

# MEMORANDUM

TO: Local Agency Formation Commission

FROM: Stephen Lucas, Executive Officer

SUBJECT: **Agenda Item 4.3 – Update on the Proposed County Wastewater Management System**

DATE: February 27, 2013 for the Meeting of March 7, 2013

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## Background

For many years now the County of Butte has been exploring methods to develop a program to allow for, and monitor the use of, on-site community wastewater treatment systems that could be an alternative to traditional septic tank leach field systems. Such alternative systems have advantages related to the treatment level of the wastewater and the availability of the grey water for irrigation purposes. They also come with a need for regulation and long-term maintenance that requires a financial commitment to ensure their safe operation in the form of performance bonds or other parcel assessment to pay for operation and maintenance and/or replacement.

One large part of evaluating such an approach was for the County to identify what type of oversight entity it would propose to be created to ensure that future operation and maintenance was conducted within the guidelines of the County and the State Water Quality Control Board. This process included examining countywide approaches, such as an umbrella sanitation district that could oversee these systems as zones of benefit. However, the use of alternative systems is expected to be mainly limited to serving the preferred growth areas in the County's General Plan 2030, most of which are located in, and around, existing jurisdictions and spheres of influence of cities and special districts who operate traditional piped sewage collection systems. Based on LAFCO law and local policies, overlapping service territories for like service providers is discouraged meaning establishing a "countywide" district would face complications both in terms of service boundary redundancy and any eventual protest hearing or vote.

## County Draft Proposal

There does exist however, an option for the County to consider such systems on a case by case basis and make an individual determination as to whether an alternative waste treatment system is preferable to connecting to a traditional piped sewage collection system. In these cases, economic and environmental factors would be considered when evaluating the appropriate type of community wastewater system to be approved by the County. To this end, the County is now proposing a policy to utilize County Service Areas (CSA) for the oversight of individual Community Wastewater Systems. This proposal is provided as **Attachment 1** to this report.

As CSA's are considered special districts pursuant to LAFCO law and as such, the decision to form a CSA is under the authority of LAFCo. This is primarily important in that LAFCO, not the County, would ultimately evaluate and determine if the use of CSA to manage an alternative wastewater treatment system is appropriate, and in areas of existing sewer service providers, preferable to utilizing the facilities of the existing sewage collection agency (district/city). Such a process makes it ever more important for proponents of projects intending to use such

alternative wastewater systems to fully disclose such intentions early in the development application review process so that all affected agencies can provide early consultation. Without such early consultation, a project may gain initial County approval only to face a possible setback should LAFCO or an affected sewer service provider not accept the appropriateness of a proposed alternative wastewater system. Such a problem could be avoided if any County policy related to this matter include an early consultation component such as the Master Cooperative Environmental Review Agreement adopted in 2005 between the County, LAFCO and the three primary water and sewer districts (LOAPUD, TWSD, SFWPA) in the Oroville region. While such early consultation would not necessarily bind the County, it would ensure active communication and may limit disputes later in the process. In the end, such early consultation is to the benefit of the developer proposing such a system as a way to remove uncertainty and lost time.

#### Future Steps

The County Board of Supervisors is anticipated to review the proposal in March 2013. It should be noted that County staff has requested LAFCO staff input on this matter at a number of junctures and most recently at the February 19, 2013 meeting of the Wastewater Advisory Committee. These meetings provided valuable dialogue and helped shape the current proposal. There is general agreement that alternative community wastewater treatment systems are proven technology and provide a useful tool in the land use development arena, and in some cases may offer the only reasonable approach to solving an existing problem. The bigger question, for which there are varying opinions, is where they should be utilized and how to best manage them now and into the future. The Commission now has the opportunity to provide any input that may assist staffs and the BOS in evaluating the proposal.

**ACTION REQUESTED:** Staff requests that the Commission review the proposed County Policy for Establishing a County Service Area for (Management of) Community Wastewater Systems and offer any comments or observations related to the proposal.

