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November 18, 2008

TO: Board of Supervisors
FROM: Robert Bendorf, County Administrative Officer
By Randy Margo, Assistant County Administrator *RM*
SUBJECT: Credit and Reimbursement Policy Document

Recommended Actions

1. Provide policy direction to staff regarding the policy issues summarized below and in the attached documents.
2. Provide authority to County Administrative Officer or his designee to negotiate terms of development agreements with landowners within the policies outlined below and in the attached documents.

Purpose of Recommended Actions

A credit and reimbursement policy document has been developed to address when and how Landowners that have provided advanced funding for levee improvements within the South Yuba Basin would receive credit toward their Levee Fee obligation, or be reimbursed for any excess funding above their Levee Fee obligation. The Levee Fee obligation is stipulated in the revised Levee Impact Fee Ordinance and Nexus Study. These crediting and reimbursement policies have consequences for repayment of County tax dollars and YCWA revenues.

Background

Yuba County and TRLIA have entered into a number of agreements and established financing mechanisms with Landowners to provide advance funding for flood control improvements within the South Yuba Basin, as shown below:

- The November 4, 2003 Funding Agreement for Plumas Lake Specific Plan Area Flood Control Improvements Study Advance Agreement (2003 Agreement);
- Three Rivers Levee Improvement Authority (TRLIA) Community Facilities District (CFD) 2004-1;
- April 19, 2005 Agreement for Advanced Funding and Reimbursement of Costs for Levee Improvements (First Funding Agreement);
- August 19, 2006 Second Agreement for Advanced Funding and Reimbursement of Costs for Levee Improvements (Second Funding Agreement).
Approximately \$20.3 million was provided under this agreement. However, the full amount required to fulfill the advanced funding was not met. As a result,

the County and Yuba County Water Agency (YCWA) funded the Landowners share. Consequently, the County determined on March 28, 2008 that the second Funding Agreement was no longer operative.

- TRLIA CFD's 2006-1 and 2006-2.
- A separate Agreement between the County and Axel Karlshoej on March 27, 2008.

As a result of the funding advanced by these Agreements, certain Landowners have either credits due, reimbursements owed, or a combination of both credits and reimbursements.

Policy Considerations

CREDIT POLICY QUESTION	POLICY OPTIONS / IMPLICATIONS	RECOMMENDATION
<p>How to address projects that have paid levee fees in excess of the amount currently due, but still have an additional funding obligation on the remainder of the project?</p>	<ol style="list-style-type: none"> 1. Provide full credit for remaining units that have been paid for until entire credit is used / Delays repayment for County & YCWA borrowing until credited units are absorbed. 2. Require full payment of outstanding funding obligations as remaining units are developed. / Accelerates repayment, but makes building more difficult in current financial environment. 3. Spread payment of outstanding funding obligations in proportion to remaining credit. / Continues advanced funding while credited units get absorbed. Accelerates Fee revenue for repayment of County & YCWA borrowing 	<p>Both Landowners and County staff support policy option #3. If option #3 is approved, in consideration of continued advanced funding, County staff and Landowners have further agreed to submit development agreements for Board approval with the following key terms.</p> <ul style="list-style-type: none"> • Extend Tentative Maps for 20-years from date of map approval • Impose no new County fees except those associated with road improvements or Regional Parks • Regional Park Fee capped at \$2,000 per unit. • All current development impact fees locked at current rate, except for inflation • Levee impact fees calculated at building permit issuance; collected at final inspection

REIMBURSEMENT POLICY QUESTION	POLICY OPTIONS	RECOMMENDATION
<p>When and how should reimbursement be allowed to occur for parties advance funding levee improvements that are due repayment? These parties include the Landowners as well as County & YCWA?</p>	<ol style="list-style-type: none"> 1. Reimburse Landowners owed money first with any new funds that come into program. 2. No reimbursement to any party until the levees improvements are completed & certified. After certification, but before repayment of County/YCWA debt occurs, fully reimburse Homes by Towne first, then reimburse Landowners and County/YCWA on a proportionate basis of outstanding reimbursement due. After debt service begins (March 1, 2015) all fee revenue is first used for debt service, then to repay any remaining obligation owed to Homes by Towne, then split proportionately between County/YCWA & Landowners. 3. Reimburse Landowners only after County & YCWA have been fully repaid. 	<p>Staff recommends option #2</p>

Attachments: Draft Credit & Reimbursement Policy Summary
Draft Appendix B to Credit & Reimbursement Study: TRLIA CFD
Bond Issuance Terms
Draft Appendix C to Credit & Reimbursement Study: Use of
Special Tax Revenue for TRLIA CFDs 2006-1 & 2

THREE RIVERS LEVEE IMPACT FEE CREDIT & REIMBURSEMENT POLICIES

UNDERLYING ASSUMPTIONS

The following are the underlying assumptions that predicate the establishment of credits and reimbursements:

