

Staff Report

for the Board of Directors' Meeting of January 25, 2017

TO: Board of Directors
FROM: Chip Close, Water Operations Manager
DATE: January 31, 2017
SUBJECT: Placer County / NID Tax Share Agreement

OPERATIONS

RECOMMENDATION:

Adopt resolution 2017 - 05 approving a property tax sharing agreement with the County of Placer for exclusionary parcels to be annexed into the District's boundary and authorize the General Manager to execute the agreement

BACKGROUND:

In 1926 the District boundaries were expanded into portions of Placer County by a majority vote of parcel owners within the area. Although the expansion was widely supported, a handful of parcel owners elected to remain separate from the District. The parcels that chose to decline led to exclusionary zones within the District's internal boundaries.

The parcels that are contained in these exclusionary islands do not partake in District services such as elections, and tax collection contributions. Water service to a limited number of these parcels has occurred based on previous railroad commission order agreements, however they are subject to a 25% fee above inside District rates to make up for the lack of tax contribution. These services are limited on quantity based on location afforded within the RCO order. All other parcels in the exclusionary zone are under a moratorium for District water sales based on board action in 2005.

In recent years many of the parcel owners within these exclusionary islands including Placer County have expressed in interest in receiving District waters. This spurred discussions between the District and Placer County on a tax share agreement that will allow for the annexation on these islands and share the incremental increase of tax revenue.

Through a collaborative negotiation process, the District and Placer County have come up with a mutually acceptable Master Property Exchange Agreement. The Agreement provides that 10% of the tax increment of the annexed territory accruing to the County shall be apportioned to the District. In return the District shall commence within three years of the execution of the agreement an investment of \$500,000 in infrastructure improvements to the Placer County Government Center. In addition, the District has committed to expending future revenues as a result of this agreement into District facilities within the unincorporated area of Placer County.

The County Board of Supervisors will consider the agreement at a coming meeting in February of 2017. In the event the Supervisors approve the agreement subject to minor non substantive edits, we ask that the Board of Directors authorize staff to make the necessary changes subject to Legal Counsel concurrence.

BUDGETARY IMPACT:

The agreement will generate nominal annual tax revenue for the District following annexation of the exclusionary islands.

The \$500,000 capital improvement project to upgrade water supply infrastructure to the Placer County Government Center is already included in the District's short term Capital Improvement Plan and will provide flows benefits to the District as well as the county.

AC

Attachments (2):

- Draft Agreement with exhibits
- Resolution

MASTER AGREEMENT FOR
APPORTIONMENT OF PROPERTY TAX
REVENUES DUE TO JURISDICTIONAL CHANGES

COUNTY OF PLACER &
NEVADA IRRIGATION DISTRICT

THIS AGREEMENT is made and entered into the ____ day of ____, 2017, by and between the COUNTY OF PLACER, a political subdivision of the State of California (hereinafter referred to as "County") and NEVADA IRRIGATION DISTRICT, a special district (hereinafter referred to as "NID")(hereinafter sometimes collectively referred to as "Parties").

RECITALS

A. NID has certain areas within its jurisdiction in Placer County identified as exclusion zones as depicted in Exhibit A where NID provides limited service. NID wishes to apply to the Local Agency Formation Commission ("LAFCO") to annex areas within exclusion zones in the unincorporated Placer County.

B. Both Parties agree that this Agreement does not apply to exclusion zones located within the City of Lincoln city limits, areas within the City of Lincoln Sphere of Influence, areas located within the boundaries of the Bickford Ranch Specific Plan, and areas within the Auburn Valley Country Club community and as depicted in Exhibit B.

C. Section 99 of the Revenue and Taxation Code provides that no jurisdictional change pending before the LAFCO shall become effective until each local agency whose service areas or service responsibilities would be altered by such jurisdictional change agrees by resolution to accept the negotiated exchange of property tax revenues.

D. This Master Tax Sharing Agreement governs allocations and distributions of available property tax revenues in the annexation areas upon annexation and consistent with the terms of existing law.

E. The County is in support of this Agreement and NID's annexation of the exclusion zones to better serve customers in areas that are largely rural, agricultural and / or within commercially designated areas in unincorporated Placer County.

