	<b>\$351,154</b>	<b>\$5,853,846</b>

**SECTION 4: Project Substitution**

(a) Section 8 of the Ordinance contains provisions for substitution of Plan projects. It states:

*In the event any project described in this Section is not economically or environmentally feasible, the legislative body having jurisdiction over the lands involved shall recommend to the Napa County Flood Control and Water Conservation District a replacement project. Only replacement projects that meet the criteria set forth in the first two paragraphs of this Section shall qualify and may be approved provided, however, that facilities for, or purchase of, North Bay Aqueduct or other water imported from outside Napa County shall not qualify as replacement projects. The Napa County Flood Control and Water Conservation District shall consider recommending approval of a*

<sup>5</sup> Napa City share of maintenance is \$205,000 per year plus the capitalization of a Maintenance Trust Fund of \$10 million, which will pay for project maintenance in perpetuity. These costs are included in the overall financing plan for the Napa Project (see Leifer Report).

*replacement project to the Authority only after obtaining the recommendation of the Financial Oversight Committee and the Technical Review Committee. Approval by the Authority shall be in the form of an amendment to this Ordinance. Changes meeting the above criteria, to the extent permitted by law, shall not need a vote of the People ratifying the amendment.*

(b) In carrying out and administering this provision, the County, the Municipalities, the Authority and the District agree that the following criteria will guide the approval of replacement projects:

(1) All projects funded by Flood Protection Sales Tax revenues will be permanent public improvements meeting the Government/Streets & Highways Code definitions of capital projects. Operation and maintenance costs for the capital projects will be allowable.

(2) All Municipalities will address their primary flood protection needs as the highest priority, before water supply reliability and wastewater projects are undertaken.

(3) Project substitutions will be allowed only if projects identified in the Plan are determined to be not economically or environmentally feasible or if a CEQA analysis of alternatives determines that a different project is superior in addressing the objectives of flood protection, improved water quality or stabilization of water supply reliability for existing residents.

(4) The Ordinance, in its entirety, will guide the approval of replacement projects. The Ordinance specifies project design criteria, oversight by the Financial Oversight Committee and provides policy and intent statements of the people of the County regarding the Plan projects, including replacement projects. Additional projects, rather than substitute projects, are not authorized by the Ordinance and therefore cannot be permitted.

#### **SECTION 5: Use of Additional Revenues**

(a) Additional revenues can be expected to accrue to the Tax Fund due to interest received, growth in Flood Protection Sales Tax revenues which exceed the \$6 million 1995-96 base year level, and funds received from the State of California pursuant to section 12748 of the California Water Code (the "State Subventions") in excess of those needed for Napa Project Cost Overruns (as that term is defined in Section 6). Growth Tax Revenues shall be allocated in the manner set forth in this Section. Interest accruing to each jurisdiction's sub-fund account within the Tax Fund (i.e., the Napa Project Fund, the Calistoga Fund etc.) shall be credited to that sub-fund account for use by that jurisdiction in the implementation of that jurisdiction's qualifying projects. These additional funds, if any, will not be used for additional projects beyond those projects, or duly authorized substitute projects, identified in the Ordinance. The funds will be disbursed in the manner described in subparagraphs (b) and (c) immediately below.

(b) Growth Tax Revenues will be used only for the following purposes:

(1) For the first seven (7) years of the Flood Protection Sales Tax term ending June 30, 2005, Growth Tax Revenues shall be allocated to all jurisdictions based on the Base Tax percentages set forth in subparagraphs (c) and (d) of Section 3 for use by each jurisdiction in the implementation of that jurisdiction's approved projects; provided, however, that all such growth revenues shall be temporarily re-allocated for the purpose of financing the Napa Project.

(2) Growth Tax Revenues received or after July 1, 2005, shall be allocated in the following order of priority on a quarterly basis. Reallocations called for by subparagraphs (B) through (E) shall be on a pro-rata basis.

(A) To satisfy any debt financing payment incurred for the Napa Project not satisfied by the Napa Project's share of tax revenues set forth in Table 3 (see section 3(h)) as that percentage may be adjusted annually following July 1, 2005, pursuant to Section 3(f);

(B) To make up for any shortfalls in previous years to the Napa Project or County-wide Projects due to the drop in Flood Protection Sales Tax revenues below \$6 million as set forth in Section 7(b);

(C) To return to the Countywide Projects Flood Protection Sales Tax revenues that were temporarily reallocated for use on the Napa Project during the period July 1, 1998 through June 30, 2005 pursuant to Sections 3(e) and 5(b)(1);

(D) To return to the Countywide Project sub-fund accounts an amount equal to the interest that would have been earned on the Flood Protection Sales Tax revenues that were diverted for use on the Napa Project as set forth in Section 3(e) and 5(b)(1) had the diversion not occurred;

(E) To all jurisdictions in the amounts set forth in Section 3(g) of this Agreement.

(F) To retire project-related outstanding debt as early as possible so that the Flood Protection Sales Tax will be terminated at the earliest possible time.

(c) Notwithstanding any other provision of this Agreement, State Subventions shall be utilized in the following order of priority:

(A) To satisfy any debt financing payment incurred for the Napa Project not satisfied by the Napa Project's share of tax revenues set forth in Table 3 (see section 3(h)) as that percentage may be adjusted annually following July 1, 2005, pursuant to Section 3(f);

(B) To fund Napa Project Cost overruns in their entirety;

- (C) To return to the County Unincorporated sub-fund account an amount equal to the Flood Protection Sales Tax revenues generated in the Napa Vicinity from July 1, 2005 to the expiration or early termination of the Flood Protection Sales Tax;
- (D) To make up for any shortfalls in previous years to the Napa Project or Countywide Projects due to a drop in Flood Protection Sales Tax revenues below \$6 million as set forth in Section 7(b);
- (E) To return to the Countywide Projects Flood Protection Sales Tax revenues that were temporarily reallocated for use on the Napa Project during the period July 1, 1998 through June 30, 2005 pursuant to Sections 3(e) and 5(b)(1);
- (F) To return to the Countywide Project subfund accounts an amount equal to the interest that would have been earned on the Flood Protection Sales Tax revenues that were diverted for use on the Napa Project as set forth in Section 3(e) and 5(b)(1) had the diversion not occurred;
- (G) To retire project-related outstanding debt as early as possible so that the Flood Protection Sales Tax will be terminated at the earliest possible time.

**SECTION 6: Napa Project Cost Overruns**

It is the responsibility of the Authority to ensure the Flood Protection Sales Tax revenues are properly expended in the manner contemplated by Sections 3, 5 and 7 of this Agreement and the Ordinance. The Authority intends to satisfy its responsibility by entering into a contract for administrative services with the the District. For purposes of this Agreement, Napa Project cost overruns shall be defined as all expenses creditable to the Napa Project by the Army Corps of Engineers (the "Corps") in excess of the estimates contained in the Final General Design Memorandum certified by the District with respect to the Napa Project and any non-Corps creditable expenses of the Napa Project necessary to ensure the Napa Project's compliance with the project plan of the Community Coalition for Napa Flood Management. Napa Project cost overruns will be funded in the following order of priority:

- (a) State Flood Control Subventions program reimbursements received by the District as a result of the implementation of the Napa Project.
- (b) Growth Tax Revenues available to the District pursuant to Section 5(a) or (d) provided such revenues will not exceed the probable total additional sales tax generated by the City of Napa and the Napa County vicinity.
- (c) City of Napa funding from other than Flood Protection Sales Tax sources.

If the above funding is not sufficient reductions in Napa Project's scope will be required.

**SECTION 7: Reductions in Flood Protection Sales Tax Revenues**

(a) It is understood that Flood Protection Sales Tax revenues are influenced by cycles in the overall economy, changes in State laws governing what is and is not taxable and other factors of external influence. In the event that Flood Protection Sales Tax revenues drop below the 1995-96 base year levels used for the financial forecasting for this Agreement, funding of the Napa Project shall have first priority and all other projects shall be subordinated on a pro-rata basis to the financing needs of the Napa Project.

(b) The Napa Project will maintain the minimum annual funding base specified in Table 1, if possible, and all other allocations will be proportionately reduced in any year that Flood Protection Sales Tax revenues are below \$6.0 million per year County-wide. Shortfalls that might occur to the Napa Project or other County-wide Projects due to this reduction in revenues shall be recovered in other years when Flood Protection Sales Tax revenues exceed the Base Tax levels in the manner set forth in Section 5(b)(2)(B), with funding for the Napa Project having first priority during the first seven years of the life of the tax; thereafter adjustments shall occur on a proportionate basis

**SECTION 8: Debt Financing Policies**

(a) The Napa Project will require debt financing not to exceed 20 years for approximately one half of the construction cost, as detailed in the Leifer Report. The County, the Authority, the District and the Municipalities understand and agree that the debt for the Napa Project will require the maintenance of a debt service coverage ratio and other covenants which will affect the ability to borrow for other Plan projects and may at times restrict the ability of other jurisdictions to access their allocated funds.<sup>6</sup> As required by Section 20<sup>7</sup> of the

<sup>6</sup> If bonds or other indebtedness are issued by the Authority, it is likely that the financing documents will require that all of the Flood Protection Sales Tax revenues be transferred by the State Board of Equalization directly to a trustee who will be appointed in connection with the issuance of the bonds or other indebtedness. The financing documents will also require the trustee to transfer to the Auditor of the Authority in a timely manner such revenue as are not needed for the servicing of the bonds or other indebtedness. The financing documents will further require the trustee to provide such reports as the Auditor may require to enable the Auditor to allocate (for accounting purposes only) all of the Flood Protection Sales Tax revenues (including but not limited to those funds retained by the trustee) so that when the Tax expires, or is terminated prior to its scheduled expiration, each jurisdiction will be able to verify through an examination of the Auditor's records that its cumulative allocation approximates the additional Flood Protection Sales Tax revenues generated within that jurisdiction due to the existence of the Tax. Financing documents shall not be approved by the Authority unless they require the trustee to take such action.

<sup>7</sup> SECTION 20. Bonds and Other Obligations. Upon voter approval of this Ordinance, the Authority shall have the authority to issue bonds or other obligations (including, without limitation, lease or installment sales agreements) to finance any of the projects included in the Plan as it may be amended from time to time (including reserves and other financing costs), which bonds or other obligations shall be payable from the

Ordinance, the rights of all parties hereunder to Flood Protection Sales Tax revenues shall be subordinate to the debt service coverage ratio needs of the above-described Napa Project debt. County-wide projects may be debt financed either through the Authority or by the Municipalities or the County. Any such financing must first be approved in writing by the governing board of the Authority. Any such financing must expressly state that it is subordinate to the Napa Project financing.

(b) The Authority will enter into project specific agreements with the County, the District and the Municipalities as described in Section 9(c). These agreements will detail project and financial terms and conditions consistent with this Agreement and the Ordinance. All such agreements must expressly state that the funding of the projects identified in the agreement(s) shall be subordinate to the Napa Project financing.

(c) Each project specific agreement described in Section 9(c) shall contain guarantees to protect the County General Fund. Such protections will include but not be limited to the following:

(1) Any debt incurred must indicate that the County General Fund is not obligated for its repayment; amounts pledged for the repayment of debt shall be limited to Flood Protection Sales Tax revenues contained in the Flood Tax Fund and any sub-accounts of such Fund.

(2) No County owned assets will be pledged as security for bond holders (unless the County chooses to use such assets as security when financing one of its approved projects). Rather, the projects themselves must provide the necessary security or the Municipalities or the District must identify additional security.

(d) The County, the District and the Municipalities understand and agree that Section 20 of the Ordinance anticipates that the Authority will issue bonds or other obligations (including, without limitation, lease or installment sales agreements) (including reserves and other financing costs), that these bonds or other obligations, if issued, will be payable from the revenues of the Flood Protection Sales Tax on a priority basis, and therefore in allocating Flood Protection Sales Tax revenues all debt service requirements and other financing costs of the Napa Project bonds and other obligations must be met, in accordance with the terms of the financing documents prior to allocating funds for any other purposes or projects. Therefore the County, the District and the Municipalities agree that each project specific agreement described in Section 9(c) of this Agreement shall contain guarantees ensuring that the funding of all projects (and substitute projects) identified in Section 8 of the Ordinance and referenced in Section 9(c) of this Agreement shall be subordinate to the Napa Project bonds and other obligations.

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revenues of the Flood Protection Sales Tax. In allocating Flood Protection Sales Tax revenues all debt service requirements and other financing costs of such bonds and other obligations shall be met prior to allocating funds for any other purposes or projects.



(e) In connection with any of the debt financing described herein, the County, the District, the Authority and/or the Municipalities may be requested to provide certain information regarding their organization, operations, financial status and/or use of Flood Protection Sales Tax revenues (the "Information") in connection with the issuance of debt and annully thereafter. Each party hereby covenants and warrants that any Information it provides to the Authority, the District, the County, or their respective officers, employees, consultants or agents, shall, to the best of its knowledge be true, complete and correct. Each party hereby agrees to indemnify and hold harmless the other parties with respect to any inaccuracies in the Information provided by it.

**SECTION 9: Fund Accounting, Contract Relationships, and Oversight**

- (a) The Authority's Auditor will maintain a Tax Fund to receive and disburse Flood Protection Sales Tax revenues in accordance with the Ordinance and the terms of this Agreement and subject to the Agreement for State Administration of District Transactions and Use Taxes, dated May 7, 1998, and any resolution or indenture or similar document providing for issuance of bonds or other obligations of the Authority under Section 20 of the Ordinance .
- (b) The Authority's Auditor will prepare an annual budget for the Authority, including the status of the Tax Fund, which will be formally adopted each year by the governing board of the Authority. The Authority may consult with the Financial Oversight Committee established by the Ordinance in the preparation of this budget. Each year the County's Auditor-Controller will also conduct an audit of the Flood Tax Fund as required by section 23 of the Ordinance. This audit shall be in addition to the audit required by the Ordinance to be conducted by the Financial Oversight Committee.
- (c) All disbursements of Flood Protection Sales Tax revenues will be accomplished through contracts between the Authority and individual Municipalities, the County or the District. Jurisdictions wishing to access such funds shall submit to the Authority a request for disbursement in a form acceptable to the Authority, which, at a minimum, shall state the amount of funds requested, describe the project for which the funds are sought and specify how the proposed project is a permissible use of Flood Protection Sales Tax revenues.
- (d) The Authority's Auditor will establish a financial system technical advisory committee (the "Technical Advisory Committee") to include the Authority's Auditor, the County Auditor-Controller and the appropriate administrator from each Municipality, the County, and the District. The Technical Advisory Committee will determine and recommend necessary controls for tracking of equitable distribution of revenues from the Flood Tax Fund and other financial aspects of this Agreement. The Technical Advisory Committee will also serve as the Debt Advisory Committee.
- (e) The Technical Advisory Committee will provide assistance and support to the

Financial Oversight Committee established by the Ordinance to carry out its oversight mission.