#### Attachments

1. Draft Butte County Community Wastewater Management System 1/31/13

## Butte County Wastewater Program (1/31/13 draft)

### **Background**

In early 2009 Development Services, Environmental Health and Public Works staff provided the Board of Supervisors an update on the proposed County Wastewater Program. At that meeting, the Board approved the following actions;

- 1) Accept information on the individual on-site wastewater ordinance and manual.
- 2) Direct staff to proceed with a Sanitation District unless staff demonstrates that there are financial advantages to developing a budget with a CSA.
- 3) Direct that the applicable areas of the proposed community wastewater ordinance be the growth areas of the preferred land-use alternatives of the General Plan.
- 4) Approve the proposed timeline as detailed in the agenda report for completion of the community wastewater ordinance and the establishment of a community wastewater systems management entity and ancillary CEQA review.

The adopted General Plan 2030 established the following policy with regard to new community wastewater systems:

GP 2030 policy P12-3 states; New community sewerage systems shall be managed by a public County Sanitation District or other County approved method. Proponents shall demonstrate the financial viability of construction, operating and maintaining the proposed community sewerage system.

### **Discussion**

The GP 2030 policy is not area specific. The concern leading to this policy was the past practice of having Homeowners Associations (HOA) operating and managing small community wastewater treatment systems. In some instances the HOA were unable to deal with the system both operationally and financially. Based on the 2009 Board Direction, staff was to develop a Community Recycled Wastewater Pond Ordinance along with the structure of the County Sanitation District and then prepare the necessary environmental documents to support its approval and implementation by the Board. The Department of Development Services made a budget request for the necessary funding in its FY2011/2012 budget to perform these tasks but because of the need to update the County Zoning Code, the effort was not funded. Having completed the Zoning Code update, Development Services again requested in its FY 2012/13 budget, funding to initiate the CEQA review for both the Community Recycled Wastewater Pond ordinance and the establishment of the Sanitation District. This budget request was approved.

The GP 2030 designated selected areas for more urban types of growth. These growth areas are generally located outside existing Sphere Of Influences (SOI) of the incorporated cities and

special districts whose designated services include providing sanitary sewage service to the areas within their SOI's. The areas were as follows:

- Palermo
- Southern Oroville
- Pacific Heights Road /SR 70
- Stringtown Mountain Specific Plan
- South Paradise/Pentz Rd. (Paradise Summit)
- Skyway/Neal Road
- Doe Mill/Honey Run
- Durham Residential
- Upper Stilson
- North Chico Specific Plan

Since adoption of the GP 2030 County staff has learned that Lake Oroville Public Utility District (LOAPUD) has submitted an application to Butte County LAFCo (LAFCo) to expand their SOI that will grant it with the power to provide sanitary sewer service to the area . If approved this SOI expansion will include four (4) of the adopted GP 2030 growth areas located in southern Butte County. These include; Palermo, Southern Oroville, Pacific Heights /SR 70 and Stringtown Mountain Specific Plan.

If LAFCo approves LOAPUD's application to expand its SOI, it would be contrary to LAFCo's policies to then approve a County application to establish a Sanitation District that would include these same four (4) growth areas. Any projects in these areas would likely be required to annex to LOAPUD and have that entity operate and manage the wastewater system that the developer proposes.

This would reduce the number of growth areas outside adopted SOI's to only six. In addition Staff does not foresee any great demand for rapid development in the near future in the remaining GP 2030 growth areas. With this change in circumstances, staff began to re-examine the Board direction to form a County Sanitation District rather than individual project CSA's for providing the County Management entity for small community wastewater systems.

### **County Service Areas (CSA's) vs. County Sanitation District**

The February 10, 2009 staff report to the Board of Supervisors on the County's proposed wastewater program recommended that the Board select County Service Areas (CSA's) to serve as the County's Management Entity for future community wastewater systems. At that time, the Board directed staff to proceed with the establishment of a Sanitation District instead of CSA's. Staff believes the primary reason for this direction was the intent to form a comprehensive County Sanitation District with zones of benefits for individual projects with community wastewater systems.

