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**BUTTE LOCAL AGENCY FORMATION COMMISSION (LAFCo)  
EXECUTIVE OFFICER'S REPORT**

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**TO:** Local Agency Formation Commission

**FROM:** Stephen Betts, Deputy Executive Officer

**SUBJECT:** *LAFCo File 19-10 – Durham Irrigation District –Holland Avenue Annexation No. 1*

**DATE:** November 26, 2019, for the December 5, 2019, LAFCo Meeting

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**Summary**

Proposed is the annexation of five parcels and the adjacent roadway, totaling approximately 10 acres, to the Durham Irrigation District (***Exhibit A***). This uninhabited annexation would allow the Durham Irrigation District to supply water for domestic purposes to existing and future residential uses. The proposal has the support of the affected landowners and substantially conforms to LAFCo policy; therefore, the Executive Officer recommends approval of this proposal.

**General Information**

Application Submitted: April 25, 2019 (*Incomplete*)

Application Deemed Complete: November 12, 2019

100% Landowner Consent: Yes

Notice and Hearing Required: No

Proponent: Durham Irrigation District, by Resolution 2019-03

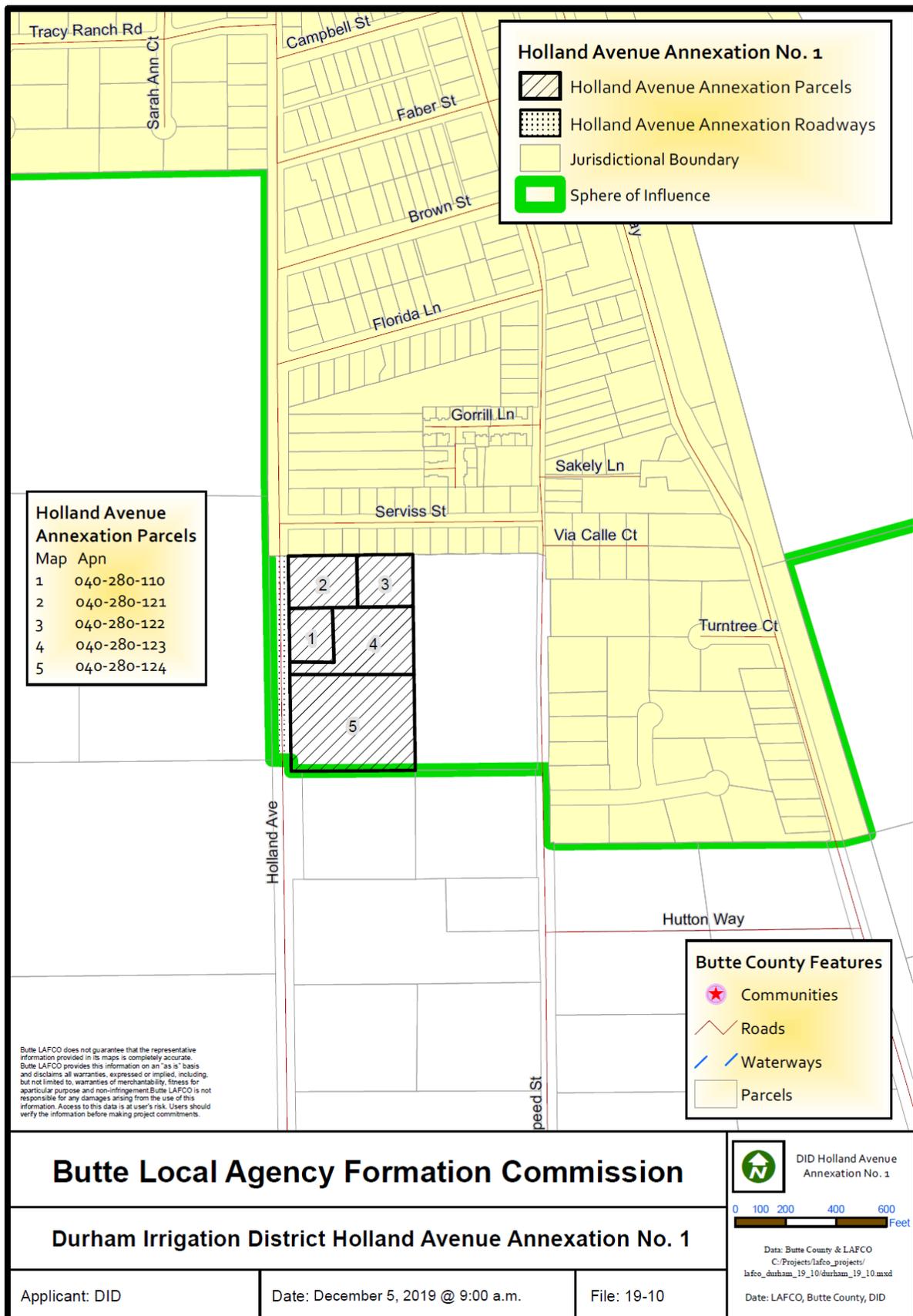
Landowners: Durham Irrigation District (APN 040-280-110), Christopher & Nancy Brown (APN 040-280-121), AC Partners LLC (APN 040-280-122), John & Candace Messina Revocable Living Trust (APN 040-280-123), & Black Diamond Holdings LLC (APN 040-280-124)