AGREEMENT

NOW, THEREFORE, the parties do agree as follows:

1. Recitals. The Parties incorporate by reference the recitals.
2. Scope. This Agreement shall apply only to annexations involving NID and the County in the exclusion zones, which do not include those areas identified in Recital B above. The parties understand that NID shall only submit an application to LAFCO for annexation of parcel groupings within the exclusion zones upon request of one or more of the affected parcel(s) property owner(s). NID agrees to include a legal description of the affected parcel(s) with each annexation application. NID acknowledges and agrees that the County has the right to comment on each such application.
3. Definitions.
 - a) "Base Year Tax Revenues". In the event of annexation, "Base Year Tax Revenues" shall be the portion of the 1% property tax authorized by Article 13A, section 1 of the California Constitution, accruing to the County General Fund, excluding any property tax revenues allocated to the Library Fund or Fire Control Fund, and less the

Superior Debt amount, based on the AB-8 gross levy prior to adjustments and revenue transfer relative to the Education Revenue Augmentation Fund (ERAF) in the applicable fiscal year the Annexation Area(s) is annexed.

b) “ERAF Factor”. The “ERAF Factor” is the percentage required by California Revenue and Taxation Code sections 97, et seq., to be multiplied by an affected agency’s AB-8 gross levy in order to determine the amount of funds to be transferred to the schools for ERAF.

c) “Tax Increment” means the amount of 1% ad valorem property tax revenues accruing to the County, excluding any allocation to the Library Fund or Fire Control Fund and less the Superior Debt, in excess of Base Year Revenues accruing to each agency (by TRA) in the annexation area (s) and resulting from the increase in assessed valuation from one year to the next. For the purposes of this Agreement, Tax Increments shall be cumulative. The original Base Year (when annexation occurs) shall remain the Base Year for future calculations of the cumulative increments to be apportioned among the County and NID. “TRA” means tax rate area.

d) “Superior Debt” means such debt or other enforceable obligations that are from the former Placer County Redevelopment Agency bonded indebtedness or other obligations that have been disclosed and defined as enforceable obligations pursuant section 34167(d) of the California Health and Safety Code that encumber areas within the exclusion zones and have a superior lien position on tax increment revenues accruing from the former redevelopment project areas. For areas within the exclusion zones that are within former redevelopment project areas (Exhibit C), the calculation of Apportionment as detailed below shall be calculated after bonded indebtedness obligations and enforceable obligations have been paid.

4. Apportionment.

a) No part of any agency's Base Year Revenues from annexed territory shall be reapportioned to NID.

b) From and after the first fiscal year following the effective date of each annexation ten percent (10%) of the Tax Increment of the annexed territory thereafter accruing to County prior to the ERAF Factor shall be apportioned to NID less the Superior Debt obligation identified in Paragraph 3.

5. Infrastructure Improvements. In consideration for the apportionment as defined in Section 4.b. above, NID expend a minimum investment of \$500,000 in infrastructure improvements to improve water service flow and pressure standards ("Infrastructure Improvements") to the Placer County Government Center. NID shall also commit to expending the revenues received under the apportionment defined in Section 4.b. above in the unincorporated area of Placer County. Any State permit requirements and/or environmental review required for said Infrastructure Improvements and all costs of construction shall be the sole responsibility and cost of NID. NID agrees and acknowledges that this provision is material consideration for the County to enter into this Agreement. Failure of NID to perform these commitments is grounds for termination of this Agreement.

6. Tax Rate Area. The County will work with the County Auditor to establish a separate Tax Rate Area (TRA) for each annexed area prior to allocation and distribution of property tax under this Agreement and will report to NID the actual amount of the 1% AD VOLREM Property Tax Revenues from the TRA available for allocation and distribution pursuant to this Agreement.

7. Term of Agreement.

a) Initial Term. This Agreement shall become effective as of the last date of execution below and shall remain in effect for an initial three (3) year term (Initial Term).

b) First Renewal of Initial Term. If NID has made substantial progress in performing the obligations in section 5, this Agreement shall be renewed for an additional three (3) year term (Extended Term). For purposes of this Agreement, “substantial progress” shall mean that all permitting and environmental review has been completed by NID.

c) Renewal of Extended Term. If NID has completed construction of Infrastructure Improvements by the end of the Extended Term, this Agreement shall be renewed on that date for a subsequent five (5) year Term (Extended Term Renewal) and automatically thereafter at the end of the Extended Term Renewal for subsequent five (5) year Terms.

