

DRAFT

ARTICLE ●. - RIGHT TO GEOTHERMAL EXPLORATION AND DEVELOPMENT ORDINANCE

Sec. 1-1. - Findings and Policy.

- 1.1 California is privileged to have access to a variety of robust energy resources, particularly geothermal energy. It produces more geothermal power than any other state, and alone accounts for more than 20% of total geothermal energy production worldwide. Additionally, the U.S. Department of Energy's (DOE's) National Renewable Energy Laboratory (NREL) demonstrated the importance of adding even more geothermal energy to California's grid, which could translate to potentially hundreds of millions of dollars saved annually in operations, maintenance, and statewide utility bills. The most developed of the high-temperature geothermal resource areas in California is in the Geysers, which was first tapped as a geothermal resource to generate electricity in 1960. This area, which includes significant areas of Lake County, is only one of two locations in the world where a high-temperature, dry steam resource is found which can be used to move turbines and generate electricity. By 2016, geothermal energy in California produced 11,582 gigawatt-hours of electricity.
- 1.2 It is the declared policy of Lake County to encourage the development and improvement of its land for the exploration, development and production of geothermal energy, and to reduce the occurrence of conflicts between such use and other permitted uses of real property in nearby areas. It is the purpose and intent of this article to reduce the loss to the County of its geothermal resources by limiting the circumstances under which land use conflicts with geothermal operations or activities may be deemed to constitute a nuisance. It is the further intent of this article to provide the residents of this County with proper notification of the County's recognition and support of geothermal energy in the County of Lake.
 - 1.3 The California Constitution recognizes the authority of cities and counties to make and enforce, within their borders, "all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) This inherent local police power includes broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders, and preemption by state law is not lightly presumed.
 - 1.4 This article is not to be construed as in any way modifying or abridging State law as set out in the California Government Code, Civil Code, Health and Safety Code, or any other applicable provision of State law relative to nuisances, but rather is only to be utilized in the interpretation and enforcement of the provisions of this Code and county regulations.
 - 1.5 An additional purpose and intent of this article is to promote a good neighbor policy by requiring notification to owners, purchasers, residents, and users of property adjacent to or near geothermal operations of the inherent potential nuisance related problems associated with such purchase or residence. Such concerns may include, but are not limited to, the noises, induced seismicity, vibrations, odors, and hours of operation that may accompany geothermal operations. It is intended that, through mandatory disclosures, purchasers and users will better understand the impact of living near geothermal operations or activities and be prepared to accept attendant conditions as a normal and necessary aspect of living in a county with active geothermal resources.

1.6 Implementation of these policies can be strengthened by establishing a dispute resolution procedure designed to amicably resolve any complaints about geothermal operations that are less formal and expensive than court proceedings.

Sec. 1-2. - Definitions.

2.1 For the purpose of this article, the following words and phrases shall have the following meanings:

- (a) *Geothermal land* shall mean those land areas of Lake County wherein geothermal operations are located, or have been leased for geothermal purposes, or within five (5) miles of said operations and leases.
- (b) *Geothermal operations* means and includes, but is not limited to, the exploration, development, and production of geothermal steam, or the associated production of electrical power, from below and above the surface of the land using geothermal reservoirs of water and/or steam; any commercial practices performed as incident to or in conjunction with such operations; and injection of waters into the geothermal reservoir for the purpose of producing steam., and all the pipelines, wells, equipment and equipment related to injection of waters.
- (c) *Geothermal processing facilities or operations* means a facility, or appurtenances thereof, including but not limited to water injection and steam production wells; steam pipelines; drilling rigs and other equipment and machinery used to explore, develop, and utilize subsurface reservoirs of geothermal water and/or steam.
- (d) *Property* means any real property located within the unincorporated area of Lake County.
- (e) *Transfer* means the sale, lease, trade, exchange, rental or gift of property.
- (f) *Transferee* means any buyer or tenant of property.
- (g) *Transferor* means the owner and/or transferor of title of real property or seller's authorized selling agent as defined in Business and Professions Code Section 10130 et seq., or Health and Safety Code Section 18006, or a landlord leasing real property to a tenant.

Sec. 1-3. - Nuisance.

3.1 No geothermal operation or activity, nor any facility or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with or in compliance with local, state and federal statutes, regulations, licenses, and government authorizations shall be deemed a public nuisance per se solely as a result of its existence, exploration and development of geothermal land, and/or continued geothermal operations. Further, given the extraordinary benefit to the public as described hereinabove, should the exploration and development and continued operations be conducted in a negligent or intentionally improper manner, there shall be an administrative requirement that, prior to any public nuisance action being initiated pursuant to Chapter 13 of this Code, the complainant and the subject of the complaint, with the assistance of a County Enforcement Official, shall engage in dispute resolution before the Geothermal Grievance Committee established herein.