(f) General Administrative expenses of the Authority shall be provided for as follows:

- (1) Notwithstanding any other provision of this Agreement, and prior to the allocation of Flood Protection Sales Tax funds in accordance with Sections 3, 5 and 7, the Authority's Auditor shall annually allocate up to three percent (3%) of gross Flood Protection Sales Tax revenues to be used for the payment of the Authority's general administrative expenses incurred in connection with the administration of the Flood Protection Sales Tax, including costs associated with the operation of the Financial Oversight Committee and Technical Advisory Panel described in the Ordinance as well as the Technical Advisory Committee described in (d); provided, however, that the Authority shall be entitled to retain funds allocated hereunder only to the extent expenses are actually incurred as set forth in (4) below.
- (2) The annual budget adopted by the Authority pursuant to (b) shall take into account these general administrative funds. The Authority shall keep records of all expenditures charged to general administration, which records shall be made reasonably available to the County, the District and the Municipalities upon request.
- (3) Any administrative expenses of the Authority which are clearly and directly related to a particular project as determined by the Authority's Auditor (such as debt financing expenses as described in Section 8) shall not be deemed general administrative expenses hereunder but shall instead be charged to the Flood Account of the jurisdiction responsible for the project. Such charges shall be clearly shown on the quarterly financial report of general administrative expenses described in Section 9 (f) (6). Within 30 days of receiving this report a jurisdiction may appeal the decision of the Authority's Auditor by filing a formal request for review with the Secretary of the Authority. If such a request is filed, it shall be considered at the next regularly scheduled meeting of the Authority's governing body for which the appeal can be properly agendized. The determination of the issue by the Authority's governing body shall be final and conclusive.
- (4) Any funds allocated for payment of the Authority's general administrative expenses in a particular fiscal year that are not expended during that year (or encumbered for payment of expenses arising in that fiscal year) shall be re-allocated to the County, the District and the Municipalities in accordance with Sections 3, 5 and 7. The Authority shall not be entitled to "carryover" any such excess funds from year to year, but shall instead, in each fiscal year, be subject to the 3% cap set forth in (1) above. To the extent the Authority's general administrative expenses exceed in any fiscal year the amount allocated for their payment hereunder, such expenses shall not be defrayed using Flood Protection Sales Tax revenues.
- (5) Any Department of the County or the Flood Control and Water Conservation District which does not track time and activity in 1 hour or less increments who intends to bill the Authority for general administrative expenses shall conduct a time study in 1 hour increments

for one month of each calendar quarter in order to justify such charges. Such time studies and activity reports shall be available for review by any party to this Agreement. In Departments where some but not all employees track time and activity in 1 hour or less increments, only those employees who do not track time and activity in 1 hour or less increments shall be subject to this requirement.

(6) Not less than sixty (60) days following the end of each calendar quarter the Auditor shall issue a report regarding the administrative expenses incurred during the preceeding quarter. The report shall allocate the total costs of the quarter to the various projects that qualify for sales tax reimbursement, the operation of the Financial Oversight Committee, the Technical Advisory Committee, and the Authority itself. Copies of this report shall be mailed to each party to this Agreement by certified mail. A party that objects to the allocations contained in that report must file written objections with the Auditor within 30 calendar days of receipt of the report. After that point all objections to the allocation(s) of the Auditor are deemed waived. Objections that are received will be resolved in the manner set forth in subparagraph (f)(3) of this section.

#### **SECTION 10: Mutual Indemnification**

Notwithstanding section 895.2 of the Government Code, each party hereunder hereby agrees to defend, indemnify and hold harmless the other parties, their officers, agents and employees, from any claim, loss or liability including without limitation, those for personal injury (including death) or damage to property, arising out of or connected to its performance under this Agreement, including activities of that party funded in whole or in part by Flood Protection Sales Tax revenues.

#### **SECTION 11: Miscellaneous Provisions**

(a) This Agreement constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof, including the MOU.

(b) If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

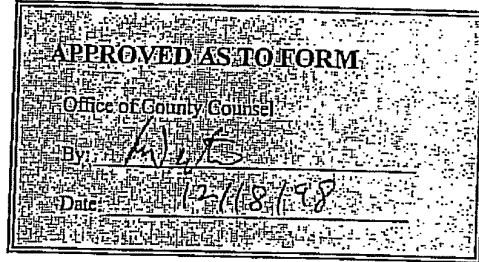
(c) The headings used herein are for reference. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California. To the extent any conflict exists between the terms of this Agreement and the terms of the Ordinance, the terms of the Ordinance shall control.

COUNTY OF NAPA

By Vina Ferraro

ATTEST:  
MARY JEAN MCLAUGHLIN  
Clerk of the Board

By Tori Sisson, Deputy

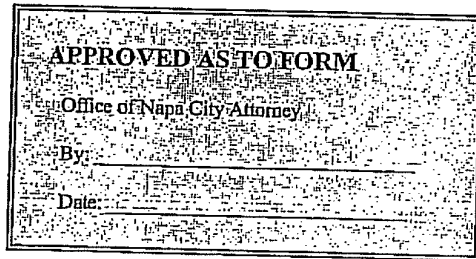


CITY OF NAPA

By \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

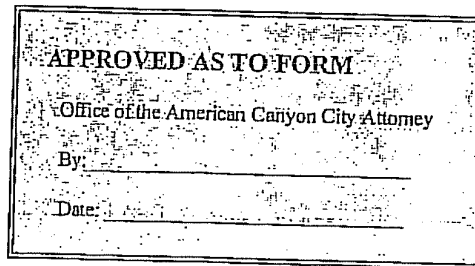


CITY OF AMERICAN CANYON

By \_\_\_\_\_

ATTEST:

By \_\_\_\_\_



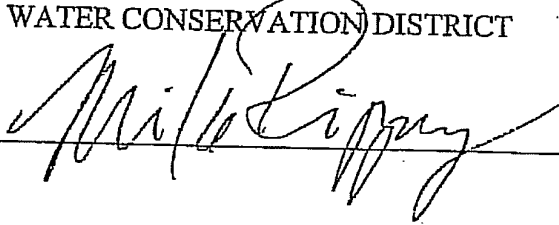
(d) Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of all parties.

(e) This Agreement may be executed in counterparts with the same force and effect as if each of the signatories had executed the same instrument.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

NAPA COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT

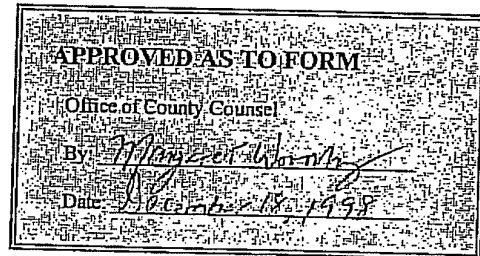
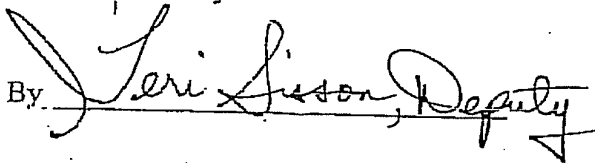
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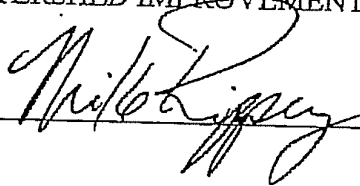
MARY JEAN MCLAUGHLIN,  
District Secretary

By



NAPA COUNTY FLOOD PROTECTION AND  
WATERSHED IMPROVEMENT AUTHORITY

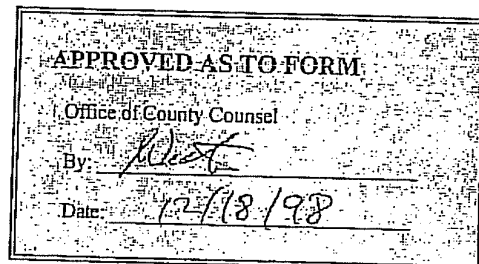
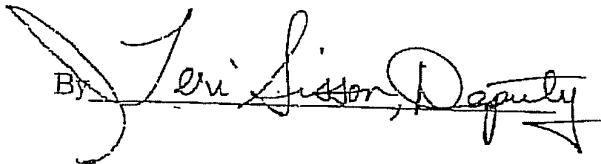
By



ATTEST:

MARY JEAN MCLAUGHLIN  
Secretary of NCFPWIA

By



CITY OF NAPA

By \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM:

By \_\_\_\_\_

By \_\_\_\_\_

CITY OF AMERICAN CANYON

By Bry Anderson

ATTEST:

APPROVED AS TO FORM:

By [Signature]

By William D. [Signature]

CITY OF ST. HELENA

By \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM:

By \_\_\_\_\_

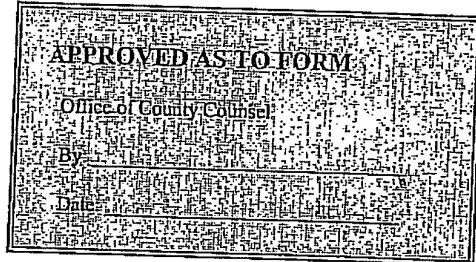
By \_\_\_\_\_

COUNTY OF NAPA

By \_\_\_\_\_

ATTEST:  
MARY JEAN MCLAUGHLIN  
Clerk of the Board

By \_\_\_\_\_



COUNTERSIGNED:

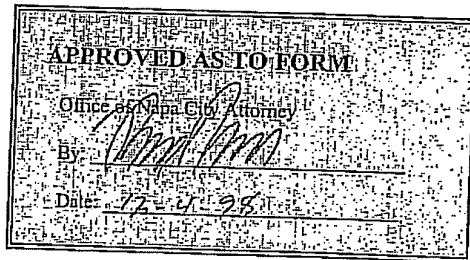
CITY OF NAPA

By *Mary Jean McLaughlin*  
FINANCE DIRECTOR

By *Ed Henderson*

ATTEST:

By *Douglas D. Ogawa*

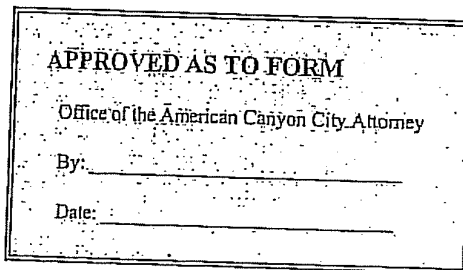


CITY OF AMERICAN CANYON

By \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

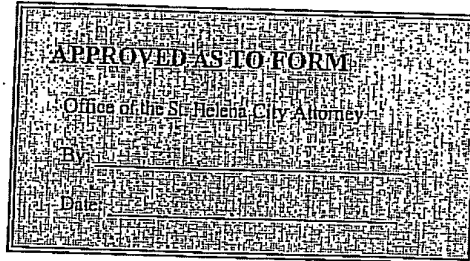


CITY OF ST. HELENA

By \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

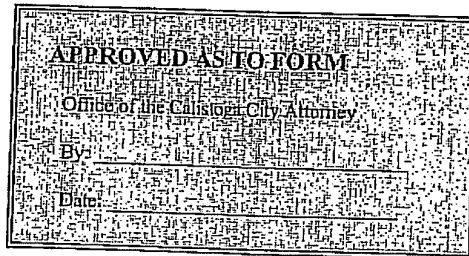


CITY OF CALISTOGA

By \_\_\_\_\_

ATTEST:

By \_\_\_\_\_

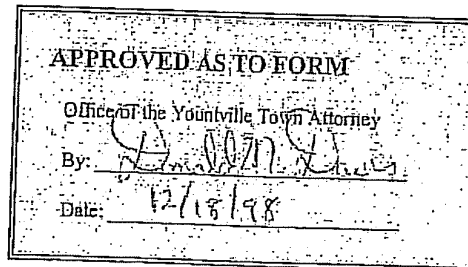


TOWN OF YOUNTVILLE

By Mary Lou Holt  
Mary Lou Holt, Mayor

ATTEST:

By K. Joyce Houghton  
K. Joyce Houghton  
Deputy Town Clerk





TOWN OF YOUNTVILLE  
RESOLUTION NUMBER 1561-98

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YOUNTVILLE AUTHORIZING THE MAYOR TO SIGN A JOINT POWERS AGREEMENT REGARDING THE USE AND EQUITABLE DISTRIBUTION OF SALES TAX REVENUES GENERATED BY THE ENACTMENT OF THE NAPA COUNTY FLOOD PROTECTION SALES TAX ORDINANCE.

---

WHEREAS, on March 3, 1998, the electorate of the County approved the Authority's Ordinance Number 1 which, among other things, imposed a one-half of one percent transactions and use tax in the County and established a Flood Protection and Watershed Improvement Expenditure Plan which describes the projects authorized to be funded with the proceeds of the Flood Protection Sales Tax; and

WHEREAS, in anticipation of the approval of the Ordinance by the electorate, on January 13, 1998, Yountville adopted Resolution Number 1409-98 approving a Memorandum of Understanding, regarding the use and equitable distribution of the sales tax revenues generated by the enactment of the proposed Napa County Flood Protection Sales Tax Ordinance; and

WHEREAS, the Memorandum of Understanding contained operating policies and criteria regarding the equitable distribution of Flood Protection Sales Tax revenues by the Authority to the County, the District, and the municipalities, debt financing for projects contained in the Plan, project substitution, fund accounting, contract relationships, and administrative support to the Financial Oversight Committee established by the Ordinance; and

WHEREAS, the parties now intend to update and replace the Memorandum of Understanding with this formal joint powers agreement.

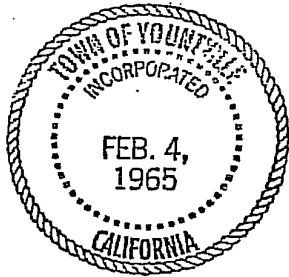
NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Yountville hereby authorize the Mayor to sign the Joint Powers Agreement regarding the use and equitable distribution of sales tax revenue generated by the enactment of the Napa County Flood Protection Sales Tax Ordinance as revised, on behalf of the Town of Yountville.

Mary Lou Holt  
Mary Lou Holt, Mayor

STATE OF CALIFORNIA    )  
COUNTY OF NAPA        )§  
TOWN OF YOUNTVILLE    )

I, Deputy Town Clerk of the Town of Yountville, do hereby certify the foregoing Resolution was duly and regularly adopted by the Town Council of the Town of Yountville at a regular meeting thereof held on the 24th day of November, 1998 by the following vote:

AYES:                 Jefferson, Knight, Miner, Borrelli-Caldwell, Holt;  
NOES:                 None;  
ABSENT:               None;  
ABSTAIN:              None.



(s) K. Joyce Houghton  
K. Joyce Houghton, Deputy Town Clerk

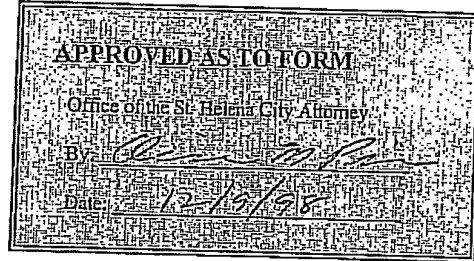


CITY OF ST. HELENA

By Bonnie Long  
Bonnie Long, City Administrator

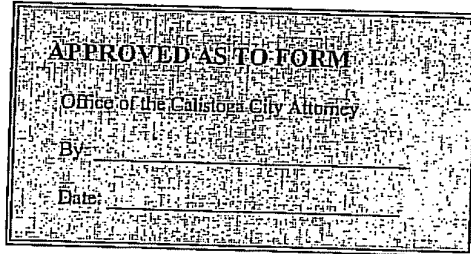
ATTEST:

By Dolcia Gujosa  
City Clerk  
Dolcia Gujosa



CITY OF CALISTOGA

By \_\_\_\_\_



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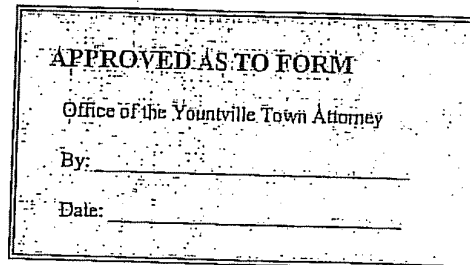
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TOWN OF YOUNTVILLE

By \_\_\_\_\_

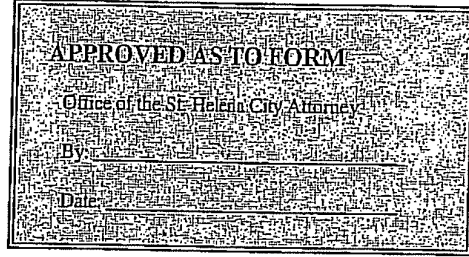
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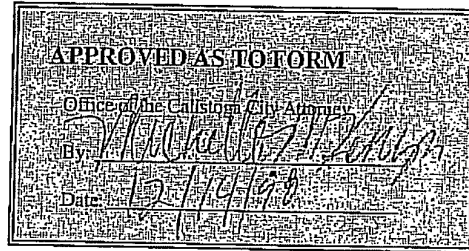
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CITY OF CALISTOGA

By [Signature]

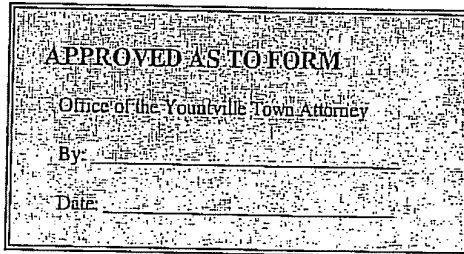


ATTEST:

By [Signature]

TOWN OF YOUNTVILLE

By \_\_\_\_\_



ATTEST:

By \_\_\_\_\_



A Tradition of Stewardship  
A Commitment to Service

# **NAPA COUNTY GRAND JURY**

**2011-2012**

**Report on**

**NAPA COUNTY JAIL**

**NAPA COUNTY JUVENILE HALL**

**CALIFORNIA PUBLIC SAFETY  
REALIGNMENT ACT**

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A Tradition of Stewardship  
A Commitment to Service

**NAPA COUNTY GRAND JURY**  
**P.O. BOX 5397**  
**NAPA, CALIFORNIA 94581**

June 12, 2012

The Honorable Mark S. Boesseneker  
Presiding Judge  
Superior Court of the State of California  
County of Napa  
825 Brown Street  
Napa, California 94559

Re: 2011-2012 Grand Jury Final Report on Inspections of Napa County Jail, Juvenile Hall,  
and related issues.