- All prior advance funding of the Three Rivers Levee Impact Fee (Levee Fee) has been collected on behalf of development projects as identified by the tables included in the Credit & Reimbursement Study, currently dated 11/18/08.
- All prior advance funding of the Levee Fee is proportionately allocable to the individual tract maps/phases/units/villages in projects based upon the projects' gross developable acreage.
- Units within a project are assumed to have been previously absorbed if a permit for the unit has been applied for before October 21, 2008.
- The Levee Fee obligation for all remaining developable acreage in a project after April 19, 2005, and absorbed before October 21, 2008, is the Initial Fee Rate for Single-Family Residential Development in the Plumas Zone as identified in the October 13, 2008, Revised Three Rivers Levee Fee Nexus Study of \$60,159 per GDA as adopted by Yuba County Ordinance [TBD] on November 18, 2008 (reference Table 1 of that Nexus Study).¹
- The credit for prior advance funding will be expressed in terms of GDAs and will be determined by taking the amount of prior advance funding and dividing it by the Initial Fee Rate of \$60,159 per GDA.² The amount of GDA credit will be set by this methodology and will not be recalculated in the future by the escalating fee rate.
- All permits that have previously been applied for before October 21, 2008, (i.e., absorbed) are assumed to have been fully funded with credit from prior advance funding and no additional Levee Fees will be required to be paid for these units.
- For multiple projects that are being developed by a common landowner:
 - If one project is determined to have advance funded Levee Fees in excess of its obligation and is due a reimbursement, the reimbursement will be applied and added to the credit of the next project currently underway with the consent of the landowner.

¹ The Levee Impact Fee obligation for the Rio Del Oro 4—Dansk Californisk Danna 70 project and Rio Del Oro Farms #2 Rio Del Oro Village 16 is \$53,471. This is based on the analysis included in the respective Exhibit C of the proposed development agreement for each of these projects.

² Except in the case of the Danna 70 project and Rio Del Oro Village 16 project as noted in footnote #1.

CREDITING POLICY FOR PRIOR ADVANCE FUNDING

The Crediting Policy will allow for the use of the accumulated credit on a proportionate basis as the remainder of a project is developed. The basis for the proportionality will be the ratio of Remaining Credit Acreage to Total Remaining Acres to be developed.

- “Remaining Credit Acreage” will be defined as the credit accumulated by the prior advance funding less the amount of credit utilized by units that have been absorbed prior to October 21, 2008.
- “Total Remaining Acres” to be developed will be defined as the difference between the total developable GDAs in a project after April 19, 2005 and the amount of acres absorbed before October 21, 2008, or as subsequently revised by County and Landowner.

Use of Credit

As homes are constructed by permits applied for after October 21, 2008, the landowner will fund a portion of the Fee based on the relative proportionality between the remainder of a project **not** able to be funded from credit and the total remaining acreage left in the project after all previously absorbed units.

To implement this policy, the County will calculate this remaining amount of the Levee Fee due as the individual building permits are issued for units to be constructed in the project. Collection of the Levee Fee will be deferred until the final inspection of the home.

In exchange for providing additional funding on this proportionate basis, the County may enter into individual development agreements with the landowners of the projects upon proper application and payment of County fees, subject to review by the Planning Commission and approval by the Board of Supervisors with terms that may generally include these:

- The form of development agreement will contain the terms set forth below and substantially conform to the form available from the County’s website here:

http://www.co.yuba.ca.us/Departments/Community%20Development/Planning/documents/Forms%20&%20Applications/Planning2008/DA-PART2_6-08.pdf
- The Tentative Map life for the project will be extended to a total of 20 years from the date of approval of the Tentative Map.
- No new County imposed development impact fees will be imposed for 10 years from the date of the development agreement with the following exclusions.
 - Any fees associated with any Traffic Impact or Road Improvements within the County of Yuba; and,
 - Any fees associated with regional park improvements up to a maximum of \$2,000 dollars per dwelling unit or equivalent.

- All currently County imposed development impact fees will not be increased for 10 years from the date of the development agreement with the following exclusions.
 - Any currently incorporated escalator adopted with the fee;
 - Any increase associated with the current Traffic Impact (Road Improvement) Fee component of the County Capital Facilities Fee and any change or increase associated with the current PLSP/NASA Road Improvement Fee; and,
- The collection of the balance of the Levee Fees due after the application of credit as described above will be determined at the time a building permit is pulled but will be deferred collection until the final inspection of home (in a manner consistent with Yuba County Ordinance 1461). The duration of this fee deferral will be 10 years from date of the development agreement.
- The collection all development impact fees and County Capital Facilities Fees will be deferred in a manner consistent with Yuba County Ordinance 1461, however, the duration of this deferral will be 10 years from the date of the development agreement.

With respect to Mello-Roos financing by TRLIA for landowners Levee Impact Fee obligations, the County will work with TRLIA to incorporate its acceptance of the following;

- The redemption of any outstanding builder bonds through the issuance of private placement or conventional Mello-Roos bonds issued by TRLIA associated with TRLIA CFDs 2006-1 and 2006-2 will be subject to the terms outlined in Appendix B of the Credit & Reimbursement Study.
- The application of revenues from special tax collections associated with TRLIA CFDs 2006-1 and 2006-2 will be as outlined in Appendix C of the Credit & Reimbursement Study.