8. Termination.

a) Failure of NID to satisfy the obligations in section 5 and within the time frames outlined in section 7 is grounds for the County to terminate this Agreement. County agrees to provide NID with three (3) months written notice prior to the date of termination.

b) The termination of the Agreement under this section shall not result in a reapportionment of property tax revenues from territories annexed prior to such termination. In the event of termination pursuant to this section, any monies expended by NID pursuant to Section 5 shall not be subject to reimbursement or claim against the County.

9. Counterpart. This Agreement may be executed in two counterparts, each of which constitutes an original.

10. General Provisions.

a) Modification. This Agreement may only be modified or amended in writing duly authorized and executed by both the NID and the County. Said amendments may require prior approval of the governing boards of NID and the County. The parties agree that amendments to Section 5 shall require prior public hearings by both the NID and the County Board of Supervisors.

b) Entire Agreement. With respect to each annexed area only, this Agreement supersedes any and all previous negotiations, proposals, commitments, writings, and understandings between the NID and the County with respect to the sharing of Property Tax Revenue.

c) Notices. All notices, requests, certifications, or other correspondence provided by the Parties to this Agreement shall be in writing and shall be personally delivered or delivered by first class mail to the respective Parties at the following addresses:

County
Placer County Executive Officer
County of Placer
District
175 Fulweiler Avenue.
Auburn, CA 95603

NID
General Manager
Nevada Irrigation
1036 W. Main Street
Grass Valley, CA 95945-5424

Notice by personal delivery shall be effective immediately upon delivery. Notice by mail shall be effective upon receipt or three (3) days after mailing, whichever is earlier.

d) Agreement or Consent. Wherever this Agreement requires a party's agreement or consent, the party shall make its decision to give or withhold such agreement or consent in good faith, and shall not withhold such agreement

unreasonably or without good cause.

e) Construction of Captions. Captions of the sections of this Agreement are for convenience and reference only. The words in the captions in no way explain, modify, amplify, or interpret this Agreement.

f) Authority to Execute Agreement. NID has authorized the execution of this Agreement by its General Manager through adoption of Resolution No. _____ by its Board. County has authorized the execution of this Agreement by the County Executive through adoption of Resolution No. _____ by the Board of Supervisors.

g) Venue. This Agreement is made in the County of Placer in the State of California. Any action to enforce or interpret its terms shall be brought in Placer County Superior Court.

h) Severability. Should any part, term or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

IN WITNESS WHEREOF, this Agreement is entered into the date first above written.

COUNTY OF PLACER

NEVADA IRRIGATION

DISTRICT

By: _____

By: _____

Its: County Executive

Its: General Manager

Date: _____

Date: _____

Authorizing Board Resolution: _____

Authorizing Board Resolution: _____

Approved as to Form:

County Counsel
County of Placer

Approved as to Form:

