



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



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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 (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.

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.

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”

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

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 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.

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.

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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.

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.

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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

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

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.

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

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

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

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

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)

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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

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

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

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.

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.

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

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.**

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

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.

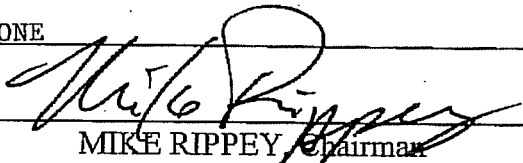
The foregoing Ordinance was introduced and read at a special meeting of the Napa County Flood Protection and Watershed Improvement Authority, held on the 28th day of October, 1997 and passed at a special meeting of the Napa County Flood Protection and Watershed Improvement Authority, held on the 4th 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 Leri 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, Sulphur 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:	NONE
ABSTAIN:	NONE
ABSENT:	NONE

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
Maira 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/ Maira Johnston Block

President, Friends of the Napa River

s/ Sandi Perlman

President, Napa Chamber of Commerce

s/ Gary L. Simpson

Sheriff-Coroner, Napa County

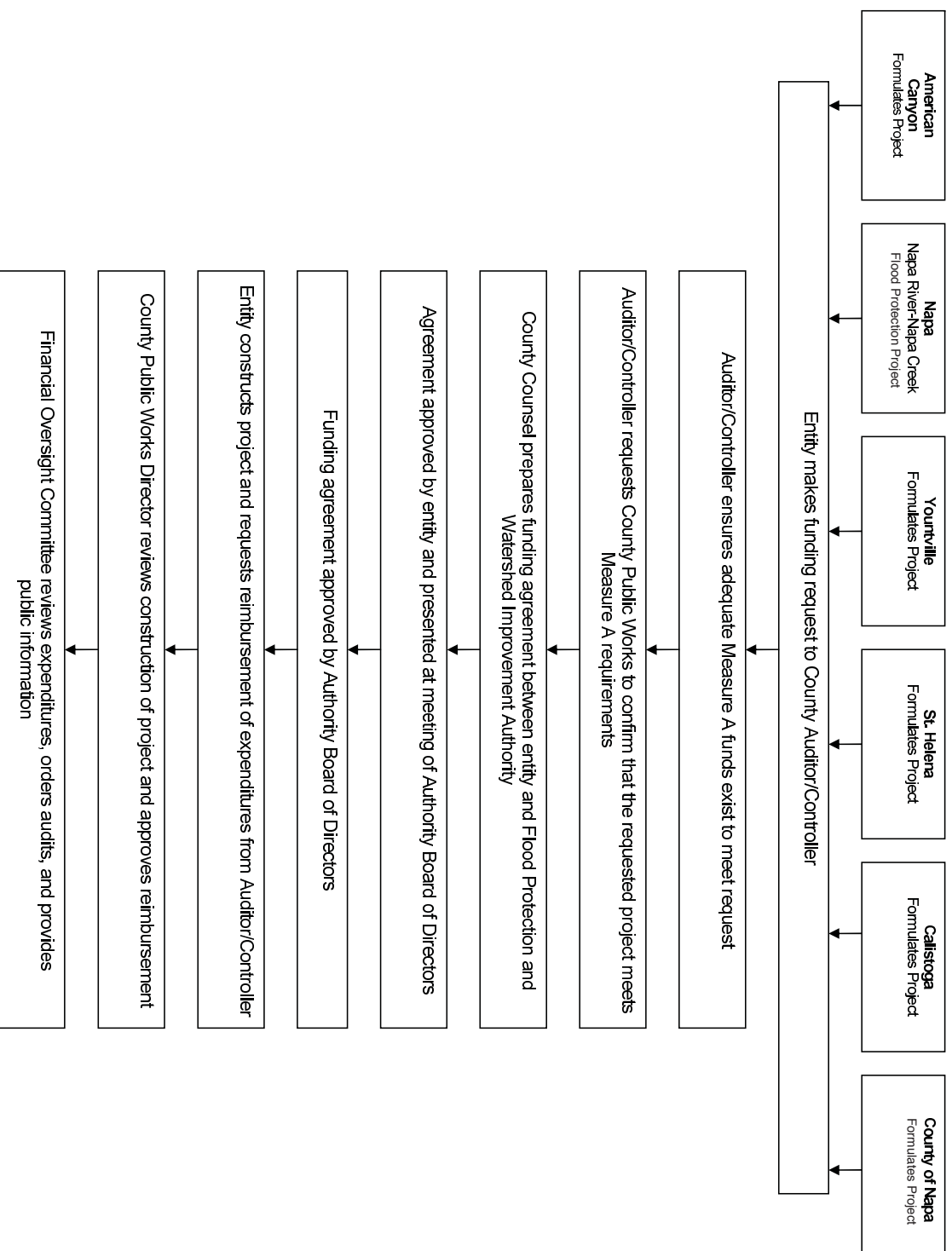


Answers to common questions

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 1st 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>
Total 1995-96 Actual Receipts	\$6,000,000	100%

(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)¹ 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

¹ 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>1st Seven year Sharing %</u>
(1) City of American Canyon: ²	\$ 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): ³	<u>\$ 574,000</u>	<u>9.6%</u>
Total 1995-96 actual receipts	\$ 2,000,000	33.4%

(e) Adjustment to County-wide Annual Allocations during Construction of the Napa Project:

² 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.

³ 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 3⁴

(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 1st 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 1st 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 15th 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 1st 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:

⁴ 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 ⁵	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
TOTAL	\$120,000,000	\$6,000,000	\$6,000,000	\$351,154	\$5,853,846

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

⁵ 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.⁶ As required by Section 20⁷ of the

⁶ 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.

⁷ 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.

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.

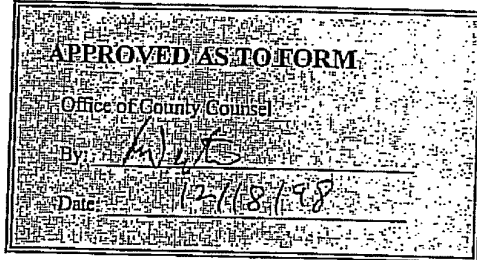
(c) The headings used herein are for reference. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California. To the extent any conflict exists between the terms of this Agreement and the terms of the Ordinance, the terms of the Ordinance shall control.

COUNTY OF NAPA

By Vina Ferraro

ATTEST:
MARY JEAN MCLAUGHLIN
Clerk of the Board

By Tori Sisson, Deputy

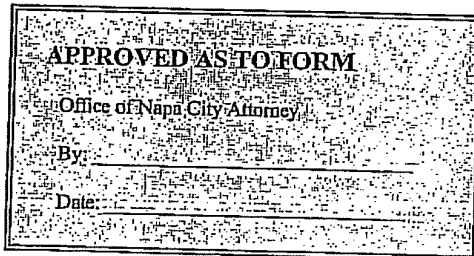


CITY OF NAPA

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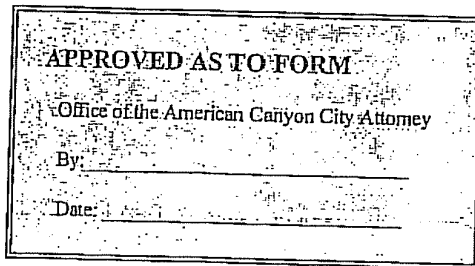


CITY OF AMERICAN CANYON

By _____

ATTEST:

By _____



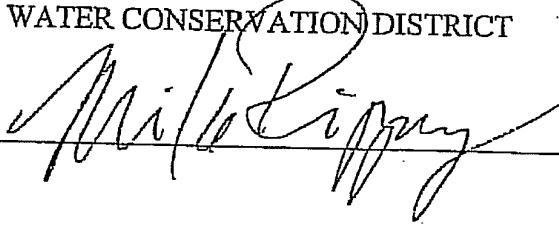
(d) Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of all parties.

