



**AGENDA**  
**WEDNESDAY JULY 21, 2010 - 9:00 A.M.**  
**BOARD OF SUPERVISORS CHAMBERS**  
**HUMBOLDT COUNTY COURTHOUSE, EUREKA, CA 95501**

1. CALL TO ORDER
2. FLAG SALUTE
3. ROLL CALL-Welcome New Alternate City Member Michael Winkler from City of Arcata  
Councilmember Winkler selected by HCAOG Mayors Committee  
*\*Thank you Alternate City Member Leonard, whose term expired in June, 2010.*
4. ALTERNATE PUBLIC MEMBER ACTION VOTE (NO ATTACHMENT)  
Receive recommendation from Alternate Public Member Selection Committee
5. STAFFING SERVICES AGREEMENTS FOR PLANWEST PARTNERS AND PMC  
(ATTACHMENT 5A)
6. PUBLIC HEARINGS
  - A) Garberville Sanitary District (GSD) Water Services Extension Application  
(ATTACHMENT 6A). Note: Resolution for GSD pending CEQA Adoption.
  - B) Town of Scotia LLC. Community Services District Formation (ATTACHMENT 6B)
7. FISCAL YEAR-END BUDGET REPORT FOR 2009-10 (ATTACHMENT 7A)  
Receive and File Item
8. PUBLIC APPEARANCES
9. ADJOURNMENT



## ATTACHMENT 5A

### MASTER SERVICES AGREEMENT EXTENSION

### BETWEEN PLANWEST PARTNERS AND HUMBOLDT LAFCO AND BETWEEN PMC AND HUMBOLDT LAFCO

**DATE:** July 21, 2010  
**TO:** Local Agency Formation Commission  
**FROM:** George Williamson AICP, Executive Officer  
**SUBJECT:** Master Services Agreements: between Planwest Partners, Inc. and Humboldt LAFCo, and between PMC and Humboldt LAFC for Professional Services

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#### **Recommendation**

That the Commission:

1. Approve revised language for Master Services Agreement between Planwest Partners, Inc. and the Humboldt LAFCo, and between PMC and Humboldt LAFCo for Professional Consulting Services, for a two year period.

#### **Discussion**

At the May 19 2010 LAFCo meeting the commission heard testimony regarding conflict of interest when the Master Services Agreement extension between Planwest Partners, Inc. and Humboldt LAFCo was being considered

In response the LAFCo Chair requested that LAFCo legal counsel Jeff Guttero evaluate the conflict of interest provisions of the Planwest Partners Inc. Master Agreement (herein "Master Agreement") with LAFCo in light of the conflict of interest objection raised, regarding current contract administration. It was requested that any contract revisions apply to contracts between both Planwest Partners, Inc. and the Humboldt LAFCo, and between PMC and Humboldt LAFCo, due to similarity of services provided. Under the Master Agreement, both Planwest and PMC continue to provide professional consulting services to LAFCo for a two year term.

Jeff Guttero issued a Confidential - Attorney Client Privilege Memorandum to Humboldt LAFCo in response to the LAFCo Chair requested. In the memo Jeff Guttero finds that it is appropriate for the parties to the contract to agree on "fail safe" additional language to the contract that would alleviate the occurrence of this circumstance. Such an amendment would allow the existing procedure to continue in order to identify conflicts, but in no case would it allow Planwest to remain in a conflict of interest situation where a meritorious objection has been raised on conflict of interest grounds.

Jeff Guttero recommended that the following language be included in Page 4 of 5 paragraph no. 3 of the Master Agreement as adopted by LAFCO on May 19, 2010:

Where a meritorious conflict of interest objection has been raised, Planwest Partner's Inc., its principals, staff, and employees shall recuse themselves from participation for compensation on behalf of third parties with proceedings pending before LAFCo.

The conflict of interest issue raised on May 19 concerned recusal during those matters before the Humboldt LAFCo Commission where parties have a conflict of interest. Neither the testimony nor the LAFCo Chair's direction to legal counsel mentioned compensation. To clarify this, but retain the essential conflict language, the following language acceptable to Planwest has been added to both the Master Services Agreement between Planwest Partners, Inc. and the Humboldt LAFCo, and the agreement between PMC and Humboldt LAFCo.

Where a meritorious conflict of interest objection has been raised, Planwest Partner's Inc., its principals, staff, and employees will recuse themselves from providing staff services under this contract in any such proceedings before LAFCo.

Where a meritorious conflict of interest objection has been raised, Pacific Municipal Consultants (PMC), its principals, staff, and employees will recuse themselves from providing staff services under this contract in any such proceedings before LAFCo.

It is requested that the revised language immediately above be approved by the commission, as addressing the conflict of interest issue and allowing appropriate services to be provided.

The Master Services Agreements: between Planwest Partners, Inc. and Humboldt LAFCo, and between PMC and Humboldt LAFC for Professional Services and associated Exhibits are attached.

**MASTER SERVICES AGREEMENT BETWEEN  
PLANWEST PARTNERS, INC. AND THE  
HUMBOLDT LOCAL AGENCY FORMATION COMMISSION**

**FOR PROFESSIONAL CONSULTING SERVICES**

This AGREEMENT is extended as of May 19, 2010, between the parties identified as PLANWEST PARTNERS, INC. (hereafter PLANWEST), a planning consulting firm, and the Humboldt Local Agency Formation Commission (hereafter LAFCo).

**RECITALS**

This Agreement is predicated on the following facts:

1. LAFCo requires ongoing professional staffing services.
2. PLANWEST is qualified to provide these services and is willing to provide them according to the terms of this Agreement.
3. LAFCo and PLANWEST agree upon the concept of a Master Services Agreement followed by subsequent written Task Orders describing contract provisions for specific services that are not outlined in the Scope of Work for the Master Agreement attached as EXHIBIT A. All provisions of the Master Agreement shall apply to each Task Order.

NOW, THEREFORE, the parties agree as follows:

**1. SCOPE OF SERVICES**

LAFCo agrees to retain PLANWEST and PLANWEST agrees to continue performing the services described in EXHIBIT A, attached to this AGREEMENT. Those services are outlined in Exhibit A as "Task Order 1," for Municipal Services Reviews (MSRs), Sphere of Influence (SOI) Updates and processing applications; and "Task Order 2," for other staffing services.

**2. MUNICIPAL SERVICE REVIEWS AND SPHERES OF INFLUENCE UPDATES**

It is understood by the parties that PLANWEST will perform the services required by LAFCo to complete the review and conduct the management of Municipal Service Reviews and Sphere of Influence submittals. The Scope of Work set forth under the section titled "Task Order 1" in EXHIBIT A will be performed by to accomplish the required tasks in an efficient and cost-effective manner for LAFCo. The details of the tasks to be performed will be set forth in specific Task Orders as directed by the LAFCo Commission. PMC and LAFCo will enter into a separate Master Services Agreement to be executed simultaneously with this Agreement with PLANWEST.

### **3. MANAGING POTENTIAL CONFLICTS**

It is understood by the parties that PLANWEST will primarily be responsible for all of the tasks set forth in Exhibit A under the "Task Order 2" section. In the event that PLANWEST has a potential conflict with respect to executing any of the tasks set forth in "Task Order 2" of Exhibit A, PLANWEST will request that PMC handle these tasks pursuant to a separate Task Order that will be executed between LAFCo and PMC. PLANWEST is charged with the responsibility to exercise due diligence and care to ascertain when a potential conflict might exist and to promptly notify the LAFCo chair of the existence of a potential conflict and the need to execute a Task Order with PMC to accomplish the services that might give rise to the potential conflict.

Where a meritorious conflict of interest objection has been raised, Planwest Partner's Inc., its principals, staff, and employees will recuse themselves from providing staff services under this contract in any such proceedings before LAFCo.

### **4. TERMS AND CONDITIONS**

Work shall be performed to complete the tasks specified in the attached EXHIBIT A in a manner consistent with the usual and customary standards of the applicable profession. All work products shall be subject to review and acceptance by LAFCo.

### **5. TERM**

Services of PLANWEST shall continue as of May 19<sup>th</sup> 2010, and the Agreement shall remain in full force and effect, until June 30 2012.

### **6. COMPENSATION**

As compensation for the services performed hereunder, LAFCo shall pay PLANWEST on a time and materials basis, based on itemized invoices submitted to LAFCo. Each invoice and County Auditor Claim Form shall document PLANWEST's time and material expenses and progress made in completing the specified tasks. LAFCo shall authorize and submit invoices and claim forms to the County Auditor in a timely manner for payment within 30 days of the receipt of each invoice.

### **7. RELATIONSHIP OF PARTIES**

The parties intend that PLANWEST in performing services herein specified shall act as an independent contractor and shall have control over the work and the manner in which it is performed. PLANWEST is not to be considered an employee of LAFCo, and is not entitled to participate in any pension plans, worker's compensation insurance, or similar benefits.

### **8. LIABILITY**

PLANWEST shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work by PLANWEST, its agents, representatives or employees. PLANWEST shall furnish LAFCo with certificates of insurance and with original endorsements effecting coverage by this clause. The certificates and endorsements for each insurance policy that is required and mentioned below are to be signed by the person authorized by the insurer to bind coverage on its behalf. The certificates and amounts required are as follows:

The amount of General Liability insurance shall be \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.

The Professional Liability insurance shall be in the amount of \$1,000,000.

The Workers Compensation insurance shall have limits as required by the Labor Code of the State of California in the amount of \$1,000,000 per accident.

Automobile liability insurance shall be in the amount of \$1,000,000 combined single limit per accident for bodily injury and property damage.

PLANWEST will furnish LAFCo with proof of such insurance prior to the performance of any services under the Agreement.

## **9. INDEMNITY**

PLANWEST agrees to protect, defend, indemnify and hold LAFCo, its officers and officials, free and harmless from and against losses arising out of or relating to claims, liens, demands, obligations, actions, proceedings, or causes of action, in connection with or arising out of negligence in performance of services pursuant to this Agreement. Notwithstanding the foregoing, PLANWEST shall not be liable to indemnify LAFCo for damage arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of LAFCo, or its employees.

## **10. CONTRACT TERMS TO BE EXCLUSIVE**

This written AGREEMENT contains the sole and entire AGREEMENT between the parties. The parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this AGREEMENT or any representation inducing the execution and delivery hereof except such representations as are specifically set forth herein; and each party acknowledges that it has relied on its own judgment in entering into the Agreement. The parties further acknowledge that any statements or representations that may have therefore been made by either of them to the other are void and of no effect and that neither of them has relied thereon in connection with its dealings with the other.

## **11. WAIVER OR MODIFICATION INEFFECTIVE UNLESS IN WRITING**

No waiver, modification or amendment of this Agreement shall be valid unless agreed upon in writing by both parties.

## **12. CONTRACT GOVERNED BY LAW OF STATE OF CALIFORNIA**

This Agreement shall be construed in accordance with the laws of the State of California, and the parties hereto agree that the venue shall be in Humboldt County, California.

## **13. CONTRACT TERMINATION**

Either party may terminate this Agreement at any time by giving thirty (30) days written notice to the other party. Upon termination, PLANWEST shall give LAFCo all work done toward completion of its services. LAFCo shall pay PLANWEST for work delivered and services performed for LAFCo under the terms of the Agreement. All papers and documents relating to the services described in the Agreement, and all materials supplied to PLANWEST by former LAFCo staff or by other Consultants hired by LAFCo shall remain the property of LAFCo and be returned to LAFCo promptly upon termination of services or expiration of this Agreement.

**14. ASSIGNMENT**

Neither party shall assign its obligations under this Agreement without the prior written consent of the other. However PLANWEST may assign work to Legal Counsel and engineering consultant identified in the approved budget. Any assignment in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement.

**15. BINDING EFFECT**

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of the parties and to each of their heirs, executors, administrators, successors, and assigns.

**16. SEVERABILITY**

If any term, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the Agreement shall be in full force and effect, unless such enforcement shall frustrate the purpose and intent of this Agreement.

**17. NOTICE**

Any notice given under this Agreement shall be in writing and deemed given when personally delivered or deposited in the U.S. Mail postage pre-paid for first class delivery addressed to the parties as follows:

**Humboldt LAFCo**

Humboldt LAFCo  
1125 16<sup>th</sup> Street, Suite 202  
Arcata, CA 95521

**PLANWEST**

Planwest Partners, Inc.  
1125 16<sup>th</sup> Street, Suite 200  
Arcata, CA 95521

IN WITNESS WHEREOF, the parties have executed this Agreement on the date above written.

**Humboldt LAFCo**

**PLANWEST**

By: \_\_\_\_\_  
Marty McClelland  
Chair, Humboldt County LAFCo

By: \_\_\_\_\_  
George Williamson AICP, Principal  
Planwest Partners, Inc.

## **EXHIBIT A**

### **SERVICES TO BE PERFORMED FOR TASK ORDER NUMBERS 1 & 2 TO THE MASTER SERVICES AGREEMENT BETWEEN PLANWEST PARTNERS, AND THE HUMBOLDT LOCAL AGENCY FORMATION COMMISSION**

#### **TASK ORDER 1**

In accordance with the Master Services Agreement for professional consulting services between PLANWEST PARTNERS (PLANWEST) and the Humboldt Local Agency Formation Commission (LAFCo) approved on May 19, 2010, and effective as of that date that, PLANWEST hereby agrees to perform the following services:

1. Maintain documentation of Municipal Service Review and Spheres of Influence submittals from LAFCo member organizations to determine if these submittals meet the requirements under the law for adequacy and completeness;
2. Maintain an up to date compliance work plan report outlining the status of all MSRs and SOIs and update as needed in cooperation with the member organization; and
3. Advise LAFCo of changes in services and to boundaries and SOIs by member organizations, and advise those member organizations about the applicable aspects of LAFCo authority and review.

Where PLANWEST has a conflict of interest, this work would be done in conjunction with PMC, working under a separate Master Services Agreement for professional consulting services with the Humboldt LAFCo.

The combined cost for reviewing and analyzing the submittals and preparing the reports is as stated in the approved LAFCo budgets. Payment for these services will be in accordance with this Master Services Agreement Compensation Clause (No. 5).

#### **TASK ORDER 2**

In accordance with this Master Services Agreement for professional consulting services between PLANWEST and the Humboldt Local Agency Formation Commission (LAFCo), and effective as of the date of authorization by LAFCo, PLANWEST hereby agrees to perform the services: Outlined in this Exhibit attached to this agreement.

These services to be provided for up to six meetings per year. Additional meetings will be staffed at additional costs. For all submittals requiring non-routine LAFCo review (i.e. municipal service reviews and spheres of influence) an estimate of deposit and allowances for processing will be prepared. The amount specified will be requested from the agency requesting review, prior to processing.

1. Prepare CEQA compliant environmental documents. CEQA review is required for most LAFCo applications. Upon receipt of complete applications to LAFCo, a determination will be made as to the type of environmental document required.



2. Schedule six routine LAFCo meetings per year. This will include posting notices and providing staff support in accordance with the Act and LAFCo policies and procedures.
3. Mail, file, publish and keep records of regular meeting agendas, notices and other required official documents on behalf of LAFCo. Agendas, minutes, staff reports and related information for LAFCo procedures and practices will be maintained on the LAFCo website.
4. Provide office facilities, telephone, email services and a website. The office facility will be open to the public full-time, 40 hours per week. Facilities will include a small meeting room, storage area for LAFCo files, and a space for administrative staff and the LAFCo Executive Officer.
5. Respond to inquiries and provide information/ technical assistance to public agencies and individuals.
6. Provide supporting fiscal services such as the development of the annual LAFCo budget, management of LAFCo financial accounts including the processing of LAFCo fees and charges, processing the payment of LAFCo charges and expenses, and the preparation of required fiscal reports.
7. Administer LAFCo agreements. Should LAFCo enter into agreements for preparation of materials for LAFCo review and action, such as environmental documents, engineering studies or reports and fiscal analysis, they would be administered as part of this scope.
8. Inform LAFCo of new legislation, correspondence, CALAFCO activities, current events and matters of interest related to LAFCo. This includes attending CALAFCO workshops and training activities.
9. Seek the appropriate counsel for legal advice as requested by LAFCo or LAFCo staff. LAFCo will contract separately for legal services. Planwest will coordinate with selected legal counsel and incorporate legal opinions and documents in LAFCo records.
10. Provide staff to perform Executive Officer duties under the approval of LAFCo and receive policy direction from the Commission to encourage the orderly formation and development of local government agencies.

