



SOUTH FEATHER WATER & POWER

TO: Board of Directors

FROM: Michael Glaze, General Manager

DATE: November 4, 2005

RE: Cooperative Environmental Review Agreement
Agenda Item for 11/22/05 Board of Directors Meeting

Attached is a final draft of an agreement involving the County of Butte, Butte LAFCo, SFWPA, Lake Oroville Area Public Utility District, and Thermalito Irrigation District. The agreement, if approved by all the parties, would specify the process by which the California Environmental Quality Act (CEQA) requirements would be accomplished for land developments that involve approvals by the County, LAFCo and one or more special districts providing water and/or sewer service.

For some time the County has been refusing to accept development applications when projects involve property that has yet to be annexed to a special district providing water or sewer service. The County wanted the annexation completed before it would consider the application. Unfortunately, annexations trigger CEQA, and CEQA requires analysis of the entire project (traffic, growth-inducing impacts, etc.), not just the impact on the special district's utility infrastructure.

County Counsel and LAFCo's counsel developed the original draft of the agreement. I subsequently met with them and requested modifications to the agreement that they have incorporated into the attachment. If all parties ultimately approve the agreement, it would allow developers to have their projects assessed for feasibility by the County prior to annexing to one of the special districts, with the County assuming the role of the lead agency for CEQA purposes, special districts being able to process annexation applications after the environmental work is complete, and the County being able to process the development application in conjunction with LAFCo's annexation(s) processing.

The recommended form of action is:

"I move approval of the Master Cooperative Environmental Review Agreement between the County of Butte, Butte LAFCo, Lake Oroville Area Public Utility District, South Feather Water and Power Agency and Thermalito Irrigation District."

MASTER COOPERATIVE ENVIRONMENTAL REVIEW AGREEMENT

THIS AGREEMENT is entered into effective _____ 2005, by and between the County of Butte ("County"), the Butte Local Agency Formation Commission ("LAFCo"), and the undersigned special districts ("Districts"). County, LAFCo and Districts are collectively referred to sometimes hereinafter as "The Parties".

RECITALS

WHEREAS, from time to time County processes applications for discretionary development projects which cannot be carried out as proposed unless and until one or more of the undersigned Districts can provide domestic water or sewer service to the property in question; and

WHEREAS, in order for County to approve such development projects, County must be assured that the affected Districts are willing and able to provide such service; and

WHEREAS, the affected Districts cannot give such assurance unless the property in question is within the Districts and the Districts have the capacity to serve the development; and

WHEREAS, annexation of the property to the affected Districts may be required in order for the Districts to be able to provide such service; and

WHEREAS, the annexation of the property in question to the affected Districts and the approval of the development project by County are separate but related discretionary approvals that are most appropriately analyzed together as one project pursuant to the requirements of the California Environmental Quality Act ("CEQA"); and

WHEREAS, on occasion the annexation to the affected Districts may involve properties in addition to the property in question; and

WHEREAS, it is desirable that the combined environmental impacts, if any, of these separate approvals be considered by the County, LAFCo and the affected Districts as a whole, at the earliest feasible time, and that a duplication of costs and effort be avoided.

NOW THEREFORE, the Parties desire to enter into this Cooperative Agreement pursuant to CEQA Guidelines Section 15051(d) to designate the County as the Lead Agency for purposes of CEQA under specified circumstances and to provide a method to complete a coordinated environmental review process as follows:

ARTICLE 1

Initial Process

Section 1.1 Notice to Affected Districts and LAFCo.

When an application for a discretionary development project which proposes reliance on domestic water or sewer services from affected Districts is offered to County by a developer, County will not receive the application but will start a public domestic water and/or sewer availability pre-screening process. If LAFCo and Districts furnish to County information forms to be completed by developers pertaining to proposed projects, County will require the completion and submittal of such forms to County. Within 10 working days of submittal by a developer of all required information and completed forms, County shall notify the affected Districts and LAFCo of the proposal and shall supply them with the assessor's parcel numbers of all properties included in the proposed development, and copies of all the materials submitted by the developer, including a project map showing the location and layout of the project.