District Counsel

EXHIBIT A

NID Exclusion Areas

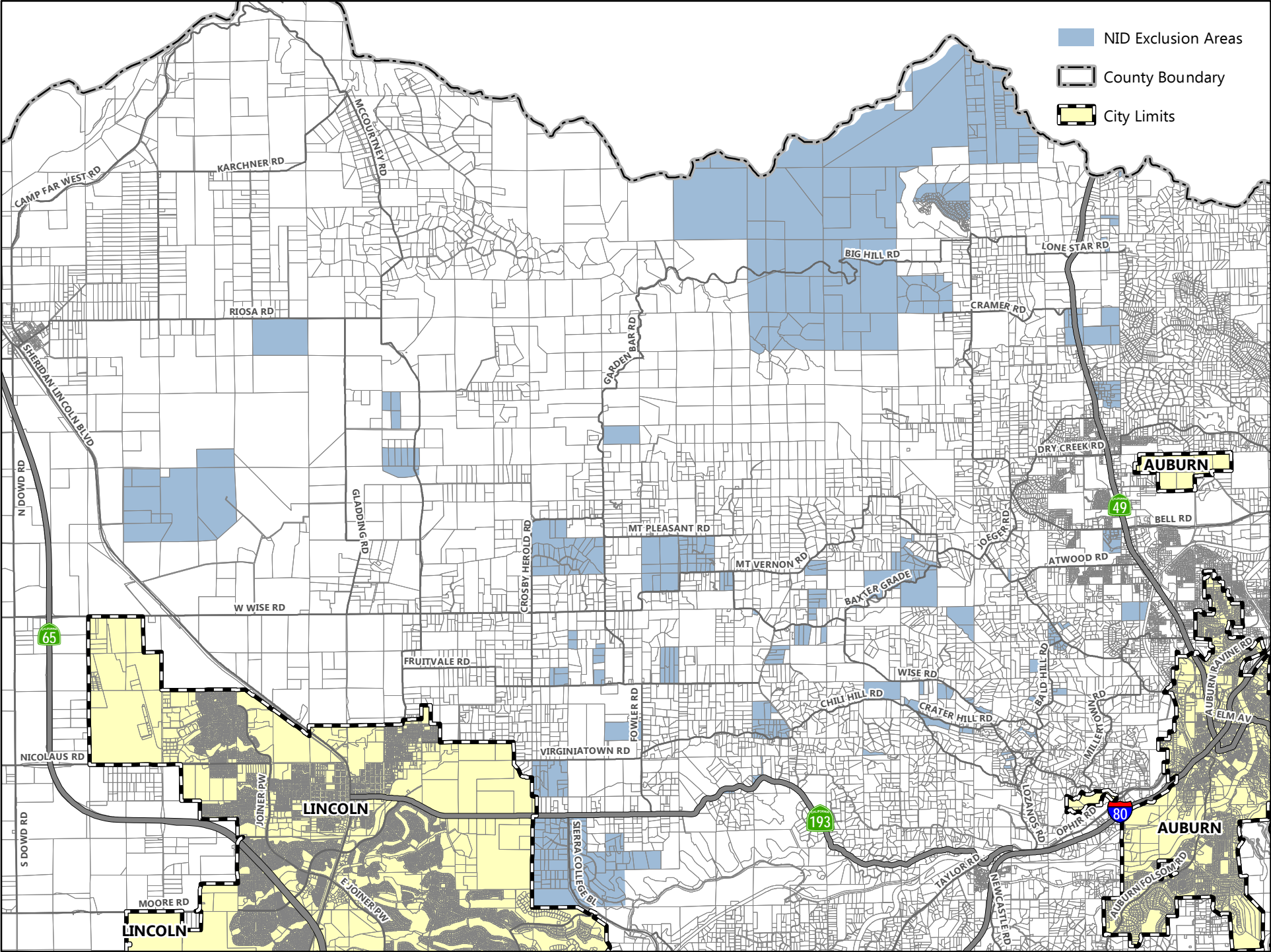


EXHIBIT B Areas Not Subject to This Agreement