Location: The subject territory is located on the east side of Holland Avenue, approximately 170 feet south of Serviss Street, in the unincorporated south Durham area. The territory consists of Assessor's Parcel Numbers 040-280-110, 040-280-121 (9156 Holland Ave.), 040-280-122 (60 San Rafael Ct.), 040-280-123, & 040-280-124. The territory is located in Supervisorial District 4.

Proposal: Annexation of five parcels and the adjacent portion of Holland Avenue, totaling approximately 10 acres, to the Durham Irrigation District for the provision of domestic (potable) water.

**Requested**

Action: Adopt Resolution 07 2019/20 (***Exhibit B***) approving the annexation.



## DISCUSSION AND ANALYSIS

### Background

The territory proposed for annexation to the Durham Irrigation District is located on the east side of Holland Avenue, north and south of San Rafael Court in the unincorporated community of Durham. The territory consists of five parcels ranging in size from 1 to 4 acres. Two of the parcels are developed with single family dwellings and one parcel is developed with a DID well and pumping facility (DID Well No. 5). The remaining two parcels are undeveloped. Surrounding land uses include single-family dwellings to the north and orchards to the west, east, and south. The Butte County General Plan designates the subject territory as Very Low Density Residential and the territory is zoned VLDR (Very Low Density Residential, 1 acre minimum parcel size). The existing residential uses are consistent with the land use policies of Butte County.



**Aerial View of the Territory**



**DID Well No. 5 Facility Located within the Territory**

#### *Development Process Missteps*

When the annexation proposal was initiated by the District and submitted to LAFCo in April 2019, the territory consisted of *one legal parcel with one owner* with an approved Tentative Map (TPM16-0011 -Black Diamond Holding, LLC). Subsequently and *prior to* the annexation being considered/approved by LAFCo:

- 1) the Tentative Parcel Map was finalized/recorded by the County; and
- 2) the newly subdivided parcels were prematurely sold to separate ownership; and
- 3) the District extended water service to a parcel under construction and the County allowed building permits to be issued; and
- 4) the District was forced to reach out to each new parcel owner to solicit support.

A condition of the parcel map required that the five parcels be annexed to the Durham Irrigation District for domestic water service. Additional conditions, shown below, addressed impacts to existing agricultural uses on the parcels to the west, south, and east of the territory.

4. Place a note on the Parcel Map or additional map sheet stating: “Residential dwelling setback from the adjacent active orchard shall be 100 feet along east property line. If the existing agricultural use (orchard) has been permanently removed, the residential dwelling setback shall be consistent with the zoning.”
5. Delineate the 300 foot agricultural buffer on Parcels 3 and 4 and place a note on the Parcel Map or additional map sheet stating: “Agricultural Buffer setback on Parcel 4 shall be 300 feet from the agriculturally zoned parcels to the south and west (across Holland Avenue) and on Parcel 3 shall be 300 feet from the agriculturally zoned parcel to the west (across Holland Avenue).”
6. If a Declaration Acknowledging Right to Farm (Agricultural Statement of Acknowledgement) has not already been recorded on the parcel, prior to or concurrently with the recordation of the Parcel Map, record said document.
7. Place a note on a separate document which is to be recorded concurrently with the Parcel Map or on an additional map sheet that states: “A Declaration Acknowledging Right to Farm (Agricultural Statement of Acknowledgement) has been recorded on the parcels.”

With regards to Condition No. 4, the orchard on the adjacent parcel to the east of the territory still exists.

### **Annexation**

The annexation was initiated by Durham Irrigation District and the affected property owner to facilitate future domestic (potable) water to the parcels within the territory. According to the Butte County Elections Office, there are less than 12 registered voters within the proposal area making the proposal an uninhabited annexation with 100% landowner support.