Section 1.2 Action by Districts.

(a) Response to Notice.

Within 10 working days of receipt of notice from the County regarding the offered application, the affected Districts shall provide the following written information to the County, with copy to LAFCo:

(1) Whether the proposed project is located within the Districts' boundaries, or, if not, whether Districts are willing and able to apply to LAFCo to annex the project property.

(2) Whether the Districts have adequate capacity and are willing and able to provide service to the proposed project when it is likely to be required. If there is any qualification or condition placed on the ability to provide service, the condition or qualification shall be fully explained. If the Districts need more information to be able to determine whether they can serve the proposed project, they will notify County what information is necessary to enable them to do so.

(3) What capital facility improvements are likely to be required in order to provide service to the project, and, if reasonably available, the cost and timing for the construction or installation of such facilities.

(b) Attend meeting(s).

If County determines that a meeting should be held to discuss the offered application, the affected Districts shall attend and participate in the meeting, provided that County confers with the Districts regarding the time and place of such meeting.

Section 1.3 Action by LAFCo.

(a) Response to Notice.

Within 10 working days of receipt of notice from the County regarding the offered application, LAFCo shall provide the following written information to the County with copy to the affected Districts:

(1) Whether the project is located within the Districts' boundaries or outside the boundaries.

(2) If located outside the Districts' boundaries, whether the project is located within the sphere of influence of the Districts.

(3) If located outside the boundaries but within the sphere of influence of the Districts, LAFCo shall state whether annexation would be consistent with its policies, shall identify which additional parcels LAFCo would likely require to be included in the annexation to make the annexation consistent with its policies, and shall specify any other likely annexation conditions.

(b) Attend meeting(s).

If County determines that a meeting should be held to discuss the offered application, LAFCo shall attend and participate in the meeting, provided that County confers with LAFCo regarding the time and place of such meeting.

Section 1.4 County Action Based on Responses.

The County shall take one of the following actions after receiving the responses from the affected Districts and LAFCo:

(a) Services Available and Within Districts. If the property is within the Districts and the Districts confirm that they are willing and able to provide the necessary services, County will receive the application and will determine whether the application is in all other respects complete. Once the application is determined to be complete pursuant to the Permit Streamlining Act, the County will prepare, or have prepared, a CEQA review for the project.

(b) Services Available but Not Within Districts. If the property is not within the Districts but is within the Districts' adopted spheres of influence and Districts inform County that the Districts are willing and able to provide the service and will apply to LAFCo for annexation, and if LAFCo informs County that the annexation will likely comply with its policies, County will receive the application and will determine, pursuant to the Permit Streamlining Act, whether the application is in all other respects complete. Once the application is determined to be complete, the County will assume the role of Lead Agency, for purposes of CEQA, for the project development, extension of services and annexation, and will prepare, or have prepared, a CEQA review for such separate but related approvals, pursuant to the terms of this Agreement, and shall recognize LAFCo and Districts as Responsible Agencies, for purposes of CEQA, entitled to participate in the environmental review process, including providing specific detail regarding the scope and content of the environmental review pursuant to CEQA

Guidelines Section 15082 (b).

(c) District Services Not Available. If the property is not within the affected Districts' adopted spheres of influence, or Districts' services are otherwise not available to the property in question, County will not receive the developer's application, unless the County, LAFCo and the affected Districts enter into a project-specific agreement dealing with the enlargement of Districts' spheres of influence, annexation, and/or the provision of services to the specific property in question.

ARTICLE 2 **County As Lead Agency**

Section 2.1 County to Act as Lead Agency.

When paragraph 1.4 (b) applies, the County will act as the Lead Agency for the purposes of CEQA for the project development, the annexation and the extension of services by the affected Districts.

Section 2.2 Consultation with affected Districts and LAFCo.