This work will be done on a time and materials basis. Should actual work required to complete this scope exceed the estimated amount, additional costs would be invoiced separately. Payment for these services will be in accordance with Compensation Clause (No. 5) of the Master Services Agreement.

**MASTER SERVICES AGREEMENT BETWEEN  
PACIFIC MUNICIPAL CONSULTANTS. AND THE  
HUMBOLDT LOCAL AGENCY FORMATION COMMISSION**

**FOR PROFESSIONAL CONSULTING SERVICES**

This AGREEMENT is extended as of May 19, 2010, between the parties identified as Pacific Municipal Consultants. (hereafter PMC), a planning consulting firm, and the Humboldt Local Agency Formation Commission (hereafter LAFCo).

**1. SCOPE OF SERVICES**

LAFCo agrees to retain PMC and PMC agrees to continue performing the services as outlined in Exhibit A where PLANWEST has a conflict of interest.

**2. MUNICIPAL SERVICE REVIEWS AND SPHERES OF INFLUENCE UPDATES**

It is understood by the parties that PMC will perform the services required by LAFCo to complete the Scope of Work set in EXHIBIT A will be performed by to accomplish the required tasks in an efficient and cost-effective manner for LAFCo. The details of the tasks to be performed will be set forth in specific Task Orders as directed by the LAFCo Commission. PMC and LAFCo will enter into this separate Master Services Agreement to be executed simultaneously with the PLANWEST Agreement.

**3. MANAGING POTENTIAL CONFLICTS**

It is understood by the parties that PLANWEST will primarily be responsible staffing services except where there is a conflict of interest. In the event that PLANWEST has a potential conflict with respect to executing any of the tasks set forth in Exhibit A, of PLANWEST 's agreement with LAFCo, PLANWEST will request that PMC handle these tasks pursuant to this agreement executed between LAFCo and PMC. PMC is charged with the responsibility to exercise due diligence and care to ascertain when a potential conflict might exist and to promptly notify the LAFCo chair of the existence of a potential conflict.

Where a meritorious conflict of interest objection has been raised, PMC., its principals, staff, and employees will recuse themselves from providing staff services under this contract in any such proceedings before LAFCo.

**4. TERMS AND CONDITIONS**

Work shall be performed to complete the tasks specified in the attached EXHIBIT A in a manner consistent with the usual and customary standards of the applicable profession. All work products shall be subject to review and acceptance by LAFCo.

**5. TERM**

Services of PMC shall continue as of May 19<sup>th</sup> 2010, and the Agreement shall remain in full force and effect, until June 30 2012.

**6. COMPENSATION**

As compensation for the services performed hereunder, LAFCo shall pay PMC on a time and materials basis, based on itemized invoices submitted to LAFCo. Each invoice and County Auditor Claim Form shall document PMC's time and material expenses and progress made in completing the specified tasks. LAFCo shall authorize and submit invoices and claim forms to the County Auditor in a timely manner for payment within 30 days of the receipt of each invoice.

## **7. RELATIONSHIP OF PARTIES**

The parties intend that PMC in performing services herein specified shall act as an independent contractor and shall have control over the work and the manner in which it is performed. PLANWEST is not to be considered an employee of LAFCo, and is not entitled to participate in any pension plans, worker's compensation insurance, or similar benefits.

## **8. LIABILITY**

PLANWEST shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work by PMC, its agents, representatives or employees. PMC shall furnish LAFCo with certificates of insurance and with original endorsements effecting coverage by this clause. The certificates and endorsements for each insurance policy that is required and mentioned below are to be signed by the person authorized by the insurer to bind coverage on its behalf. The certificates and amounts required are as follows:

The amount of General Liability insurance shall be \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.

The Professional Liability insurance shall be in the amount of \$1,000,000.

The Workers Compensation insurance shall have limits as required by the Labor Code of the State of California in the amount of \$1,000,000 per accident.

Automobile liability insurance shall be in the amount of \$1,000,000 combined single limit per accident for bodily injury and property damage.

PMC will furnish LAFCo with proof of such insurance prior to the performance of any services under the Agreement.

## **9. INDEMNITY**

PMC agrees to protect, defend, indemnify and hold LAFCo, its officers and officials, free and harmless from and against losses arising out of or relating to claims, liens, demands, obligations, actions, proceedings, or causes of action, in connection with or arising out of negligence in performance of services pursuant to this Agreement. Notwithstanding the foregoing, PMC shall not be liable to indemnify LAFCo for damage arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of LAFCo, or its employees.

## **10. CONTRACT TERMS TO BE EXCLUSIVE**

This written AGREEMENT contains the sole and entire AGREEMENT between the parties. The parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this AGREEMENT or any representation inducing the execution and delivery hereof except such representations as are specifically set forth herein; and each party acknowledges that it has relied on its own judgment in entering into the Agreement. The parties further acknowledge that any statements or representations that may have therefore been made by either of them to the other are void and of no effect and that neither of them has relied thereon in connection with its dealings with the other.

## **11. WAIVER OR MODIFICATION INEFFECTIVE UNLESS IN WRITING**

No waiver, modification or amendment of this Agreement shall be valid unless agreed upon in writing by both parties.

## **12. CONTRACT GOVERNED BY LAW OF STATE OF CALIFORNIA**

This Agreement shall be construed in accordance with the laws of the State of California, and the parties hereto agree that the venue shall be in Humboldt County, California.

**13. CONTRACT TERMINATION**

Either party may terminate this Agreement at any time by giving thirty (30) days written notice to the other party. Upon termination, PMC shall give LAFCo all work done toward completion of its services. LAFCo shall pay PMC for work delivered and services performed for LAFCo under the terms of the Agreement. All papers and documents relating to the services described in the Agreement, and all materials supplied to PMC by former LAFCo staff or by other Consultants hired by LAFCo shall remain the property of LAFCo and be returned to LAFCo promptly upon termination of services or expiration of this Agreement.

**14. ASSIGNMENT**

Neither party shall assign its obligations under this Agreement without the prior written consent of the other. However PMC may assign work to Legal Counsel and engineering consultant identified in the approved budget. Any assignment in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement.

**15. BINDING EFFECT**

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of the parties and to each of their heirs, executors, administrators, successors, and assigns.

**16. SEVERABILITY**

If any term, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the Agreement shall be in full force and effect, unless such enforcement shall frustrate the purpose and intent of this Agreement.

**17. NOTICE**

Any notice given under this Agreement shall be in writing and deemed given when personally delivered or deposited in the U.S. Mail postage pre-paid for first class delivery addressed to the parties as follows:

**Humboldt LAFCo**

Humboldt LAFCo  
1125 16<sup>th</sup> Street, Suite 202  
Arcata, CA 95521

**PMC**

Pacific Municipal Consultants  
2729 Prospect Park Drive, Suite 220  
Rancho Cordova, CA 95670

IN WITNESS WHEREOF, the parties have executed this Agreement on the date above written.

**Humboldt LAFCo**

**PMC**

By: \_\_\_\_\_  
Marty McClelland  
Chair, Humboldt LAFCo

By: \_\_\_\_\_  
Philip Carter  
PMC.

## **EXHIBIT A**

### **SERVICES TO BE PERFORMED BY PACIFIC MUNICIPAL CONSULTANTS,**

In accordance with the Master Services Agreement for professional consulting services between Pacific Municipal Consultants (PMC) and the Humboldt Local Agency Formation Commission (LAFCo) and effective as of the date that the agreement is executed, PMC hereby agrees to perform the following services:

Where PLANWEST has a conflict of interest, PMC, shall serve as Executive Officer and provide professional consulting services to Humboldt LAFCo:

In accordance with this Master Services Agreement for professional consulting services between PLANWEST and the Humboldt Local Agency Formation Commission (LAFCo), and effective as of the date of authorization by LAFCo, PMC hereby agrees to perform the services: Outlined in this Exhibit as follows.

11. Prepare CEQA compliant environmental documents. CEQA review is required for most LAFCo applications. Upon receipt of complete applications to LAFCo, a determination will be made as to the type of environmental document required.
12. Schedule LAFCo meetings. This will include posting notices and providing staff support in accordance with the Act and LAFCo policies and procedures.
13. Mail, file, publish and keep records of regular meeting agendas, notices and other required official documents on behalf of LAFCo. Agendas, minutes, staff reports and related information for LAFCo procedures and practices will be maintained on the LAFCo website.
14. Respond to inquiries and provide information/ technical assistance to public agencies and individuals.
15. Provide staff to perform Executive Officer duties under the approval of LAFCo and receive policy direction from the Commission to encourage the orderly formation and development of local government agencies.

This work will be done on a time and materials basis. Should actual work required to complete this scope exceed the estimated amount, additional costs would be invoiced separately. Payment for these services will be in accordance with Compensation Clause (No. 5) of the Master Services Agreement.

**ATTACHMENT 6A**

**GARBERVILLE SANITARY DISTRICT  
OUT-OF-DISTRICT SERVICE EXTENSION APPLICATION**

**MEETING DATE:** July 21, 2010  
**TO:** Humboldt Local Agency Formation Commission  
**FROM:** George Williamson AICP, Executive Officer  
**SUBJECT:** Garberville Sanitary District (GSD) Application -  
Out-of-District Service Extension for Health and Safety Reasons

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**Recommendation**

That the Commission:

1. Approve the Garberville Sanitary District's (GSD) application and adopt the attached Resolution for a water service extension with conditions to serve Kimtu Meadows Subdivision, alleviating a health and safety concern about Kimtu Meadows Subdivision's water quality and source reliability. This recommendation is contingent on an environmental document for the water line project, prepared by State Department of Public Health being completed.

**Discussion**

The fundamental role of the Humboldt LAFCo is to implement the Cortese-Knox-Hertzberg Act (Act) consistent with local conditions and circumstances. The Act guides LAFCo's decisions. Some of the major goals of LAFCo, as established by the Act, that should be considered when considering a service extension request include:

- Encourage and promote orderly growth and development;
- Discourage urban sprawl;
- Preserve open-space and prime agricultural lands by guiding minimizing resource loss;
- Exercise its authority to ensure that affected populations receive efficient services;
- Establish priorities by assessing and balancing community service needs with financial resources available to secure and provide community services and to encourage government structures that reflect local circumstances, conditions and financial resources; and
- Determine whether new or existing agencies can feasibly provide needed services in a more efficient or accountable manner and, where deemed necessary.

GSD has submitted The following application materials for an out-of-district water service extension to serve the Kimtu Meadows subdivision for documented health and safety reasons:

- Humboldt LAFCo Project Proposal Application for Extension of Water Service from the GSD to the Kimtu Meadows Subdivision;
- Appendix G – Initial Study for Kimtu Meadows Water Transmission Main Line Construction Project;
- Response to LAFCo Comments on Initial Study for Kimtu Meadows Water Transmission Main Line Construction Project;
- Summary of Alternative Water Sources Considered;
- Kimtu Meadows Subdivision Properties-Assessor Parcel Numbers & Acreage;
- Kimtu Meadows Subdivision Assessor’s Map (Bk. 222-Pg.20); and
- Resolution 09-012 of the GSD Requesting LAFCo Approval of Extension of Services Outside District Boundaries to the Kimtu Meadows Subdivision.

The Kimtu Meadows Subdivision (Kimtu), located adjacent to and approximately 730 feet south of the GSD SOI was constructed in the 1960’s (Figure 1). At the time that Kimtu was constructed, and prior to the GSD providing water service, the privately owned Kimtu Mutual Water Company (KMWC) was formed to serve Kimtu residents. The water provided to residents by the KMWC has since been determined unreliable and unsafe to drink by the State Department of Public Health Services (DHS).

In the *Kimtu Meadows Water Transmission Main Line Construction Project Draft Initial Study* that was prepared by the State Department of Public Health (DPH), a branch of the DHS, it was noted that the water provided to residents by the KMWC was identified by the DHS as being unreliable and unsafe to drink. The agreement with DHS also required the KMWC to have a plan for achieving compliance with the State’s Surface Water Treatment Regulations (SWTR).

It has been determined by the DHS that the GSD may be the only option to ensure the provision of potable water to Kimtu residents. Thus, the GSD’s proposed water service extension may be necessary as a means of providing safe and adequate water service to Kimtu residents.

### **GSD’s SOI and Current Water Service Area**

The GSD was originally formed in 1932 as a single power district for the purpose of providing wastewater collection, treatment, and disposal within its boundaries. The District’s most recently adopted MSR/SOI Review was completed in 1986. Since that adoption, and prior to January 1, 2006, the District purchased a water company and began providing District residents with water service, in addition to wastewater service.

With the passage of Senate Bill 135 (Community Services Districts Law) in 2005, the following “Latent Power” definition was established (Government Code §61002(h)):

"Those services and facilities authorized by Part 3 (commencing with Section 61100) that the local agency formation commission has determined, pursuant to subdivision (i) of Section 56425, that a district *did not* provide prior to January 1, 2006.

Available Humboldt LAFCo records indicate that the District was providing water service prior to January 1, 2006, and as such, review and approval of the activation of such power by the Commission was not yet required by State law. Therefore, the GSD's ability to provide water service, and hence, the District's SOI and/or any potentially affected areas for receipt of such service, were not evaluated by LAFCo at such time that the power became active and have never been evaluated in relation to the water service that is currently being provided by the District and/or in relation to any nearby areas that may benefit from receipt of such water service, in either the present or the future.

During conversations with GSD staff it was identified that as a result of purchasing the water company, the District currently serves water customers that are located outside of the District boundary (Figure 2). During the MSR and SOI update process, it is LAFCo and District's staffs' intent to update the District boundary, ensuring that the boundary and the District service area correlate. In addition, LAFCo staff will be discussing with District any plans for future service provisions and adjusting the SOI appropriately in consideration of these plans to accurately reflect where the District intends to grow in the future. Figure 2 indicates a "draft" SOI boundary, for planning purposes only.

#### **LAFCo's Policy for Provision of Services Outside of District Boundaries**

The California Government Code Section 56133(c) states that:

*The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries and outside its sphere of influence to respond to an existing or impending threat to the public health or safety of the residents of the affected territory if both of the following requirements are met:*

- (1) The entity applying for the contract approval has provided the commission with documentation of a threat to the health and safety of the public or the affected residents.*
- (2) The commission has notified any alternate service provider, including any water corporation as defined in Section 241 of the Public Utilities Code, or sewer system corporation as defined in Section 230.6 of the Public Utilities Code, that has filed a map and a statement of its service capabilities with the commission.*

While the State Government Code allows for the approval of an extension of services outside of a District's SOI in response to a documented health and safety concern, Humboldt LAFCo's internal procedural policy states:

*Because LAFCo will only approve out-of-agency service agreements in anticipation of subsequent jurisdictional changes, applicants shall submit an annexation or reorganization application, or other documentation demonstrating that the agreement is in anticipation of a subsequent jurisdictional change.*



### **Kimtu Meadows in Relation to Current District Boundary**

The Kimtu Subdivision is located outside of the GSD Boundary and SOI (Figure 1). LAFCo's approval of an extension of GSD's water service to this area may result in a future recommendation by LAFCo to include the Kimtu Meadows Subdivision in the District's updated MSR and expanded SOI (Figure 2). The source of Figure 2 is the service area and draft SOI mapping by the District that is posted at the GSD office. LAFCo staff and District staff are actively coordinating to ensure that the current GSD MSR and SOI update will accurately reflect the District's service area and anticipated future growth. At such time that the District's updated SOI is evaluated, the inclusion of Kimtu Meadows in the District's SOI will be considered by both LAFCo and the District, given the District's plans for growth, constraints presents, and LAFCo's mandated duties and responsibilities.