Miscellaneous provisions:

- Mutual agreement by all parties (i.e. Landowners who accept the Credit and Reimbursement Policy, County and TRLIA) that the Second Funding Agreement for Advance Funding and Reimbursement of Costs for Levee Improvements (“Second Funding Agreement”) is terminated and of no force and effect and that any obligations or provisions that survive will be restated and incorporated into the development agreement (e.g., mandatory flood insurance provisions) along with any other provisions that the parties might mutually agree upon..
- Landowners shall receive benefit of any development impact fee or capital facilities fee reduction applied to the County generally.
- TRLIA to be released by Landowners executing development agreements from any liability arising out of use of funds received under the Second Funding Agreement.
- TRLIA to execute Development Agreement only as to acceptance and compliance with sections related to redemption of outstanding builder bonds (Appendix B), application of revenues from special tax collections associated with TRLIA CFDs 2006-1 and 2006-2

(Appendix C), restatement of obligations that survive the Second Funding Agreement, and approval of Credit & Reimbursement Policies.

REIMBURSEMENT POLICY FOR PRIOR ADVANCE FUNDING IN EXCESS OF A PROJECTS LEVEE FEE OBLIGATION

The reimbursement policy will be consistent with the following underlying principles.

- No reimbursements should be made to any party advancing funds into the levee improvement program until all project costs are paid and the levee improvement program has been complete and certified, unless otherwise determined by the County and YCWA that payment of such reimbursements are financially and legally advantageous to the County and YCWA.
- The Board should make decisions that consider the impact to the General Fund and the services provided to the County at large.
- The Board should make decisions that consider the proportionality of the investment made into the levee improvement program.
- The Board should consider the timing of repayment of capital to those investing in the levee improvement program.

Reimbursements will be made in the following manner based upon a time period:

Period 1: Before Levee Certification

During this time period no reimbursements will be made to the County, YCWA, or landowners unless otherwise determined to be financially and legally advantageous to the County and YCWA and directed by the County and YCWA. All new Levee Fees collected will be used to directly fund the levee improvements and ultimately offset additional investment by the County and YCWA into the levee improvements program.

Period 2: After Levee Certification, before March 1, 2015

During the time period between when the levees are certified and before the County and YCWA will be required to pay debt service on their borrowing, twice per year distributions of Levee Fee revenue will occur as follows:

- One hundred percent of revenues collected from Levee Fees will first be used to reimburse any outstanding reimbursement due pursuant to Exhibit M of the Second Funding Agreement to Homes by Towne.
 - The principal amount of this reimbursement due is \$366,218 as of November 29, 2005. It will accrue interest at 7.5 percent per annum.

- After the full reimbursement of this amount to Homes by Towne, revenues collected before March 1, 2015, will be split between those parties determined by the County to be due reimbursements (including the County and YCWA) on a proportionate basis of the principal amount of their outstanding reimbursement. **Table 1** has been provided to demonstrate an example of the proportionality of outstanding reimbursements.
 - It will be assumed that landowners' reimbursement will accrue and capitalize interest onto their principal amounts at the same interest rate as the County and YCWA joint borrowing of 5.534 percent per annum. Interest will be calculated on a monthly compounding rate that is equivalent to an effective interest rate of 5.534 percent per annum.

Period 3: After March 1, 2015, until Reimbursements are Complete

Commencing on March 1, 2015, when debt service is due on the County / YCWA borrowing, twice-per-year distributions of Levee Impact Fee revenue will occur as follows:

- One hundred percent of Fee revenue collected will go fund the debt service due on the borrowing up to the debt service amount.³
- After March 1, 2015, any fee revenue collected in excess of this debt service due will first be used to complete the reimbursement due to Homes by Towne under the Second Funding Agreement to the extent it was not completed before March 1, 2015.
- After this reimbursement to Homes by Towne, any fee revenue will be split between those parties determined by the County to be due reimbursements (including the County and YCWA) on a proportionate basis of the principal amount of their outstanding reimbursement:
 - It will be assumed that landowners' reimbursement will accrue and capitalize interest onto their principal amounts at the same interest rate as the County and YCWA joint borrowing of 5.534 percent per annum. Interest will be calculated on a monthly compounding rate that is equivalent to an effective interest rate of 5.534 percent per annum. Because the County and YCWA will be amortizing the principal amount of their reimbursement through the payment of debt service, their outstanding reimbursement amount will be reduced by this amount as debt service payments are made.

³ The debt service amount is defined as the total debt service due on the outstanding Taxable and Tax-Exempt Bonds.