Sec. 1-4. - Real Estate Transfer Disclosure Statement.

4.1 Pursuant to Section 1102.6a of the California Civil Code, it is intended by this article to require disclosures in addition to those disclosures required by Section 1102.6 of the California Civil Code.

4.2 Upon any transfer of real property by sale, exchange, installment land sale contract, lease with option to purchase, or ground lease coupled with improvements, or transfer of residential stock cooperative, the transferor shall require that the disclosure statement set forth in subsection 4.4 shall be signed by the purchaser or lessee.

4.3 Forms for the disclosure statement set forth in subsection 4.4 of this section shall be printed and made available to property owners and real estate agents by the Lake County Community Development Department.

4.4 The disclosure required by subsection 4.2 of this section shall contain, and be in the form of, the following:

I

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY LOCATED IN THE COUNTY OF LAKE, STATE OF CALIFORNIA, DESCRIBED AS [INSERT NECESSARY ASSESSOR'S PARCEL NUMBER]. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE-DESCRIBED PROPERTY IN COMPLIANCE WITH ARTICLE ● OF CHAPTER ● OF THE ORDINANCE CODE OF LAKE COUNTY. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

SELLER'S INFORMATION

THE SELLER DISCLOSES THE FOLLOWING INFORMATION WITH THE KNOWLEDGE THAT EVEN THOUGH THIS IS NOT A WARRANTY, PROSPECTIVE BUYERS MAY RELY UPON THIS INFORMATION IN DECIDING WHETHER AND ON WHAT TERMS TO PURCHASE THE SUBJECT PROPERTY. SELLER HEREBY AUTHORIZES ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION TO PROVIDE A COPY OF THIS STATEMENT TO ANY PERSON OR ENTITY IN CONNECTION WITH ANY ACTUAL OR ANTICIPATED SALE OF THE PROPERTY. THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER AS REQUIRED BY THE COUNTY OF LAKE AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

THE COUNTY OF LAKE PERMITS GEOTHERMAL OPERATIONS AND ACTIVITIES WITHIN THE COUNTY.

If your real property is adjacent to, located within five (5) miles of, or contains personal property used for geothermal operations or activities, you may be subject to inconveniences, annoyances, or discomforts arising from such geothermal lands and operations, including but not limited to noise, induced seismicity, vibrations, odors, and the operation of machinery of any kind during any twenty-four (24) hour period. Lake County has established a grievance committee to assist in the resolution of any disputes which might arise between residents of this County regarding geothermal operations or activities. If you have any questions concerning this Ordinance or the Geothermal Grievance Committee, please contact the Lake County staff or geothermal liaison.

Seller certifies that this information herein is true and correct to the best of Seller's knowledge as of the date signed by the Seller.

Seller _____ Date _____ Seller _____ Date _____

II

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER(S) AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date _____ Buyer _____ Date _____

Seller _____ Date _____ Buyer _____ Date _____

Agent (Broker) Representing Seller _____ By _____ Date _____
(Associate Licensee or Broker)

Agent (Broker) Obtaining the Offer _____ By _____ Date _____
(Associate Licensee or Broker)

Present A.P.No. _____

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

Sec. 1-5. - Existence of Geothermal Exploration and Development Notice.

5.1 5.2 For all discretionary approvals of parcel maps or subdivision maps involving geothermal land, or real property, the Lake County Planning Commission, or Board of Supervisors on appeal, shall include as a condition of approval that the final recorded map shall contain the following statement: "All persons purchasing lots within the boundaries of this approved map should be notified of the possibility of inconveniences or discomforts associated with geothermal operations or activities, such as noise, induced seismicity vibrations, or odors that are performed in a manner consistent with local, state and federal statutes, regulations, licenses or other government authorizations. ."

5.3 The Lake County Community Development Department shall provide all applicants for building permits for new residential construction or manufactured home placement with a "Existence of geothermal exploration and development notice" in substantially the form provided in subsection 5.6.

5.4 The Treasurer-Tax Collector of the County shall mail a copy of the "right-to-geothermal exploration and development notice" as an insert or on the back of tax envelopes in substantially the form provided in subsection 5.6 to all owners of real property in Lake County with the annual secured 2016—2017 tax bill, any supplemental tax bill, and every year thereafter.