Therefore, it is important to note that the proposed water line extension project is in direct response to a public health and safety concern regarding Kimtu Meadows Subdivision's current water supply and although the MSR and SOI update are occurring concurrently with the Kimtu Meadows service extension project, these two projects are separate and are being considered independently of one another. While, Kimtu is located outside of the GSD Boundary and SOI, a SOI amendment is not proposed as part of this application. However, any future SOI amendments and/or the inclusion of Kimtu Meadows Subdivision would be considered at such time that the District's MSR and SOI are updated.

### **California Environmental Quality Act (CEQA) Compliance**

Any action on the Kimtu application is contingent upon adoption of an environmental document for CEQA compliance. The State DPH has prepared an Initial Study (IS) and Draft Mitigated Negative Declaration (MND) for water services extension to the Kimtu Meadows Subdivision. This will be complete upon the issuance of a Notice of Determination (NOD) by the DPH. Humboldt LAFCo, as a responsible agency, will also adopt this CEQA compliance document for its actions. Should the NOD not be completed by the July 21, 2010 meeting, these matters will be continued to the September 15th, 2010 meeting.

Attached, to this staff report is revised Kimtu Meadows Water Line Initial Study language. To address concerns regarding the project's growth inducing potential, the following changes have been made, specifically:

- 1) (Page 2) Project Purpose and Intent added to Project Description.
- 2) "T" connection to GFD proposed fire hydrant removed from project description.
- 3) "T" connection to expected future location of water treatment plant removed from project description.
- 4) (Page 44/45) Clarify status of MSR/SOI. Notes LAFCO request for an SOI amendment with Out of Agency Services request. Notes GSD concerns that MSR is out of date and would require comprehensive update to support an SOI amendment. Notes that the effects of such an MSR/SOI amendment are outside of the scope of the Kimtu IS. Describes path forward if LAFCO denies service under 56133(c) in the absence of an SOI.

- 5) (Page 48) Population and Housing section amended. Includes discussion of pipe capacity, development potential of surrounding area based on GP/Zoning, physical and regulatory constraints. Reinforces statements from Project Description regarding limited project purpose. Notes GSD resolution limiting future connections to the line. Identifies potential (though unsupported and unauthorized) uses of excess pipe capacity (existing residences, second units and new construction). Note that the IS concludes that the potential capacity for 20 additional connections, none of which are authorized or supported with this action, and some of which, even if authorized, could consist of services to existing residences, does not have the potential to “induce substantial population growth” in the area and no mitigation measures are proposed (see LAFCo’s conditions for approval under Staff Findings, below).

These revisions have been determined by State Department of Public Health not to warrant recirculation. The will be included in the Mitigated Negative Declaration for the project. Please note that Humboldt LAFCo may not take action on this application until an environmental document, prepared by State Department of Public Health is completed.

### **LAFCo Staff Findings**

In the *Kimtu Meadows Water Transmission Main Line Construction Project Draft Initial Study* that was prepared by the State Department of Public Health (DPH), a branch of the State Department of Public Health Services (DHS), it was noted that the water provided to residents by the KMWC was identified by the DHS as being unreliable and unsafe to drink. It has been determined by the DHS that the Garberville Sanitary District may be the only option to ensure the provision of potable water to Kimtu residents. Thus, the GSD’s proposed water service extension may be necessary as a means of providing safe and adequate water service to Kimtu.

It is the responsibility of LAFCo to ensure that affected populations receive efficient services. However, it is also LAFCo’s responsibility to promote orderly growth and development, to discourage urban sprawl and to preserve open-space and prime agricultural lands by guiding and minimizing resource loss.

The potentially growth-inducing impacts of the proposed project include:

- (1) providing a new 8” in diameter water line adjacent to Southern Humboldt Community Park, the Mitchell property, and other vacant land IN Garberville SD SOI; and
- (2) providing access to water for fire prevention to the existing residences on the north side of the Sprowel Creek Road bridge.

A portion of the proposed 8” in diameter pipeline alignment occurs adjacent to land designated AS (1-5) in the Humboldt County General Plan, which permits one dwelling unit per 1 to 5 acres. So, for example, 50 acres of such designated land could permit up to 50 dwelling units without any General Plan Amendment (GPA). In addition, any GPAs induced by the proposed project could be applied for at any time, and would not need to be approved as part of Humboldt County’s General Plan Update process or be evaluated in the associated PEIR.

### **GSD's Response to Comments**

The following responses to LAFCo staff's comments were received by LACO Associates on behalf on the project applicants:

(1) The anticipated demand used for sizing the pipeline to Kimtu is 50 gallons per minute, and constitutes the assumed Maximum Day Demand of the existing subdivision as defined in the Preliminary Engineering Report prepared by Spencer Engineering (2005). This is equivalent to 2.5 gallons per minute per service for the 20-lot subdivision. The pipeline is sized to provide for the Maximum Day Demand plus fire flow. Fire flow requirements provided by the Humboldt County Fire Safe Regulations put the required fire flow at a minimum of 750 gpm based on a density of one to two residential homes per acre (California Public Utilities Commission General Order 103). The minimum capacity of the proposed water main is the combination of Maximum Day Demand (50 gpm) and minimum fire flow (750 gpm), or 800 gpm total.

The calculated capacity of the proposed 8-inch line is 50 gpm greater than necessary to meet the Maximum Day Demand for the Kimtu Meadows subdivision and minimum fire flow requirements. There is no practical means to design the system to more precisely meet Kimtu's actual needs. Using the Maximum Day Demand of 2.5 gpm per residential connection, this excess capacity could be used to serve 20 residences in addition to the existing homes within Kimtu Meadows. If approved and utilized, such additional connections could consist of any combination of new residences along the path of the water line, existing residences converting from private to community water, or second units, added to existing dwellings pursuant to the Humboldt County Code.

(2) As noted in the Initial Study, the District does not currently have the independent authority to grant connections along the proposed pipeline for either existing or new residences. For those connections to be approved, the District would require additional LAFCo action to either approve the annexation of additional land to the District or authorize individual "out-of-agency" service agreements. Other regulatory restrictions such as General Plan and Zoning designations, and physical limitations, such as steep slopes and protected habitat areas also reduce the likelihood that all 20 potential connections would be used to serve new development. With those limitations, the potential addition of approximately 20 single family residential units between Garberville and including Kimtu Meadows is considered to be a less than significant impact as associated with growth inducement adjacent to the project area.

### **LAFCo Staff Recommendations**

The Draft Mitigated Negative Declaration and response to comments for the proposed project do not contain measures that would prohibit any future connection to this water line and therefore eliminate growth inducing affects. The Humboldt County General Plan does not contemplate this project or other projects that are planned in the area and therefore, does not plan for the future growth in the Garberville Sanitary District SOI. Therefore, the conditions for project approval proposed below are intended to avoid these potential environmental effects.

Also, any action in the application is contingent on adoption of an environmental document for CEQA compliance. The State DPH has prepared an Initial Study (IS) and Draft Mitigated Negative Declaration (MND) for water services extension to the Kimtu Meadows Subdivision. This will be complete upon the issuance of a Notice of Determination (NOD) by the DPH. Humboldt LAFCo, as a responsible agency, will also adopt this CEQA compliance document for its actions. Should the NOD not be completed by the July 21, 2010 meeting, these matters will be continued to the September 15<sup>th</sup>, 2010 meeting.

Given the health and safety issue associated with the proposed project, it is recommended that the GSD's application for an out-of-district water service extension to serve the Kimtu Meadows Subdivision be APPROVED by the Commission with the following conditions:

1. Prior proposed project construction, the GSD shall provide documentation to Humboldt LAFCo that District policies have been adopted sufficient to ensure that no future connections to the proposed water line outside of the District Boundary will be approved by the District for any purpose, other than to correct an existing threat to public health and safety (as described in Government Code Section 56133(c)). Such policies shall not be amended, except with LAFCo approval to ensure that future proposals for SOI amendments and/or annexations would be considered under the assumption that the water line is not available for purposes other than its specified intent of correcting a public health threat to the existing residents of the Kimtu Meadows Subdivision, or until such time that the GSD completes their MSR update and SOI expansion and the Community Humboldt County Plan and General Plan for the area is adopted.
2. That any future connections to the Garberville Sanitary District water line extended to serve Kimtu Meadows Subdivision be submitted to Humboldt LAFCo for review and approval prior to the connection being made; and
3. That Garberville Sanitary District shall notify Humboldt LAFCo when service to the Kimtu Meadows Subdivision has been established and provide a description of the constructed water system.

### **Attachments**

Garberville Sanitary District Application for Water Service Extension to Humboldt LAFCo;  
Initial Study for Kimtu Meadows Water Transmission Main Line Construction Project;  
Response to LAFCo Comments on Initial Study for Kimtu Meadows Water Transmission Main Line Construction Project;  
Summary of Alternative Water Sources Considered;  
Kimtu Meadows Subdivision Properties-Assessor Parcel Numbers & Acreage;  
Kimtu Meadows Subdivision Assessor's Map (Bk. 222-Pg.20); and  
Garberville Sanitary District Resolution 09-012 Requesting LAFCo Approval of Extension of Services Outside District Boundaries to the Kimtu Meadows Subdivision.

Figure 1. GSD Boundary, SOI & Kimtu Meadows Subdivision

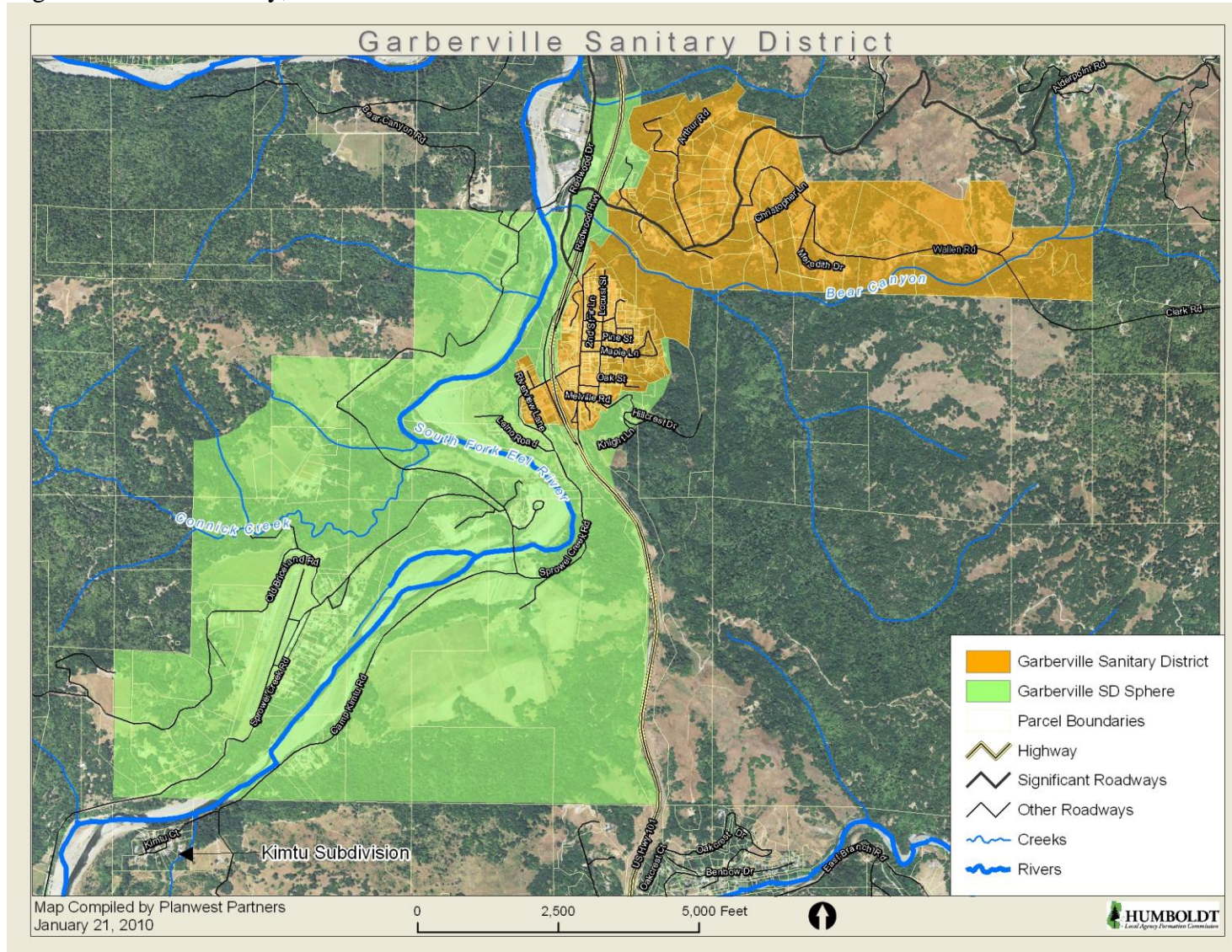
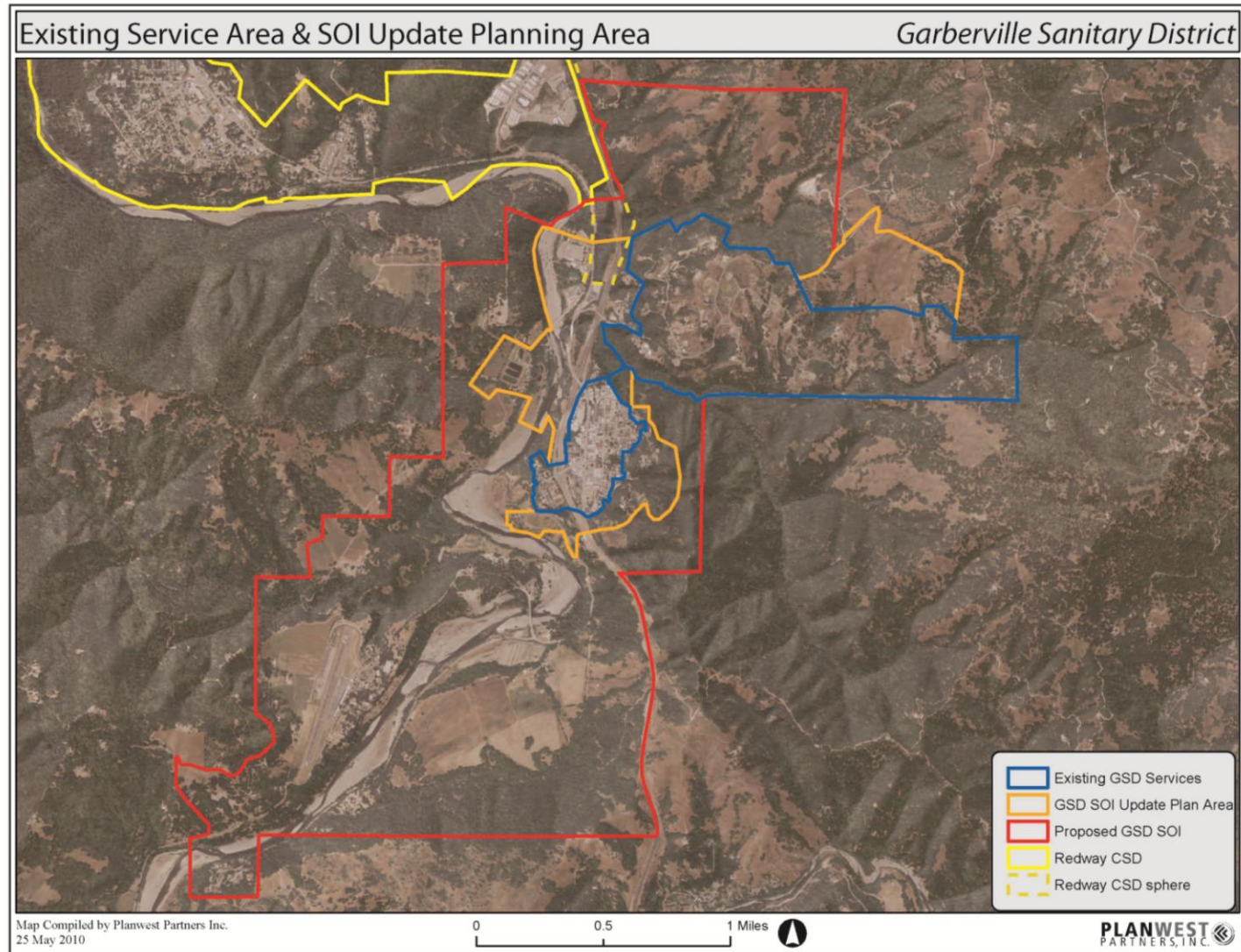