### **Individual Factors for Consideration**

California Government Code § 56668 provides a list of factors to be considered in the review of a proposal. No single factor is determinative. The purpose in considering these factors is to help inform the Commission in its decision-making process. An evaluation of these factors as it relates to the proposal follows.

#### **(a) Population; land use; topography; proximity to other populated areas; the likelihood of significant growth in the area.**

*The affected territory is located in the unincorporated community of Durham and is developed with two single-family dwellings and a DID well/pumping facility. The territory is designated Very Low Density Residential by the Butte County General Plan and is zoned VLDR (Very Low Density Residential, 1-acre minimum parcel sizes). The existing residential use are consistent with the land use policies of Butte County. With two dwellings, the territory has a current population of approximately six people.*

*The affected territory is legally uninhabited given there are fewer than twelve (12) registered voters based on the most recent data provided by the Butte County Elections Department.*

*The site and surrounding area have no significant natural features that would adversely affect the annexation.*

#### **(b) The need for organized community services; probable effect of the proposed annexation on the cost and adequacy of services and controls in the area and adjacent areas.**

*The need for organized community services in the annexation area is to support residential development consistent with the Butte County General Plan.*

#### **(c) The effect of the proposed action and of alternative actions.**

*The proposed annexation will allow for the extension of public domestic water to the parcels proposed for annexation. There will be no immediate change to the subject territory brought by annexation. Impact to local government is nominal.*

#### **(d) The conformity of the proposal with the adopted commission policies on providing planned, orderly, efficient patterns of urban development.**

*The proposed boundary change is consistent with existing service delivery patterns and development in adjacent areas and facilitates the provision of domestic water services provided by the Durham Irrigation District.*

#### **(e) The effect of the proposal on agricultural lands.**

*Two of the five parcels proposed for annexation are developed with single-family dwellings. Of the three remaining parcels, one is developed with a DID well facility and*

two are undeveloped. The territory is designated by the Butte County General Plan as Very Low Density Residential and is zoned VLDR (Very Low Density Residential, one-acre minimum parcel size). No agricultural uses are found within the territory and none of the parcels within the territory are subject to a Williamson Act contract.

Agricultural uses, primarily orchards, are located on the adjacent parcels to the west, east, and south. The parcels to the south and west of the territory are designated as Agricultural by the Butte County General Plan, while the parcel to the east of the territory is designated as Very Low Density Residential. Additionally, the parcels to the west of the territory are subject to a California Land Conservation Act ("Williamson Act") agreements.

The parcel map that created the five parcels within the territory requires a 100-foot or a 300-foot residential structure setback due to the existence of orchards on the adjacent parcels to the east, south, and west. The 100-foot setback is not required if the orchard on the adjoining parcel on the east side of the territory is permanently removed.

Annexation of the subject territory to the Durham Irrigation District would not contribute to the loss of agricultural lands.

**(f) Boundaries of the territory.**

The subject territory is parcel specific, with definite and certain boundaries. There are no conflicts with lines of assessment or ownership.

**(g) Consistency with city or county general and specific plans.**

The annexation of the subject territory is consistent with the Butte County General Plan 2030, which designates the territory as Very Low Density Residential.

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

The proposed annexation is consistent with the Sphere of Influence for the Durham Irrigation District, as reviewed and updated by the Commission on June 6, 2019. The annexation does not conflict with the Sphere of Influence of any other district.

**(i) The comments of any affected local agency.**

On November 13, 2019, LAFCo staff circulated copies of the application materials for review and comment from local public agencies. Following is a list of the agencies who responded to LAFCO's request for comments and their response.

**Agency**

**Comment**

Butte County Agricultural Commissioner

Durham Irrigation District providing services to existing parcels does not cause any direct impacts to adjacent agricultural operations. See notes from TPM16-011 below;

A 300ft Agricultural buffer from the production orchards on the west and south parcel boundaries is annotated on the Site plan. Additionally, a 100ft residential buffer is proposed on the east boundary adjacent a production orchard, is also annotated on the Site plan. These conditions satisfy the requirements of BCC code sections 24-83 and 24-56 and are recommended by the Agricultural Commissioner's Office.