5.5 The Lake County Community Development Department shall be responsible for the printing and related cost of the "existence of geothermal exploration and development notice" set forth in subsection 5.6 of this section and shall supply the Treasurer-Tax Collector and the Assessor-Recorder with notices as needed. This is expensive for a "right" that has no state or federal recognition as such.

5.6 The "right to geothermal exploration and development notice" shall contain, and be substantially in the form of, the following:

LAKE COUNTY - EXISTENCE OF GEOTHERMAL EXPLORATION AND DEVELOPMENT NOTICE

The County of Lake recognizes and supports the significant public purpose achieved by encouraging the exploration and development of geothermal energy from the lands in a manner consistent with local, state and federal statutes and regulations. Residents of Lake County should be prepared for the inconveniences, annoyances or discomforts associated with geothermal operations or activities,

including but not limited to noise, induced seismicity vibrations, odors and the operation of machinery of any kind during any twenty-four (24) hour period. Lake County has determined that the existence of such geothermal operations or activities, solely in and of itself, shall not be considered a public nuisance. Lake County has established a process for dispute resolution regarding geothermal operations or activities. If you have questions concerning this Ordinance or the dispute resolution process, please contact the Lake County Geothermal Liaison.

Sec. 1-6. - Dispute Resolution. What form should this take?

6.1 Geothermal and geothermal processing operations shall comply with all local, state, and federal statutes, regulations, licenses, and government authorizations applicable to the operations.

6.2 Should any controversy arise regarding any inconveniences or discomfort associated with geothermal operations or activities, the party, parties, or the enforcement agency may submit the controversy to a grievance committee as set forth below in an attempt to resolve the matter prior to the filing of any court action.

6.3 There is established the Lake County Geothermal Grievance Committee, which shall hear grievances involving geothermal operations or activities.

6.4 The Lake County Board of Supervisors shall appoint a Geothermal Grievance Committee as the need arises. The grievance committee shall consist of four (4) members selected by a majority of the Board of Supervisors, two (2) of whom shall be members of the energy community, and two (2) of whom shall have no financial interest in any geothermal property or operation. The Lake County Geothermal liaison shall provide staff support and maintain minutes of each meeting of the Geothermal Grievance Committee.

6.5 The Lake County Geothermal liaison, outside energy advisors, and staff from the Lake County and State agencies may serve as technical advisors to the Geothermal Grievance Committee as the need arises.

6.6 Any controversy relating to geothermal operations or activities between the parties shall be submitted in writing to the Geothermal Grievance Committee within sixty (60) days of the date of the occurrence of the particular incident or activity giving rise to the controversy or of the date a party became aware of the occurrence or operation or activity.

6.7 Thereafter, the Geothermal Grievance Committee may investigate the facts of the controversy but must, within sixty (60) days, hold a meeting to consider the merits of the matter and within thirty (30) days of the meeting render a written decision to the parties. All participants will be given notice at least ten (10) days prior to the meeting. At the time of the meeting, all participants shall have an opportunity to present what each considers to be pertinent facts. 6.8 The Geothermal Grievance Committee determinations are non-binding unless both parties voluntarily agree to abide by the Geothermal Grievance Committee's decision. Full discussion and complete presentation of all pertinent facts concerning the dispute is necessary to eliminate any misunderstandings. The parties are encouraged to cooperate in the exchange of pertinent information concerning the controversy.

6.9 Based upon the information presented to the Geothermal Grievance Committee during its investigation, the Geothermal Grievance Committee may, but is not required to, determine the following: (1) that the complaining party has filed complaints concerning the geothermal operation or activity which is the subject of the dispute, and that those complaints are repetitive, without merit or brought for purposes of annoyance, and (2) that the geothermal operation or activity which is the subject of the dispute is operating in a manner consistent with local, state and federal statutes, regulations, licenses and other government authorizations, (3) complaints which are substantially the same as prior complaints which the Committee addressed previously do not have to be addressed again unless there has been a demonstrated, material, change in circumstances. If such a determination is made by the Geothermal Grievance Committee, the enforcement agency having jurisdiction of the matter shall take that determination into

consideration before taking any action regarding future complaints related to the geothermal operation or activity.

Sec. 3-7. - Penalty for Violation.

7.1 Failure to comply with the provisions of this article shall not prevent the recording of any document, nor shall it affect title to real property or any mortgage or deed of trust made in good faith or for value. This article is in no way intended to limit damages that may be awarded in nuisance suits.

7.2 A violation of any provision of this article is punishable as an infraction by a fine not exceeding one hundred dollars (\$100.00); or as a misdemeanor by a fine of not more than five hundred dollars (\$500.00).

Sec. 3-8. - Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.