**Table 1
Three Rivers Levee Fee Credit & Reimbursement
Summary of Reimbursements from Levee Impact Fees**

Entity	Project	Reimbursements [1] as of October 21, 2008	Estimated Proportionate Amount of Total Reimbursement
First Entity with Reimbursement Due from Levee Impact Fees			
Homes by Towne	Rio Del Oro (Village 14) [2]	\$415,173	
Remaining Entities with Reimbursements Due from Levee Impact Fees [3]			
Beazer	Rio Del Oro (Villages 1-5, 7, & 9-13)	\$354,176	0.429%
Cassano/Kamilos	Rio Del Oro (Villages 6 & 8)	\$25,643	0.031%
DR Horton	Wheeler Ranch (Units 4 & 5)	\$3,095,289	3.749%
Homes by Towne	Rio Del Oro (Village 14)	\$462,093	0.560%
K Hovnanian/Forecast	Wheeler Ranch I (Units 2, 3, 6 & 7)	\$254,925	0.309%
		\$4,192,126	5.078%
<i>Public Entity</i>			
Yuba County		\$39,185,000	47.461%
Yuba County Water Agency		\$39,185,000	47.461%
	<i>Subtotal Public Borrowing</i>	\$78,370,000	94.922%
	Total Remaining Entities with Reimbursements	\$82,562,126	100.000%

"percentage2"

Source: Appendix A

[1] Represents the principal amount of reimbursements as of October 21, 2008 including, in the case of the Homes by Towne reimbursement from the First Funding Agreement, the capitalized interest amount due from that agreement.
 [2] Homes by Towne, from the Second Funding Agreement was due a principal amount of \$336,218 with interest to accrue at an effective 7.5% per annum from November 29, 2005.
 [3] Remaining Entities will accrue interest on their outstanding balances at the Public Bond rate of 5.534%.

APPENDIX B
(to the Three Rivers Levee Impact Fee Advance Funding
Credit and Reimbursement Policies and Procedures Study)

TERMS ASSOCIATED WITH THE ISSUANCE OF PRIVATE PLACEMENT
AND CONVENTIONAL BONDS FOR TRLIA CFD'S 2006-1 & 2006-2

TRLIA shall use its best efforts to effectuate the earliest repayment to holders of Builder Bonds of any Capital Call Amounts through the issuance of Private Placement Bonds or Conventional Bonds. Landowners shall cooperate with TRLIA in such effort. In order to promote the sale of Private Placement Bonds and Conventional Bonds to outside parties prior to the completion of the Levee Improvement Program, TRLIA shall agree to use its best efforts to identify investors and consider the use of call protection for such Bonds, the use of tax-exempt interest rates that reflect actual market rates for bonds with similar credit characteristics to the Bonds being marketed, and the use of other bondholder incentives as may be necessary to attract investors for the Bonds. TRLIA shall also consider investors willing to purchase Private Placement Bonds who are proposed by the Participants, and approval of such investors shall not be unreasonably withheld as long as such investors comply with the terms and qualifications for bond purchasers listed below. The terms for such bond issuances are contained below. The cost of issuance shall be paid by the proceeds of the sale of Private Placement Bonds and Conventional Bonds to outside parties. TRLIA may require a deposit in a reasonable and customary amount towards the cost of issuance. So long as (i) the applicable Landowners fully and timely cooperates with respect to the provision of customary requests for information, certificates, legal opinions, and execution of continuing disclosure certificates, (ii) the proposed financing is in compliance with the requirements below, and (iii) with respect to Private Placement Bonds, a purchaser has been identified, TRLIA expects that Private Placement Bonds will be issued within 90 days of a request by a Participant therefore and Conventional Bonds will be issued within 180 days of a Participant's request therefore; subject in any event to general market conditions for land secured financings.

(1) Landowners with property located within TRLIA CFD's 2006-1 & 2006-2 (Landowners) may request that TRLIA issue Private Placement Bonds and Conventional Bonds on behalf of one or more Tax Zones owned by that Landowner.

(2) For Landowners that are willing to provide individual collateral (e.g., a letter of credit), TRLIA will use reasonable efforts to seek willing investors for a variable rate or fixed rate interest bond issue in the conventional marketplace in lieu of issuing Builder Bonds, without satisfying the terms of Section 3 (except subparagraphs b. and i. shall apply in any event) and 4 (except subparagraphs b.(i), b.(ix), b.(x), b.(xi) and b.(xiii) shall apply in any event).