Dear Judge Boesseneker,

Pursuant of Section 933 (a) of the California Penal Code, the 2011-2012 Napa County Grand Jury submits to you its final report on County Inmate Facilities and related issues.

Our investigation of this subject was conducted in a manner consistent with the California Penal Code, this Court's Charge, and the historic role of the Grand Jury, to protect the interests of and inform the residents of Napa County.

This is the third in a series of final reports we will be issuing before the term ends. I would like to acknowledge the hard work and dedication of the Grand Jurors, which our report reflects.

It is a privilege and a pleasure to work with them.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David B. Gilbreth".

David B. Gilbreth  
Foreman  
2011-2012 Napa County Grand Jury



A Tradition of Stewardship  
A Commitment to Service

# NAPA COUNTY GRAND JURY

P.O. BOX 5397

NAPA, CALIFORNIA 94581

To the Residents of Napa County:

In order to fulfill the Grand Jury's mandate to investigate local jail and detention facilities, and to assure they are being administered efficiently in the best interests of Napa County residents, the 2011-2012 Grand Jury investigated the Napa County Jail, Napa County Juvenile Hall, and examined the potential effects on Napa County Jail as a result of the California Department of Corrections and Rehabilitation Reorganization Plan.

After investigation, the Grand Jury developed findings and recommendations in furtherance of informing public awareness.

The Napa County Office of County Counsel has reviewed this final report. The Napa County Superior Court Presiding Judge, pursuant to California Penal Code Section 933(a), has found that this report complies with California Penal code Part 2 Title 4. This report has been accepted and filed as a public document by the County Clerk.

Copies of this report are available for review in the Napa City-County Library and online at [www.napa.courts.ca.gov](http://www.napa.courts.ca.gov) (follow the link to the Grand Jury).

We hope you find this report informative. It is an honor and privilege to serve you during our 2011-2012 Grand Jury tenure.

Respectfully Submitted,  
Napa County Grand Jury 2011-12



## **SUMMARY**

This Grand Jury report incorporates three elements of the County's Criminal Justice system; the two mandated inspections of the Napa County Jail and Napa County Juvenile Hall facility as well as a report on the impact of California's new Public Safety Realignment Act on Napa County.

### **NAPA COUNTY JAIL**

The California Penal Codes mandate that the Grand Jury annually inspect detention facilities within the county. The 2011-12 Napa County Grand Jury inspected the Napa County Jail (NCJ), reviewed operations and interviewed Napa County Department of Corrections (NCDC) Administrators and Staff in compliance with California Law.

In addition to the jail inspection, the Grand Jury also interviewed Law Enforcement Personnel from the Napa County Sheriff's Department, Napa Police Department, St. Helena Police Department, and Calistoga Police Department regarding their evaluation of the NCJ Facility, Administration, and Staff in meeting the needs of our community.

The jail and its location in downtown Napa are currently under review at request of the Board of Supervisors (BOS) to determine the facility's adequacy to meet the County's needs in the future. The Adult Correctional System Master Plan recommendations to the BOS, as well as subsequent studies and analysis, have identified a need for an updated jail facility. Outside consultants are currently updating recommendations as a result of Realignment Act projections in order to refine three options for a new or remodeled jail facility. This study should be complete in summer 2012.

### **NAPA COUNTY JUVENILE HALL**

Pursuant to the same mandate, the Grand Jury also inspected the Napa County Juvenile Hall (NCJH) located in downtown Napa and interviewed facility administrators and staff. The NCJH is a modern well-designed facility with rehabilitation programs and a classroom environment to allow a full school curriculum.

The NCJH is a secure facility providing safe custody, counseling, medical care, and guidance to delinquent youth. The NCJH is well managed and maintained with programs designed to engage and rehabilitate youth, and instill the values of treating others with respect and courtesy. The facility provides residents the opportunity to continue school through on site teachers and classrooms. In cooperation with other County Agencies and non-profits, the NCJH provides programs addressing alcohol and drug abuse, mental health, conflict resolution, religious services, and art.

## **PUBLIC SAFETY REALIGNMENT**

The evolution of criminal justice policy began to change significantly in the early 2000's. For the previous 30 or so years, legislators and executive policy makers across the United States were busy designing laws that increased the punitive nature of criminal justice policy. Primarily, they broadened the definitions of criminal behavior and measures to increase the number of offenders sentenced to prison as well as the lengths of time served. In 2001, the economic impact became more apparent and caused many legislators to re-examine the corrections budgets. Many states got an early "jump" on these budgetary cuts in state expenditures, and the results of some of these efforts encouraged other states to follow.

California's "awakening" to the state prison overcrowding crisis came in May 2011 when the US Supreme Court upheld a federal court ruling that California must reduce the prison population by 33,000 inmates within two years.

In 2011, the Governor signed Assembly Bills (AB) 109 and AB 117, Public Safety Realignment Act (<http://www.cdcr.ca.gov/realignment/>). The state's new Realignment Act shifts the burden for incarceration, monitoring and rehabilitation of offenders convicted of low-level crimes to the counties. The legislation is designed to close the revolving door of low-level inmates cycling in and out of state prisons. These new laws are the state's solution to complying with the U.S. Supreme Court decision to reduce the number of inmates in the state's 33 prisons to 137.5 percent design capacity by May 24, 2013. The legislation specifically states that:

Inmates will complete their sentences in state prisons and trickle into county post-release community supervision services. After October 1, 2011, all new offenders who are non-violent, non-serious, and non-sex offenders must go to county jails.

No inmates currently in state prison will be transferred to county jails or released early.

The Realignment Act contains provisions that exclude felons with certain felony convictions from county jails. These include: defendants who have prior or current serious or violent felony convictions, or defendants who are required to register as sex offenders, or defendants who are convicted of felonies with enhancements for aggravated theft. Incarceration for these crimes will continue to be at the state prisons.

Under the Realignment Act ("Realignment"), felony sentencing is revised to include specified lower-level crimes that would be punishable in jail or another local sentencing option for more than one year. As a result, the County will not only see an increase in number of prisoners diverted to our jail, but could also encounter a different class of prisoners with mental health and substance abuse disorders requiring significantly more treatment. Treatment for this group of individuals will require facility modifications, as

well as the development of programs and practices that effectively address their complex needs.

The State of California and Napa County are in the midst of a vast experiment under Realignment. County officials implementing corrections Realignment are doing so under considerable public scrutiny and perhaps some skepticism.

Some observers have stated that Napa County is in a better position than most other California counties. In 2006, the County retained outside expertise to assist with developing a master plan for its correctional system's short and long term needs. County officials analyzed criminal justice trends, jail trends, and jail capacity needs. The County has established an aggressive goal to reduce recidivism by 30 percent through the use of in-jail programming and the Community Corrections Service Center (CCSC).

Napa County has a history of handling its correctional issues collaboratively among various groups who have demonstrated an ability to work together as a cohesive team. Earlier than most other counties, the Napa County Criminal Justice Committee, a group of local stakeholders from the criminal justice community, was formed to seek alternatives. In addition to seeking cost-effective solutions, the committee sought to include evidence-based practices into any solution implemented so that long-term results could be maximized and public safety impacted positively. Napa Criminal Justice Committee recognized that implementing evidence-based practices could potentially reduce the demand for increasingly costly jail beds, reducing costs and recidivism.

Napa County has systems in place to remain flexible with changes that AB 109 will require. County officials recognized that best practices must be identified. It is critical that the State and Napa County engage in careful, ongoing evaluation and make adjustments as necessary.

# **NAPA COUNTY JAIL INSPECTION**

## **BACKGROUND**

The Napa County Jail (NCJ) is located in downtown Napa adjacent to the Napa Superior Courts and Napa County Administration Offices. The original structure was completed in 1975 with new additions in 1989. It is a secure facility housing male and female detainees and inmates, including those awaiting sentencing. It has a maximum capacity of 264 inmates, which is exceeded frequently. The overcrowding conditions are managed daily by the addition of temporary beds. Housing areas include Temporary Holding, Observation Cells, Work Furlough, General Population, Administration Segregation, Protective Custody, Maximum Security, a Medical Unit, and Solitary Confinement. A contracted medical provider provides for the medical, mental health and dental needs of the inmates. There is a staff member from the medical unit on duty 24 hours a day.

The NCJ is one of only two California County Jails operated by a civilian corrections department. In 56 other California Counties, the jail is operated by the Sheriff's Department. This organizational structure has been discussed in previous Grand Jury reports and was not considered as part of this report. The Department is responsible for the coordination of all programs and services related to the institutional punishment, care, treatment, and rehabilitation of inmates, including intake screening, diagnosis, classification, and programs that deal with sentencing alternatives. The Department must meet all California guidelines for jail operations.

## **DISCUSSION**

NCDC has jurisdiction over the Napa County Jail facility. The NCDC reports directly to the Napa County Board of Supervisors through the County Executive Officer. The current Director of the NCDC is bringing much needed stability and oversight to a facility that has experienced frequent transition in its top management over the past few years. The Director is providing strong and professional leadership essential to the safety of both inmates and the public. All County law enforcement officials interviewed stated that the current jail facility and NCDC are operating efficiently and meeting the needs of Napa County. As a member of the County Criminal Justice Community, the NCDC complements a strong team of public safety professionals prepared to deal with the overcrowding issues and jail expansion plans facing Napa County.

The NCJ and its location are currently under review by the county administration for the Board of Supervisors to determine the facility's adequacy to meet the county's needs in the future. The jail currently handles bookings in the range of 6,000 to 6,500 per year, a snapshot population sampling showed an Average Daily Population (ADP) of 277. This included 185 (67%) who were pre-sentence status and 92 (33%) who were post-sentence, serving their time. The pressures to manage the jail population limits within the legal maximum are likely to increase as a result of the new Public Safety Realignment legislation. It will fall upon the jail administration, District Attorney's office, and the Probation Department, to determine which available options meet sentencing guidelines, reduce recidivism and protect public safety.

The jail has implemented the Jail Employment Education Program (JEEP), an evidence based program, to provide case management, group classes, and computer training for employment preparation. The program's focus is on occupational planning, job search and interviewing skills.

The county has engaged an outside consultant to update the Conceptual Facilities Master Plan, June 7, 2011. This update will consider additional data, specifically including data from the impact of the Realignment legislation on Napa County, and make facility recommendations.

## **FINDINGS**

The 2011–2012 Grand Jury finds that:

- F1. The recent hiring of a new NCDC Director and the cooperative working relationships in the County's Criminal Justice Community has resulted in an efficient administration of justice that is certainly a plus for Napa County.
- F2. The NCDC Director has demonstrated a high level of professionalism and leadership, while improving jail operations, and staff morale.
- F3. The Napa County Criminal Justice Committee has promoted evidence based programs to reduce recidivism and has implemented alternatives to jail sentences for lower level criminals.
- F4. There are frequent overcrowding issues in the current jail facility.

# **NAPA COUNTY JUVENILE HALL INSPECTION**

## **BACKGROUND**

The facility was built in 2004 as a state of the art detention and rehabilitation center and was designed to house up to 50 juveniles, supervised by 27 permanent staff assisted by additional part time staff members. The Napa County Probation Department oversees the operation of NCJH. The Chief Probation Officer serves as its Director, responsible for the overall operation of NCJH.

NCJH provides for juvenile detention and rehabilitation providing custody, counseling, medical care, and guidance of delinquent and custodial children in a variety of short- and medium-term evidence based programs and assessments. Juvenile probation oversight delivers various levels of supervision that are based on protection of the community, risk/needs assessments, out-of-home placements, and amenability to rehabilitation. The juvenile supervisors collaborate with the Napa County Health and Human Services Department in the supervision of selected cases wherein mental health issues are a major factor. The supervisors also collaborate with other community and government agencies such as Juvenile Drug Court, Wolfe Center and Aldea Inc. Detainees receive treatment including mental health evaluations and services provided by a mental health professional 40 hours per week. General nursing care is provided seven days per week.

## **DISCUSSION**

The Grand Jury found that NCJH is a secure facility that provides safe custody, counseling, medical care, and guidance to delinquent youth. The Grand Jury found the NCJH to be well managed and maintained with programs designed to engage and rehabilitate youth, and instill the values of treating others with respect and courtesy. The facility provides residents the opportunity to continue school through on site teachers and classrooms. In cooperation with other County agencies and non-profits, the NCJH provides programs addressing alcohol and drug abuse, mental health, conflict resolution, religious services and art.

The Grand Jury was satisfied with the facility operations, and the high level of professionalism and respectfulness of the administration and staff.

## **FINDINGS**

The 2011-2012 Grand Jury finds that:

- F5. The NCJH is providing a safe and secure environment for delinquent Napa County youths.
- F6. The Juvenile Hall facility is well designed, maintained and has a dedicated management team.
- F7. Administration and staff demonstrate a high level of professionalism and respectfulness while carrying out their duties.
- F8. Administration and staff are making use of evidence based drug abuse, alcohol abuse, and mental health rehabilitation programs.

# CALIFORNIA PUBLIC SAFETY REALIGNMENT

## BACKGROUND

As shown in the table below, California's prison population grew rapidly over the past two decades. From 1990 to 2011, the population in the state's prisons grew from 97,000 to nearly 161,000. At the same time, the cost of incarceration rose from \$20,562 per inmate to \$49,190.

	1990	2011	Change
Prison Population	97,000	161,000	+166 %
Cost of Incarceration	\$20,562	\$49,190	+239 %

With a greater than 70 percent state prison recidivism rate, most observers would rate the state's prison system challenged.

These were clearly unsustainable trends. Many factors influenced this increase in the state's prison population. The two most significant contributors were mandatory sentencing laws and tougher drug enforcement policies. The ultimate recognition of the rising prison population, combined with the economic factors of prison expansion programs, and soaring labor costs, began to gather attention. Researchers, lawmakers, fiscal analysts and corrections officials recognized that the rehabilitation process was not working and that the system could not sustain this growth.

Thus the Realignment legislation shifted the responsibility for monitoring, tracking and imprisoning low-level offenders, previously bound for state prison, to county jails. Unfortunately it did so without necessarily providing all of the equivalent funding to the county governments. Criminals arrested after October 1, 2011, who qualify under the so-called "triple non" qualification (non-violent, non-serious, non-sex offenders), will serve their sentences in county jail rather than the state prison. This puts offenders under the management of local officials who may have a greater stake in their rehabilitation than distant state prison employees.

Napa County's response to this legislation, in essence, began in 2004 when seeking a long-term solution for overcrowding conditions at the jail. A study illuminated trends at the jail and made recommendations for improvements. These recommendations evolved into a two phase Master Plan identifying correction system needs for the next 20 years. Subsequent reports presented to the BOS in 2007 and 2008 by the Criminal Justice Committee concluded the County was not implementing evidenced based programs that



could reduce recidivism, and recommended the County begin planning for a jail that would meet population projections.

In December of 2010, the BOS was presented with a Major Facilities Preliminary Financing Plan and Feasibility Analysis that, among other items, recommended a two phase Jail Replacement Project. The CEO's office conducted community meetings in early 2011 to solicit public comment on this new Downtown Campus Redevelopment Plan.