<i>Butte County Environmental Health</i>	<i>This proposal enhances protection of water aquifers by allowing the possibility of individual private well destructions on affected parcels.</i>
<i>Butte County/CAL Fire</i>	<i>Butte County CAL Fire has reviewed all submitted documents and has no substantive comments.</i>
<i>Butte County Land Development</i>	<i>No substantive comments provided.</i>
<i>Butte County Planning Division</i>	<i>No substantive comments provided.</i>

*The following agencies were sent a request for comments, but did not respond:*

*Butte County Administration, Butte County Assessor's Office, Butte County Elections, Butte County Auditor-Controller, Butte-Glenn Community College District, Durham Unified School District, Durham Recreation & Park District, Durham Mosquito Abatement District.*

**(j) The ability of the receiving entity to provide the services.**

*Through its Resolution of Application, the Durham Irrigation District attests to its ability to supply domestic (potable) water to the subject territory. Additionally, DID stated in the annexation application submitted to LAFCo that "DID hereby affirms that it has adequate raw-water storage and treatment facilities to supply potable water to the annexing parcel."*

**(k) Availability of adequate water supplies.**

*As shown in the Municipal Services Review/Sphere of Influence Plan for the Durham Irrigation District, as adopted by the Commission on June 6, 2019, DID has adequate water supplies (groundwater) to supply water to the subject territory.*

**(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.**

*The subject territory is developed with two single-family dwellings. This annexation proposal would not affect Butte County in achieving its regional housing needs allocation.*

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

*Landowners and registered voters within 300 feet of the territory were notified of this annexation proposal via mailed notice. No comments from the public regarding the proposed annexation have been received as of the date of this report.*

**(n) Any information relating to existing land use designations.**

*The territory is currently developed with two single family dwellings, which is consistent with existing zoning and General Plan designations.*

**(o) The extent to which the proposal will promote environmental justice.**

*The proposed annexation is intended to benefit the existing and future residents of the subject territory by providing a long-term source of public domestic water.*

Based upon the above responses, the proposal appears to be consistent with the listed factors.

### **Applicable Butte LAFCo Policies**

Section 2.0 (*LAFCo General Policies and Standards*) and Section 4.0 (*Annexation and Detachments*) of Butte LAFCo Policies and Procedures provides the Commission with general standards for annexation proposals. The relevant policies for consideration and guidance for this proposal include:

- The creation of logical boundaries. (2.11.2)
- Consistency of a proposal with the Sphere of Influence and Municipal Service Review of the affected jurisdiction(s). (4.1.1)
- Determination of the most efficient service provider. (4.2)

The proposal is substantially consistent with the above policies in that:

- The annexation does not create illogical boundaries; and
- The Durham Irrigation District will provide a secure source of treated domestic water to the territory being annexed; and
- The Durham Irrigation district has adequate supplies and facilities to provide service to the territory; and
- The Durham Irrigation District is the only domestic water service provider in the area.

### **ADDITIONAL INFORMATION**

#### **Property Tax Agreement**

In accordance with provisions of Revenue and Taxation Code § 99, a Master Property Tax Transfer Agreement was executed between the County of Butte and all of the special districts within Butte County. The master property tax sharing agreement was approved by the Butte County Board of Supervisors on December 4, 1979. The Master Property Tax Transfer Agreement states that no property tax transfer will occur as a result of any annexation to special districts.

#### **Support/Protest and Conducting Authority Proceedings**

On February 12, 2019, the Durham Irrigation District Board of Directors adopted Resolution No. 2019-03 initiating the annexation proposal. There are less than twelve (12) registered voters in the territory, which makes the territory uninhabited pursuant California Government Code § 56046, which requires twelve (12) or more registered voters to live within the proposal area before it can be considered inhabited. The proposal annexation has the support of the owners of the five parcels within the territory.

#### **Environmental Analysis**

The Durham Irrigation District is the lead agency for the proposal under the California Environmental Quality Act (CEQA). The District found the proposal to be Categorically Exempt from CEQA, pursuant to the following sections: Section 15301(b), Existing Facilities and Lots for Exempt Facilities; Section 15303(d) - New Construction; and Section 15304 - Minor Alteration. The Durham Irrigation District prepared a Notice of Exemption (**Exhibit C**) for the annexation project and provided the following reasons as to why the proposed annexation is exempt from CEQA:

*The project involves the annexation of the Black Diamond Parcel Map in order to provide potable water to APN 040-280-109. This would allow the Durham Irrigation District to provide municipal water service to the parcel. Since the project is the extension of an existing facility it is categorically exempt under Section 15301(b) - Existing Facilities. The project is exempt under Section 15303(d) - New Construction as it involves the construction of a new portion of a utility extension, specifically, a water line. Additionally, the project is exempt under Section 15304 - Minor Alteration as the project will not disturb a large area and will be constructed within the existing right-of-way. It is anticipated installation activities would include trenching to install the water line extension where the trench would be backfilled and covered.*

Staff concurs with the Agency's use of Section 15319, Section 15303(d), and Section 15304 exemptions.