Given the staff discussion above regarding LOAPUDS proposal and LAFCo's policies, staff believes and recommends that the Board select CSA's as the County management entity for future community wastewater systems on a project by project level basis.

As individual projects with community wastewater systems are proposed and move forward, they will be analyzed through CEQA and will be conditioned to establish a CSA to serve as the County's wastewater management entity.

There is a concern that an agency or District could demand that a proposed project within their SOI, annex to their District and construct or install sanitary sewer service that is infeasible or extraordinarily expensive to meet. In this case, staff is proposing that the applicant have the option to demonstrate to the County and LAFCo that their proposed solution to sewage disposal would be both economically and environmentally superior to the agency's or Districts solution and that the County should consider establishing a CSA to provide the necessary oversight of the community wastewater system.

Staff has prepared the attached Resolution, which if approved, will adopt policies and procedures for the establishment of County Service Areas as the public management entity for community wastewater systems. (Attachment A)

### **Community Recycled Wastewater Pond Ordinance**

Butte County Environmental Health Department has prepared a proposed Community Recycled Wastewater Pond Ordinance to regulate the use of open recycled wastewater ponds for projects where leach fields can not function on a year-round basis due to site constraints. The proposed ordinance is attached to this report for your reference (Attachment B). If the Board of Supervisors approves the recommended actions below, staff will proceed with the necessary CEQA review and return to the Board with the proposed ordinance and CEQA document for consideration.

### **Recommended Actions**

- 1) Direct staff to proceed with the CEQA review of the proposed Butte County Recycled Wastewater Pond Ordinance.
- 2) Direct staff to proceed with establishing CSA's as the County's public entity to oversee and manage community wastewater systems on a project by project level basis
- 3) Adopt the attached Resolution establishing County policies and procedures for the establishment of County Service Areas as the public management entity for community wastewater systems.

# Proposed Policy (resolution) for establishing a County Service Area for Community Wastewater Systems

## Purpose

To comply with GP 2030 policy PUB P 12 – 3; New community sewerage systems shall be managed by a public County Sanitation District or other County approved methods. Proponents shall demonstrate the financial viability of constructing, operating and maintaining the proposed community sewerage system.

## Policy

1. Any proposed project located within a LAFCo approved Sphere of Influence (SOI) of any incorporated city or town or Special District with the power to provide sanitary sewer service, the project will be required to do one of the following:
  - a. Make application to said entity to provide sanitary sewer service or provide the operation and management of the on-site community wastewater system to the proposed project as the County approved management entity to oversee operate and maintain the projects community wastewater system or;
  - b. Demonstrate to the satisfaction the County and LAFCo an alternative method of managing and operating the projects community wastewater system that is both economically and environmentally superior to using the city, town or special district to providing that service. Should the County and LAFCo concur with the proposed alternative analysis the applicant will be required to submit an application with all supporting documentation and fees to LAFCo to form a County Service Area (CSA) as the County approved management entity to oversee operate and maintain the projects community wastewater system.
2. Any proposed project located outside a LAFCo approved SOI of any incorporated city or town or special district with the power to provide sanitary sewer service will be required to establish a CSA as the County approved management entity to oversee operate and maintain the projects community wastewater system. The developer shall pay the full cost to establish the CSA, including staff time and LAFCo fees.
3. In setting up the CSA annual service charges shall be established to ensure financial viability of the CSA for the construction, operation and maintenance of the community wastewater system, including but not limited to the following;
  - OPERATIONS
    - Annual costs for the regulatory agency requirements to monitor and inspect the facility.
    - Annual costs for a licensed operator to operate the facility in accordance with the approved Waste Discharge Requirements (WDR's).
    - Annual operating costs such as utilities, supplies and services.
  - MAINTENANCE
    - Annual costs for the facilities maintenance, repair and contingencies.
  - CAPITAL REPAIR & REPLACEMENT
    - Establishment of a capital replacement fund to accumulate the full replacement value of the facilities within the timeframe of 75% of the estimated lifespan of the facility.