(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

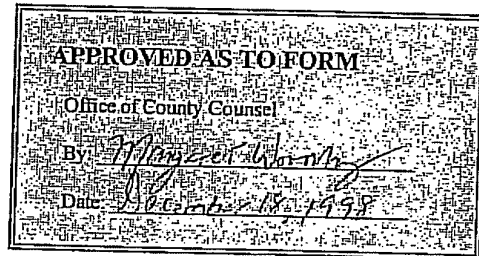
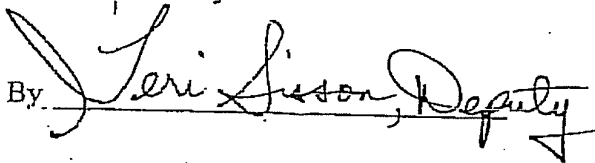
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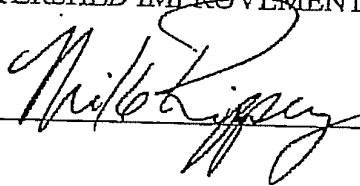
MARY JEAN MCLAUGHLIN,
District Secretary

By



NAPA COUNTY FLOOD PROTECTION AND
WATERSHED IMPROVEMENT AUTHORITY

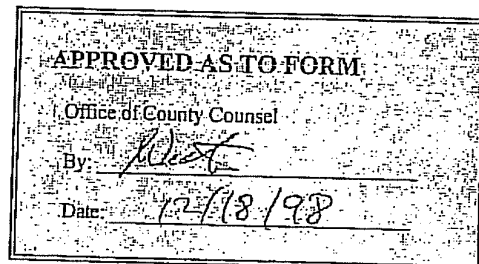
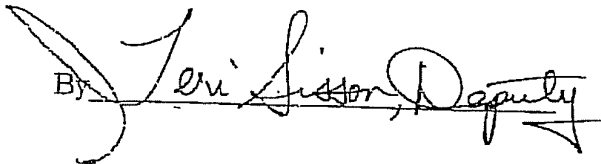
By



ATTEST:

MARY JEAN MCLAUGHLIN
Secretary of NCFPWIA

By



CITY OF NAPA

By _____

ATTEST:

APPROVED AS TO FORM:

By _____

By _____

CITY OF AMERICAN CANYON

By Bey Anderson

ATTEST:

APPROVED AS TO FORM:

By [Signature]

By William D. [Signature]

CITY OF ST. HELENA

By _____

ATTEST:

APPROVED AS TO FORM:

By _____

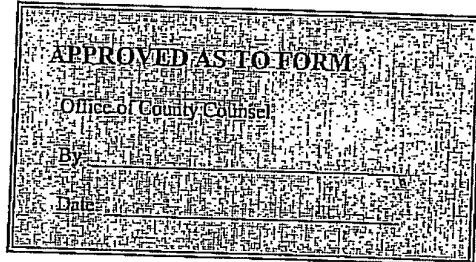
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COUNTY OF NAPA

By _____

ATTEST:
MARY JEAN MCLAUGHLIN
Clerk of the Board

By _____



COUNTERSIGNED:

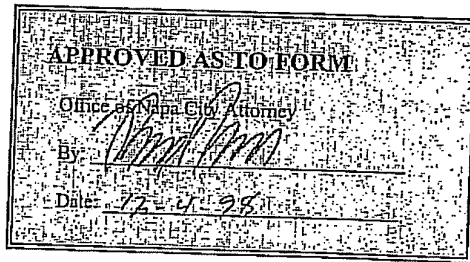
CITY OF NAPA

By *Mary Jean McLaughlin*
FINANCE DIRECTOR

By *Ed Henderson*

ATTEST:

By *Douglas D. Ogawa*

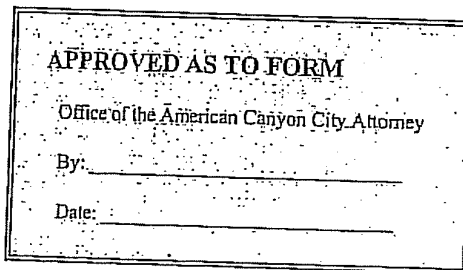


CITY OF AMERICAN CANYON

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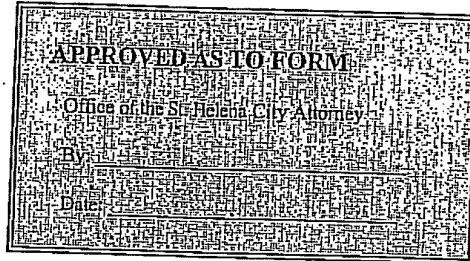