Figure 2. GSD Current Service Area & SOI Update Planning Area



## **RESOLUTION 10-06**

### **RESOLUTION OF THE HUMBOLDT LOCAL AGENCY FORMATION COMMISSION APPROVING AN OUT OF AREA WATER SERVICE EXTENSION FOR THE GARBERVILLE SANITARY DISTRICT TO SERVE THE KIMTU MEADOWS SUBDIVISION**

**WHEREAS**, the fundamental role of a Special District is to provide an alternative method for providing governmental services by counties within unincorporated areas (25210.1(e)); and

**WHEREAS**, functions for a Special District may be established to provide extended services within an unincorporated area (25210.1(f)), including, but not limited to, Water Service; and

**WHEREAS**, the CA Department of Public Health, has requested that the Garberville Sanitary District (GSD) provide water service to the Kimtu Meadows Subdivision (KMS) due to documented health and safety concerns of the existing water supply; and

**WHEREAS**, the LAFCo has reviewed the application submitted by GSD for extension of said water service; and

**WHEREAS**, a service may be extended with approval from the Humboldt LAFCo (25213.5(e)); and

**WHEREAS**, Humboldt LAFCo has the authority to grant water service extensions within an approved Sphere of Influence upon the request of the District Board; and

**WHEREAS**, the Humboldt LAFCo convened on July 21, 2010 at a publicly noticed meeting to consider the extension of water service to the KMS; and

**WHEREAS**, the Humboldt LAFCo considered all the factors required by law under California Government Code Section 56133.

**WHEREAS**, It has been determined by Humboldt LAFCo in the updated GSD MSR, that the GSD has available water supply and could extend water service to the KMS; and

**NOW, THEREFORE, BE IT RESOLVED** as follows:

1. That all the foregoing recitations are true and correct.
2. That pursuant to CEQA Guidelines, the extension of water service for health and safety reasons, to an existing facility within the special district's Sphere of Influence (SOI), by a provider with sufficient existing capacity, is subject to CEQA and as such, a Mitigated Negative Declaration (MND) is adopted.
3. The GSD may extend water service to the KMS to remedy current health and safety risks to residents.

4. That the three conditions below, contained in the July 21, 2010 GSD Service Extension Application Staff Report, are incorporated into this resolution.

1. Prior to funding or construction of the proposed project, the Garberville Sanitary District shall provide documentation to Humboldt LAFCo that District policies have been adopted sufficient to ensure that no future connections to the proposed water line outside of the District Boundary will be approved by the District for any purpose, other than to correct an existing threat to public health and safety (as described in Government Code Section 56133(c)). Such policies shall not be amended, except with LAFCo approval to ensure that future proposals for Sphere of Influence amendments and/or annexations would be considered under the assumption that the water line is not available for purposes other than its specified intent of correcting a public health threat to the existing residents of the Kimtu Meadows Subdivision, or until such time that the Garberville Sanitary District completes their Municipal Service Review update and Sphere of Influence expansion and the Community Humboldt County Plan and General Plan for the area is adopted.
2. Any future connections to the Garberville Sanitary District water line extended to serve Kimtu Meadows Subdivision be submitted to Humboldt LAFCo for review and approval prior to the connection being made; and
3. Garberville Sanitary District notify Humboldt LAFCo when service to the Kimtu Meadows Subdivision has been established and provide a description of the constructed water system.

The foregoing resolution was duly and regularly adopted by the Humboldt Local Agency Formation Commission, State of California.

**PASSED AND ADOPTED** at a regular meeting of the Humboldt Local Agency Formation Commission, State of California, on the 21<sup>st</sup> day of July 2010, by the following vote:

**AYES:**            **Board Members:**  
**NOES:**           **Board Members:**  
**ABSENT:**       **Board Members:**  
**ABSTAIN:**      **Board Members:**

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**Marty McClelland, Chairperson**  
Humboldt LAFCo

Attest:

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**George Williamson AICP, Executive Officer**  
Humboldt LAFCo





## ATTACHMENT 6B

### SCOTIA COMMUNITY SERVICES DISTRICT FORMATION

**MEETING DATE:** For July 21, 2010 Public Hearing  
**TO:** Humboldt Local Agency Formation Commission  
**FROM:** Merle Anderson, Contract LAFCo Executive Officer  
**SUBJECT:** Scotia Community Services District Formation

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#### **Recommendation**

- Receive staff's presentation;
- Open the public hearing and take public comments;
- Consider the LAFCo factors related to the formation of the Scotia Community Services District;
- Do one of the following:
  - Keep the public hearing open and continue the hearing to a later date;
  - Close the public hearing;
  - Approve formation of the Scotia Community Services District, wholly or conditionally, with or without modifications (after first approving a resolution making findings concerning the California Environmental Quality Act);
  - Disapprove.
- If formation of the Scotia Community Services District is approved, continue with the following:
  - Make specific findings and determinations via resolution;
  - Establish a date for the protest hearing.

#### **Project Description**

The proposal is to create a Scotia Community Services District (SCSD), to assume control of and provide water, wastewater, storm drainage, roadway maintenance, fire protection, and parks services to the "Town of Scotia". In addition, the formation of the SCSD would include establishment of a Sphere of Influence (SOI), coterminous with the proposed boundaries of the SCSD. The SCSD would be governed by voters residing within the proposed SCSD boundaries.

Most of the services proposed by the application are currently provided by the Town of Scotia, LLC (TOS). TOS is the owner of all land and facilities within the proposed SCSD boundaries. Humboldt County currently provides governance and limited public services in addition to those provided by the TOS, including law enforcement and maintenance of some streets. Private telephone, television, and natural gas providers also serve the area. Fire protection is currently provided by the Scotia Volunteer Fire Department (SVFD). As part of the proposed formation of the



SCSD, the SVFD would be merged for administration into the SCSD and would continue to operate as a volunteer fire department.

The Community Services District, if formed, would be established and operated under the provisions of Government Code Section 61000 and 56100, et seq.

### **Project Site and Surroundings**

The Town of Scotia is located along Highway 101 in central Humboldt County, immediately south of the City of Rio Dell, from which Scotia is separated by the Eel River. Comprising approximately 420 acres of land, the property is largely developed with a number of land uses as summarized below:

*Residential* – There are three neighborhoods within the Town of Scotia, totaling 272 single family homes on 59 acres, with a net density of 4.6 units per acre. North Court Neighborhood, Williams Street Neighborhood, and Primary Neighborhood are the local names for these three areas.

*Commercial* – The major commercial area is a 13-acre site along Main Street. This area includes a post office, theatre, the Scotia Inn, and other office and retail spaces. Commercial offices are also located in the Primary Neighborhood.

*Industrial* – Approximately 275 acres, or about two-thirds of the community, is dedicated to industrial production of timber and other industrial uses. (The Humboldt Redwood Company, LLC, is the primary company in the industrial area. HRC provides work for approximately 205 employees in the forest operations, corporate and sawmill department.) Industrial areas include Mill Complex A (which includes a brewing facility of the Eel River Brewing Company), Complex B, a remanufacturing plant, a cogeneration plant, sawmills, ponds, log storage areas, and other supporting buildings and open areas.

*Institutional and Parks* – Within the three neighborhoods there are several institutional structures and areas including an elementary school, two churches, a recreation center, and the fire station.

### **Background**

Development of the area that would become the Town of Scotia began in the mid-1880s primarily to support logging operations. The first housing in the community was built in 1884, with mills, schools, hotels, and commercial structures opening through the 1920s. Additional commercial areas, athletic and school facilities, mill additions and building improvements have been constructed since, and the community continues to operate with a resident population of between 800 and 900 people. Historically, the town has had a maximum population of up to 1,100 people.

The community of Scotia was developed privately by Pacific Lumber Company (PALCO) to support the mill operations established along the Eel River. Most of Scotia residents and many Rio Dell residents worked for the mills, or were engaged in businesses and employment that was supported by the lumber industry. Following slowdowns in the market for locally produced

lumber, PALCO began assessing options for converting the town to public governance in the 2000s.

In 2006, PALCO and the City of Rio Dell began discussions on potential annexation of Scotia to the City. These discussions included consideration of a number of factors, including costs of necessary upgrades to utility and infrastructure systems, governance issues, and timing of improvements. According to both the City and the applicant, these negotiations failed following significant differences in estimates for needed improvements to infrastructure, based on opinions in both professional standards and legal requirements for the systems in question. Also at issue were development standards for road improvements and the city's ADA requirements. Following the failure of the annexation discussions, PALCO submitted an application to LAFCo for the formation of the Scotia SCSD.

In 2007, PALCO applied to the County of Humboldt for a General Plan Amendment, Zoning Amendment and Major Subdivision for the Town of Scotia. These actions would have allowed PALCO, the original applicant and property owner, to subdivide and offer for sale land in the town. As the land owner, PALCO provided services to the town, but would be unable to continue providing these services to individual property owners due to the company's financial situation. In order to proceed with the proposed actions pending at the County, and to complete the sale of property, PALCO needed to transfer its municipal services to a public agency. The two major options considered were annexation to the City of Rio Dell, or the formation of a special district.

In July 2008, PALCO's real and personal assets for Scotia were transferred to the Town of Scotia Company, LLC (TOS). TOS is now the applicant and is proceeding with the original application to form the SCSD.

On November 10, 2009, the Humboldt County Board of Supervisors Certified EIR Resolution No. 09-77 and approved Vesting Tentative Subdivision Map FMS 05-01, allowing for the subdivision of the Town of Scotia into 340 parcels. The County established a number of conditions of approval on the Vesting Tentative Subdivision Map, including condition number 4 which states:

4. Prior to recordation of the Final Map, the applicant shall document that a Community Services District or other public entity as been established for the management of water and sewer utilities. This requirement shall be administered by the Department of Public Works.

Condition of approval number 11 also requires formation of a CSD or homeowners association to manage the open space:

11. Conditions of approval require the formation of a Community Services District and/or homeowners association or other suitable entity to manage open space shown on the development plan.

Humboldt LAFCo, as a responsible agency, provided written comments and received written responses on the EIR. (More is said about this below.) Both the formation of a CSD and the con-



sideration of annexation to the City of Rio Dell were considered as alternatives within the environmental document. Humboldt County filed a notice of determination for their action on December 9, 2009.

### **LAFCo Application History**

On November 27, 2007, LAFCo staff received an application from James Shanks of PALCO for the formation of a CSD. As noted above, the application has proceeded under the Town of Scotia LLC. The application materials included various supporting materials, including a Municipal Service Review and detailed engineering and financial information regarding the infrastructure and finances of the area. (These materials were subsequently updated.)

On December 20, 2007, staff deemed the application incomplete and provided the applicant with a letter detailing the required information necessary to complete the application for the formation of a CSD. Critical items that were missing included a certified Environmental Impact Report, a complete Municipal Service Review (MSR), and supporting financial and engineering information.

On February 25, 2008, staff reviewed Humboldt County's Scotia Draft Environmental Impact Report (DEIR) and requested that the EIR address several of LAFCo's concerns. The letter also requested a greater consideration of LAFCo actions and processes in the project description.

On July 8, 2008, the U.S. Bankruptcy Court issued a judgment and order confirming the reorganization plan for PALCO's bankruptcy, and transferred PALCO's Scotia assets to a new entity, the Town of Scotia Company, LLC (TOS). Per the re-organization plan, Humboldt Redwood Company LLC operates and will acquire title to the mill facilities and properties directly connected with lumber operations. TOS continued PALCO's application process to form the SCSD. All of Humboldt Redwood Company's facilities in Scotia are also proposed to be included in the CSD.

Between February and December 2008, LAFCo staff continued to work with the applicant and the applicant's consultants, SHN, to obtain more detailed information to complete the SCSD application.

On December 11, 2008, staff reviewed Humboldt County's Scotia Administrative Final Environmental Impact Report (Administrative FEIR) and requested that the Final EIR address several of LAFCo's concerns unaddressed since the DEIR. Items remaining to be addressed included a project-level analysis for the upgrades necessary to the facilities and infrastructure, and the need to say more about consideration of the alternative for annexation to the City of Rio Dell. The Final EIR included responses to LAFCo's comments, and presented additional information relative to potential annexation to the City as an alternative proposal.

Updated application materials, including the Final Municipal Service Review with the Financial Analysis, and the Detailed Engineering Analysis (Revision 3), were provided in May 2009. These documents were supported by the Scotia Draft and Final Environmental Impact Report, as well as Rezoning, and General Plan Amendments approved by the County on November 10,

2009 and submitted to LAFCo in December 2009. Following review of these materials and corrections of outdated information in the application forms, the application was deemed complete in March 2010. A study session on the formation of the SCSD was scheduled for April 21, 2010, conducted in Scotia, leading to the first public hearing on the SCSD formation at the June 21, 2010 LAFCo meeting.

### **Environmental Analysis**

As noted above, Humboldt County assumed the role of lead agency for preparation of an EIR pursuant to the California Environmental Quality Act, and caused an EIR to be prepared with the title “Program Environmental Impact Report, General Plan Amendment, Zone Reclassification, and Final Map Subdivision, Town of Scotia” (State Clearinghouse No. 2007052042). The project description included formation of a Community Services District (CSD). LAFCo assumed the role of a Responsible Agency under CEQA.

CEQA Guidelines Section 15096 outlines the CEQA process for Responsible Agencies. An important part of the process is for Responsible Agencies to work with the Lead Agency in considering the scope of impacts to be addressed in an EIR and to review and comment on those aspects of the project that are within the Responsible Agency’s area of expertise, or which are required to be carried out or approved by that agency. It is noted that Daniel Hamilton, Executive Officer, reviewed the EIR at different stages of its preparation and submitted comments on behalf of LAFCo. Comments were submitted on the Draft EIR with a letter dated February 25, 2008, noting that, “Humboldt Local Agency Formation Commission (LAFCo) has reviewed the Draft EIR and has several comments on the Draft EIR.” Daniel Hamilton also reviewed the Administrative Final PEIR and, with a letter dated December 12, 2008, submitted comments on behalf of LAFCo. In another letter dated February 13, 2009, Mr. Hamilton submitted additional comments concerning the Final EIR as it pertained to the formation of a CSD and the consideration of annexation to the City of Rio Dell as an alternative to forming a CSD.

Per CEQA Guidelines Section 15096, as a Responsible Agency LAFCo is now to accept the certified EIR as sufficient CEQA review for those elements of the project that are within LAFCo’s jurisdiction. However, LAFCo must make its own environmental findings regarding the environmental impacts associated with the proposal. Responsible Agencies shall make the findings required by Section 15091 for each significant effect of the project and shall make the findings in Section 15093 (pertaining to Overriding Considerations) if necessary. (It is noted that the County did not adopt any Statements of Overriding Consideration.)