(3) *Private Placement Bonds.* Terms under which Private Placement Bonds for a Tax Zone may be issued are listed below; however, neither the County nor TRLIA can guarantee that a buyer will exist even if the following criteria are satisfied:

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a. Purchasers of such Private Placement Bonds shall be "qualified institutional investors" as such term is defined in Subsection (a) of Rule 144A of the Securities Act of 1933 or "accredited investors" as such term is defined in Subsection (a) of Rule 501 of Regulation D under the Securities Act of 1933;

b. The EIR and/or EIS for the Phase 4 Work is approved and certified, with no legal challenge pending.

c. Bonds for the Tax Zone are supported by at least a 3:1 value-to-lien ratio in accordance with all provisions of Section (4)a, below. Parcels of undeveloped land within such Tax Zone with a 2:1 value-to-lien ratio, or lower, shall not be included for purposes of determining land values or tax revenue capacity. However, notwithstanding Section 4(a), all appraisals utilized to determine the 3:1 and 2:1 value-to-lien ratios for purposes of issuing Private Placement Bonds shall assume the completion of all Phase 4 Work, with all disclosure documents for such Bonds clearly stating that although Phase 4 Work has in fact not yet been completed, its completion has been assumed in determining the appraised value of the CFD and all parcels located therein.

d. All net refunding proceeds generated by Private Placement Bonds within a Tax Zone shall be placed with the fiscal agent for the CFD and expended as necessary to pay the future Levee Impact Fee obligations of the Landowner for that Tax Zone, until all of such Landowner's future Levee Impact Fee Obligations have been satisfied. Once sufficient funding has been collected to cover all future projected Levee Impact Fees for a specific Landowner, any additional refunding proceeds generated by Private Placement Bonds within a Tax Zone shall be distributed directly to the owner of the Builder Bonds that were refunded with the proceeds of the Private Placement Bonds.

e. California Debt Issuance Advisory Committee (CDIAC) compliant appraisal has been provided;

f. Annual tax levy in effect and customary foreclosure covenant on the Landowner's property;

g. Customary reserve fund(s) established;

h. The Private Placement Bonds shall have at least \$100,000 face value denominations (to preclude owners from re-offering portions of the bonds) and such bonds shall be in certificated (not book-entry) form; and

i. The Landowners complete questionnaires and provide sufficient data for TRLIA to compile and deliver a suitable initial disclosure document to the targeted investor(s); there is an agreement in place with TRLIA to enable it to fully comply with continuing disclosure requirements; TRLIA has reason to believe that it will be furnished all required customary 10(b)-5 opinions and certificates required to close the

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offering; and the sale of the bonds is accompanied by a "traveling" investment letter and occurs through a registered broker dealer.

j. Private Placement Bonds may be current interest bonds or capital appreciation bonds.

k. Tax-exempt interest rates assigned to Private Placement Bonds shall reflect actual market interest rates for bonds with similar credit characteristics to the Bonds being marketed, as may be necessary to attract investors for the Bonds.

(4) *Conventional Bonds.* For Conventional Bonds to be issued for a Tax Zone, one of the following conditions must be met within such Tax Zone:

a. The standards established within the then current TRLIA's adopted Goals and Policies for Land Secured Financings; or

b. Improved land value to public lien ratio must be at least 3 to 1, and supported by an as-built appraisal plus *all* of the following criteria must be satisfied:

(i) there are no delinquent taxes on any parcels owned by Landowners in the Tax Zone;

(ii) the combined total of the projected assigned special taxes on all parcels in a Tax Zone are equal to or greater than 110% of projected gross (not net) debt service of the proposed Private Placement Bonds and Conventional Bonds (at peak level, if escalated) for the next year, based on projected interest rates for the Bonds;

(iii) special taxes on developed (final mapped) property will provide at least 50% of the projected debt service requirement for the next fiscal year on the proposed Conventional Bonds and Private Placement Bonds;

(iv) the special tax revenues for undeveloped parcels with a land value to public lien ratio of less than 2 to 1 shall not be included for purposes of calculation of the 110% coverage factor;

(v) no impediment to development exists from restrictions imposed by agencies such as FEMA, the State Reclamation Board or any other agency having jurisdiction over the levees and levee-related matters;

(vi) a customary reserve fund(s) established;

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(vii) the Conventional Bonds shall be in "standard" (i.e., \$5,000) denominations;

(viii) the Conventional Bonds shall be structured so as to pay periodic interest;

(ix) special taxes required to amortize the debt, when combined with overlapping ad valorem property taxes, other special taxes or assessments, and other property taxes, are limited to 1.8% of the projected average residential sales price for properties included in each final map in the Tax Zone, and shall provide minimum coverage levels of 110% of projected debt service requirements;

(x) typical validity and tax exemption opinions of counsel are provided;

(xi) standard initial disclosures shall be provided (with typical comfort letters and opinions) and shall be accompanied by appropriate ongoing disclosure agreement(s);

(xii) such other material features as the several underwriters for such Conventional Bonds may require to establish suitability for intended offerees; and

(xiii) The Landowners complete questionnaires and provide sufficient data for TRLIA to compile and deliver a suitable initial disclosure document to the targeted investor(s); there is an agreement in place with TRLIA to enable it to fully comply with continuing disclosure requirements; TRLIA has reason to believe that it will be furnished all required customary 10(b)-5 opinions and certificates required to close the offering.

c. To the extent Conventional Bonds have not yet been issued, TRLIA shall use its best efforts to issue Conventional Bonds secured by building permit lots

(5) *Builder Bonds Status in the Event of Issuance of Private Placement Bonds or Conventional Bonds.* IN THE EVENT OF A SALE OF A PRIVATE PLACEMENT BOND OR CONVENTIONAL BOND, THE LIEN OF ANY REMAINING BUILDER BONDS SHALL BE SUBORDINATE TO THE PRIVATE PLACEMENT BOND OR THE CONVENTIONAL BOND AND SUCH LIEN AND OBLIGATION TO PAY THE BUILDER BOND WILL BE EXTINGUISHED IN THE EVENT OF A DEFAULT AND FORECLOSURE AGAINST THE PROPERTY SECURING SUCH PRIVATE PLACEMENT BOND OR CONVENTIONAL BOND.