By then it was obvious these earlier projections for jail population increases would be impacted by the legislature's enactment of the Realignment Act. While the legislation neither transfers nor orders early release of any inmates, it does shift custody of newly convicted felons sentenced for non-violent, non-serious, non-sex offenses to county control unless excluded by statute. In the near term, this bill will affect Napa County by impacting both the number of prisoners in the jail and the severity of their crimes. It will also impact the probation monitoring requirements.

This necessitated a re-evaluation of previous projections. In June 2011, a presentation, Napa County Jail Expansion Design Concepts and Split Operations Analysis, was made to the BOS taking into consideration the projected Realignment impact over the next several years, detailing the cost estimates of three jail construction alternatives.

In addition to the revised jail population projections and cost estimates, the analysis explored access to Courts, proximity to other County Departments and services, land use, compatibility for other jail sites, law enforcement access and parking. The report also explored construction complexities associated with each prospective site and capacity for expansion if necessary in the future.

The staff recommendation to the BOS is for the jail to maintain its current position, that the downtown site is the preferred location for the jail. However, staff recommended delaying a final decision until further analysis can be conducted. The two primary issues driving the delay are related to the downtown location; limited future expansion capacity and complexities associated with new construction at the existing site. An updated report to the BOS is anticipated later this year.

The State has allocated \$1 billion to the 58 counties to administer the Realignment program, but this initial funding will end on June 30, 2012. The money comes after lawmakers converted part of the state sales tax to a local sales tax. Counties also will receive \$453 million from the state's vehicle license fees that used to go to the Department of Motor Vehicles. The State allocates a relatively low dollar amount to Napa County versus other counties, based on the number of offenders the county has sent to state prison in the past.

The Governor has pledged to put a constitutional amendment before voters in November 2012 to guarantee that local governments get this money regardless whether the state runs into more fiscal difficulties. Despite these promises, funding remains one of the many concerns for Napa County as well as the other counties. It is uncertain whether there will be enough money from the state to implement and manage the upcoming changes. If not, this burden could shift to the Napa County taxpayers.

## **DISCUSSION**

### **JAIL EXPANSION ALTERNATIVES**

The Master Plan recommendations to the BOS, as well as the subsequent studies and analysis, have identified a need for an updated jail facility. Based on these recommendations and escalating overcrowding issues, Carter Gobel Lee Companies, a consulting group, was authorized in February of 2011 to update the 2008 County Corrections Master Plan.

Among the alternatives under consideration have been suggestions that, in light of the nearby Napa River Development, the Jail should be relocated to a more remote location that would allow better use of the current jail property. Others have pointed out that keeping the jail downtown is more convenient to County agencies working with the jail, including probation staff and the Superior Court, due to their current proximity to the jail.

The initial proposal arrived at three options summarized below:

- Option #1 \$90,810,063 - 526-bed jail on the existing jail site downtown
- Option #2 \$103,660,995 - 526-bed 2-jail split operation with a 358-bed jail on the existing jail site and a 168-bed jail on a new site
- Option #3 \$96,660,344 - 526-bed on a new site outside the city of Napa

All the preliminary cost estimates are expressed in 2011 dollars.

An updated evaluation of the impacts on the jail is expected in the consultants' revised Conceptual Facilities Master Plan later this year. However, it is already clear that:

- Facility overcrowding conditions can be somewhat mitigated with the continuation of evidence-based programs; ultimately, however, facility expansion will become necessary.
- Staffing levels in the County Probation Department will likely need to increase to meet additional parolee monitoring.

- Increases in medical staff and medical facility upgrades will be necessary. With the probable rise in the average age of inmates, including that of high need inmates, the amount of medical services and costs are sure to be substantial.

## ALTERNATIVE PROGRAMS

The state's new Realignment Act shifts the burden for incarceration, monitoring and rehabilitation of criminal offenders to the counties. The impact of this shift will be felt by many of Napa County's agencies, which will have to provide additional facilities, staffing and monitoring. Needless to say, an unknown fiscal impact is also forecast due to funding uncertainties at the state level.

National studies have demonstrated that the practice of just "locking them up" does little to reduce the rate of recidivism (see Methodology). This is evident by a current recidivism rate of greater than 70% for the state's prisons. It is felt that having non-violent, non-serious, non-sex criminal offenders incarcerated locally, where they are close to families, support networks and ultimate job environment, will significantly reduce this recidivism rate.

In order to mitigate some of Realignment's impact on the community, Napa has begun a series of programs based on practices implemented in other states. These programs have been found, by documented evidence, to be effective. These programs are designed to reduce the recidivism rate. They are based on risk assessment and alternative evidence based programs tailored to rehabilitate individuals and prevent their recycling through the criminal justice system.

Napa County is considered ahead of most other counties in the state, as a result of a planning process that began addressing jail overcrowding, and investigating alternative programs, several years ago. The County has since received statewide recognition for its efforts addressing Realignment requirements and implementing alternative community resources for criminal rehabilitation. These programs provide an alternative to incarceration. They are designed to reduce the rate of recidivism by changing the individual's criminal behavior as well as providing vocational training by teaching job related skills.

The success of these alternative programs is the basis for Napa County's projections of the cost impact and facilities expansion necessary to accommodate increases in jail population, as well as rehabilitation and monitoring programs. The criminal justice officials in Napa County have established the following specific goals in implementing these programs:

- Insure the public safety
- Tailor punishment to provide a deterrent
- Reduce the recidivism rate

- Provide a cost effective solution
- Utilize alternatives to incarceration

National studies have shown that incarceration in prison or jail reinforces negative interactions, weakens ties to society, and often increases the likelihood of reoffending. Nationwide programs have been developed to provide an alternative to the full-time monitored jail environment while still providing sanctions and rehabilitation. These programs are designed to impose restrictions on offenders' freedoms and limit their mobility during the period of their sentence. There is, of course, a need for retribution in the event the individual does not successfully complete prescribed programs. This can be in the form of a return to jail for short periods (flash incarceration), or for the remainder of the original sentence.

## ELECTRONIC MONITORING

Electronic Monitoring (EM) is one type of sanction widely used across the nation today. EM devices are of two types: active or passive. Active devices are physically attached to an individual and track the offender via GPS technology. This enables a supervisor or probation officer to continuously monitor an individual's location in real-time. Any variance from the pre-set boundaries is immediately reported. Passive monitoring may be used in home detention where the offender is required to periodically call a specific number, or to answer the phone when called. These methods of monitoring allow individuals to reconnect with family and community. It also affords employment continuity and inhibits further criminal activity.

National studies have shown this alternative is most effective when used with other treatment programs like those employed by the CCSC at the Napa County Department of Corrections. An overwhelming majority of offenders surveyed in the study said it was an effective supervision tool, and they would not have considered escaping.

In the past, EM had primarily been used for high-risk parolees and sex offenders. This category typically represents less than 10% of the nation's parolee population. Napa's utilization of these devices, in the past, has been a much lower percentage. However, as the pool of parolees increases with Realignment's impact, and overcrowding conditions at the jail necessitates early releases, electronic monitoring may become a significantly more expedient alternative for monitoring a larger population.

## REPORTING PROGRAMS

Day reporting and work release programs are alternatives that allow offenders to, return or remain in, their communities under strict monitoring conditions with tailored rehabilitation requirements. Both of these program types are considered intermediate sanctions. They have historically been used as early release alternatives.

However, in today's Realignment climate, they are becoming more prevalent as an alternative to overcrowded jails for non-serious offenders. Day reporting centers are structured environments that provide treatment and close supervision to offenders who have not responded to traditional supervision, such as parole or probation. These programs are nationally recognized for providing enhanced surveillance of problem offenders and for referring them to treatment services.

Napa's implementation of these programs began with concern about overcrowding conditions at the jail, and the recognition that over three quarters (77%) of the inmates were there for misdemeanors. This led the county to explore alternatives to incarceration and ultimately implement a community based day reporting program.

The Community Corrections Services Center (CCSC) is a contracted facility through Behavioral Interventions Incorporated (BI), to provide treatment and services for offenders that have been referred by the county Probation Department. Using evidence based programs, the CCSC focuses on breaking the cycle of criminal thinking and providing services in order to facilitate transition back into the community.

The CCSC assesses each offender to determine individual risk and establish a need level. Offenders are assigned a tailored curriculum of group treatment programs and training classes. The enrolled participants begin with daily reporting requirements at the CCSC where they are monitored for drug and alcohol use. They are required to demonstrate a commitment to the programs and undergo close monitoring for alcohol and drug use. Individuals completing the program are monitored for subsequent offenses. Initial statistics indicate a recidivism rate of 23%, which is the county's target in projections to the BOS.

In addition to the post-release programs, in-jail transition programs are structured to introduce behavioral change, treatment, and training to help ensure a successful transition toward release and to help prevent re-arrest. In addition, the Jail Employment Education Program (JEEP) provides case management, group classes, and computer training for employment preparation.

The potential monetary savings resulting from these programs is staggering. A report from the Justice Policy Institute states:

In 2008 there were 1.6 million sentenced people in state prisons and county jails in the United States. One-quarter of this population, 413,693 - were serving time for non-serious, non-sexual offenses and could be eligible for alternative sentences.

Potential cost savings were based on a hypothetical adopting of alternative programs for 80% of the non-serious, non-sexual prison and jail population. For this year \$12.9 billion dollars was expended on incarceration in the U.S.; estimating a cost of alternatives at \$3.2 billion there would be a potential savings

of \$9.7 billion.

In California we had 173,186 prisoners in state facilities of which 23% were non-serious, non-sexual offenders. Cost of incarcerating 80% of nons is \$1.5 billion dollars and using a cost of alternatives of \$116 million yields a potential savings of \$1.4 billion.

## IMPACT TO THE COUNTY

Local officials throughout the state have expressed concerns about Realignment. Many worry that the current level of state funding to counties is insufficient to manage the high and moderate risk offenders that will be under local jurisdiction. Serious questions remain, for example, about how to fund support services and medical care costs that CDCR is presently paying for former parolees. Future funding is also a concern, given the current state budget deficit and the lack of a guaranteed funding stream in the Realignment legislation. Counties might be left with responsibility for more and more high-needs correctional clients without the requisite financing.

The county's capacity to manage the increased population is another concern. The jail is frequently crowded beyond designed capacity and could come under court-ordered capacity limits. Probation department caseloads will likely grow with the new influx of parolees from the State as well as the increased caseload from the jail overflow.

As with any new legislation there are many elements of the Realignment Act that have yet to be determined. Some can be considered positive, for example, the county will now have control and will manage programs aimed at rehabilitation. Others issues will be negatives and will represent challenges for the County to address.

## POSITIVE ASPECTS

- Some believe that Napa County can provide better rehabilitation and job training services that will ultimately decrease the state's high recidivism.
- If Napa County can coordinate social service and educational programming effectively, the net result may be reduced crime and a reduced flow of offenders to prisons and jails overall.
- Realignment moves low-level offenders to the local level where they can be closer to work and family connections, a familiar environment, and the rehabilitation services the counties offer.
- Napa County is implementing many alternative rehabilitation programs other than jail incarceration – one example is the Community Corrections Service Center (CCSC). All offenders are given counseling, job training and lessons on how to make wise decisions when posed with moral predicaments – all of which should lead to less recidivism and less crime.

## NEGATIVE ASPECTS

- Increased numbers of sentenced prisoners in Napa Jail that formerly went to State Prison. Many are parolees who would have normally gone back to state prisons after violating terms of their parole. Instead, they can be sentenced to Napa's already overstressed jail.
- Increased caseload for the County Probation Department to monitor State-released and local parolees.
- Potential for increased crime in the County.
- Many of these State-released inmates had plea bargained their sentence down and are already getting a reduced sentence. Through Realignment they are now effectively seeing further sentence reduction. This could be perceived by some as a "get out of jail free" card.

A significant impact to the County would be the lack of continuing state funding. If that occurs, Realignment will likely cause an increased burden on Napa County taxpayers to fund expansion of the County Corrections and Probation Departments, and increases in cost for new alternative programs. Immediate fiscal impacts would likely be felt (1) in the day-to-day costs of feeding, housing and clothing county jail's rising population, and (2) in alternative community rehabilitation programs, especially for "special needs" inmates with gang affiliations or who require medical treatment or prescription medications for drug and mental health issues.

## PUBLIC SAFETY

Some have suggested that Realignment is a threat to public safety because more offenders will be on the streets. Unlike the other concerns, this fear is not supported by the evidence. The current parolees, who will be transferred to county jurisdiction, are presumably not highly dangerous individuals. Further, there is very little evidence that accelerated release from incarceration leads to higher levels of recidivism. In fact, in some cases it may lead to lower recidivism.

Three priorities may help in keeping the community safe as Realignment takes place:

- Assure enough bed space at the jail to incarcerate individuals who truly are a threat to public safety. The County's criminal justice community will need to identify this group.
- Have proactive supervision and immediate sanctions for those offenders who are on county probation or parole. This probably will require increased staffing.

- Have in place programs that will affect positive change in offenders' behavior that will decrease recidivism, and lead them to be law abiding, productive members of society. We cannot change every offender, and those who choose to continue a life of criminality will still need to be incarcerated.

## **FINDINGS**

The 2011/2012 Grand Jury finds that:

- F9. The various agencies involved within the County's criminal justice system are working well together as a team to solve the many issues imposed by the new Realignment legislation and current jail overcrowding conditions.
- F10. These stakeholders are finding a common ground, implementing jail alternatives such as the Community Corrections Service Center and the use of home detention and electronic monitoring.
- F11. Napa's alternative programs to incarceration are up and running and have been recognized statewide.
- F12. Alternative programs have been shown to reduce recidivism and modify criminal behavior, potentially increasing the safety of our community and saving taxpayers' funds.
- F13. Current overcrowding conditions could be exacerbated by the influx of new prisoners; expansion solutions remain several years away.
- F14. County projections forecast a 23% population reduction with evidence-based practices. If achieved, this could translate into a cost savings for the taxpayers of Napa County since the cost of the monitoring and treating out-of-custody offenders is less than the cost of incarceration.
- F15. The County's Criminal Justice team is challenged on a daily basis to manage the prisoner population to stay within the bed-rated capacity.
- F16. Commitments of State financial support have been very limited, funding provisions included in the Assembly Bills expire in June 2012. A long-term solution is dependent on future legislation.



## **RECOMMENDATIONS**

The 2011/2012 Grand Jury recommends that:

- R1. County Criminal Justice Community report each year to the citizens on how the alternative programs are working, including current information on average jail population, alternative program statistics, and recidivism rate along with the annual crime rate report.
- R2. County administration continue to reach out at public forums, and solicit community input regarding jail design and location, while looking at jail expansion alternatives.
- R3. The County prepare to assume greater financial responsibility for Realignment, in the event State funding is not forthcoming.
- R4. The County study alternative funding strategies, in the event State funding is not forthcoming.

## **COMMENDATIONS**

The 2011/2012 Grand Jury commends:

1. The NCJ and NCJH leadership and staff, for their dedication and commitment to explore newer evidence based programs and innovations in an attempt to reduce recidivism and address offenders' rehabilitation needs
2. The Napa County Criminal Justice committee, as the representatives and stakeholders in the county, who have worked harmoniously to come up with innovative solutions to address the issues imposed by the Realignment Act

## **REQUEST FOR RESPONSES**

Pursuant to Penal code section 933.05, the grand jury requests responses as follows:

From the following individuals:

- Napa County Chief Executive Officer: R2, R3, R4.
- From the following governing bodies:
  - Napa County Board of Supervisors: R2, R3, R4.
  - Napa County Department of Corrections: R1.
  - Napa County Probation Department: R1.