In Finding 6 of Resolution No. 09-77, wherein the Humboldt County Board of Supervisors certified the EIR, the County found that:

The final EIR identifies no significant environmental effects that will result if the Project is approved, and all significant effects that can be feasibly mitigated or avoided have been reduced to an acceptable level by the imposition of mitigation measures on the approved Project. All mitigation measures shall be incorporated into conditions of approval. The list of mitigation measures, and County monitoring programs for those measures, is

attached hereto as Mitigation Monitoring and Reporting Form, and is incorporated herein by this reference.

As a Responsible Agency, LAFCo will file a notice of determination in basically the same manner as a lead agency, stating that the Commission, for its purposes, considered the EIR as prepared by the lead agency. A draft Resolution has been prepared for LAFCo that provides specific findings concerning the EIR as it relates to the proposed LAFCo actions.

### **CONFORMANCE WITH LAFCO PROPOSAL EVALUATION POLICIES**

The Humboldt LAFCo Policies and Procedures Manual sets forth policies for the review of all proposals, including formation of a CSD. Analysis of the proposed SCSD formation is provided here for each required policy.

- 1. To the greatest extent possible, boundaries should follow existing political boundaries and natural or man-made features such as rivers, lakes, railroad tracks, and roads. Where roads form a portion of the boundary, the boundary should not be drawn so as to divide the road along its centerline. Roads should either be fully included or excluded along the boundary of the proposal. Where boundaries are not in conformance with this policy, the proponent shall justify the reasons for non-conformance in writing.*

Analysis: The proposed SCSD boundaries follow the historic physical form of the Town of Scotia, including the Eel River as a major boundary on the westward side of the proposed CSD. Highway 101 partially serves as a proposed boundary for the CSD. No roads are divided as a part of this proposal.

Conclusion: The proposal **is consistent** with this policy.

- 2. Boundaries should not be drawn so as to create an island, corridor, or strip, either within or immediately adjacent to the proposal. Where such island, corridor, or strip is created, the proponent shall justify the reasons for non-conformance in writing.*

Analysis: In an effort to include all of the historic town and mill facilities of Scotia, the proposed SCSD boundary results in two areas that are partially separated by Highway 101 (although connected by a service road underpass). The primary area west of Highway 101 is contiguous and does not contain islands, corridors, or inappropriate strips of land. The second area, which contains industrial uses, is on the east side of Highway 101. Should the Commission desire, the boundaries could be modified to include the roadway portion, thus creating a single contiguous boundary. It is justifiable that the industrial and utility areas located on the east side of Highway 101 should be included in the SCSD as proposed. It is further noted that there is no state law which prohibits multiple unconnected areas for a CSD.

Conclusion: The proposal **is consistent** with this policy.

- 3. Boundaries should avoid dividing an existing identifiable community, commercial district, or other area having social or economic homogeneity. Where such division occurs, the proponent shall justify the reasons for nonconformance with this policy in writing.*

Analysis: The proposed SCSD boundaries do not divide an existing community because the boundaries are consistent with the historical boundaries of the historic Town of Scotia.

Conclusion: The proposal **is consistent** with this policy.

- 4. Where undeveloped or under-developed territory is proposed for annexation to an existing city, LAFCo requires that such territory be rezoned prior to submittal to LAFCo. Any required environmental review shall be conducted by the affected city at the time of rezoning.*

Analysis: This policy pertains to annexation proposals and not to formation of a CSD. The current proposal to form the SCSD does not include annexation to an existing city and, therefore, is not contrary to this policy.

Conclusion: The proposal **is consistent** with this policy.

- 5. Proposals shall take into account not only the present needs of the subject area, but also the future services which may be required to accommodate future growth and expansion.*

Analysis: On November 10, 2009, the Humboldt County Board of Supervisors approved General Plan Amendment GPA 05-01, Rezoning ZR 05-01, Planned Development Permit PDP 05-01, and Vesting Tentative Subdivision Map FMS 05-01. These actions were taken to ensure that the Town of Scotia proposal was consistent with the County's General Plan and zoning. The EIR certified by the County included the intent to form the SCSD in conjunction with the other project approvals. Conditions 4 and 11 of the approved Vesting Tentative Subdivision Map requires the establishment of "a community services district or other public entity" for management of water and sewer utilities" as well as open space.

Land within the Town of Scotia is nearly fully developed with residential, commercial, industrial, and institutional structures. What little vacant land there is within the SCSD boundaries has very little additional capacity for development under the current General Plan and zoning designations of the County. The infrastructure and service analysis provided in the proposed MSR is sufficient to address both the existing and anticipated future land uses within Scotia, as approved by the County.

Conclusion: The proposal **is consistent** with this policy.

6. *If the proposal could result in significant or serious operational or economic problems, or in the disruption of existing services in the remaining adjacent territory, the proponent shall justify, in writing, why the boundaries of the proposal should not be adjusted in recognition of such problems.*

Analysis: The proposal contains projections for improving the existing infrastructure and facilities within the Town of Scotia to meet public service requirements. Financing plans contained within the application and the supporting Municipal Service Review indicate that the improvements can occur within a five year time frame, with little interruption of service for existing customers. Long-term operational and economic problems are not predicted as a result of this proposal. Rather, the proposal includes substantial upgrades to the existing water, wastewater, and drainage systems already in operation in the Town of Scotia.

Conclusion: Proposal **is consistent** with this policy.

7. *New, expanded, or consolidated services should be reviewed by one of the following governmental agencies should in descending order of preference:*
- a. *Annexation to an existing city.*
  - b. *Annexation to an existing multi-purpose district.*
  - c. *Annexation to an existing single-purpose district.*
  - d. *Annexation to an existing county service area (CSA).*
  - e. *Incorporation of a new city.*
  - f. *Formation of a new multi-purpose district.*
  - g. *Formation of a new single-purpose district.*
  - h. *Formation of a new county service area (CSA).*

Analysis: The proposal is for the formation of a new CSD, consistent with item (f) from the list above. Of the stated preferential government structures above, item (a), annexation to an existing city, is a conceptual alternative to formation of the CSD. As noted above, representatives from PALCO (previous property owners of Scotia) and the City of Rio Dell, the only city with the capacity to annex the property, negotiated on potential annexation of the site through 2007. In a letter to residents of Rio Dell dated July 19, 2006, Dennis Wood, Vice President of Strategic Planning and Implementation for PALCO, expressed enthusiasm for annexation in stating:

We believe that annexation results in the most efficient mechanism for providing services, offers the best means of addressing community zoning and planning, and maintaining public safety services (police and fire protection) for the residents of Scotia. In addition, we believe that the annexation will lead to many benefits of Rio Dell for many years to come.

Subsequently, however, negotiations between PALCO and the City failed to reach agreement on the principles of annexation and the standards of improvements for infra-



structure in the Town of Scotia that would be required by the City of Rio Dell prior to annexation. As noted in the correspondence on this item, the City of Rio Dell insisted on bringing the existing improvements in the Town of Scotia up to City of Rio Dell development standards as if the project were new construction. The escalating cost estimates and expected physical impacts and changes to the historic character of the Town associated with the City's standards and terms for annexation resulted in PALCO terminating consideration of annexation. TOS LLC has continued to declare that the City's terms for annexation were and are infeasible and unacceptable.

Scotia has never been included in the City of Rio Dell's Sphere of Influence.

Staff believes that there are two valid interpretations that LAFCo commissioners could make concerning this proposal evaluation policy. One interpretation is that, since annexation is generally preferred by LAFCo over formation of a new district, a CSD should not be formed in an area that could conceivably be annexed by a city as long as annexation is theoretically possible. This is generally the City of Rio Dell's position.

A second interpretation of this policy is that formation of a new district should only be considered after the possibility of annexation to an existing city has been "reviewed". However, once the possibility and practicality of annexation has been considered, if it is determined to be infeasible and/or otherwise not preferred for valid reasons, LAFCo might find that allowing a CSD to be formed under the circumstances is acceptable and not inconsistent with this policy. This is the position supported by TOS that led to the submittal of the application to form the SCSD.

(Note: The phrase in the policy that a proposal "should be reviewed by one of the following governmental agencies" is expressed as an advisory policy, both in use of the term "should" and use of the term "reviewed". The policy is not clearly directive, as it would be if it read, in effect, "annexation shall be required".)

The EIR identified two major issues involved in comparing the annexation alternative and the proposed formation of the SCSD and subdivision pursuant to county requirements. These issues relate to 1) protecting the historic status of the Town of Scotia and its historically significant structures; and, 2) options for wastewater treatment. The Municipal Service Review for the SCSD summarized that, "These issues entail significant impacts to historic and water resources due to requirements for major infrastructure changes set by the City of Rio Dell as conditions for annexation." In short, the owners of the land that is Scotia and proponents for formation of the SCSD have expressed staunch opposition to annexation because they are convinced that improvements of existing infrastructure to comply with the City's standards for annexation would be excessive and not in their financial interest. The EIR noted that, after consideration of the potential impacts of an annexation alternative, formation of the SCSD is the "Environmentally Superior" alternative.

There is also concern that, if LAFCO was to now reject the proposed formation of the SCSD, nearly all of the time, money and effort that has gone into the EIR and the approvals that the County gave in November 2009 for the Scotia project as a whole (i.e., the general plan amendments, zoning, tentative subdivision approval) would be negated. Under the Subdivision Map Act, if annexation takes place, TOS would need to apply to the City of Rio Dell to subdivide the Town of Scotia, essentially starting the application process from the very beginning. As the level of improvements was apparently the crux of the disagreement over the annexation vs. CSD formation negotiations, staff is doubtful the discussion over a new subdivision application to the City of Rio Dell would be successful. Even if much of the foregoing documentation could be used to support an annexation application, the process would likely still take another 12 to 24 months to complete. The subdivision of Scotia could not proceed until if and when annexation was accomplished. (Please see the attached notes at the end of this staff report which discuss the process of annexation.)

It is important to note that LAFCO cannot “force” annexation of property or guarantee that an annexation proposal will be successfully accomplished. True, LAFCO can deny formation of a CSD with the intent that annexation to an existing city would be a preferred means of providing services, but the process involves the consent of registered voters, application by property owners, and completion of application materials. LAFCO cannot assume that annexation would be initiated or successfully completed.

There even seems to be a possible scenario that, if formation of a CSD is denied, and if the owners of the property decided that it is not in their interest financially to comply with the City’s requirements for annexation and subdivision of the property, or if the inhabitants of Scotia rejected annexation, the resulting stalemate could result in the property not being divided, the property owner being unable to continue financing maintenance and improvement of infrastructure, and long-term preservation of the community could be jeopardized.

While negotiation efforts for annexation were terminated, and the owners of the property have pursued formation of the SCSD, the City of Rio Dell has continued to provide public comment on the feasibility of the City providing services instead of forming the SCSD. The City of Rio Dell has made a concerted effort to advocate annexation, despite the objections of TOS. The position of the City is documented in the correspondence entitled, “Public Hearing Materials Presented to Humboldt LAFCo”, which has the subtitle, “Why Annexation of the Town of Scotia to Rio Dell should be selected over the proposed Community Services District Formation”, dated June 2010. This document, with its cover letter, has multiple attachments, including commentary from Winzler & Kelly. The document expresses criticism of the proposed SCSD and advocates the expected benefits of annexation to both the community of Scotia as well as to the City itself. The City’s cover letter urges that LAFCo remove the CSD option from the table so that talks between the developer and the City can resume. The City claims that until the option of forming a CSD is removed by LAFCo, TOS will not be compelled to work with the City to forward the annexation proposal.

The City's June letter declares the City's intent to expedite an application for the annexation of Scotia to LAFCo when the City receives and deems complete an annexation application from the TOS LLC. As recently as June 15, 2010, the City held a public hearing to continue its consideration of the issue and confirmed its support for annexation of Scotia.

It also needs to be noted that, in addition to the question of annexation to the City of Rio Dell, there is also the issue that, if the SCSD, which proposes to absorb the Scotia Volunteer Fire Department, is not formed, could and would the Town of Scotia be annexed to the Rio Dell Fire Protection District. In a letter dated July 1, 2010 from Leroy Martinelli, Chair of the Rio Dell Fire District Board of Commissioners, he informs LAFCo that, if the City of Rio Dell proceeds with annexation, the Rio Dell Fire District would initiate annexation of Scotia into that district's service area, conditioned upon reaching mutually agreeable terms with the TOS, LLC.

The determination of consistency of the proposal to this evaluation policy is subject to the Commission's interpretation of its policy. If the Commission determines that annexation to the City of Rio Dell is clearly preferred and that annexation has not been adequately reviewed or pursued, the Commission may find that the proposal to form a new CSD is **not consistent** with the policy and must therefore deny the application. If, however, after review of the record, attachments, correspondence and public input, the Commission determines that the prospects for annexation have been adequately "reviewed" and dismissed, the Commission may find that the proposal to form the new CSD **is consistent** with this policy. While the Commission must make its own determination, staff believes that, while annexation is theoretically a preferred means of providing community services, given the circumstances of the situation, there is little potential for successful annexation of Scotia to the City of Rio Dell with the existing parameters as expressed in the record for this project.

Conclusion: As both annexation and formation of a CSD have been analyzed, the proposal **is consistent** with this policy.

8. *If the proposal is for the formation of a new agency, the proponent shall demonstrate that the required services cannot be feasibly provided by an existing agency.*

Analysis: This policy turns attention to the issue of whether the City of Rio Dell, as an existing agency, could feasibly provide the services proposed to be provided by the proposed new agency, the SCSD. The issue of annexation vs. formation of a CSD is discussed in several sections of this staff report and need not be repeated here in full.

This policy, as with Policy 7 above, requires an interpretation by the Commissioners to fit the case at hand. The term "feasible" is the key term in this policy, and the Commission should consider several aspects of what may be theoretically feasible relative to what may or may not be readily or practically feasible. For example, is it technically feasible

for the City of Rio Dell to provide the proposed services? The City of Rio Dell suggests that it is feasible, if Scotia is compelled to annex to the City. Conversely, it is not feasible for the City to provide the services until and unless Scotia is annexed. Therefore, at this time, a determination may be that it is not feasible for the City to provide the services because, not only is the project area not in the city, it is not in the City's Sphere of Influence and the City's General Plan does not, as yet, propose to include Scotia as part of the City.

As discussed in several places in this staff report, given the relationship of Scotia to the City of Rio Dell, it is apparent that there are serious obstacles to successful annexation. This includes the adamant objection to annexation by the single property owner of Scotia, TOS LLC, who the City says would need to file an application for annexation and comply with the City's terms for annexation and, subsequently, subdivision of Scotia. Objections to annexation have also been expressed by a fair portion of the residents of Scotia, who could block such an effort if it went to election. The record of this project demonstrates that annexation was initially considered, but that the terms of annexation were not satisfactorily negotiated between PALCO and the City of Rio Dell. As a result, PALCO and then the TOS LLC pursued the formation of a CSD to support the subdivision of the property through Humboldt County. The correspondence between the City of Rio Dell and TOS LLC indicates that there is little likelihood of the parties agreeing on the terms of annexation that have been proposed by the City.

Therefore, since services by Rio Dell would require the project area to be in the City, and if the prospect of annexation is not confirmed, the Commission may conclude that, while it may be technically feasible, it is not reliably feasible in a political context for the City to provide the proposed services at this time.

The situation in Scotia is very unique in that all of the services and facilities that are proposed to be provided by the SCSD (following various improvements) are already basically provided by the owner of the historic mill town property that is Scotia. The CSD is proposed to assume those services. The applicant has provided an MSR for the formation of the SCSD, in which the costs of improving the infrastructure to county standards is described and detailed. The City has presented information to argue that it is not only feasible but advantageous and preferable that the City annex Scotia and provide services after the current property owner makes all of the improvements necessary to comply with the City's requirements.