APPENDIX C

(to the Three Rivers Levee Impact Fee Advance Funding Credit and Reimbursement Policies and Procedures Study)

SPECIAL CONSIDERATION FOR PROJECTS WITHIN TRLIA CFD'S 2006-1 AND 2006-2

The purpose of this Appendix is to discuss the use of special tax revenue collected from those projects that have land within TRLIA CFDs 2006-1 and 2006-2. Specifically, this Appendix will explain how that special tax revenue relates to the Credits and Reimbursements described in the Study.

The terms related to how special tax revenue collected from property within these CFDs is to be used are contained within the Rate and Method of Apportionment of the Special Tax (RMA) for each CFD and the individual Fiscal Agent Agreements entered into for each Tax Zone within each CFD. The terms of these documents are summarized in the Annual Tax Reports prepared for each CFD. This report is prepared for the submission of the tax levy to the Auditor Controller on August 10th of each year. The Annual Tax Report discusses the methodology for determining the tax to be levied on the taxable parcels and the accounting of the special tax revenue once it is collected. Two Annual Tax Reports have been prepared for each CFD for each of the two fiscal years the CFDs have been in existence (Fiscal Years 07/08 and 08/09).¹

Page 8 of each of the Annual Tax Reports for Fiscal Year 08/09 states the following;

“With respect to the use of Special Tax Revenues, provisions of the Second Funding Agreement entered into by the Builders/Developers in the CFD, the County, and TRLIA have been transferred into Article IV of the Fiscal Agent Agreements for each respective Tax Zone’s currently outstanding Builder Bonds. Article IV, Section 4.01, of each of these agreements outlines the use of Special Tax Revenues. Section 4.01 states that Special Tax Revenues, after the payment of any claims or pledges as related to the Builder Bonds, will be used for the following purposes:

“(i) the payment of debt service on any Private Placement Bonds or Conventional Bonds, as such terms are defined in the Second Funding Agreement; (ii) the payment of any debt service on any

¹ Copies of the FY 08/09 Annual Tax Reports can be found on TRLIA’s website (www.trlia.org) as part of the August 5, 2008 board meeting agenda materials.

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Refunding Bonds; and (iii) the payment of any other Annual Cost, as such term is defined in the RMA, other than the payment of the Bonds.”

According to the RMA, the following item is one component of Annual Costs:

“Pay-As-You-Go Expenditures for Authorized Facilities to be constructed or acquired by the CFD, including the repayment of Builder Bonds, or to be used to reduce the amount of future Capital Calls.”

Based on the RMA and Fiscal Agent Agreements, Special Tax Revenues must be used to fund Authorized Facilities, and not used to retire Builder Bonds.

Since a portion of Authorized Facilities are yet to be constructed as of FY 2008–2009, remaining Special Tax Revenue (after administrative expenses) from each Tax Zone will be used to fund these facilities directly. The intent of the Second Funding Agreement was for the remaining Special Tax Revenue from each of the Tax Zones that goes to fund Authorized Facilities directly, ultimately be used to reduce the remaining Capital Calls. In other words, the Builder/Developers would get credit for Special Tax Revenue generated by their respective Tax Zones...”

Based upon the above discussion of the terms contained within the Fiscal Agent Agreements and the RMA and the intent of Second Funding Agreement, special tax revenue collected from projects before TRLIA’s levee improvement project is complete should be treated the same as any other advance funding or payment of Levee Fees. In fact, to date, this is how special tax revenue collections have been treated. **Table 2** shows the credit of special tax revenue collections from Fiscal Year 07/08 applicable to each landowner.

On a going forward basis, special tax revenue will continue to be accounted for in a similar manner. However, special provisions need to be addressed that deal with the following;

- Special tax revenues collected on behalf of projects that have no further obligation to fund (i.e., projects that are expecting reimbursements); and,
- The timing of the use of credit generated from special tax revenue collections.