### **ALTERNATIVES FOR COMMISSION ACTION**

After reviewing this report and any testimony or materials that are presented, the Commission can take one of the following actions:

OPTION 1 – APPROVE the proposals as submitted:

- A. Find: 1) The subject territory is uninhabited, 2) The affected landowners have given written consent to the annexation and 3) The annexation agency has given written consent to the waiver of conducting authority proceedings.
- B. Waive the conducting authority proceedings and direct staff to complete the proceeding.
- C. Adopt Resolution No. 07 2019/20 making determinations approving the proposed Durham Irrigation District - Holland Annexation No. 1.

OPTION 2 – DENY the proposal.

OPTION 3 – CONTINUE this proposal to a future meeting for additional information.

### **ACTION REQUESTED:**

Approve OPTION 1.

Respectfully submitted,

*Stephen Betts*

Stephen Betts  
Deputy Executive Officer

### **Attachments:**

- Exhibit A: Annexation Area Map (Page 2)
- Exhibit B: Draft LAFCo Resolution No. 07 2019/20 (Page 10)
- Exhibit C: Notice of Exemption (Page 13)

**DRAFT**

**Exhibit B**

**RESOLUTION NO. 07 2019/20**

**RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION  
OF THE COUNTY OF BUTTE  
MAKING DETERMINATIONS AND ORDERING THE ANNEXATION OF  
TERRITORY DESIGNATED AS 19-10  
DURHAM IRRIGATION DISTRICT  
HOLLAND AVENUE ANNEXATION NO. 1**

**RESOLVED**, by the Local Agency Formation Commission of the County of Butte, State of California, that

**WHEREAS**, a proposal for the annexation of certain territory to the Durham Irrigation District in the County of Butte was heretofore filed by the Durham Irrigation District and accepted for filing on November 12, 2019, by the Executive Officer of this Local Agency Formation Commission pursuant to Title 5, Division 3, commencing with Section 56000 of the Government Code; and

**WHEREAS**, the Executive Officer, pursuant to Government Code Section 56658, set December 5, 2019, as the hearing date on this proposal and gave the required notice of public hearing; and

**WHEREAS**, the Executive Officer, pursuant to Government Code Section 56665, has reviewed this proposal and prepared a report, including recommendations thereon, and has furnished a copy of this report to each person entitled to a copy; and

**WHEREAS**, this Commission called for and held a hearing on December 5, 2019, and at the hearing this Commission heard and received all oral and written protests, objections and evidence which were made, presented or filed, and all persons present were given an opportunity to hear and be heard with respect to this proposal and the report of the Executive Officer; and

**WHEREAS**, this Commission considered the factors determined by the Commission to be relevant to this proposal, including, but not limited to, factors specified in Government Code Section 56668; and

**NOW, THEREFORE**, the Local Agency Formation Commission of the County of Butte **DOES HEREBY RESOLVE, DETERMINE AND ORDER** as follows:

**Section 1.** Environmental Findings:

- A. The Commission concurs with the Durham Irrigation District determination that the proposed project is Categorically Exempt from the California Environmental Quality Act pursuant to Section 15301(b), Existing Facilities and Lots for Exempt Facilities; Section 15303(d) - New Construction; and Section 15304 - Minor Alteration. A Notice of Exemption was prepared by the Durham Irrigation District (Exhibit C).

**Section 2.** General Findings and Determinations:

- A. The Commission has considered the factors determined by the Commission to be relevant to this proposal, including, but not limited to, Sphere of Influence and General Plan consistency, the Municipal Service Review and Sphere of Influence Plan for the Durham Irrigation District, and Commission Policies and other factors specified in Government Code Section 56668 and as described in the staff report dated November 26, 2019, for the meeting of December 5, 2019.
- B. The Commission finds that the proposal has 100% support of the affected property owners and orders the annexation complete without a protest hearing pursuant to Government Code Section 56663.
- C. The annexation area shall consist of five (5) parcels and the adjacent portion of the Holland Avenue right-of-way totaling, approximately 10 acres, as submitted by the Durham Irrigation District and described in Exhibit “A.”
- D. The subject area is found to be uninhabited and is assigned the following short form designation: 19-10 – Durham Irrigation District – Holland Avenue Annexation No. 1.
- E. The proposal is consistent with the Durham Irrigation District Sphere of Influence as reviewed and updated by the Commission on June 6, 2019.
- F. Pursuant to Butte LAFCO Policy 2.13.1, the Commission determines that agricultural and/or open space lands will not be adversely affected by this proposal as the subject territory is not developed with any agricultural uses and that 100-foot or 300-foot residential structure setbacks are required from adjacent agricultural uses. Therefore, no conversion of designated agricultural or open space lands will occur because of the requested annexation.
- G. A Master Property Tax Transfer Agreement, which states that there will be no transfer of property taxes, was executed between all of the special districts within Butte County and the Butte County Board of Supervisors on December 4, 1979.