The County shall consult with the affected Districts and LAFCo in preparing the environmental review and shall consider any Municipal Services Review and sphere plan prepared by LAFCo for such Districts. LAFCo shall advise the County of any expected additions of parcels to the proposed annexation and the County shall include those additional parcels as part of the project for the purposes of the environmental review.

Section 2.3 Scope of Environmental Review.

The scope of the environmental review shall include the impacts of the annexation, including any parcels likely to be added by LAFCo to meet its policy requirements. The review shall also consider the impacts on the affected Districts and their service capacity of the extension of services.

Section 2.4 Circulation of Administrative Drafts.

In preparing the environmental review, the County shall provide administrative drafts to LAFCo and the affected Districts and shall respond to the changes requested by the Parties, either by making the changes requested or by explaining why the changes are not being made and offering to confer on the matter, prior to issuing a public draft. Sufficient time shall be permitted where appropriate for the administrative drafts to be reviewed by the staffs of LAFCo and the affected Districts.

Section 2.5 Commitment to Provide Information to Lead Agency.

Both LAFCo and the affected Districts agree to work with the County and timely provide any

information reasonably required by the County to complete the environmental review.

Article 3
Environmental Review Cost

Section 3.1 Environmental Review Agreement.

(a) For projects subject to this agreement, County may, at its sole discretion, select a qualified consultant to prepare the environmental document following the procedures set forth in Butte County Environmental Review Guideline VIII F and will require the execution of a three-party agreement between the County, the consultant, and the developer for preparation of the environmental review and payment by the developer of the costs relating thereto. In addition, County will require the developer to execute agreements with LAFCo and the affected Districts agreeing to pay for their staff costs in preparing information, reviewing drafts of the environmental document and attending meetings pursuant to Sections 1.2(b) or 1.3(b) of this Agreement.

Article 4
GENERAL PROVISIONS

Section 4.1 Annexations initiated by District or Property Owner.

This Agreement does not apply to District annexations initiated by the District or the property owner, independent of any development applications pending with or offered to County. However, the Parties understand that LAFCo policy disfavors premature annexations that are not accompanied by development applications, except in extraordinary circumstances. Therefore, LAFCo and the affected Districts will review annexations initiated by the affected Districts or the property owner, to determine whether the annexation is related to future development. If the annexation is related to such future development, the affected Districts and LAFCo will normally refer the developer to the County to consider processing in a manner consistent with this Agreement.

Section 4.2 Termination; notice.

Any one of the Parties may terminate this Agreement, as to that Party, regarding future development projects and annexation applications for which the processes provided for in this Agreement have not yet begun, by giving written notice to the other Parties and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination.

Section 4.3 Term.

This Agreement shall remain in effect unless and until terminated.

Section 4.4 Resolution of Problems.

Should a problem arise with respect to implementation or performance of this Agreement, the affected Parties agree to meet as necessary to resolve the problem. If the problem persists, any Party, by written notice to the others, may require a formal mediation of the matter. The Parties shall agree on a neutral mediator who shall facilitate the mediation, with the cost shared equally between the affected Parties. The chief executive officer, or designee, of each affected Party shall participate in the mediation. The mediation shall be held as soon as reasonably possible. Nothing herein is intended to limit or restrict a Party's authority as a responsible agency pursuant to CEQA.

Section 4.5 Counterparts.

This Agreement may be executed in counterpart and shall become effective as to any of the Districts upon the signatures of the County, LAFCo and such District to signature pages hereto. It is not required for the Agreement to become generally effective that all proposed Districts sign counterparts of the Agreement.

BUTTE COUNTY

Dated: _____

By: _____
Kim K. Yamaguchi, Chair, Board of Supervisors

Attest: _____
Clerk of the Board of Supervisors

Approved as to form and procedure:

County Counsel

LAFCo

Dated: _____

By: _____
Carl Leverenz, Chairman

Lake Oroville Public Utility District

Dated: _____

By: _____, Chairman

South Feather Water & Power

Dated: _____

By: _____, Chairman

Thermalito Irrigation District

Dated: _____

By: _____, Chairman