The following details the procedures for dealing with special tax revenues;

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- For Projects that have additional Levee Fee obligation to fund:
 - Special tax revenue will be creditable toward funding the fee obligation due on the remaining units. The funds will be accounted for by the Fiscal Agent and upon remission to YLFA to pay project costs, YLFA will advise the County on the amount of acreage credit to be applied.
 - The funds will be accounted for and utilized in the same manner as the future payment of Levee Impact Fees. Special tax revenues can be used to pay project costs if the levee improvement project is still incomplete or the revenues can be used to pay reimbursements due to those parties that advance funded improvement costs (reference **Chapter 4**).
 - The acreage credit will be determined based upon the fee applicable at the time the funds are transmitted to YLFA.
 - Acreage credit generated from special tax revenue collections can be utilized by the landowner to satisfy the additional Fees due as outlined in **Chapter 3** on the next subsequent building permits issued. The credit will be able to satisfy the additional proportional fees due in the same manner as cash paid would. This credit built up from future special tax revenue will not be subject to the “spreading” of credit condition that prior advanced funding is.
 - As a result of utilizing this funding to satisfy additional Levee Fee obligations, this funding will not be used toward the redemption of builder bonds.
- For Projects that have satisfied their Levee Fee obligation through prior advance funding to date (or satisfied their Levee Fee obligation through additional funding from either cash payments or future special tax revenue collections):

Special tax revenue collected from property that has previously satisfied its Levee Fee obligation while builder bonds are outstanding will be held by the Fiscal Agent for the future redemption of Builder Bonds. This revenue will be held and used to facilitate the future issuance of Refunding Bonds as contemplated in the Fiscal Agent Agreement and Second Funding Agreement by prefunding a reserve account or paying costs of issuance.



**Three Rivers Levee Fee
Credit & Reimbursement
Policy Review**

**Yuba County Board of Supervisors
November 18, 2008**

Overview

- ▶ **Purpose**
 - ▶ **Present the Policy recommendation to Board for Review, Comment and Direction**
 - ▶ **If Board concurs with recommendation, direct County Administrator to prepare and negotiate Development / Reimbursement Agreement**
- ▶ **Present Background**
- ▶ **Present proposed policy related to Credits**
- ▶ **Present proposed policy related to Reimbursements**
- ▶ **Request Direction**

Background

- ▶ Since 2003, funds advanced through various agreements & financing mechanisms by private landowners for levee improvements
 - ▶ 2003 Levee Study Advance Agreement
 - ▶ TRLIA CFD 2004-1
 - ▶ 2005 Agreement for Advance Funding (First Funding Agreement)
 - ▶ 2006 Second Agreement for Advance Funding (Second Funding Agreement)
 - ▶ TRLIA CFD's 2006-1 and 2006-2
 - ▶ Private agreements with County and individual landowners
- ▶ Agreements predicated on receiving credit and/or reimbursement for funding
- ▶ Agreements “rolled” forward the obligations and prior funding

Background

- ▶ **Landowner funding did not provide all funding needed for completion of improvements**
(Second Funding Agreement failed)
- ▶ **However, collectively, \$70.4 million of “creditable” funding advanced**
- ▶ **Mechanism is needed for credit and/or reimbursement**
- ▶ **Purpose of the Credit & Reimbursement Policy is to establish the principles and foundation by which the County will provide credit and/or reimbursement for prior advance funding**

Basic Crediting Principles



- ▶ Credit given toward the Three Rivers Levee Fee
- ▶ Credit will be given in term of Acreage based on initial starting fee rate of \$60,159 per GDA
(Single-Family Residential Development fee rate in Plumas Zone)