## **GLOSSARY**

ALDEA – Children and family services provider  
BI Incorporated – Contract provider for monitoring, supervision, treatment services  
BOS – Napa County Board of Supervisors  
CDCR - California Department of Corrections and Rehabilitation  
CCSC - Community Corrections Services Center  
CCP – Community Corrections Partnership  
EM – Electronic Monitoring  
Evidenced Based Programs – Rehabilitation programs that are based on empirical results  
JEEP – Jail Employment Education Program  
NCDC – Napa County Department of Corrections  
NCJ – Napa County Jail  
NCJH – Napa County Juvenile Hall  
PRCS – Post-Release Community Supervision  
RECIDIVISM - reoffending criminal activity

## **METHODOLOGY**

### Interviews Conducted

- Calistoga Police Department
- St. Helena Police Department
- Napa Police Department
- Napa County Sheriff's Department
- Napa County Department of Corrections, administration and staff
- Napa County Juvenile Hall, administration and staff
- Napa County Probation Department, administration and staff
- Members of the Downtown Merchant's Association
- Napa County administrative staff
- Member of the District's Attorney's Office
- The Community Corrections Services Center, administration and staff
- Napa County Jail Inmates

### Documents Reviewed

- 2008 County Correction's Plan, Submitted by Carter, Gobel, Lee Companies
- The Public Safety Realignment Act., California Assembly Bills 109 & 117
- Rethinking the State – Local relationships; correction's, By Public Policy Institute of California
- The San Francisco Chronicle (a newspaper)
- The Napa Valley Register (a newspaper)

- The Cary Group Publications
- Press release from the Los Angeles District Attorney's Office
- California State Sheriff's Association report
- Napa County Jail Expansion final report
- Adult Correctional System Master Plan Phase 1, Report to BOS, 20 November 2007
- Napa County Jail Expansion Design Concepts and Split Operations Analysis, Carter Goble Lee, 3 June 2011
- Conceptual Facilities Master Plan, Napa County, 7 June 2011
- Published articles by John Tavaglione, President of the California State Association of County's
- Sense and Sustainability, Fresh Perspective on Sustainable Development, 17 December 2011 | Karin Drucker
- Attitudes of US Voters toward Non-serious Offenders and Alternatives to Incarceration; FOCUS, June 2009
- CDCR Fact Sheet, 2011 Public Safety Realignment
- Rethinking the State-Local Relationship: Corrections; Public Policy Institute of CA, August 2011
- Realignment: A Bold New Era in California Corrections, Warren Institute, 30 August 2011
- Jail Location Options – Update Alternatives, Analysis and Recommendations, Napa County Executive Office, 9 August 2011
- The Extravagance of Imprisonment Revisited, National Council on Crime and Delinquency, January 2010

## **APPENDIX A KEY PROVISIONS PUBLIC SAFETY REALIGNMENT ACT**

**[HTTP://WWW.CDCR.CA.GOV/REALIGNMENT/](http://www.cdcr.ca.gov/realignment/)**



A Tradition of Stewardship  
A Commitment to Service

# **NAPA COUNTY GRAND JURY**

**2011-2012**

**June 15, 2012**

**Final Report on**

**SHOOTING IN ALTA HEIGHTS**



A Tradition of Stewardship  
A Commitment to Service

**NAPA COUNTY GRAND JURY**  
**P.O. BOX 5397**  
**NAPA, CALIFORNIA 94581**

June 15, 2012

The Honorable Mark S. Boesseneker  
Presiding Judge  
Superior Court of the State of California  
County of Napa  
825 Brown Street  
Napa, California 94559

Re: 2011-2012 Grand Jury Final Report on Shooting in Alta Heights

Dear Judge Boesseneker,

Pursuant of Section 933 (a) of the California Penal Code, the 2011-2012 Napa County Grand Jury submits to you its final report on Shooting in Alta Heights. Our investigation of this subject was conducted in a manner consistent with the California Penal Code, this Court's Charge, and the historic role of the Grand Jury, to protect the interests of the residents of Napa County.

This is fourth in a series of final reports we will be issuing before the term ends. I would like to acknowledge the hard work and dedication of the Grand Jurors, which our report reflects. It is a privilege and a pleasure to work with them.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David B. Gilbreth".

David B. Gilbreth  
Foreman  
2011-2012 Napa County Grand Jury



A Tradition of Stewardship  
A Commitment to Service

**NAPA COUNTY GRAND JURY**  
**P.O. BOX 5397**  
**NAPA, CALIFORNIA 94581**

To the Residents of Napa County:

In order to fulfill the Grand Jury's mandate to investigate local governmental agencies to assure they are being administered efficiently, honestly, and in the best interests of Napa County residents, the 2011-2012 Grand Jury investigated the incident of November 28, 2010 in the Alta Heights neighborhood in which Richard Poccia was shot and killed by Napa Police officers.

The Grand Jury reviewed official documents and conducted interviews with agencies and citizens in the course of its investigation. Upon concluding the investigation, the Grand Jury has developed a set of findings recommendations with the objective of representing the public interest.

The Grand Jury found that in the Richard Poccia incident Napa County Mental Health's effort was inadequate and the Napa Police Department's response was unsuitable. As a result, the Grand Jury also found that numerous residents of the Alta Heights neighborhood now hold a negative opinion of the Napa Police.

The Grand Jury recommends that Napa County Mental Health develop more resources for crisis support and that it coordinate training and practice with Napa Police Department regarding crisis situations; that Napa Police Department coordinate training and practice with Napa Mental Health as well as providing public liaison officers for crisis situations; that Napa Police Department publish its Administrative Investigation Reports in a more timely manner; and that the Napa County Board of Supervisors with local governments establish a civilian review board as well as provide the necessary funding resources for the recommendations herein.

The Napa County Office of County Counsel has reviewed this final report. The Napa County Superior Court Presiding Judge, pursuant to California Penal Code Section 933(a), has found that this report complies with California Penal code Part 2 Title 4. This report has been accepted and filed as a public document by the County Clerk.

Copies of this report are available for review in the Napa City-County Library and online at [www.napa.courts.ca.gov](http://www.napa.courts.ca.gov) (follow the link to the Grand Jury).

We hope you find this report informative. It is an honor and privilege to serve you during the 2011-2012 Grand Jury tenure.

Respectfully submitted,

The 2011-2012 Napa County Grand Jury.

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Letter to the Citizens of Napa County

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# SHOOTING IN ALTA HEIGHTS

## SUMMARY

Richard Poccia was fatally shot by uniformed police officers on November 28, 2010, in the Alta Heights neighborhood of Napa. This episode has distressed many residents in the Alta Heights community and in the Napa community at large. To date, Alta Heights community members who experienced that afternoon in confusion, lock-down, and mourning have received little or no information from the Napa agencies involved.

The Napa Police Department needs the support and trust of the Napa community. However, some of the actions taken in the Alta Heights incident eroded that support and trust. The 2011-2012 Napa County Grand Jury is concerned, and has looked into the circumstances surrounding the death of Mr. Poccia. Police records and other official documents were reviewed, such as recorded interviews in the Sheriff's report of all the officers and witnesses involved. The Grand Jury also independently interviewed additional witnesses.

At this time the Grand Jury is not rendering an opinion as to whether or not the shooting was justified. Indeed, ongoing civil litigation, time constraints, and the delay of Napa Police Department's Administrative Report (internal affairs report) after more than sixteen months, have precluded a full investigation by the Grand Jury into the shooting.

This report addresses the need for better communication and common understanding between the Napa Police Department and the community, the need for closer cooperation between law enforcement and mental health agencies, and the need for vastly improved procedures following officer involved fatalities.

The 2011-2012 Napa County Grand Jury recommends instituting a program to assist communities dealing with the results of such events, establishing a Civilian Police Review Board and implementing measures to promote trust and communication among the Napa Police Department, the Napa County Mental Health Crisis Center and the Napa community.



## **BACKGROUND**

The Napa Police Department was established in 1875, several years after the town of Napa was incorporated. The Police Department consists of 125 full time employees serving as Peace Officers, Public Safety Dispatchers, Community Services Officers and various specialists and assistants. Its mission "...in partnership with the community, is to promote and maintain a peaceful, safe and secure environment." (Mission Statement, City of Napa, Police Department website.)

Alta Heights, a quiet neighborhood of predominately single-family homes, is located at the foot of the east hills in Napa, California. It started in the early twentieth-century primarily by Italian-Americans from San Francisco and became part of what was referred to as the City of Napa's "Little Italy." Over the years this pleasant, middle class community has maintained its character and neighbor-friendly environment.

## **DISCUSSION**

Richard Poccia was a sixty-year-old resident of Alta Heights living with his wife on Meek Avenue. He had been employed as a registered nurse in bay area hospitals and had interests in martial arts and music. Neighbors who had contact with Richard Poccia prior to the incident described him as considerate and congenial. The shooting death of Richard Poccia on November 28, 2010 was shocking and traumatic to his neighbors in Alta Heights as well as to the Napa community. This event has left many people feeling alienated from the agency committed to their safety.

The following facts, unless otherwise noted, are derived from the Sheriff's Report.

### **Sunday Morning, November 28, 2010 (Summarized from Sheriff's Report)**

Richard Poccia was on leave from his job as registered nurse, with post-traumatic stress disorder (PTSD). Police interviews with Richard Poccia's wife indicate he was drinking heavily the weekend of November 26-28, 2010. His wife took other lodging on Friday night, November 26th.

Records show that Richard Poccia's wife, with the help of close friends, contacted the Napa Police that Sunday morning. Police were informed that Richard Poccia was alone and posed no threat to his wife or others in the area, possessed guns and had martial arts training. However, a friend reported to the police that Richard Poccia told him:

If the Police and Paramedics come here, it will end badly. Either they will get killed, I will get killed, or we both will get killed.

A Police sergeant, the Incident Commander (IC) who had experience in “hostage negotiations,” determined it would be counterproductive for police to physically approach Richard Poccia. The IC requested the Mental Health Crisis Center to contact Richard Poccia. The IC also told police to maintain a safe distance from Richard Poccia’s residence during their shifts. Interviews with Napa County Mental Health indicate that the Crisis Center called Richard Poccia twice that Sunday morning, but there was no response. The Crisis Center left a message and did not contact Richard Poccia again that day.

## **Sunday Afternoon, November 28, 2010 (Summarized from Sheriff’s Report)**

Richard Poccia was in phone contact with his wife Sunday afternoon. According to Police reports he told her he had no more alcohol and if she would not get him some he was going out for more. She relayed this information to the IC, and added that it was a possible that he would take his .22 caliber pistol if he left the house. The police then assigned a team who would place Richard Poccia under an involuntary Section 5150<sup>1</sup> if and when he left his house.

The Napa Police Department successfully made contact with Richard Poccia when the IC called his cell phone. Richard Poccia informed the officer he had knowledge of Section 5150 and although he had five guns in his possession, he was not a danger to himself. Specifically, he denied being suicidal. The IC assured Richard Poccia that it was legal to possess firearms, that his wife was concerned for him, and that they wanted assurance he was not going to harm himself. Richard Poccia agreed to have police officers come to his residence to check on his welfare. He agreed to wait until officers arrived and then come out of his house without his guns.

The contact team, referred to at that time as the Emergency Response Team (ERT), consisted of four officers who brought weapons of various lethality. Standard police procedure requires increasing levels of force to insure compliance with commands. According to standard procedure, the first officer went “hands on” (not using his

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<sup>1</sup> Section 5150 of the California Welfare and Institutions Code allows police (and certain other designated mental health professionals) to take someone into custody if they believe that, due to a mental disorder or inebriation, said person is:

1. A danger to his or herself, and/or;
2. A danger to others, and/or;
3. Gravely disabled. (As a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing or shelter.)

This is not a criminal arrest. Under this law, the subject is taken to a psychiatric hospital. There, the professional staff may detain that person for up to 72 hours if it’s determined that that person meets the above criteria.

weapon), the second officer had a Taser, the third officer possessed a beanbag gun, and the fourth carried a rifle. (Appendix I.)

Other officers came into the neighborhood to secure the general area as the ERT was preparing. The decision was made to not notify the neighbors. There was virtually no contact with the neighbors throughout the incident.

The official records show that the IC placed one more call to Richard Poccia. He reiterated that he was not going to hurt himself or others. He was asked to remove his jacket, tuck his shirt into his pants and not carry any weapons when he exited his house. He agreed to come out with his hands up and listen for the instructions from the officer in charge, who was positioned down the street.

The ERT was positioned behind a small retaining wall about 150 feet down the street from Richard Poccia's residence. The "hands on" officer was giving directions to Richard Poccia, telling him, "I'm your friend; It's important that you listen to me." As he walked down the small elevation of his street to the officers, he was instructed to turn around a second time more slowly, and was reminded several times to keep his hands up by multiple officers.

The Coroner's record stated that Richard Poccia had a blood alcohol level of 0.32. A blood alcohol level of 0.08 is the threshold for legal intoxication.

One witness reported that Richard Poccia responded, "...Where, Where?" at one of the officers and seemed confused because, according to this witness, "...all these people were screaming at him." A second witness the Grand Jury interviewed also stated three or four officers were issuing commands to Richard Poccia.

Official records reflect that when Richard Poccia came closer to the officers and saw their weapons his demeanor drastically changed. The record indicates that he became particularly agitated by the presence of the Taser and rifle. The officers began to form a semi-circle around Richard Poccia, within ten feet from him. According to the information provided, the officer with the beanbag shotgun lowered his weapon, drew his revolver and then returned it to his holster. It was reported Richard Poccia became increasingly belligerent and displayed hostile aggression in his body movements.

The record reflects that at this time the command to Taser him was given. Simultaneously, Richard Poccia turned forty-five degrees away from the officers and purportedly reached to his waistband. The Sheriff's Report states that one officer reported he saw a knife handle, a second reported he saw a knife and a third reported he saw a gun handle. Police and neighbors report that a "pop" was heard followed by a scream and a "bang" immediately after. The autopsy report states that the fatal AR-15 bullet wound at the back of Richard Poccia's head was "tangentially front-to-back, right to left, and essentially horizontal". Both Taser darts penetrated his back. Near Richard Poccia's body was found not a gun, but a closed pocketknife.

## **Sunday Evening, November 28, 2010**

The Coroner reports that the shooting occurred at 3:16 p.m., but the body was not removed until 5:00 a.m. the following morning. It took over thirteen hours for the proper officials to complete their examination of the area. Richard Poccia's body was left in the street throughout this thirteen-hour period.

The Grand Jury finds this incomprehensible and unacceptable, and acknowledges the dismay it caused the residents of the quiet neighborhood. The Grand Jury recommends that in the future, more expedient procedures be followed, even if it requires bringing in professionals from neighboring counties. The Grand Jury further recommends that screening be provided to give a scene of violence a modicum of civility and respect.

It is standard policy for the Napa County Sheriff to conduct an investigation when the discharge of weapons by Napa Police Officers causes a fatality. The investigation by the Sheriff's Office included interviews of persons in the area. The most extensive information came from the officers who were directly involved in the incident. The Grand Jury did not find any civilian who actually saw the shooting.

The Grand Jury does not attempt to draw any conclusions regarding the justifiability of the shooting. Based on the facts in the Sheriff's report, the Napa County District Attorney found the shooting to be reasonable self-defense and ruled the death a justifiable homicide.

## **Conclusion**

The events and aftermath of November 28, 2010, are highly disturbing. The Grand Jury is concerned with minimizing the damage to the community resulting from any such tense, traumatic situations in the future.

The report states that Richard Poccia had been experiencing a mental crisis for several days. On November 28, 2010, the Napa Police Department was the first agency to be notified and was concerned for his safety. It concluded the Crisis Center of Napa County Mental Health would be the appropriate agency to assist him. A worker at the Crisis Center made two unsuccessful attempts to contact Richard Poccia by phone. Recent budget issues at Napa County Mental Health had resulted in fewer staff positions. It was single staffed on Sunday morning. There was no other staff member available to check on Richard Poccia should it have been considered necessary.

The Grand Jury believes that the outcome might have been altered if a Mental Health Crisis worker had been assisting. It certainly warranted an effort. There is a need for Napa Mental Health and the Napa Police Department to work more effectively together. Previously, as a matter of policy, in situations where weapons are concerned crisis workers are not called out. Police exclusively are expected to handle the event. The Grand Jury challenges that policy: A crisis worker placed safely away from harm and in a

position to monitor the situation could provide valuable input to the officers carrying out their duty.

Napa County Mental Health and the Napa Police share the common goal of promoting a high quality of life in the community of Napa, one by alleviating suffering associated with mental illness and the other by assuring a safe and secure environment. The Grand Jury encourages these two public service agencies to operate “hostage negotiations” in conjunction whenever the possibility arises.