Staff also notes that formation of a CSD at this time would not eliminate the potential for annexation in the future. It is not uncommon for cities to annex or include all or part of a CSD within the city limits. In essence, formation of the SCSD does not preclude an annexation request at a future date. Also, formation of the SCSD does not preclude the development and use of a shared facility (such as a wastewater treatment plant), even though the CSD's plan of services didn't originally propose a shared facility. Staff notes that engineering estimates provided by TOS LLC and the City of Rio Dell are based on assumptions rather than actual construction drawings, and that the Regional Water Quality Control Board may mandate the consolidation of facilities at some point in the future.

Other services might be provided separately, or the CSD might contract for certain services from an adjoining city in the future.

Conclusion: Since the project area is not in the city limits or the Sphere of Influence of the City of Rio Dell, or within the service area or Sphere of Influence of any other existing agency, the services proposed to be provided by the SCSD cannot, at this time, be feasibly provided by an existing agency. Therefore, the SCSD proposal **is consistent** with this policy.

- 9. If the proposal is for the formation of a new agency, the proponent shall demonstrate the economic feasibility of the proposed formation, taking into account any and all potential sources of revenue.***

Analysis: The applicant has provided an MSR for the formation of the Community Services District, in which the costs of improving the infrastructure to public standards is described and detailed. A five-year Capital Improvement Program provides for \$17,679,400 in improvements to occur for the project, of which \$12,670,000 is proposed to be financed privately by the property owner. The remaining \$5,009,400 is proposed to be financed through sale of a Bond repaid through user fees for residents and users of the utility systems.

The financial analysis included with the application makes a number of assumptions regarding the current and future revenues of the SCSD. Staff notes that there is no certainty that the property tax allocation will be within the range shown in the analysis (i.e., 15 percent). Further, the costs depicted for personnel may be at the lower end of the salary scale for the region. The amount of contingency in the annual budget of \$100,000 seems adequate for the first year or so of operations, but will need to increase over time to keep pace with increases in costs. Staff notes that costs for public agencies often exceed the ‘inflation rate’ that supposedly affects other purchases. The cost analysis speculates on additional potential sources of revenue such as grants, loans, and other State and federal programs which often provide capital financing for cities and special districts. However most of these programs are designed exclusively for capital improvements and not operations and maintenance. As a result, the proposed SCSD must be able to function solely on the income from service provision and property tax.

Staff also notes that while the estimated monthly EDU utility rate is comparable to others in the region, when the debt service is added the total cost to the resident is substantially higher. At \$190 per month per EDU, staff is concerned that if the SCSD needs to increase rates to address unforeseen costs of operation, the increase may be too much for the residents. Note that monthly fees for utilities provided by public agencies seldom equal the actual cost of the services as council’s and boards are reluctant to increase rates.

(It is noted that, since preparation of the MSR and Financial Assessment, TOS has suggested that, with revised assumptions, the monthly CSD service fee could be reduced from approximately \$190 per equivalent dwelling unit (EDU) to \$153/EDU. Factors for

this revised assumption includes: donation from TOS to the CSD of facilities to house Scotia CSD staff and equipment, as well as vehicles, tools, and equipment; and use of low-interest loans to finance water and wastewater repairs. As part of this reduction per EDU, an assumption is made that property tax revenue will be used to provide street lighting and road maintenance.)

The financial analysis assumes that the SCSD will get some portion of the property taxes resulting from sale of property. While the actual percentage that it would receive is unknown at this time, a range of approximately 9 to 15 percent was estimated in the SCSD's Financial Assessment based on tax received by other CSDs in the area. The Financial Assessment then bases its budget analysis with the assumption that the CSD would receive 15 percent, which staff believes is unlikely (and not consistent with the conservative approach taken in the remainder of the analysis). Staff notes that there is a sizable increase in revenue associated with this portion of the analysis, presumably because the properties are intended to sell 'quickly'. Given the economic conditions of the last 30 months, staff does not believe that sales of the property will occur as quickly as proposed. This lag in the receipt of tax revenue could place a burden on the newly created SCSD and likely force it to use its contingency for operations and maintenance.

As noted, staff is skeptical of some of the assumptions used for the long-term income associated with the property taxes based on sales. Staff is also concerned that the high monthly rate that would eventually be charged to the residents leaves little room for the new SCSD to increase rates to overcome shortfalls in its operating revenue and build financial reserves for contingency costs. However, the above concerns notwithstanding, if the assumptions in the financial analysis remain valid over time, based on the information provided, the CSD should be capable of providing economically feasible services.

Staff notes assertions by the City of Rio Dell that annexation would substantially reduce costs are not supported by evidence in the record. The upgrades to the collection system are required regardless of whether the Town is annexed to the City, or a CSD is formed. Assuming those costs are accurate, the resulting City wastewater treatment plant would need to be sized for both communities. While there may be some savings in preparing, constructing and operating a single facility, the cost of operating the facility is likely to be similar, resulting in similar monthly costs to the residents. Therefore, the primary difference is one of capital expenditure rather than operating and maintenance costs. Further, the Town of Scotia's wastewater would need to be collected and transferred to the single wastewater treatment facility which would likely involve construction of a lift station, force main and other improvements increasing the operating and maintenance costs for the Town. Staff believes a single facility might be more efficient and possibly less expensive to operate, but the cost savings is unlikely to be as significant as indicated in the correspondence. Again, as noted above, nothing precludes the City and the SCSD, if formed, from cooperating on a single facility in the future, keeping rates separate for each community.

Conclusion: Proposal **is consistent** with this policy.

**10. In addition to the above, consideration of the following will be given in evaluating all proposals:**

- a. Conformance to the land use provisions of the General Plan for Humboldt County and the affected City.**
- b. Demonstrated ability to finance the required government services at a reasonable level.**
- c. Demonstrated capacity to serve the proposed territory with required facilities and personnel.**
- d. Conformance with the adopted Sphere of Influence of the affected agency.**

Analysis: The proposal for the formation of the SCSD follows approval by the Humboldt County Board of Supervisors of a General Plan amendment and rezoning. As a result of the Board action, the project proposal and current land uses on the site are consistent with the Humboldt County General Plan. The MSR provided with the LAFCo application illustrates that the government services to be provided can be administered at a reasonable level, with a financing plan that ensures fiscal viability. (See discussion above for Policy 9.) The capacity of the SCSD to provide these services is also established, as these are existing services already provided to the community by the TOS LLC. Finally the CSD formation proposal does not conflict with any adopted Sphere of Influence for other agencies also able to provide such services. While the City of Rio Dell is on record as considering an application for a change to their Sphere of Influence to include the Town of Scotia, no application has been filed.

Conclusion: Proposal **is consistent** with this policy.

## **CONFORMANCE WITH STATEWIDE EVALUATION POLICIES**

In addition to Humboldt LAFCo's proposal evaluation policies, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (§56000 of the Government Code) identifies the factors which must be considered by the Commission in the review of any proposal. The CKH Act also includes the Community Services District Law enacted in 2006 (§61000 of the Government Code) that establishes provisions for the formation of a CSD. LAFCo has incorporated these factors into their policies for evaluating specific proposals. The following analysis provides consideration of these factors for the proposed SCSD formation.

- A. *Population and population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.***

Analysis: Having been constructed and serving as a company mill town for more than 100 years, most of the land area of the Town of Scotia is already developed. The Town is considered to be almost entirely built-out with structures and industrial uses. Approx-

imately two-thirds of the community is devoted to industrial uses. The EIR reports that there are approximately 273 occupied residential units with an estimated residential population of approximately 800 people. There is approximately 13.1 acres of commercial area which includes a shopping center, post office, bank, movie theater, the Scotia Inn, and other facilities. Community facilities include an elementary school, fire station, park and recreation fields, a recreational center, and two churches. There is some vacant land which would allow for future development and which is included in the MSR and engineering estimates for the site. The primary change associated with the proposal will be the division of the two existing parcels into 340 parcels and the sale of the newly created parcels to existing and new residents of the town. Construction activity will likely be limited to the replacement of existing utilities. The area is across the Eel River from the City of Rio Dell. No factors from this list limit the ability of the proposed SCSD to provide services.

***B. The need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas. "Services," as used in this subdivision, refers to governmental services whether or not the services are services which would be provided by local agencies subject to this division, and includes the public facilities necessary to provide those services.***

Analysis: The existing Town of Scotia is provided a range of services, including water, wastewater, drainage, road maintenance, parks, and fire protection, through the TOS LLC, a private corporation. Fire protection is also a function of the Scotia Volunteer Fire Department. The sewer and water systems are noted to be in poor condition, and will require substantial upgrades to meet minimum public safety and service standards. The formation of a CSD would require significant improvements to these systems, including more than \$6.6 million for sewer systems, \$5.3 million for water provision, \$1.6 million for drainage, and \$1.7 million for roads, among others. The creation of the SCSD will improve the quality of the overall systems and individual services to homes and businesses, as well as establish a viable long term structure for service provision. The details of the improvements called for are contained in the MSR.

Staff notes that the City of Rio Dell makes the assertion that provision of wastewater services at a single point would be more cost effective than having two separate facilities. Possibly, however, this would entail crossing the river, lift stations, and an agreement on the provision of services. Note that the collection system improvements would still be required. It is not uncommon for agencies to share in the operation of municipal utilities. In this instance, the engineering report for the SCSD is designed to operate independently. Staff believes that, as the improvement designs get more refined, and the requirements of the Regional Water Quality Control Board evolve, the option of sharing services may be further investigated. As independent systems may be more expensive to operate, the analysis provided here represents the worst case scenario.



***C. The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.***

Analysis: The proposed formation of the SCSD would result in the public ownership of utilities and services that are currently provided by the TOS LLC to the businesses and residents of the community. The primary result of the proposal before LAFCo is the shift of ownership and management of utilities from TOS LLC to the SCSD. Public ownership of the utilities will provide a long-term structure from which to ensure local control of services, and allow for the division of land and sale of property. Humboldt County services would be largely unaffected as a result of the creation of the SCSD. Those services that are already provided by the County, such as law enforcement by the Sheriff's Office and maintenance of most roads, would continue.

The City of Rio Dell, although separated from Scotia by the Eel River, may be considered as "adjacent" to the project area and annexation to the City has been considered as an alternative to formation of the SCSD. Annexation would allow for a single governmental entity to provide municipal services to the area. There might be some cost savings associated with provision of some services by the City; however, proponents of annexation, which primarily consists of the City, have not been able to advance a concept and terms for annexation that have been able to persuade the current owners or residents of Scotia to support and pursue such an annexation. As noted above, the formation of the SCSD does not preclude future annexation or the future combination of some utilities (e.g., wastewater management). However, annexation would result in additional services to the Town of Scotia such as improved public safety, and more direct local influence over land use decisions compared to jurisdiction under the County.

As proposed, the SCSD would be an independent public agency responsible for maintaining utilities and providing services outlined in the petition to LAFCo. As an independent agency, the SCSD would be responsible for all administrative costs associated with operating the District.

***D. The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies set forth in Section 56377.***

Analysis: The Town of Scotia is almost completely developed with well-established land use patterns. The proposal to form the SCSD would not substantially affect these patterns or alter the development capacity of remaining vacant lands. With the majority of land in the project area already developed, the proposal would not conflict with the provision of planned, orderly, and efficient patterns of urban development, as required by this policy. Government Code Section 56377 concerns proposals that could reasonably be expected to induce or lead to the conversion of existing open space lands to other uses. As evaluated in the EIR, the proposed formation of the SCSD will have no effect on open space lands and therefore requires no further consideration per Section 56377.

***E. The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.***

Analysis: The project area contains no active agricultural lands. The formation of the SCSD (or annexation to the City, for that matter) will not affect the viability of any surrounding or supporting agricultural lands.

***F. The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.***

Analysis: The total project area covers approximately 420 acres on a portion of two assessor parcel numbers (APNs 205-351-016 and 205-351-018), which have historically had a single ownership. At the time formation of the CSD was initiated, the town was owned by PALCO. The town is currently owned by TOS LLC. The Town of Scotia has developed as a distinct, compact mill town community, the boundaries of which are the basis of the proposed boundaries for the SCSD. As noted above, in November 2009, the County Board of Supervisors approved the subdivision of 465 acres into 340 individual lots reflecting the existing land use patterns. The proposed boundary line of the SCSD is consistent with the historic limits of the Town of Scotia and with local geographic markers including State Route 101 and the Eel River. The Town of Scotia is separated from the City of Rio Dell by the Eel River (connected by two bridges) and there are currently no boundaries or limits associated with the City of Rio Dell that affect the proposed SCSD. Scotia is not within the City of Rio Dell's Sphere of Influence.

As addressed above concerning creation of an "island", a minor issue has been raised about the manner in which a portion of the SCSD would be substantially separated from the main part of Scotia by Highway 101. This apparent separation in proposed areas of the CSD (the two areas are, in fact, connected by a service road undercrossing Highway 101) is the result of Highway 101 improvements that split off a fragment of the historic community. The proposed SCSD boundaries encompass all lands that have, historically, been part of the Town of Scotia.

***G. Consistency with city or county general and specific plans.***

Analysis: On November 10, 2009, the Humboldt County Board of Supervisors approved General Plan Amendment GPA 05-01, Rezoning ZR 05-01, Planned Development Permit PDP 05-01, and Vesting Tentative Subdivision Map FMS 05-01. These actions were taken to ensure that the Town of Scotia proposal was consistent with the County's General Plan and zoning. The EIR certified by the County included the intent to form the SCSD in conjunction with the other project approvals. Condition 4 of the approved Vesting Tentative Subdivision Map requires the establishment of "a community services district or other public entity" for management of water and sewer utilities". Condition 11 addressed the need to provide for maintenance of open space.

***H. The sphere of influence of any local agency which may be applicable to the proposal being reviewed.***

Analysis: The project area is not contained in the Sphere of Influence of any local agency that provides the services considered in this application. While the City of Rio Dell is on record as wanting to annex the community of Scotia, the City has not included Scotia in the City's SOI or General Plan Area. The proposed SCSD boundaries include no land that is within the Sphere of Influence of the City of Rio Dell or any other city or district.

***I. The comments of any affected local agency or other public agency.***

Analysis: The City of Rio Dell has commented extensively on the SCSD formation application since its initiation in 2007. The City has made numerous comments on the adequacy of utility analysis, financial projections, user fees, and other issues of local governance, generally in response to information contained in the Draft Municipal Service Review for the proposed district. Although the application materials have been updated substantially since many of these comments were received, the following summarizes the main points of objections made by the City of Rio Dell during this process. The most recent set of comments from the City came to LAFCo as a package with a cover letter dated June 9, 2010. The material, with multiple attachments, is entitled, "Public Hearing Materials Presented to Humboldt LAFCo – Why Annexation of the Town of Scotia to Rio Dell should be selected over the proposed Community Services District Formation, June 2010."

Some of the key points of the City's comments are:

- LAFCo's proposal evaluation policy number 7 indicates that annexation to Rio Dell would be a much-preferred action than formation of a new CSD, and LAFCo should remove the SCSD option from the table and direct TOS to apply for annexation to the City so that talks between the developer and the City for annexation can resume.
- Economy of scale favors annexation by combining the approximately 800 residents with the 3200 residents in Rio Dell, which provides a larger customer base to share the cost of services.
- The City is ready, willing and able to annex Scotia to provide the full range of municipal services, and the City is committed to processing an annexation application expeditiously.
- Annexation would, in the City's estimate, be "43 percent cheaper" than the SCSD by avoiding duplication of costs and consolidating services (The City offers a number of financial estimates, based on various assumptions, to explain this claim.)

- While, under a CSD, the Town of Scotia would continue to be in the law enforcement jurisdiction of the Humboldt County Sheriff's Office, the City would still be expected to provide uncompensated police service as mutual aid. If the Town of Scotia was annexed, the City expects that it could add two police officers and provide consistent police protection to Scotia.
- The City can obtain revenues (e.g., Transient Occupancy Tax, Sales Tax, Vehicle License Fees, etc.) to fund services in the community that the SCSD could not obtain.
- Consolidation by annexation would enable the two communities to work together for a better and more cost-effective "regional" wastewater system, thereby avoiding costs that Scotia will eventually incur for substantial future improvements of its wastewater treatment plant (which the City claims the SCSD proposal largely neglects to consider as additional costs on top of short-term improvements). The City also states that consolidation of wastewater systems will protect the City's water supply from potential contamination in the event of flooding of Scotia's current WWTP site.