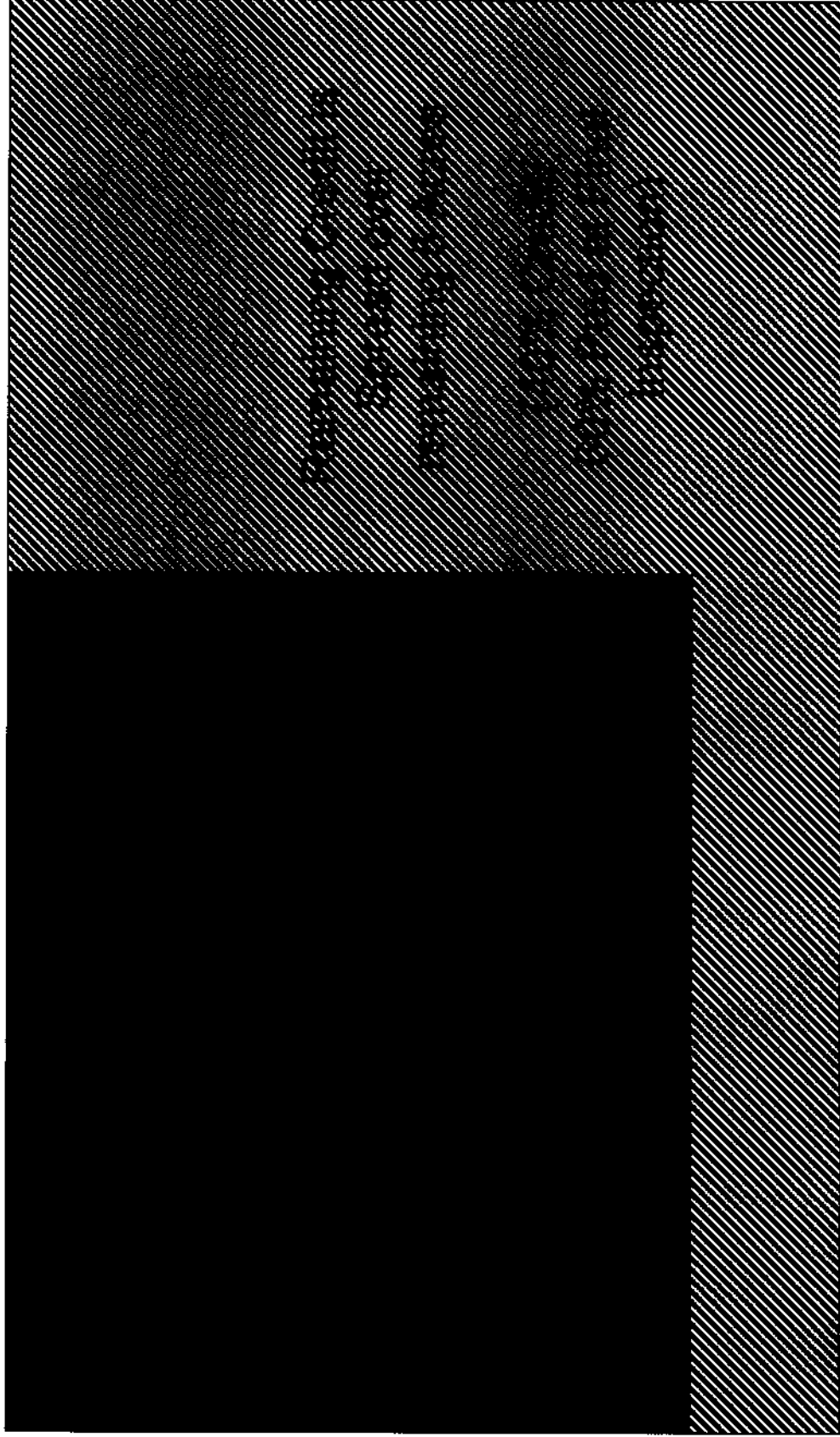
Example

Prior funding of \$1,000,000 = 16.6 Acres of Credit
($\$1,000,000 \div \$60,159/\text{GDA} = 16.6$)

Utilization of Credit

- ▶ Credit will be utilized as follows -
 - ▶ Full credit for units applied for before October 21, 2008 (i.e., no further additional funding required)
 - ▶ Any remaining credit spread on a proportionate basis over remainder of project
 - ▶ Any remaining fees due (after credit) will be determined at time of building permit issuance and collected at final inspection

Credit Utilization Example



Credit Utilization Policy

- ▶ **Goal**
 - ▶ **Bring funds into program sooner**
- ▶ **~1,700 units subject to Credit**
- ▶ **With credit spreading policy units will pay some fees sooner rather than later**
- ▶ **Mechanism for crediting is Development Agreement**

Development Agreement Provisions

- ▶ Proportionate payment of Levee Fees
- ▶ Plus -
 - ▶ 20 Year Total Map Life
 - ▶ No new County fees for 10 years (except Road Fees & Regional Park fees up to \$2,000/Unit)
 - ▶ No increase of existing fees (except current escalators and current County & Plan Area Road fees)
 - ▶ All fee collection deferred until final inspection for 10 years (vs. sunset in 2010 of current ordinance)
 - ▶ TRLIA Agreement on Builder Bond redemption terms for TRLIA CFD's 2006-1 & 2006-2

Reimbursement Policy

- ▶ **Principles for Reimbursement**
 - ▶ **No reimbursement to any party (including County and YCWA) until levee improvement program is complete and certified (unless otherwise legally and financially advantageous)**
 - ▶ **Consider impact to General Fund and services provided by County at large**
 - ▶ **Consider proportionality of investment made in levee improvement program**
 - ▶ **Consider timing of repayment**
- ▶ **Mechanism is Reimbursement Agreement**

Reimbursement Policy

- ▶ **Reimbursements will be paid only from future Three Rivers Levee Fee revenue**
- ▶ **Repayment broken into 3 time periods**
 - ▶ **Prior to Levee Certification**
 - ▶ **After Levee Certification but before March 1, 2015**
(start of debt service for joint financing)
 - ▶ **After March 1, 2015 until Reimbursement is Complete**

Reimbursement Policy

- ▶ **Prior to Levee Certification**
 - ▶ Fee revenue used to directly fund improvements
 - ▶ Fee revenue will offset additional funds from YLFA
- ▶ **After Levee Certification but before March 1, 2015**
 1. Repay Homes by Towne for 1st Funding Agreement reimbursement
 2. Split proportionately between County/YCWA and landowners (based on outstanding reimbursement)
- ▶ **After March 1, 2015 until Reimbursement is Complete**
 1. Fund County/YCWA Debt Service
 2. Repay Homes by Towne for 1st Funding Agreement reimbursement
 3. Third split proportionately (based on outstanding reimbursement) between County/YCWA and landowners

Questions?