During the course of its interviews, the Grand Jury was advised of a recent example of cooperation between these two departments. In October 2011, shortly before noon, a young transient perched himself at the top of a water tower at the Sawyer Tannery on Coombs Street. While atop the tower he attempted to destroy cell phone equipment and threw objects at the officers below as they tried to persuade him to come down. During the 6-hour standoff a mental health professional assisted police on-site by providing suicide-counseling information. Eventually, the subject was successfully brought into custody and charged with trespassing and intent to cause bodily injury.

These agencies perform two different roles, and they operate under two separate points-of-view. The Grand Jury acknowledges it is not easy to discern the balance each situation requires between patient listening in one case and swift decision-making in the other. The more these disciplines continue to share their professional skills, the more Napa will profit by the synergy of their combined practices. Mutual training exercises would provide a way to improve cooperation. The Grand Jury encourages frequent in-service exercises between the two departments, particularly at middle management and field levels, so that the expertise of each profession is shared with the other.

The Grand Jury found that before and after the shooting, virtually no attention was given to the needs of the Alta Heights neighborhood. The residents were told nothing. Some were restricted to or from their homes. The Grand Jury questions the Napa Police’s decision to not inform neighbors in the immediate area during the situation. Some information, however little, would have helped to provide reassurance. A number of Alta Heights residents have told the Grand Jury that their previous high regard for Napa Police has plummeted, mainly due to:

1. The callousness with which the police treated their neighborhood, and
2. The insensitive treatment of Richard Poccia’s body.

To prevent a repetition of this alienation, the Grand Jury recommends a public relations liaison in the Napa Police Department. Other agencies have reported success with an officer going door to door immediately after an incident to explain what happened to the extent that the situation allows. The Grand Jury suggests the Police Chief consider the position of a police liaison officer, whose duty in tense situations requiring extreme means, would be to disseminate relevant information to affected neighborhood residents.

The officer(s) should be present during and after the events for the primary purpose of facilitating understanding and assurance to the community.

Other communities have promoted trust and confidence between law enforcement and neighborhoods in various ways. One is to establish a Civilian Police Review Board. Involving civilians promotes trust. A community is more apt to perceive an investigation as fair if civilians are involved in the process.

Other cities have dealt with similar divisive events. The City of Oakland, in 2009, suffered the murder of four police officers in one incident. The acting Chief of Police commissioned an investigation by CNA, Institute of Public Research. The report presented an objective, unbiased look at what transpired; what was done right as well as what was done wrong. A report of this nature requested by the Napa Police Department could identify the factors contributing to the tragedy, develop findings on specific actions and decisions, review the use of force, and provide a set of recommendations (advisory and non-binding) to help identify potential improvements in procedures, tactics and training.

The Napa Police Department exists to protect and to serve. Commissioning independent reviews as described above would show courage. The erosion of trust this Grand Jury found in the Napa community and particularly in Alta Heights, would be mitigated by such a study and/or civilian review board.

Alta Heights has been a quiet, peaceful, close-knit neighborhood for generations. The shooting of Richard Poccia on November 28, 2010, severely traumatized many of the residents of Alta Heights. After the immediate tragedy of the shooting passed, those residents needed a forum to voice their feelings. The Grand Jury recognizes the need to support individuals who have experienced confusion, anger and grief following traumatic events. While Napa Police Department provides psychological counseling to officers (Appendix II.), there is no parallel service available to the affected civilians. The Grand Jury believes the Napa County Mental Health Department is the best public agency to offer this support. Community healing would be enhanced if Mental Health had a community program of services modeled after the services provided to schools following the death of a student.

## **FINDINGS**

The 2011-2012 Napa County Grand Jury finds that:

- F1.** The Napa Police Department is delinquent in not publishing the results of its Administration Investigation in a timely manner.
- F2.** Richard Poccia's body was left on the street over thirteen hours, an inordinate and unacceptable amount of time.
- F3.** There is a need for more effective collaboration between Napa County Mental Health and the Napa Police Department in crisis situations.
- F4.** There is no civilian review board in Napa County for OIS incidents.
- F5.** Much of the Alta Heights community is estranged from the Napa Police Department as result of police actions during and after the Richard Poccia event.
- F6.** It is commendable that the Napa Police Department provides access to psychological counseling for its officers following traumatic situations such as an OIS.
- F7.** Adequate psychological counseling is not currently available to Napa communities following traumatic situations that occur in public.
- F8.** Mental Health's two unanswered phone calls without more follow-up to Richard Poccia were inadequate.

## **RECOMMENDATIONS**

The 2011-2012 Napa County Grand Jury recommends that:

- R1.** The Napa Police Department explain the reason(s) the Administrative Investigation Report of the OIS of November 28, 2010, is delinquent, and release the report within 60 days.
- R2.** The Napa Police Department publish future Administrative Investigation Reports within 180 days of the incidents giving rise to them.
- R3.** Within 90 days the City of Napa establish procedures to utilize appropriate screening for sensitive crime scenes.
- R4.** Within 180 days the law enforcement departments in Napa County and Mental Health Department establish more effective coordination in situations of crisis intervention by (1) engaging in joint training exercises, and by (2) maintaining instantaneous communication and patching capability.

- R5.** Within one year the Napa County Board of Supervisors and all Napa County incorporated local governments establish a civilian review board to examine all investigation documents of this incident and all future Officer involved shooting (OIS) incidents to provide feedback from a civilian point-of-view.
- R6.** Within 90 days the Napa Police Department provide its staff effective public interface and/or appoint a liaison officer to inform and reassure the public during tense events.
- R7.** Within 180 days the Napa County Mental Health Department (1) establish support programs for communities involved in traumatic incidents, and (2) establish additional programs to promote community awareness of resources for crisis support.
- R8.** Within 180 days the Napa County Board of Supervisors provide the necessary funding resources to assist Napa County Mental Health with (1) appropriate staff levels for crisis situations, and (2) effective communication routing and patching links with Napa Police.

## **REQUEST FOR RESPONSES**

Pursuant to Penal Code, Section 933.05, the 2011-2012 Grand Jury requests responses from the following individuals:

- The Police Chief of the City of Napa: **F1, F2, F3, F4, F5, F6, R1, R2, R4, R5, R6.**
- The Director of Napa County Mental Health Department: **F3, F7, F8, R4, R7.**
- The Napa County Sheriff: **R4.**
- The Police Chief of the City of St. Helena: **R4.**
- The Police Chief of the City of Calistoga: **R4.**

From the following governing bodies:

- Napa County Board of Supervisors: **F3, F4, R5, R8.**
- Napa City Council: **F2, R2, R3.**



- American Canyon City Council: **R5.**
- Calistoga City Council: **R5.**
- American Canyon City Council: **R5.**
- St. Helena City Council: **R5.**
- Yountville City Council: **R5.**

## **GLOSSARY**

Administrative Report - A professional internal account of an incident, which examines the behavior of the participants in the incident with regard to department policy.

Civilian Review Board - An authorized body of citizens representing the public who investigate conduct by police officers, either as an independent agency or as part of a law enforcement agency.

Coroner Inquest - A procedure by a government official who investigates, determines and records the cause of deaths. In some jurisdictions, coroners conduct inquiries in the presence of jurors from that county.

ERT - Emergency Response Team

Hostage Negotiation - The action of peace officers to establish rapport with a person(s) involved in a crisis in order to produce a peaceful resolution to a volatile situation.

IC - Incident Commander

Napa County Incorporated Local Governments – The City/Town Councils of American Canyon, Calistoga, Napa, St. Helena, and Yountville.

OIS - Officer Involved Shooting

PTSD - (Post Traumatic Stress Disorder) A severe anxiety disorder with symptoms appearing after a psychological trauma and causing dysfunction in a person's life.

Section 5150 - A California code that permits police to place a person under involuntary custody for the welfare of that person.

Taser - A nonlethal electroshock weapon used to subdue a belligerent or dangerous individual by disrupting voluntary control of muscles.

# **METHODOLOGY**

## **Interviews Conducted**

- Calistoga Police Department
- St. Helena Police Department
- Napa Police Department Officers
- Napa County Sheriff's Department
- Napa County Mental Health Department
- Neighbors of Alta Heights Neighborhood
- Family and Friends of Richard Poccia
- Napa County District Attorney's Office

## **Documents Reviewed**

- **Napa Police Manual**
- **NPD 10-007227 which includes:**
  - Statements of On Scene Police Officers
  - Statements of On Scene Supervisor
  - Statements of Napa County Police Department Investigative Unit
  - Statements of Napa County Sheriff's Department Investigative Unit
  - Coroner's Report of Richard Poccia
  - Toxicology Report of Richard Poccia
  - Crime Scene Log
  - Witness Written Statements
  - Search Warrant and Return
- **Napa County Interagency Crisis Response Protocol**
- **<http://www.suicide.org/suicide-by-cop.html>**

- **Improving Responses to People with Mental Illnesses; The Essential Elements of a Mental Health Court.** Report prepared by the Council of State Governments
- **Independent Board of Inquiry Into the Oakland Police Department; March 21, 2009, Incident** by CNA, Institute for Public Research
- **Justice Center Criminal Justice/Mental Health Consensus Project**
- **Police Accountability and Citizen Review** by International Association of Chiefs of Police
- Related Articles in **Napa Register**

## **APPENDIX**

- I.** NPD Policy 300, “Use of Force”;  
NPD Policy 308, “Control Devices and Techniques”  
NPD Policy 309, “TASER Guidelines”
- II.** NPD Policy 310, “Officer Involved Shooting”



## Napa Police Department

Policy Manual

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# Use of Force

### **300.1 PURPOSE AND SCOPE**

This policy recognizes that the use of force by law enforcement requires constant evaluation. Even at its lowest level, the use of force is a serious responsibility. The purpose of this policy is to provide officers of this department with guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

#### **300.1.1 PHILOSOPHY**

The use of force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied human encounters and when warranted, may use force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, the limitations of their authority. This is especially true with respect to officers overcoming resistance while engaged in the performance of their duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use reasonable force and protect the public welfare requires a careful balancing of all human interests.

#### **300.1.2 DUTY TO INTERCEDE**

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of such excessive force. Such officers should also promptly report these observations to a supervisor.

### **300.2 POLICY**

It is the policy of this department that officers shall use only that amount of force that reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control. "Reasonableness" of the force used must be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any interpretation of reasonableness must allow for the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving about the amount of force that is necessary in a particular situation.

Given that no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying reasonable force.

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**300.2.1 USE OF FORCE TO EFFECT AN ARREST**

Any peace officer that has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance of the person being arrested; nor shall such officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance (Penal Code § 835a).

**300.2.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE**

When determining whether or not to apply any level of force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

- (a) The conduct of the individual being confronted (as reasonably perceived by the officer at the time).
- (b) Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion and number of officers vs. subjects).
- (c) Influence of drugs/alcohol (mental capacity).
- (d) Proximity of weapons.
- (e) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (f) Time and circumstances permitting, the availability of other options (what resources are reasonably available to the officer under the circumstances).
- (g) Seriousness of the suspected offense or reason for contact with the individual.
- (h) Training and experience of the officer.
- (i) Potential for injury to citizens, officers and suspects.
- (j) Risk of escape.
- (k) Other exigent circumstances.

It is recognized that officers are expected to make split-second decisions and that the amount of an officer's time available to evaluate and respond to changing circumstances may impact his/her decision.

While various degrees of force exist, each officer is expected to use only that degree of force reasonable under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

It is recognized however, that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the standard tools, weapons or methods provided by the Department. Officers may find it more effective or practical to improvise their response to rapidly unfolding conditions they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree reasonably necessary to accomplish a legitimate law enforcement purpose.

**300.2.3 NON-DEADLY FORCE APPLICATIONS**

Any application of force that is not reasonably anticipated and intended to create a substantial likelihood of death or very serious injury shall be considered non-deadly force.

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Each officer is provided with equipment, training and skills to assist in the apprehension and control of suspects as well as protection of officers and the public. Non-deadly force applications may include but are not limited to leg restraints, control devices and TASER described in Policy Manual §§ 306, 308 and 309 respectively.

Given that no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying reasonable force.

#### **300.2.4 PAIN COMPLIANCE TECHNIQUES**

Pain compliance techniques may be very effective in controlling a passive or actively resisting individual. Officers may only apply those pain compliance techniques for which the officer has received departmentally approved training and only when the officer reasonably believes that the use of such a technique appears necessary to further a legitimate law enforcement purpose. Officers utilizing any pain compliance technique should consider the totality of the circumstance including, but not limited to:

- (a) The potential for injury to the officer(s) or others if the technique is not used
- (b) The potential risk of serious injury to the individual being controlled
- (c) The degree to which the pain compliance technique may be controlled in application according to the level of resistance
- (d) The nature of the offense involved
- (e) The level of resistance of the individual(s) involved
- (f) The need for prompt resolution of the situation
- (g) If time permits (e.g., passive demonstrators), other reasonable alternatives

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

#### **300.2.5 CAROTID RESTRAINT**

The proper application of the carotid restraint hold by a trained officer may be effective in restraining a violent individual. Only officers who have successfully completed department-approved training on the use of the carotid restraint hold and the department Use of Force Policy are authorized to use the technique. After initial training, officers shall complete training annually on the use of the carotid restraint hold.

The carotid restraint hold may only be used when the officer reasonably believes that the application of the hold appears necessary to prevent serious injury or death to an officer or other person(s).

After any application of any carotid restraint hold, the officer shall ensure the following steps occur:

- (a) Any individual who has had the carotid restraint hold applied, regardless of whether he/she was rendered unconscious, shall be promptly examined by paramedics or other qualified medical personnel.

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- (b) The officer shall inform any person receiving custody, or any person placed in a position of providing care, that the individual has been subjected to the carotid restraint hold and whether the subject lost consciousness as a result.
- (c) Any officer applying the carotid restraint shall promptly notify a supervisor of the use or attempted use of such hold.
- (d) The use or attempted use of the carotid restraint shall be thoroughly documented by the officer in the related incident report.

### **300.3 DEADLY FORCE APPLICATIONS**

While the use of a firearm is expressly considered deadly force, other force might also be considered deadly force if the officer reasonably anticipates and intends that the force applied will create a substantial likelihood of causing death or very serious injury. Use of deadly force is justified in the following circumstances:

- (a) An officer may use deadly force to protect himself/herself or others from what he/she reasonably believe would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing suspect when the officer has probable cause to believe that the suspect has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent or future potential risk of serious bodily injury or death to any other person if the suspect is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

### **300.4 REPORTING THE USE OF FORCE**

Any use of force by a member of this Department shall be documented promptly, completely, and accurately in an appropriate report depending on the nature of the incident. The content of a use of force report should include, but not be limited to the factors outlined in §300.22 and §300.5 when appropriate. The use of particular weapons such as chemical agents may require the completion of additional report forms as specific in departmental policy and/or law.

#### **300.4.1 NOTIFICATION TO SUPERVISORS**

Supervisory notification shall be made as soon as practicable following the application of physical force, under any of the following circumstances:

- (a) The application of force appears to have caused physical injury
- (b) The individual has expressed a complaint of pain
- (c) Any application of a control device
- (d) The individual has been rendered unconscious

#### **300.4.2 MEDICAL ATTENTION FOR INJURIES SUSTAINED USING FORCE**

Medical assistance shall be obtained for any person(s) who has sustained visible injury, expressed a complaint of pain, or who has been rendered unconscious.

### **300.5 SUPERVISOR RESPONSIBILITY**

When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

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- (a) Obtain the basic information from the involved officer(s);
- (b) Insure that any injured parties are examined and treated;
- (c) Insure that photographs have been taken of any areas involving visible injury or complaint of pain as well as overall photographs of uninjured areas;
- (d) Review and approve related reports;
- (e) Should the supervisor determine that any application of force was not within policy, a separate internal administrative investigation shall be initiated.
- (f) In the event that the supervisor believes that the incident may give rise to potential civil litigation, notification to the next level of supervision shall be made as soon as practical.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.



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## **Control Devices and Techniques**

### **308.1 PURPOSE AND SCOPE**

To reduce and minimize altercation-related injuries to officers and suspects, the Department authorizes the use of selected control devices. Certain control devices are provided in order to control violent or potentially violent suspects. It is anticipated that the use of these devices will generally result in fewer altercation-related injuries to officers and suspects. The below procedures are for the use and maintenance of control devices (e.g., baton, oleoresin capsicum (OC) spray and tear gas). Only those control devices that have been approved by the Chief of Police or his/her designee are authorized to be carried by members of this department.