CITY OF ST. HELENA

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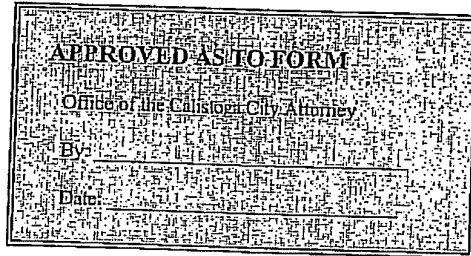


CITY OF CALISTOGA

By _____

ATTEST:

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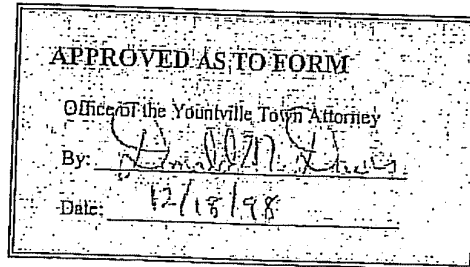


TOWN OF YOUNTVILLE

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.

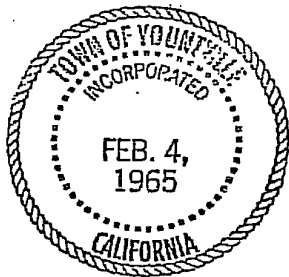
NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Yountville hereby authorize the Mayor to sign the Joint Powers Agreement regarding the use and equitable distribution of sales tax revenue generated by the enactment of the Napa County Flood Protection Sales Tax Ordinance as revised, 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

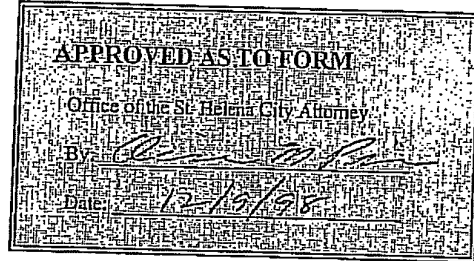


CITY OF ST. HELENA

By Bonnie Long
Bonnie Long, City Administrator

ATTEST:

By Dolcia Gujosa
City Clerk
Dolcia Gujosa



CITY OF CALISTOGA

By _____



ATTEST:

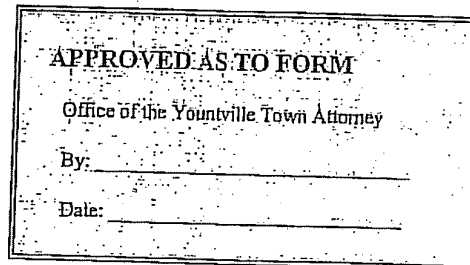
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TOWN OF YOUNTVILLE

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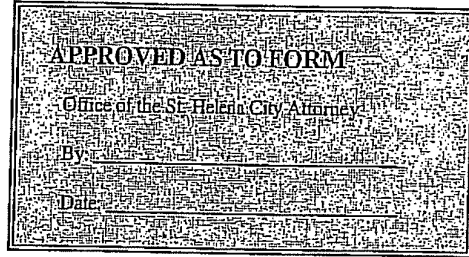
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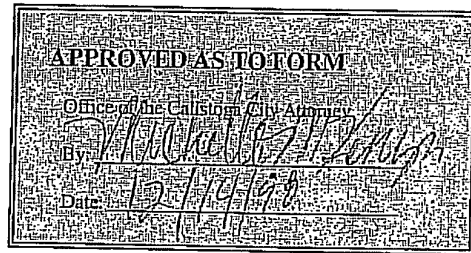
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CITY OF CALISTOGA

By [Signature]

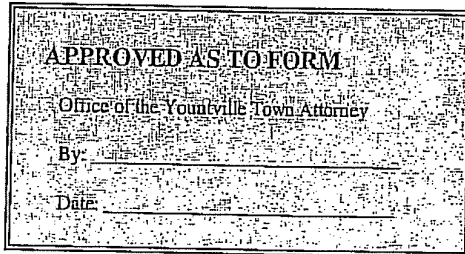


ATTEST:

By [Signature: Patt Osborne]

TOWN OF YOUNTVILLE

By _____



ATTEST:

By _____