North Lincoln Area

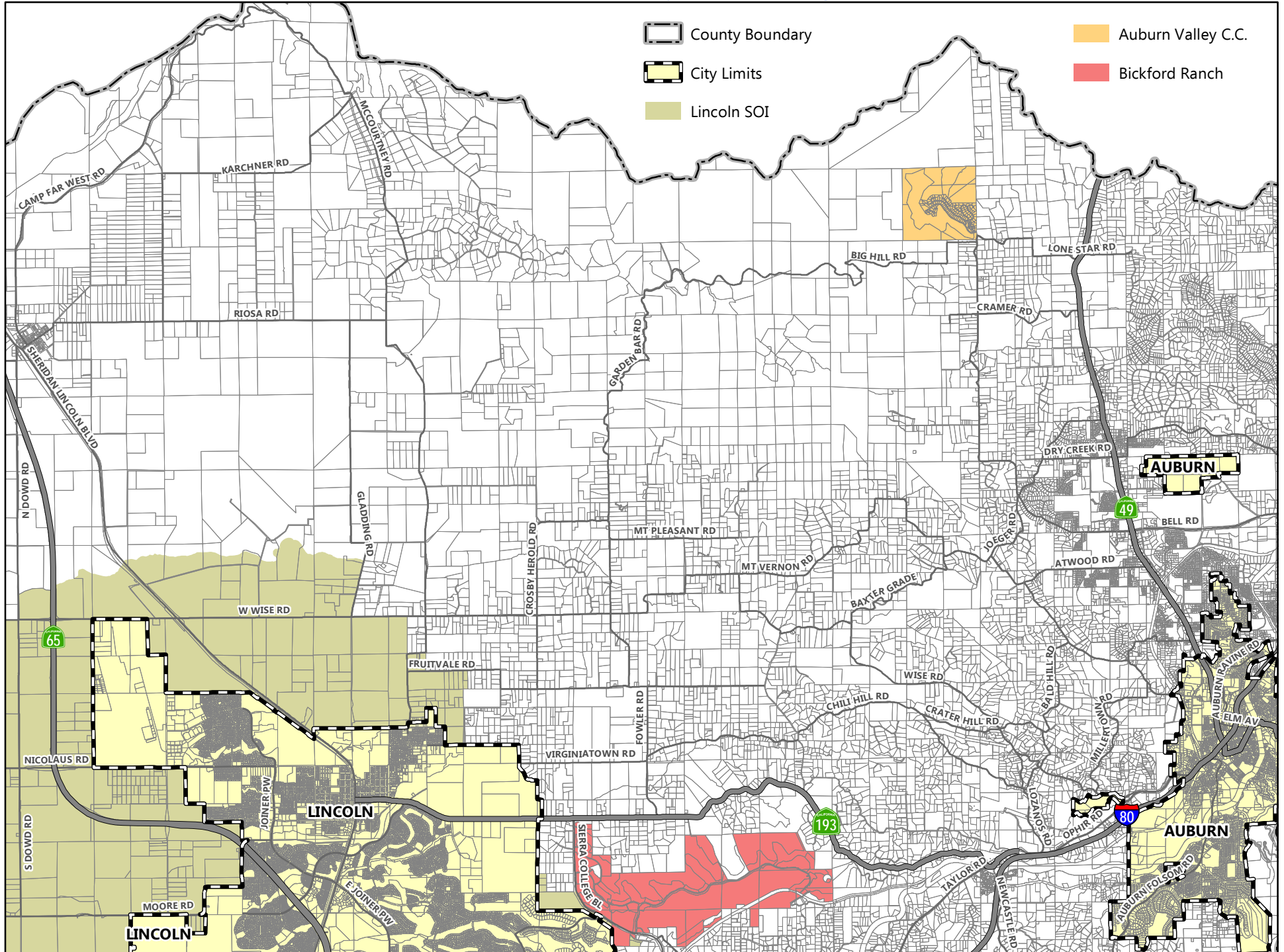
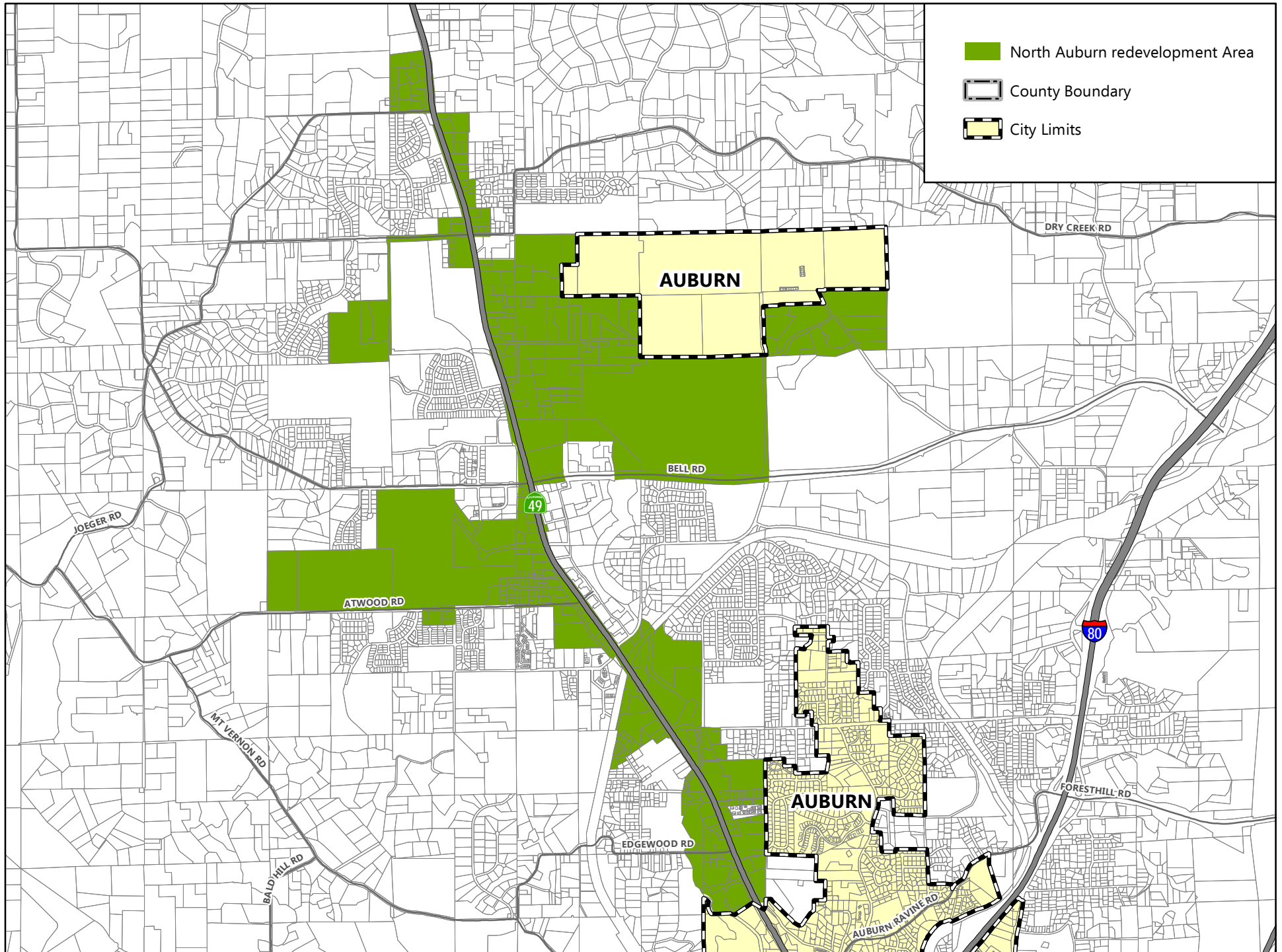