#### **308.1.1 WHEN DEVICES MAY BE USED**

When a decision has been made to control or arrest a violent or threatening suspect, an approved control device may only be used when its use appears reasonable under the circumstances.

#### **308.1.2 TRAINING FOR CONTROL DEVICES**

- (a) Only officers trained and having shown adequate proficiency in the use of any control device and this agency's Use of Force policy are authorized to carry the device. Proficiency training must be monitored and documented by a certified weapons or tactics instructor.
- (b) Training for all control devices should occur every two years at a minimum.
- (c) All training and proficiency for control devices will be documented in the officer's training file.
- (d) Officers failing to demonstrate proficiency with the weapon or knowledge of this agency's Use of Force policy will be provided remedial training. If, after two additional attempts, an officer still cannot demonstrate proficiency with a weapon or knowledge of this agency's Use of Force policy, the officer may be subject to discipline.

### **308.2 BATON GUIDELINES**

The Department authorizes the use of the following impact weapons:

- (a) **Straight Baton:** The straight baton should be made of a high quality wood with a close, straight grain. The baton length should be no less than 21 inches and no more than 29 inches. The baton diameter should be no less than 1 1/8 inches and no more than 1 1/4 inches.
- (b) **Expandable Straight Baton:** The Department only authorizes use of expandable straight batons manufactured by ASP Inc, Monadnock Lifetime Products Inc, Winchester Police Products/Professional Safety Inc., and Peacekeeper Products International. For officers working uniformed assignments the baton length should be no less than 21 inches and no more than 31 inches. For officers working plain clothes assignments the baton length should be no less than 16 inches and no more than 31 inches.
- (c) **Riot Baton:** The riot baton should be made of high quality wood with a close, straight grain. The baton length should be no less than 36 inches and no more than 42 inches.

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The baton diameter should be no less than 1 1/8 inches and no more than 1 1/4 inches.

- (d) Side-Handle Baton: Only departmentally issued side-handle batons are approved.
- (e) Orcutt Police Nunchaku (OPN): Only departmentally issued OPN's are approved.

#### **308.2.1 IMPROVISED IMPACT WEAPONS**

On certain rare occasions, an officer may be forced to resort to the use of an improvised impact weapon. An improvised impact weapon is any object used to strike a human being which is not primarily designed for use as an impact weapon. Examples include flashlights, radios and firearms. As such items are not designed for use as impact weapons they may cause more severe injury than intended or result in other dangerous consequences such as the discharge of a firearm.

Officers shall not use improvised impact weapons unless no reasonable alternative exists to prevent the escape of a violent suspect or to protect the officer or another person from injury. Every officer who uses an improvised impact weapon will be required to thoroughly explain and support the failure to use an authorized impact weapon in an appropriate report pursuant to Policy Manual 300.4 and 300.5.

#### **308.3 TEAR GAS GUIDELINES**

The use of tear gas for crowd control, crowd dispersal or against barricaded suspects shall be based on the circumstances. The Shift Sergeant, Incident Commander or Crisis Response Unit Commander may authorize the delivery and use of tear gas, evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary to result in the safe control of the suspect(s). When practical, fire personnel should be alerted or summoned to the scene to control any fires and to assist in providing medical aid or gas evacuation when the scene is safe. Only officers or supervisors trained in the use of tear gas weapons should discharge such devices at the scene.

#### **308.4 CHEMICAL AGENTS SPRAY GUIDELINES**

Only authorized personnel may possess and maintain department issued oleoresin capsicum spray. Chemical agents are weapons used to minimize the potential for injury to officers, offenders, or other persons. They should be used only in situations where such force reasonably appears justified and necessary.

##### **308.4.1 REQUIRED INSTRUCTION FOR USE**

All personnel authorized to carry oleoresin capsicum spray, shall complete the required course of instruction prior to possessing and using the oleoresin capsicum spray.

##### **308.4.2 CARRYING OF OLEORESIN CAPSICUM (OC) SPRAY**

Uniformed field personnel who exercise the option of carrying the oleoresin capsicum spray shall carry the device in its holster on the equipment belt. Plainclothes and non-field personnel may carry the oleoresin capsicum spray as authorized, consistent with the needs of their assignment or at the direction of their supervisor.

Canisters involved in any type of malfunction or damage shall be turned in to the Rangemaster for exchange. Damage to City Property forms shall also be forwarded to the appropriate supervisor and shall explain the cause of damage.

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**308.4.3 PEPPERBALL SYSTEMS**

PepperBall® projectiles are plastic spheres that are filled with a derivative of oleoresin capsicum (OC) powder. A compressed gas launcher delivers the projectiles with enough force to burst the projectiles on impact, releasing the OC powder. Although classified as a less-lethal device, the potential exists for the projectiles to inflict injury when they strike the head, neck, spine and groin. Therefore, personnel deploying the PepperBall system shall avoid intentionally striking those body areas unless a life-threatening situation exists. The use of the PepperBall system is subject to the following requirements:

- (a) Officers encountering a situation that requires the use of the PepperBall system shall notify a supervisor as soon as practical. The supervisor shall respond to all PepperBall System deployments where the suspect has been hit. The field sergeant shall make all notifications and reports as required by § 300 Use of Force Policy.
- (b) Only qualified, department-trained personnel shall be allowed to deploy and use the PepperBall system.
- (c) Each deployment of a PepperBall system shall be documented. This includes situations where the launcher was directed toward the suspect, whether or not the launcher was used. Only non-incident deployments are exempt from the evaluation form requirement (e.g., training, accidental discharges, or product demonstrations).

**308.4.4 TREATMENT OF OC SPRAY/CHEMICAL AGENTS EXPOSURE**

Persons who have been affected by the use of OC spray or chemical agents should be promptly provided with the proper solution to cleanse the affected areas. Those persons who complain of further severe effects shall be afforded a medical screening by appropriate medical personnel.

**308.4.5 REPORT OF USE**

All uses of chemical agents or OC spray shall be documented in the related arrest/crime report.

**308.5 IMPACT MUNITIONS**

This department is committed to reducing the potential for violent confrontations when suspects are encountered. Impact munitions, when used properly, are less likely to result in death or serious physical injury.

Impact munitions are approved by the department and are fired from a 37 mm launchers or shotgun. Certain munitions can be used in an attempt to de-escalate a potentially deadly situation, with a reduced potential for death or serious physical injury.

**308.5.1 DEPLOYMENT**

Approved munitions are justified and may be used to compel an individual to cease his or her actions when such munitions present a reasonable option for resolving the situation at hand.

Officers are not required or compelled to use approved munitions in lieu of other reasonable tactics if the involved officer(s) determine that deployment of these munitions cannot be done safely. The safety of hostages, innocent persons, and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.

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#### **308.5.2 EXAMPLES OF CIRCUMSTANCES APPROPRIATE FOR DEPLOYMENT**

Examples include, but are not limited to, the following types of situations where the subject:

- (a) Is armed with a weapon and the tactical circumstances allow for the safe application of approved munitions
- (b) Has made credible threats to harm himself or others
- (c) Is engaged in riotous behavior or is throwing rocks, bottles, or other dangerous projectiles at people and/or officers

#### **308.5.3 DEPLOYMENT CONSIDERATIONS**

Before impact munitions, the officer should consider the following factors:

- (a) Severity of the crime or incident.
- (b) Subject's capability to pose an imminent threat to the safety of officers or others.
- (c) If the subject is actively resisting arrest or attempting to evade arrest by flight.
- (d) The credibility of the subject's threat as evaluated by the officers present, and physical capacity/capability.
- (e) The proximity of weapons available to the subject.
- (f) The officer's versus the subject's physical factors (e.g., age, size relative strength, skill level, injury/exhaustion, the number of officer(s) versus subject(s).
- (g) The availability of other force options and their possible effectiveness.
- (h) Distance and angle to target.
- (i) Type of munitions employed.
- (j) Type and thickness of subject's clothing.
- (k) The subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.

#### **308.5.4 DEPLOYMENT DISTANCES**

Officers should keep in mind the manufacturer's recommendations regarding deployment when using control devices, but are not solely restricted to use according to these manufacturer recommendations. Each tactical situation must be evaluated on the totality of circumstances at the time of deployment.

Ten (10) feet is the manufacturer's minimum recommended distance for application of impact munitions to prevent death or serious physical injury. At distances greater than 15 yards, accuracy of the impact munitions decreases significantly, thereby increasing the chances of striking the head or throat area.

#### **308.5.5 SHOT PLACEMENT**

The need to immediately incapacitate the subject must be weighed against the risk of causing serious injury or death.

The most effective shot placement is generally in the upper torso. Shots fired to the extremities, lower abdomen, and buttocks carry a low risk of serious injury (with a low potential for immediate incapacitation).

In cases where the use of deadly force is justified or immediate incapacitation must be accomplished to prevent death or serious injury, officers are authorized to consider close

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range or extended range shots with impact munitions involving distances closer than 10 feet or greater than 15 yards.

**308.5.6 APPROVED IMPACT PROJECTILE FOR 12-GAUGE MUNITIONS**

The approved 12-gauge munitions projectile for patrol use is the Def-Tec #23DS. It is a 2-3/4" standard clear plastic 12 gauge shotshell, with a 40 gram (approximately) #9 shot payload, sewn into a tear shaped bag of cotton and ballistic material.

**308.5.7 IMPACT DELIVERY SHOTGUNS**

A specially marked shotgun, designated for the use of 12-gauge impact projectiles, may be carried by trained officers.

Officers will inspect this shotgun at the beginning of each shift to ensure that it is in proper working order and only loaded with departmentally approved impact projectiles (Refer to 308.5.6).

**308.5.8 USE OF IMPACT MUNITIONS BY SWAT**

Officers assigned to the SWAT team, who have completed a departmental training course may carry and employ 12 gauge or 37/40 mm impact munitions while on duty or while performing Special Weapons and Tactics (SWAT) missions.

**308.5.9 TRAINING REQUIRED FOR USE**

Personnel who have successfully completed an approved departmental training course shall be authorized to use impact projectiles. Officers deploying impact projectiles will complete an annual recertification course.

**308.6 RESPONSIBILITIES**

**308.6.1 SHIFT SERGEANT RESPONSIBILITIES**

The Shift Sergeant shall monitor the use of control devices in the same manner as all other use of force incidents.

- (a) The Shift Sergeant may authorize the use of a control device by selected personnel or members of specialized units provided the person(s) authorized has/have the required training. The request for a control device should be made through the Shift Sergeant.
- (b) The Shift Sergeant shall review each use of control devices by any personnel within his or her command.
- (c) The Shift Sergeant shall ensure training on the use of control devices is provided as needed.

**308.6.2 RANGEMASTER RESPONSIBILITIES**

The Rangemaster shall control the inventory and shall issue all control devices. All damaged, inoperative and/or expended control devices shall be returned to the Rangemaster for disposition, repair or replacement.

**308.6.3 MAINTENANCE RESPONSIBILITY**

All normal maintenance, charging or cleaning shall remain the responsibility of personnel using the various devices.

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## *Control Devices and Techniques*

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### **308.7 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES**

Any application of a control device and/or technique listed within this section shall be documented pursuant to Policy Manual § 300.4 and 300.5.



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# TASER™ Guidelines

### 309.1 PURPOSE AND SCOPE

When properly applied in accordance with this policy, the TASER™ device is considered a non-deadly control device that is intended to control a violent or potentially violent individual, while minimizing the risk of serious injury. It is anticipated that the appropriate use of such a device will result in fewer serious injuries to officers and suspects.

### 309.2 POLICY

Personnel who have completed department-approved training may be issued a TASER for use during the current assignment. Personnel leaving a particular assignment may be expected to return it to the department's inventory.

Officers shall only use the TASER and cartridges that have been issued by the Department. The device shall be carried either as part of a uniformed officer's equipment in an approved holster or secured in the driver's compartment of the officer's vehicle so that it is readily accessible at all times.

- (a) When the TASER is carried as part of a uniformed officer's equipment, the TASER shall be carried on the side opposite the duty weapon.
- (b) All TASERs shall be clearly and distinctly marked to differentiate them from the duty weapon and any other device.
- (c) Whenever practical, officers should carry a total of two or more TASER cartridges on their person at all times when carrying a TASER.
- (d) Officers shall be responsible for ensuring that their issued TASER is properly maintained and in good working order at all times.
- (e) Officers should never hold both a firearm and the TASER at the same time unless lethal force is justified.

### 309.3 VERBAL AND VISUAL WARNINGS

A verbal warning of the intended use of the TASER should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is for the following:

- (a) Provide the individual with a reasonable opportunity to voluntarily comply.
- (b) Provide other officers and individuals with a warning that a TASER may be deployed.

If, after a verbal warning, an individual is unwilling to voluntarily comply with an officer's lawful orders and it appears both reasonable and practical under the circumstances, the officer may, but is not required to, display the electrical arc (provided there is not a cartridge loaded into the TASER) or the laser in a further attempt to gain compliance prior to the application of the TASER. The aiming laser should never be intentionally directed into the eyes of another as it may permanently impair his/her vision.

The fact that a verbal and/or other warning was given or the reasons it was not given shall be documented by the officer deploying the TASER in the related report.



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### **309.4 USE OF THE TASER**

As with any law enforcement equipment, the TASER has limitations and restrictions requiring consideration before its use. The TASER should only be used when its operator can safely approach the subject within the operational range of the TASER. Although the TASER is generally effective in controlling most individuals, officers should be alert to the potential for failure and be prepared with other options.

#### **309.4.1 FACTORS TO DETERMINE REASONABLENESS OF FORCE**

The application of the TASER is likely to cause intense, but momentary, pain. As such, officers should carefully consider and balance the totality of circumstances available prior to using the TASER including, but not limited to, the following factors:

- (a) The conduct of the individual being confronted (as reasonably perceived by the officer at the time).
- (b) Officer/subject factors (i.e., age, size, relative strength, skill level, injury/exhaustion, number of officers vs. subjects).
- (c) Influence of drugs/alcohol (mental capacity).
- (d) Proximity of weapons.
- (e) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (f) Time and circumstances permitting, the availability of other options (what resources are reasonably available to the officer under the circumstances).
- (g) Seriousness of the suspected offense or the reason for contact with the individual.
- (h) Training and experience of the officer.
- (i) Potential for injury to citizens, officers and suspects.
- (j) Risk of escape.
- (k) Other exigent circumstances.

#### **309.4.2 APPLICATION OF THE TASER**

Authorized personnel may use the TASER when circumstances known to the officer at the time indicate that such application is reasonable to control a person in any of the following circumstances:

- (a) The subject is violent or physically resisting.
- (b) A subject who by words or action has demonstrated an intention to be violent or to physically resist and who reasonably appears to present the potential to harm officers, him/herself or others.
  - 1. When practicable, the officer should give a verbal warning of the intended use of the TASER followed by a reasonable opportunity to voluntarily comply.
  - 2. The officer must be able to articulate a reasonable belief that other available options appeared ineffective, impractical or would have presented a greater danger to the officer, the subject or others.
- (c) Absent meeting the conditions set forth in (a) or (b) above, or a reasonable belief that an individual has committed or threatened to commit a serious offense, mere flight from a pursuing officer shall not serve as good cause for the use of the TASER to apprehend an individual.



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**309.4.3 SPECIAL DEPLOYMENT CONSIDERATIONS**

The use of the TASER should generally be avoided in the following situations unless the totality of the circumstances indicate that other available options reasonably appear ineffective, impractical, or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of using the TASER:

- (a) Pregnant females.
- (b) Elderly individuals or obvious juveniles.
- (c) Individuals who are handcuffed or otherwise restrained.
- (d) Individuals who have been recently sprayed with a flammable chemical agent or who are otherwise in close proximity to any flammable material.
- (e) Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles).

Because the application of the TASER in the drive-stun mode (i.e., direct contact without darts) relies primarily on pain compliance and requires close proximity to the subject, additional caution should be exercised. The application in drive-stun mode should be limited to brief applications in which pain compliance would reasonably appear necessary to achieve control.

The TASER shall not be used to torture, psychologically torment, elicit statements or to punish any individual.