In addition to extolling the benefits of annexation, the City of Rio Dell has submitted numerous comments criticizing assumptions and claims that have been made in support of the proposed SCSD. Many of the City's points are outlined in Exhibit 3 to the June 2010 Public Hearing Materials (i.e., attached correspondence from Winzler & Kelly to the City of Rio Dell, dated June 8, 2010). Included are such comments as:

- The assumption that the SCSD can get a 15 percent property tax allocation from the County is unrealistic, and that 4 to 6 percent is more probable.
- The SCSD's Financial Assessment Report incorrectly represents the affordability of user fees based on average medium household incomes on future households in Scotia. The City claims that the resulting household costs will not, in fact, fall within the EPA Affordability Guidelines.
- The proposed rates not only barely cover initial costs, they will not enable the SCSD to build up adequate reserves to replace components when they fail.
- The proposed SCSD finance plan, including costs for limited improvements of the wastewater treatment plant (WWTP), does not cover probable costs for improvements that will be needed in the near future based on on-going studies and regulatory trends in the North Coast Basin.

The City of Rio Dell, in its submission to LAFCo (cover letter dated June 9, 2010), summed up their position on the proposed formation of the Scotia CSD by stating, in effect, that LAFCo is urged to remove the Community Service (CSD) option from the table so that talks between the developer and the City can resume. The City states that it is its

intent to have a completed LAFCo application for the annexation of Scotia to the City of Rio Dell filed within 90 days of the date that an annexation application from the TOS LLC is deemed complete.

In addition to the June 2010 “Public Hearing Materials”, the City of Rio Dell has submitted additional comments in support of annexation and/or to challenge TOS’s CSD proposal. A letter dated June 21, 2010 included a copy of a July 19, 2006 open letter from PALCO to residents of Rio Dell, in which PALCO proposed and advocated annexation in anticipation to a town hall meeting in Rio Dell.

The City has also commented extensively on how it intends to facilitate an annexation proposal and related CEQA analysis if LAFCo, as the City requests, denies the proposal for formation of the CSD, and if and when Scotia initiates annexation. A letter from the City dated July 2, 2010, responds to questions raised about how the City would conduct CEQA review for an annexation proposal and the related actions that the City would need to take to consider the greater Scotia project, including subdivision.

In addition to agency comments from the City of Rio Dell is correspondence from the Rio Dell Fire Protection District, dated July 1, 2010, in which it advises LAFCo that, if the City of Rio Dell undertakes annexation, the Fire Protection District would also initiate annexation of the Town of Scotia into its service boundary, conditioned upon reaching mutually agreeable terms with TOS LLC.

***J. The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.***

Analysis: There are three essential components to financing the proposed SCSD. The first is the sale of tax allocation bonds (TAB) for the installation of sewer and water infrastructure. The TAB sale is currently estimated at \$12 million. The TAB will be paid off primarily through sale of the land by TOS LLC. The second is another bond issue, in the amount of \$5 million, which will be an encumbrance on the newly created parcels and SCSD. These bonds, which will be issued by the time the TAB has been fully repaid, will be paid off through a monthly EDU (equivalent dwelling unit) payment of debt service currently estimated at \$62.68. Operation and maintenance costs associated with the proposed SCSD is addressed with an additional monthly EDU fee of \$127.32. The total estimated monthly EDU fee, including both bond repayment and operation and maintenance costs, has been estimated in the MSR at \$190. Staff considers this amount to be at the higher end of the scale for similar services provided by CSD’s. Furthermore, the amount of the estimated monthly fee is predicted, to some extent, on the expectation that the CSD will receive a property tax allocation of 15 percent, which appears unlikely. A lower rate of property tax allocation would result in higher monthly fees.

Since preparation of the MSR and Financial Assessment, TOS has suggested that, with revised assumptions, the monthly CSD service fee could be reduced from approximately \$190 per EDU to \$153/EDU. Factors for this revised assumption includes: donation from TOS to the CSD of facilities to house Scotia CSD staff and equipment, as well as vehicles, tools, and equipment; and use of low-interest loans to finance water and wastewater repairs. This reduction also assumes that property tax revenue will be sufficient to meet streetlight and road maintenance costs.

The proposed SCSD would provide a range of municipal services, including water, sewer, storm drainage, roadway maintenance, parks, and fire protection. The ability of this agency to provide these services is the focus of the attached MSR, which provides analysis of the legal, technical, physical, and financial ability of the SCSD to provide services. The MSR includes a financial structure that is sufficient to provide the services at a level equal to existing service levels, and consistent with legal requirements. Please refer to the MSR for greater details on the specific service needs, including substantial physical and institutional upgrades, required for SCSD formation and operation.

As noted above in staff's analysis under LAFCo's Proposal Evaluation Policy No. 9, staff is concerned with some of the assumptions used for the long-term income associated with the property taxes. Staff is also concerned that the high monthly EDU rate that would eventually be charged to the residents leaves little room for the new SCSD to increase rates to overcome shortfalls in its operating revenue and build financial reserves for contingency costs. However, the above concerns notwithstanding, if the assumptions in the financial analysis remain valid over time, based on the information provided, the CSD should be capable of providing economically feasible services.

***K. Timely availability of water supplies adequate for projected needs.***

Analysis: The subject property is currently provided water for drinking, industrial uses, and irrigation from the Eel River, through water rights owned by the TOS, LLC. Engineering analysis indicates that Scotia has an average water usage rate of 484,400 gallons per day (GPD), with a seasonal maximum use of 601,000 GPD. Town of Scotia holds water rights for approximately 4.5 million GPD from the Eel River, with the Town receiving portions and the Humboldt Redwood Company also receiving portions.

The MSR indicates that the TOS LLC will transfer the water rights license to the SCSD, setting aside a contractual right that guarantees Humboldt Redwood Company a specific quantity of water. The MSR goes on to state that the water rights license will create a reversionary interest in the license to be triggered under "specified future conditions", including dissolution of the CSD or acquisition of the CSD's service area by a different water service provider.

Staff is concerned that, not knowing what other circumstances may trigger the reversion of water rights, this language clouds confirmation that the CSD will have adequate water

supplies for projected needs. Staff believes that the SCSD should have solid ownership of its water resources, and that those resources should not be jeopardized with terms for reversion. Therefore, staff proposes a condition of approval that requires that the Municipal Services Report for the SCSD, dated May 2009, be amended to eliminate the reversion of water rights from the SCSD to TOS LLC should the CSD dissolve or be annexed by another water provider. As amended, the MSR should state that the TOS LLC will transfer water rights to the SCSD upon formation.

If conditioned as recommended, water supplies to be controlled by the SCSD would exist for the existing and planned land uses within the Town of Scotia, and will be adequate to meet the needs of the community.

***L. The extent to which the proposal will affect a city or cities and the county in achieving their respective fair shares of the regional housing needs as determined by the appropriate council of governments.***

Analysis: Regional housing needs allocations are issued to cities and counties by the California Department of Housing and Community Development every five years. These allocations are based on a percentage of growth assigned to the County, and reflect the need for new construction to meet housing needs for a range of incomes. The formation of the SCSD would not result in any land use changes, either to General Plan designations or zoning, and would therefore not affect the potential number of affordable housing units to be constructed in the County. It may be worth noting that, if there is failure to provide for the long-term maintenance and management of infrastructure in the Town of Scotia, by one means or another, the housing opportunities that have historically been provided by PALCO and now TOS LLC, may not remain.

***M. Any information or comments from the landowner or owners, voters, or residents of the affected territory.***

Analysis: As noted, Scotia is owned by a single party, currently Town of Scotia (TOS) LLC. This owner is a proponent for forming the SCSD. The residents of both Scotia and Rio Dell were invited to a public study session at the Winema Theatre on April 21, 2010, to hear presentations by the City of Rio Dell and the Town of Scotia, LLC on the application. A number of public comments were provided at that meeting, primarily in favor of CSD formation, although comments were made on both sides of the issue. The City of Rio Dell has also made several written comments on the preparation of draft documents for the application, including the MSR, Financial Analysis, Schedule for Repairs to Existing Infrastructure, and Detailed Engineering Analysis. These comments were in regards to earlier drafts of the analysis and service review, and each has been updated based on the comments.

Staff has endeavored to include all written correspondence submitted for the July 21, 2010 public hearing, on this project as attachments to this staff report. Given the length of time this project has been under consideration, and the different agencies and staff who

have evaluated the project, there may be some duplication and some omissions from the attachments. The findings made in this staff report are based on the materials contained in the staff report and included as attachments.

***N. Any information relating to existing land use designations.***

Analysis: The County approved General Plan and Zoning amendments for the subject property in November 2009. The land use designations now reflect uses on the ground, and are consistent with the range of housing, business, industrial, and institutional structures and lands in the Town of Scotia.

***O. The extent to which the proposal will promote environmental justice. As used in this subdivision, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services.***

Analysis: In order for the Town of Scotia to transition from a privately-owned company town to a town with individually-owned private property, the community needs to know that public services are and will be adequately funded. The proposed SCSD formation is one mechanism that would provide for these services. No aspect of this proposal would result in unfair treatment of people on the basis of race, culture, or income, and the system improvements outlined in the MSR prepared in support of formation of the SCSD would improve the long-term level of service for all residents and buildings.

**Conclusions**

The only application decision before the Commission at this time is whether or not to allow formation of the Scotia Community Services District. The other ‘issues’ surrounding the discussion, including the concept of annexation to the City of Rio Dell, are important issues for the Commission to consider. However, the only complete and pending application is for the formation of the SCSD. In that regard, staff believes that all of the requisite information necessary for the formation of the SCSD has been provided to the Commission for consideration.



## **Attachment A**

### **Town of Scotia Annexation Discussion**

With respect to Item 7 of LAFCo's Proposal Evaluation Policies, and with consideration to the continued interest of the City of Rio Dell for annexing the community of Scotia, staff notes that denial of the SCSD will not necessarily result in annexation. The history of efforts made since 2005 to consider annexation of Scotia by Rio Dell has been cited and need not be repeated here. It may be characterized, however, that the owners of the community and proponents for forming the SCSD state that the concept of annexation has been evaluated and, in their view, the terms of annexation proposed by the City of Rio Dell are not acceptable. While PALCO back in 2006 was very interested in annexation, it eventually lost interest as it learned more about what would be required by the City. PALCO then proposed formation of the SCSD. The Town of Scotia (TOS) LLC continued with the proposal to form the CSD when it assumed ownership of the town and adamantly objects to annexation. The proposal to form the CSD has strong support by residents in Scotia.

It is important to understand what would need to take place in terms of procedure to achieve a successful annexation if the application for formation of the SCSD is denied. Without recounting in detail procedures for considering annexation (the details of which are well documented), key elements of that procedure include the following:

- The City of Rio Dell would need to amend its General Plan and Sphere of Influence (which also requires a Municipal Service Review with a plan to provide services to the area proposed for annexation). The General Plan amendment and annexation proposal would be subject to public hearings and review pursuant to the California Environmental Quality Act. Much of the EIR that was prepared by the County may be relevant (annexation was an alternative considered in the EIR), but it is expected that details of a new annexation proposal would require additional analysis. The City would be the lead agency for new CEQA analysis. (From staff's perspective, it's interesting that the City has not already taken this step if annexation. The amendment of the General Plan, a Sphere of Influence expansion request, and even rezoning of the property could be initiated through unilateral action on the part of the City. Further, the City could also adopt the County's zoning for the property and also adopt the tentative subdivision map if annexation was a paramount City goal.)
- A resolution from the City of Rio Dell would be needed with all of the pertinent information required by LAFCo, including a plan for providing services.
- Humboldt LAFCo may approve, modify or deny the annexation proposal, and adopt terms and conditions for the annexation.

- Approval would be subject to protest hearings. AB 2838 establishes LAFCo as the conducting authority for all proposals requiring protest proceedings. Therefore, if LAFCo approved the annexation proposal, it would need to notice and set the proposal for a protest hearing within 35 days following the adoption of LAFCo’s resolution of approval. The commission would receive oral or written protests, objections, or evidence, and would need to make a determination to terminate annexation or order the change with or without an election.
- Scotia is “inhabited territory”; therefore, there are specific provisions concerning what is required relative to the extent of protest:
  - (A) LAFCo must order the territory annexed without an election when protests are less than 25% of registered voters in the territory and less than 25% of the landowners owning less than 25% of the assessed value of land in the territory (57075).
  - (B) LAFCo must call an election on the question of an inhabited annexation when 25% or more (but less than 50%) of the voters or landowners protest (57075). The city may call an election on the question of an inhabited detachment or disapprove the detachment by resolution regardless of the protest provision (57079).
  - (C) When 50% or more of the registered voters of an inhabited area proposed for annexation or detachment protest in writing, the proceedings are terminated (57078).

In short, unless there was a strong commitment of support for annexation in the Town of Scotia (i.e., at least 76 percent support), the question of annexation would be subject to approval by election.

To summarize this discussion, there is much that the City of Rio Dell would need to do to successfully advance a proposal for annexation, and it is likely that the success of such a proposal would be subject, in the end, to approval by the inhabitants of Scotia.

If the annexation effort failed due to protests and voting of the inhabitants of Scotia, what then is the recourse? Would LAFCo be willing to reconsider another proposal to form a CSD? These are speculative questions, but indicate that, even if LAFCo’s policies favor annexation as suggested by the City of Rio Dell, LAFCo cannot guarantee or force an annexation.

On the subject of the County’s approval of the tentative subdivision, another factor relating to the issue of possible annexation involves Section 66413 of the Subdivision Map Act. In short, when an area is subject to an approved tentative or vesting tentative map (which TOS now has from Humboldt County), but the final map has not been finally approved, and the area is annexed to a city, all procedures and regulations required by the ordinance of the annexing city shall be deemed to commence as of the effective date of the annexation. Thereafter, the map must comply with the requirements of any applicable ordinance of the city to which the area is annexed. It is likely that many of the provisions of the map do not meet the requirements of the City of Rio Dell. As a result, if annexation was accomplished, the County’s approved tentative map would effectively be nullified and TOS LLC would need to submit a new subdivision proposal to the



City of Rio Dell, essentially starting the process over again. The subdivision proposal would need to be revised to comply with the city's ordinances.

**Government Code Section 66413.** a) When any area in a subdivision as to which a final map has been finally approved by a board of supervisors and filed for record pursuant to this division is thereafter annexed to a city, the final map and any agreements relating to the subdivision shall continue to govern the subdivision.

(b) When any area in a subdivision or proposed subdivision as to which a tentative map or vesting tentative map has been filed but a final map has not been finally approved, or as to which a parcel map is required by this division or local ordinance but the final act required to make the parcel map effective has not been taken, is annexed to a city, all procedures and regulations required by this division or by local ordinance of the annexing city shall be deemed to commence as of the effective date of the annexation and the map shall comply with the requirements of any applicable ordinance of the city to which the area is annexed.