Exhibit C Former Redevelopment Agency Project Areas

North Auburn Redevelopment Area



RESOLUTION No. 2017-05

OF THE BOARD OF DIRECTORS OF THE NEVADA IRRIGATION DISTRICT

(AUTHORIZING THE GENERAL MANAGER TO EXECUTE A PROPERTY TAX REVENUE SHARING AGREEMENT WITH THE COUNTY OF PLACER)

WHEREAS, the Nevada Irrigation District (District) expanded service into Placer County (County) in 1926 by a majority vote of landowners; and

WHEREAS, following the 1926 vote a number of parcels elected to abstain from inclusion thereby creating islands of exclusionary lands within the District's service area within the County; and

WHEREAS, a moratorium on water deliveries to parcels outside District boundaries was established in 2005 by the Board of Directors; and

WHEREAS, the County and private parcel owners located within the exclusionary lands have expressed a renewed interest in receiving District services; and

WHEREAS, parcels requesting District water service require annexation to the District to be eligible to receive water; and

WHEREAS, the Local Agency Formation Commission (LAFCO) requires a resolution authorizing the exchange of tax revenues between the County and the District for taxes generated in the annexation area, prior to consideration of the annexations; and

WHEREAS, the District and the County have negotiated a "Master Agreement for Apportionment of Property Tax Revenues Due to Jurisdictional Changes" (Tax Agreement) to support funding for potential future infrastructure in and services to the unincorporated areas of the County that are located within District boundaries; and

WHEREAS, the Tax Agreement is exempt from environmental review under the California Environmental Quality Act (CEQA) in that the activity does not constitute approval of a project under CEQA because execution of the Tax Agreement does not have the potential to cause a significant effect on the environment. The District will conduct separate environmental review, as required, under CEQA for any potential future infrastructure improvements or requests for annexation to the District.

NOW, THEREFORE BE IT RESOLVED, by the Board of Directors of the Nevada Irrigation District:

1. The Board of Directors approves the attached Tax Agreement.
2. The General Manager is authorized and directed to execute the Tax Agreement

3. This resolution shall become effective upon execution of the Tax Agreement by the District's General Manager and the County of Placer.

PASSED AND ADOPTED by the Board of Directors of the Nevada Irrigation District at a regular meeting held on the 8th day of February 2017, by the following vote:

AYES: Directors:
NOES:
ABSTAINING:
ABSENT:

President

ATTEST:

Board Secretary