**309.4.4 TARGETING CONSIDERATIONS**

While manufacturers generally recommend that reasonable efforts should be made to target lower center mass and to avoid intentionally targeting the head, neck, chest and groin, it is recognized that the dynamics of each situation and officer safety may not permit the officer to limit the application of the TASER darts to a precise target area. As such, officers should take prompt and ongoing care to monitor the condition of the subject if one or more darts strikes the head, neck, chest or groin until he/she is released to the care of paramedics or other medical personnel.

**309.4.5 MULTIPLE APPLICATIONS OF THE TASER**

If the first application of the TASER appears to be ineffective in gaining control of an individual and if circumstances allow, the officer should consider the following before additional applications of the TASER:

- (a) Whether the probes or darts are making proper contact.
- (b) Whether the application of the TASER is interfering with the ability of the individual to comply.
- (c) Whether verbal commands, other options or tactics may be more effective.

This, however, shall not preclude any officer from deploying multiple, reasonable applications of the TASER on an individual.

**309.4.6 REPORT OF USE**

All TASER discharges, intentional or accidental, shall be documented in a report and notification made to a supervisor in compliance with Policy § 300.4.1. Any report documenting the discharge of a TASER cartridge will include the cartridge serial number and an explanation of the circumstances surrounding the discharge.

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The onboard TASER memory will be downloaded through the data port by a Taser Instructor and saved with the related report as soon as practical. Photographs of probe sites, the Anti-Felon Identification (AFID) tags and other injuries sustained shall be collected. Expended cartridge along with both probes and wire shall be collected and booked into evidence for future reference. The cartridge serial number shall be noted and documented on the evidence paperwork. The evidence packaging shall be marked "Biohazard" if the probes penetrated the subject's skin.

**309.4.7 TASER CAM®**

Some TASERs are equipped with the TASER CAM, which is an audio-video recording device integrated into the power supply. The TASER CAM is activated any time the safety is in the on position. The safety should not be in the on position unless the officer intends to use the device and the guidelines established in §§ 309.3 and 309.4 are met. Any time the TASER CAM is activated, the video and audio data should be downloaded in accordance with department evidence procedures and referenced in the related case report. All video and audio not booked as evidence will be kept for a minimum of one year, at which time they will be erased or destroyed.

**309.5 MEDICAL TREATMENT**

Absent extenuating circumstances or unavailability, only qualified personnel, including certified paramedics, should carefully remove TASER darts from a person's body. Used TASER darts shall be considered a sharp biohazard, similar to a used hypodermic needle. Universal precautions should be taken accordingly.

All persons who have been struck by TASER darts or who have been subjected to the electric discharge of the device shall be medically assessed, as soon as practicable and prior to booking, by paramedics or other qualified medical personnel.

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called "excited delirium") or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death and should be examined by qualified medical personnel as soon as practicable. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

If any individual refuses medical attention, such a refusal should be witnessed by another officer and/or medical personnel and shall be fully documented in related reports.

If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

The transporting officer shall inform any person receiving custody or any person placed in a position of providing care that the individual has been subjected to the application of the TASER.

**309.6 TRAINING**

In addition to the initial department approved training required to carry and use a TASER, all approved personnel shall be recertified by a department approved TASER instructor on an annual basis. The annual training will be a reassessment of an officer's knowledge and/or practical skill on use of the Taser.

Annual training will consist minimally of the following:

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- (a) A review of the Use of Force Policy § 300.
- (b) Target area considerations, to include techniques or options to reduce the intentional application of probes near the head, neck, chest and groin.
- (c) De-escalation techniques.



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# Officer-Involved Shooting

## 310.1 PURPOSE AND SCOPE

To establish policy and procedures for the investigation of an incident in which a person is injured as the result of a police shooting. The intent of this policy is to ensure that such incidents be investigated in a fair and impartial manner.

## 310.2 INVESTIGATION RESPONSIBILITY

This department conforms to the Napa County Officer-Involved Fatal Incident Protocol for investigating officer-involved shootings.

## 310.3 TYPES OF INVESTIGATIONS

Officer-involved shootings involve several separate investigations. The investigations may include:

- (a) A criminal investigation of the incident by the agency having jurisdiction where the incident occurred. This department may relinquish its criminal investigation to an outside agency with the approval of the Chief of Police or a Bureau Captain.
- (b) A criminal investigation of the involved officer(s) conducted by an outside agency
- (c) A civil investigation to determine potential liability conducted by the involved officer's agency
- (d) An administrative investigation conducted by the involved officer's agency, to determine if there were any violations of department policy

## 310.4 JURISDICTION

Jurisdiction is determined by the location of the shooting and the agency employing the involved officer(s). The following scenarios outline the jurisdictional responsibilities for investigating officer-involved shootings:

### 310.4.1 NAPA POLICE DEPARTMENT OFFICER WITHIN THIS JURISDICTION

The Napa Police Department is responsible for the criminal investigation of the suspect's actions, the civil investigation, and the administrative investigation.

### 310.4.2 ALLIED AGENCY'S OFFICER WITHIN THIS JURISDICTION

The Napa Police Department is responsible for the criminal investigation of the suspect's actions. The criminal investigation of the officer-involved shooting will be conducted by the District Attorney's Office. The officer's employing agency will be responsible for any civil and/or administrative investigation(s).

### 310.4.3 NAPA POLICE DEPARTMENT OFFICER IN ANOTHER JURISDICTION

The agency where the incident occurred has criminal jurisdiction and is responsible for the criminal investigation of the incident. That agency may relinquish its criminal investigation of the suspect(s) to another agency. The Napa Police Department will conduct timely civil and/or administrative investigations.

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**310.4.4 INVESTIGATION RESPONSIBILITY MATRIX**

The following table identifies the possible scenarios and responsibilities for the investigation of -involved shootings:

	<b>Criminal Investigation of Suspect(s)</b>	<b>Criminal Investigation of (s)</b>	<b>Civil Investigation</b>	<b>Administrative Investigation</b>
<b>NPD in This Jurisdiction</b>	NPD Investigators	District Attorney's Office	NPD Staff	NPD Staff
<b>Allied Agency's in This Jurisdiction</b>	NPD Investigators	District Attorney's Office	Involved 's Department	Involved 's Department
<b>NPD in Another Jurisdiction</b>	Agency where incident occurred	Decision made by agency where incident occurred	NPD Staff	NPD Staff

**310.5 THE INVESTIGATION PROCESS**

The following procedures are guidelines used in the investigation of an officer-involved shooting.

**310.5.1 DUTIES OF INITIAL ON SCENE SUPERVISOR**

Upon arrival at the scene of an officer-involved shooting, the first uninvolved supervisor should:

- (a) Take all reasonable steps to obtain emergency medical attention for all apparently injured individuals.
- (b) Attempt to obtain a brief overview of the situation from any non-shooter officer(s).
  1. In the event that there are no non-shooter officers, the supervisor should attempt to obtain a brief voluntary overview from one shooter officer.
- (c) If necessary, the supervisor may administratively order any officer from this department to immediately provide public safety information necessary to secure the scene and pursue suspects.
  1. Public safety information shall be limited to such things as outstanding suspect information, number and direction of shots fired, parameters of the incident scene, identity of known witnesses and similar information.
- (d) Absent a voluntary statement from any officer(s), the initial on scene supervisor should not attempt to order any officer to provide other than public safety information.
- (e) Provide all available information to the Shift Sergeant and the Communications Center. If feasible, sensitive information should be communicated over secure networks.
- (f) Take command of and secure the incident scene with additional personnel until relieved by a detective supervisor or other assigned personnel.
- (g) As soon as practical, shooter officers should respond or be transported (separately, if feasible) to the station for further direction.
  1. Each involved officer should be given an administrative order not to discuss the incident with other involved officers pending further direction from a supervisor.

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2. When an officer's weapon is taken or left at the scene (e.g., evidence), the officer will be provided with a comparable replacement weapon or transported to the station by other officers.

**310.5.2 SHIFT SERGEANT DUTIES**

Upon learning of an officer-involved shooting, the Shift Sergeant shall be responsible for coordinating all aspects of the incident until relieved by the Chief of Police or his/her designee.

**310.5.3 NOTIFICATIONS**

The following person(s) shall be notified as soon as practical:

- Chief of Police
- Bureau Captain of the involved officer
- Special Operations/Communications Bureau Captain
- District Attorney OIS rollout team
- Psychological/Peer support personnel
- Coroner (if necessary)
- Officer representative (if requested)

All outside inquiries about the incident shall be directed to the Special Operations/Communications Captain.

**310.5.4 MEDIA RELATIONS**

A single press release shall be prepared with input and concurrence from the supervisor and agency representative responsible for each phase of the investigation. This release will be available to the Shift Sergeant, Special Operations/Communications Bureau Captain and Public Information Officer in the event of inquiries from the media.

It will be the policy of this department to not release the identities of involved officers absent their consent or as required by law. Moreover, no involved officer shall be subjected to contact from the media (Government Code § 3303(e)) and no involved officer shall make any comments to the press unless authorized by the Chief of Police or a Bureau Captain.

Law enforcement officials receiving inquiries regarding incidents occurring in other agency jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.

**310.5.5 INVOLVED OFFICERS**

Once the involved officer(s) have arrived at the station, the Shift Sergeant should admonish each officer that the incident shall not be discussed except with authorized personnel or representatives. The following shall be considered for the involved officer:

- (a) Any request for department or legal representation will be accommodated, however, no involved officer shall be permitted to meet collectively or in a group with an attorney or any representative prior to providing a formal interview or report (Government Code § 3303(i)).
- (b) Discussions with licensed attorneys will be considered privileged as attorney-client communications.

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- (c) Discussions with department representatives (e.g., employee association) will be privileged only as to the discussion of non-criminal information however.
- (d) A psychotherapist shall be provided by the Department to each involved officer, or any other officer, upon request.
  - 1. Interviews with a licensed psychotherapist will be considered privileged and will not be disclosed except to the extent that the officer is or is not fit for return to duty.
  - 2. An interview or session with a licensed psychotherapist may take place prior to the involved officer providing a formal interview or report, but the involved officers shall not be permitted to consult or meet collectively or in a group with a licensed psychotherapist prior to providing a formal interview or report.
- (e) Although the Department will honor the sensitivity of communications with peer counselors, there is no legal privilege to such. Peer counselors are cautioned against discussing the facts of any incident with an involved or witness officer.

Care should be taken to preserve the integrity of any physical evidence present on the officer's equipment or clothing, such as blood or fingerprints, until investigators or lab personnel can properly retrieve it.

Detectives shall make reasonable accommodations to the officer's physical and emotional needs (Government Code § 3303(d)).

Each involved officer shall be given reasonable paid administrative leave following an officer-involved shooting. It shall be the responsibility of the Shift Sergeant to make schedule adjustments to accommodate such leave.

### **310.6 THE SHOOTING INCIDENT CRIMINAL INVESTIGATION**

#### **310.6.1 DETECTIVE PERSONNEL**

Once notified of an officer-involved shooting, it shall be the responsibility of the Investigation Unit supervisor to assign appropriate detective personnel to handle the investigation of related crimes. Detectives will be assigned to work with investigators from the District Attorney's Office and may be assigned to separately handle the investigation of any related crimes not being investigated by the District Attorney's Office.

All related departmental reports except administrative and/or privileged reports will be forwarded to the designated detective supervisor for approval. Privileged reports shall be maintained exclusively by those personnel authorized such access. Administrative reports will be forwarded to the appropriate Bureau Captain.

#### **310.6.2 CRIMINAL INVESTIGATION**

It shall be the policy of this department to utilize the District Attorney's Office to conduct an independent criminal investigation into the circumstances of any officer-involved shooting involving injury or death.

If available, detective personnel from this department may be assigned to partner with investigators from the District Attorney's Office so as to not duplicate efforts in related criminal investigations.



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Once public safety issues have been addressed, criminal investigators will be given the next opportunity to interview involved officers in order to provide them with an opportunity to give a voluntary statement. The following shall be considered for the involved officer:

- (a) Supervisors and Administrative Investigation Staff should not participate directly in any voluntary interview of officers. This will not prohibit such personnel from monitoring such interviews or indirectly providing areas for inquiry.
- (b) If requested, any involved officer will be afforded the opportunity to consult individually with a representative of his/her choosing or an attorney, prior to speaking with criminal investigators. However, in order to maintain the integrity of each individual officer's statement, involved officers shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (c) Any voluntary statement provided by the officer(s) will be made available for inclusion in the administrative or other related investigations.
- (d) Absent consent from the involved officer or as required by law, no administratively coerced statement(s) will be provided to any criminal investigators.

**310.6.3 REPORTS BY INVOLVED OFFICERS**

In the event that suspects remain outstanding or subject to prosecution for related offenses, this department shall retain the authority to require involved officers to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals (Government Code § 3304(a)).

While the involved officer may write the report, it is generally recommended that such reports be completed by assigned investigators who should interview involved officers as victims/witnesses. Since the purpose of these reports will be to facilitate criminal prosecution, statements of involved officers should focus on evidence to establish the elements of criminal activities by involved suspects. Care should be taken not to duplicate information provided by involved officers in other reports.

Nothing in this section shall be construed to deprive an involved officer of the right to consult with legal counsel prior to completing any such criminal report.

Reports related to the prosecution of criminal suspects will be processed according to normal procedures, but should also be included for reference in the investigation of the officer-involved shooting.

**310.6.4 WITNESS IDENTIFICATION AND INTERVIEWS**

Because potential witnesses to an officer-involved shooting or other major incident may become unavailable or the integrity of their statements compromised with the passage of time, a supervisor should take reasonable steps to promptly coordinate with criminal investigators to utilize available personnel for the following:

- (a) Identify all persons present at the scene and in the immediate area.
  - 1. When feasible, a recorded statement should be obtained from those persons who claim not to have witnessed the incident but who were present at the time it occurred.
  - 2. Any potential witness who is unwilling or unable to remain available for a formal interview should not be detained absent reasonable suspicion to detain or probable cause to arrest. Without detaining the individual for the sole purpose



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- of identification, officers should attempt to identify the witness prior to his/her departure.
- (b) Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by department personnel.
    - 1. A written, verbal or recorded statement of consent should be obtained prior to transporting a witness in a department vehicle. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transportation.
  - (c) Assign available personnel to promptly contact the suspect's known family and associates to obtain any available and untainted background information about the suspect's activities and state of mind prior to contact with officers.

### **310.7 ADMINISTRATIVE INVESTIGATION**

In addition to all other investigations associated with an officer-involved shooting, this department will conduct an internal administrative investigation to determine conformance with department policy. This investigation will be conducted under the supervision of a Bureau Captain and will be considered a confidential peace officer personnel file.

- (a) Any officer involved in a shooting may be administratively compelled to provide a blood sample for alcohol/drug screening. Absent consent from the officer, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.
- (b) If any officer has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved officer.
  - 1. If a further interview of the officer is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved officer shall be provided with a copy of his or her prior statement before proceeding with any subsequent interview(s) (Government Code § 3303(g)).
- (c) In the event that an involved officer has elected to not provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.
  - 1. Although this interview should not be unreasonably delayed, care should be taken to ensure that the officer's physical and psychological needs have been addressed before commencing the interview.
  - 2. If requested, the officer shall have the opportunity to select an uninvolved representative to be present during the interview (Government Code § 3303(i)). However, in order to maintain the integrity of each individual [officer's/deputy's] statement, involved officers shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
  - 3. Administrative interview(s) should be recorded by the investigator (the officer may also record the interview) (Government Code § 3303(g)).
  - 4. The officer shall be informed of all constitutional *Miranda* rights (Government Code § 3303(h)) and, assuming no voluntary waiver, will then be given an administrative order to provide full and truthful answers to all questions (Government Code § 3303(e)). The officer shall be informed, however, that the

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interview will be for administrative purposes only and that the statement cannot be used criminally (The *Lybarger* or *Garrity* admonishment).

5. The administrative interview shall be considered part of the officer's confidential personnel file.
6. The Bureau Captain shall compile all relevant information and reports necessary for the Department to determine compliance with applicable policies.
7. The completed administrative investigation shall be submitted to the Quality Assurance Committee, which will restrict its findings as to whether there was compliance with the Department use of deadly force policy.
8. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.