**Section 3.** Conditions requested by LAFCO:

- A. All LAFCO, County of Butte and State of California fees must be paid in full prior to filing the Certificate of Completion.
- B. The legal description and map, if amended by action of the Commission, will be revised at the expense of the applicant, prior to filing the Certificate of Completion.
- C. The map and legal description shall comply with the State Board of Equalization requirement and if rejected by the State Board of Equalization, will be revised at the expense of the applicant.

**Section 4.** The boundaries, as set forth in the proposal or as amended by action of the Commission, are hereby approved as submitted and are as described in Exhibits “A” and “B” attached hereto and by this reference incorporated herein.

**Section 5.** Further protest proceedings are waived and the Commission orders the annexation, pursuant to Part 4 commencing with Section 57000.

**Section 6.** The Executive Officer is hereby authorized and directed to mail certified copies of this Resolution as provided in Section 56882 of the Government Code.

**PASSED AND ADOPTED** by this Local Agency Formation Commission of the County of Butte, on the 5<sup>th</sup> day of December 2019 by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAINS:**

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Clerk of the Commission

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**CARL LEVERENZ**, Chair  
Butte Local Agency Formation Commission

NOTICE OF EXEMPTION

Exhibit C

To: Office of Planning and Research  
P.O. Box 3044, Room 212  
Sacramento, CA 95812-3044

From: Durham Irrigation District  
9418 C Midway  
Durham, CA 95939

County Clerk  
County of Butte  
25 County Center Drive  
Oroville, CA 95965-3375

Project Title: Black Diamond Holdings Project Site Annexation

Project Location - Specific:

Refer to Figure 1: Location Map: The project is located in the community of Durham, in Butte County, CA. The project is located within Section 31, Township 21N, Range 2E of the Chico USGS 7.5-minute quadrangle. More specifically, the project is located within APN 040-280-109 on the eastside of Holland Avenue approximately 150 feet south of Serviss Street.

Project Location - City: Durham Project Location - County: Butte

Description of Nature, Purpose, and Beneficiaries of Project:

The project is the annexation of a 4-parcel residential subdivision into the Durham Irrigation District boundaries. The total project area is 9.0 acres. The water line would extend from District's existing 8-inch mainline from APN 040-280-110 on Holland Avenue south within the public right of way to the southern boundary of the property. A 4-inch water line extending into the Property will provide water services to the four parcels. The existing water line provides service to areas of the Durham Irrigation District within and surrounding the community of Durham.

Name of Public Agency Approving Project: LAFCO

Name of Person or Agency Carrying Out Project: Durham Irrigation District

Exempt Status:

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3) 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption (type and section number); Section 15301 (b): Existing Facilities, Section 15303(d): New Construction, and Section 15304: Minor Alterations of Land
- Statutory Exemption (state code number): \_\_\_\_\_

Reason why project is exempt:

The project involves the annexation of the Black Diamond Parcel Map in order to provide potable water to APN 040-280-109. This would allow the Durham Irrigation District to provide municipal water service to the parcel. Since the project is the extension of an existing facility it is categorically exempt under Section 15301(b) – Existing Facilities. The project is exempt under Section 15303(d) – New Construction as it involves the construction of a new portion of a utility extension, specifically, a water line. Additionally, the project is exempt under Section 15304 – Minor Alteration as the project will not disturb a large area and will be constructed within the existing right-of-way. It is anticipated installation activities would include trenching to install the water line extension where the trench would be backfilled and covered.

Lead Agency Contact: Kristen McKillop, Operations Manager Phone: (530)-343-1594

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project?  Yes  No

Signature: [Handwritten Signature] Title: General Manager Date: 3/20/19

- Signed by Lead Agency
- Signed by Applicant Date received for filing at OPR: \_\_\_\_\_