**RESOLUTION 10-08**

**RESOLUTION OF THE  
HUMBOLDT LOCAL AGENCY FORMATION COMMISSION  
APPROVING THE FORMATION OF THE  
SCOTIA COMMUNITY SERVICES DISTRICT**

**WHEREAS**, the above-referenced proposal to form the Scotia Community Services District (SCSD) has been filed with the Executive Officer of the Humboldt Local Agency Formation Commission (LAFCo); and

**WHEREAS**, the fundamental role of the Humboldt LAFCo is to implement the Cortese-Knox-Hertzberg Act (The Act) consistent with local conditions and circumstances in Humboldt County. The Act guides LAFCo's decisions; and

**WHEREAS**, Humboldt LAFCo received an application by James Shanks of Pacific Lumber Company (PALCO) for the proposed Formation of the Scotia Community Services District (Proposal); and

**WHEREAS**, the Proposal is to form the Scotia Community Services District (SCSD), which will provide the following services to the community of Scotia: wastewater collection and treatment; water (both domestic and raw water for fire protection services); fire protection (by absorbing the Scotia Volunteer Fire Department); storm drainage; street lighting; road maintenance; parks, recreation and open space; and landscape maintenance within public right-of-way; and

**WHEREAS**, the proposed SCSD will have the same boundaries as the established community of Scotia, comprising approximately 420 acres, located in the Eel River Valley along Highway 101, south of and separated from the City of Rio Dell by the Eel River; and

**WHEREAS**, the Proposal is made pursuant to Part 1, Division 3, Title 6 of the California Government Code (commencing with Section 61000, Community Services District Law) and Part 3, Division 3, Title 3 of the California Government Code (commencing with Section 56000, Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000); and

**WHEREAS**, the Town of Scotia, at the time of application, had 273 registered voters, and the SCSD petition was signed by 85 registered voters; and

**WHEREAS**, three persons are designated as chief petitioners: 1) Rick Walsh-504 B Street, 2) Gail McKnight-408 Church Street, 3) John Broadstock-601 1<sup>st</sup> Street; and



**WHEREAS**, the petitioners request that Humboldt LAFCo conduct the proceedings proposed in the petition pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000; and

**WHEREAS**, in July 2008, PALCO's real and personal assets for Scotia were transferred to the Town of Scotia Company, LLC (TOS), TOS now being the applicant proceeding with the original application of November 2007; and

**WHEREAS**, the initial board of directors of the proposed SCSD shall be chosen by an at-large election; and

**WHEREAS**, the Town of Scotia is not within any Sphere of Influence of any city or district; and

**WHEREAS**, there is not an "affected city" or "affected district", as defined by Government Code section §56011 or §56013; and

**WHEREAS**, the Commission has considered the Municipal Services Review dated May 2009 (MSR), containing the draft plan for services, and the proposed Sphere of Influence (SOI) for the SCSD; and

**WHEREAS**, as set forth in §56076 of The Act, a Sphere of Influence (SOI) is defined as a plan for the probable physical boundaries and service area of a local agency or district, as determined by the Commission; and

**WHEREAS**, the Sphere of Influence of the SCSD is proposed to be coterminous with the boundaries of the proposed CSD; and

**WHEREAS**, the Commission has reviewed the LAFCo staff report and has heard and fully considered all of the testimony presented at a public meeting held on July 21, 2010, and related correspondence; and

**WHEREAS**, the Commission has reviewed the Final Environmental Impact Report, certified as complete by the County of Humboldt and for which the County served as lead agency, and the Commission has made findings pursuant to the California Environmental Quality Act; and

**WHEREAS**, the Municipal Services Review document analyzes and affirms the SCSD's ability to serve existing and future development in the community of Scotia; and

**WHEREAS**, the Commission finds the Proposal conforms to the LAFCo Policies and Procedures Manual (which incorporates the Cortese-Knox-Hertzberg determinations) for the formation of a CSD, and analysis of each policy with the proposed SCSD formation was provided in the LAFCo staff report; and



**WHEREAS**, the Commission considered all the factors required by law under California Government Code 56425; and

**WHEREAS**, in accordance with Government Code §61014, the Commission determines the proposed community services district, to be financed by bonds, special taxes, benefit assessment, and user fees, will have sufficient revenues to carry out its purposes; and

**WHEREAS**, it has been determined that, under the unique circumstances of the community of Scotia, the formation of a CSD is a feasible, cost-effective and acceptable approach to providing and maintaining community services for the community of Scotia; and will establish a public entity to assume control of and maintain the public service needs of the residents and businesses of Scotia.

**NOW, THEREFORE, BE IT RESOLVED** as follows that:

1. Formation of the Scotia Community Services District is APPROVED, subject to the conditions outlined below.
2. The Municipal Services Report for the SCSD, dated May 2009, is amended to eliminate the reversion of water rights from the SCSD to TOS LLC should the CSD dissolve or be annexed by another water provider. As amended, the MSR shall state that the TOS LLC will transfer water rights to the SCSD upon formation.
3. As amended, the MSR for the SCSD dated May 2009, is adopted.
4. The financing plan provided for the formation of the SCSD is adequate to establish the initial operating budget of the SCSD.
5. The provisional appropriations limit submitted for voter approval shall be \$250,000. The permanent appropriations limit shall be set at the first election which shall be held following the full fiscal year of operation and shall not be considered a change in the appropriations of the SCSD.
6. The sphere of influence boundary for the Scotia Community Services District, to be coterminous with the boundary of the CSD, is hereby adopted.
7. Pursuant to Government Code Section 56425, the Commission makes the statements of determinations in the staff report, and concurs with the determinations of the MSR.
8. The Executive Officer shall revise the official records of the Commission to reflect any changes to the County Boundary, Sphere of Influence, or MSR.

The foregoing resolution was duly and regularly adopted by the Local Agency Formation Commission of the County of Humboldt, State of California.



**PASSED AND ADOPTED** at a special meeting of the Local Agency Formation Commission of the County of Humboldt, State of California, on the 21<sup>th</sup> of July, 2010, by the following vote:

AYES:	Commissioners:
NOES:	Commissioners:
ABSENT:	Commissioners:
ABSTAIN:	Commissioners:

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LAFCo Chair  
Humboldt LAFCo

Attest:

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Merle Anderson, LAFCo Executive Officer  
Humboldt LAFCo



**RESOLUTION 10-09**

**RESOLUTION OF THE  
HUMBOLDT LOCAL AGENCY FORMATION COMMISSION  
MAKING THE REQUIRED FINDINGS FOR CERTIFYING COMPLIANCE WITH  
THE CALIFORNIA ENVIRONMENTAL QUALITY ACT  
FOR FORMATION OF  
THE SCOTIA COMMUNITY SERVICES DISTRICT**

**WHEREAS**, the fundamental role of the Humboldt LAFCo is to implement the Cortese-Knox-Hertzberg Act (The Act) consistent with local conditions and circumstances; and

**WHEREAS**, on November 27, 2007, the County of Humboldt Community Development Services – Planning Division received an application from Pacific Lumber Company (PALCO) for the proposed Town of Scotia LLC development project (Proposal), which included a General Plan Amendment, Zone Reclassification, Subdivision and the formation of a Scotia Community Services District (SCSD); and

**WHEREAS**, in July 2008, PALCO’s real and personal assets for Scotia were transferred to the Town of Scotia Company, LLC (TOS), TOS now being the applicant proceeding with the original application for said project; and

**WHEREAS**, pursuant to the California Environmental Quality Act (CEQA), the County of Humboldt assumed the role of lead agency and Humboldt LAFCo assumed the role of a responsible agency in consideration of the proposed formation of the SCSD; and

**WHEREAS**, the County of Humboldt caused the preparation of a Draft Environmental Impact Report (State Clearinghouse Number 2007052042) for the Town of Scotia development proposal consisting of General Plan Amendment, Zone Reclassification, Subdivision Map, Planned Development Permit, and formation of a CSD; and

**WHEREAS**, the project description in the EIR included formation of a CSD, and annexation was considered in the EIR as a project alternative; and

**WHEREAS**, LAFCo staff (Daniel Hamilton, Executive Officer) reviewed the Draft PEIR and, with a letter dated February 25, 2008, submitted comments concerning formation of the Scotia CSD, noting that “Humboldt Local Agency Formation Commission (LAFCo) has reviewed the Draft EIR and has several comments on the Draft EIR”; and

**WHEREAS**, LAFCo staff (Daniel Hamilton, Executive Officer) reviewed the Administrative Final PEIR and, with a letter dated December 12, 2008, submitted comments on behalf of LAFCo and, in another letter dated February 13, 2009, submitted additional comments concerning the Final EIR; and





**WHEREAS**, responses to said LAFCo comments were incorporated into the Final EIR; and

**WHEREAS**, Humboldt County certified the EIR on November 10, 2009, and filed a Notice of Determination for their action on December 9, 2009; and

**WHEREAS**, the CEQA Guidelines contain provisions for actions that a responsible agency (as LAFCo is in this case) needs to take in consideration of an EIR prepared by another agency. These actions include that, per Section 15096(f), prior to reaching a decision on the project, the responsible agency must consider the environmental effects of the project as shown in the EIR, and, per Section 15096(h), the responsible agency shall make the findings required by Section 15091; and

**WHEREAS**, Humboldt LAFCo held a Public Hearing in consideration of the proposed formation of the Scotia CSD on July 21, 2010, and opportunity was given to all interested persons, organizations, and agencies to present oral or written protests, objections, and any other information concerning the Proposal; and

**WHEREAS**, at said meeting, the Environmental Impact Report was considered in conjunction with the project proposal; and

**WHEREAS**, LAFCo determined that the EIR prepared by the County of Humboldt for the Town of Scotia General Plan Amendment, Zone Reclassification, and Final Map Subdivision, which was certified as complete by the Humboldt County Board of Supervisors on November 10, 2009 by Resolution No. 09-77, is the appropriate environmental document for the Proposal, including formation of the SCSD; and

**WHEREAS**, the Commission found that the Final EIR considers relevant environmental effects of the elements of the proposed Project that are within the jurisdiction of LAFCo.

**NOW, THEREFORE**, be it resolved, determined and ordered that Humboldt LAFCo adopts the following findings pertaining to the CEQA analysis for the formation of the Scotia Community Services District:

1. Humboldt LAFCo, as a responsible agency for the Final Program Environmental Impact Report (EIR) for the Scotia project that was prepared and certified by Humboldt County, prior to reaching a decision on those elements of the project that are within LAFCo's jurisdiction, namely, formation of a CSD, has considered said EIR and the environmental effects of said action.
2. LAFCo concurs with the lead agency that said Final EIR is complete and adequate and fully complies with all requirements of CEQA and the CEQA Guidelines.
3. LAFCo recognizes and concurs with the findings made by Humboldt County for certification of said EIR, including findings required by CEQA Guidelines Section



15091, incorporated into this LAFCo resolution, in addition to LAFCo's own findings contained below, noting that LAFCo's consideration of environmental impacts evaluated in said EIR is limited on the proposed formation of the CSD.

4. LAFCo recognizes and concurs with the mitigation measures adopted by Humboldt County for said EIR, and the Commission finds that these mitigation measures reduce the identified potentially significant impacts to less than significant.
5. LAFCo further recognizes and concurs with the associated Mitigation Monitoring and Reporting Program as adopted by Humboldt County.

**BE IT FURTHER RESOLVED** by Humboldt LAFCo that:

Humboldt LAFCo makes the following findings:

1. **IMPACTS AVOIDED OR MITIGATED TO A LEVEL OF INSIGNIFICANCE:**

The Commission makes the findings listed below regarding the Town of Scotia project identified in the Environmental Impact Report (EIR) for the project. The Commission finds that all mitigation measures described in the EIR will be implemented pursuant to the conditions of approval and the mitigation monitoring program adopted by the County of Humboldt as part of the project. These mitigation measures were identified and discussed, or are derived directly from, measures which were identified and discussed in the EIR. The Commission hereby adopts and incorporates as part of the project all mitigation measures set forth in the EIR.

Impacts mitigated to a level of insignificance and the mitigation required to result in a less than significant impact are identified in Chapter 3 of the Draft EIR (pages 3-1 to 3-41), which is incorporated herein by reference, noting that, as they apply to LAFCo's limited jurisdiction over elements of the project, such changes or alterations are within the responsibility and jurisdiction of other public agencies and not the agency making the finding (i.e., LAFCo), and such findings have been adopted by such other agency or can and should be adopted by such other agency. The Commission finds, as such, that these mitigation measures reduce the identified potentially significant impacts to less than significant.

2. **OTHER IMPACTS ARE NOT SIGNIFICANT:**

Other potential impact subject areas are addressed in the EIR. The Commission finds that other potential impacts, including those discussed in the EIR, do not have significant effects on the environment. No mitigation measures are required for these other considerations.

3. **ALTERNATIVES:**

The Final EIR evaluates the potential environmental consequences of a range of alternatives, including the No Project Alternative, Annexation to the City of Rio Dell, and Formation of a Home Owners Association and Private Utilities.



Analysis did not determine that annexation to the City of Rio Dell, or formation of any other type of entity to provide the proposed community services, would avoid or reduce environmental impacts that would otherwise occur as a result of formation of a CSD.

Under the “No Project” alternative, the Town of Scotia would continue to be operated by a private entity, and would continue to be subject to the existing land use and zoning regulations of Humboldt County. Scotia would not be subdivided and existing housing would continue to be rented out and maintained by a private entity. Because the No Project alternative assumes that no change would occur, this alternative is the least environmentally damaging. However, the No Project alternative would not allow the project to achieve any of its objectives, including improvement and long-term management of infrastructure. Furthermore, the alternatives identified in the EIR would not result in significantly less environmental impacts than the proposed project. Therefore, the proposed project is considered in the EIR to be the environmentally superior alternative.

#### 4. STATEMENT OF OVERRIDING CONSIDERATIONS NOT NEEDED

The Commission finds the project proposed and analyzed in the Final EIR does not result in project impacts that cannot be avoided completely or mitigated to a level that is demonstrably less-than-significant, and that a Statement of Overriding Considerations, pursuant to Section 15093 of the CEQA Guidelines, is not required for this project.

**BE IT FURTHER RESOLVED** by Humboldt LAFCo that:

Humboldt LAFCo hereby directs staff to file a Notice of Determination pursuant to CEQA Guidelines Section 15094.

The foregoing resolution was duly and regularly adopted by the Local Agency Formation Commission of the County of Humboldt, State of California.



**PASSED AND ADOPTED** at a special meeting of the Local Agency Formation Commission of the County of Humboldt, State of California, on the 21<sup>st</sup> of July, 2010, by the following vote:

AYES:	Commissioners:
NOES:	Commissioners:
ABSENT:	Commissioners:
ABSTAIN:	Commissioners:

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LAFCo Chair  
Humboldt LAFCo

Attest:

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Merle Anderson, LAFCo Executive Officer  
Humboldt LAFCo



**ATTACHMENT 7A - BUDGET STATUS REPORT**

**MEETING DATE:** July 21, 2010  
**TO:** Commission Members  
**FROM:** George Williamson AICP, Executive Officer  
**SUBJECT:** 2009-10 Budget Status Report through July 14, 2010

**Recommendation**

By order of the Chair, with concurrence of the Commission, receive and file the budget report.

**Discussion**

The following is a Humboldt LAFCo end of Fiscal Year 2009-2010 budget account summary, as reported by the county auditor's office on July 14, 2010.

<b>Account</b>	<b>Description</b>	<b>Actual</b>
	<b>2009-10 Revenues to date</b>	
11	Deposit -remaining for Scotia CSD formation	\$12,187.16
11	Deposit – remaining for CAL FIRE (Account #002854)	\$447.50
11	Deposit – remaining for Garberville Sanitary District – Kimtu Meadows (Account #004963)	\$280.00
401000	Interest	\$1,374.74
808000	Trust Fund Revenues (County General Fund)	\$34,577.00
671181	City Contributions (end of calendar year)	\$34,577.00
671182	Special District Contributions (end of calendar year)	\$34,577.00
	<b>2009-10 Expenses to date</b>	
2106	Communications	\$0.00
2110	Insurance (SDRMA)	\$2,140.61
2115	Memberships (CALAFCO & SDRMA))	\$2,976.00
2118	Professional & Special Services	\$101,838.53
2123	Commission Honorariums	\$449.00
2125	Commission Transportation & Travel	\$647.25
2166	Professional Services- Annexations	\$0.00
3940	Central Service Charges	\$0.00
	<b>Remaining amount available**</b>	<b>\$25,161.51</b>