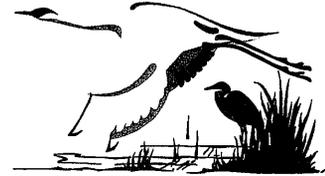


**Letter from Tom Dodson and Associates,
Response to Comments Mitigated Negative
Declaration and Notice of Determination**

Attachment 2

TOM DODSON & ASSOCIATES
2150 N. ARROWHEAD AVENUE
SAN BERNARDINO, CA 92405
TEL (909) 882-3612 • FAX (909) 882-7015
E-MAIL tda@tdaenv.com



MEMORANDUM

February 4, 2014

RECEIVED
FEB 04 2014

From: Tom Dodson

LAFCO
San Bernardino County

To: Ms. Kathleen Rollings-McDonald

Subj: Completion of the Mitigated Negative Declaration for the County of San Bernardino Local Agency Formation Commission Sphere of Influence Establishment for CSA 120 (LAFCO 3157) (SCH# 2013101088)

The County of San Bernardino Local Agency Formation Commission (LAFCO or Commission) received eight comments on the proposed Mitigated Negative Declaration for the Sphere of Influence Establishment for CSA 120 (proposed Project). CEQA (State CEQA Guidelines Section 15074) requires a negative declaration to consist of the Initial Study, copies of the comments, any responses to comments (refer to responses on the following pages); and any other project-related material prepared to address issues evaluated in the Initial Study.

For this proposed Project, the original Initial Study will be utilized as one component of the Final Mitigated Negative Declaration (MND) package. The attached responses to comments, combined with the Initial Study and the Mitigation Monitoring and Reporting Program, constitute the Final MND package that can be used by the Commission to consider the environmental effects of implementing the proposed Project.

The following parties submitted comments. These comments are addressed in the attached Responses to Comments:

1. Office of Planning and Research, State Clearinghouse
2. Mr. Steve Loe, Certified Wildlife Biologist
3. California Department of Fish and Wildlife
4. Lynn M. Boshart
5. Jane Hunt
6. City of Rancho Cucamonga
7. Mr. Tim Millington, County Special Districts Department
8. O'Neil, LLP, on behalf of Lytle Development Company

Because a mitigation measure is required for this project to reduce potentially significant impacts to a less than significant level, the Mitigation Monitoring and Reporting Program (MMRP) attached to this package is required to be adopted as part of this Final MND package. The MMRP is attached to this package for approval and implementation. The Commission will consider the Final MND package at its hearing for LAFCO 3157 on March 19, 2014. Based on the whole of the administrative record to date, we recommend that the Commission find the information contained in the whole record justifies the adopting a Mitigated Negative Declaration for the establishment of the CSA 120 Sphere of Influence. Tom Dodson will be attending the LAFCO public meeting when the project is considered by the Commission to address any questions that the Commission members or other parties may have regarding the adoption of the MND for the proposed project.

Do not hesitate to give me a call if you have any questions regarding the contents of this package.

A handwritten signature in black ink, appearing to read "Tom Dodson". The signature is written in a cursive, flowing style.

Tom Dodson

Attachments



Edmund G. Brown Jr.
Governor

COMMENT LETTER #1

STATE OF CALIFORNIA

Governor's Office of Planning and Research
State Clearinghouse and Planning Unit



Ken Alex
Director

November 27, 2013

Kathleen Rollings-McDonald
San Bernardino County Local Agency Formation Commission (LAFCO)
215 North "D" Street, Suite i204
San Bernardino, CA 92415-0490

Subject: Sphere of Influence Establishment for CSA 120 (LAFCO 3157)
SCH#: 2013101088

Dear Kathleen Rollings-McDonald:

The State Clearinghouse submitted the above named Mitigated Negative Declaration to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on November 26, 2013, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

1-1

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Scott Morgan
Director, State Clearinghouse

Enclosures

cc: Resources Agency

**RESPONSES TO COMMENTS
LETTER #1
OFFICE OF PLANNING AND RESEARCH
STATE CLEARINGHOUSE**

- 1-1 This is an acknowledgment letter verifying that the State Clearinghouse submitted the Initial Study and proposed Mitigated Negative Declaration (MND) to selected state agencies for review, and that one state agency submitted comments through the Clearinghouse by the close of the review period, which occurred on November 26, 2013. The State Clearinghouse assigned this project the following tracking number, SCH #2013101088. Responses to the comment letter received from the State Clearinghouse are provided under letter number three (Letter #3) from the California Department of Fish and Wildlife. This letter is for information only and does not require a substantive response.

**Document Details Report
State Clearinghouse Data Base**

SCH# 2013101088
Project Title Sphere of Influence Establishment for CSA 120 (LAFCO 3157)
Lead Agency San Bernardino County Local Agency Formation Commission

Type MND Mitigated Negative Declaration

Description Within each county local agency formation commissions are assigned the responsibility for designating a "Sphere of Influence" for government agencies under its purview that provide services to an area. The San Bernardino Local Agency Formation Commission (LAFCO) is considering the establishment of a Sphere of Influence (SOI) for County Service Area (CSA) 120. CSA 120 was formed under LAFCO Resolution No. 3056, effective July 1, 2009. CSA 120 is a single purpose Board-governed (San Bernardino County Board of Supervisors) Special District that performs open space and habitat management services. Administrative functions for CSA 120 are performed through the San Bernardino County Special Districts Dept. Open Space and Habitat Conservation management services are the only authorized function provided by CSA 120. The range of services includes acquisition, preservation, maintenance and operation of land to protect unique, sensitive, threatened, or endangered species, or historically significant properties.

Lead Agency Contact

Name Kathleen Rollings-McDonald
Agency San Bernardino County Local Agency Formation Commission (LAFCO)
Phone 909 383 9900 **Fax**
email
Address 215 North "D" Street, Suite 1204
City San Bernardino **State** CA **Zip** 92415-0490

Project Location

County San Bernardino
City Rialto, Rancho Cucamonga, Fontana, San Bernardino
Region
Lat / Long 34° 10' 8.7" N / 117° 26' 18" W

Cross Streets

Parcel No.	Township	Range	Section	Base
-------------------	-----------------	--------------	----------------	-------------

Proximity to:

Highways I-210 and 15
Airports
Railways
Waterways Lytle Creek
Schools
Land Use

Project Issues Archaeologic-Historic; Biological Resources; Geologic/Seismic; Minerals; Soil
Erosion/Compaction/Grading; Vegetation; Wetland/Riparian; Wildlife

Reviewing Agencies Resources Agency; Department of Fish and Wildlife, Region 6; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 8; Air Resources Board; Regional Water Quality Control Board, Region 8; Native American Heritage Commission

Date Received 10/28/2013 **Start of Review** 10/28/2013 **End of Review** 11/26/2013

COMMENT LETTER #2

Steve Loe, Certified Wildlife Biologist
33832 Nebraska St.
Yucaipa, CA 92399

RECEIVED
NOV 25 2013

LAFCO
San Bernardino County

November 25, 2013

Ms. Kathleen Rollings-McDonald,
Executive Officer, SB LAFCO
215 North D Street, Suite 204
San Bernardino, CA 92415-0490

Re: Comments on LAFCO 3157 – Sphere of influence establishment for CSA 120.
Mitigated Negative Declaration.

2-1

The proposed Sphere of Influence establishment and proposed subsequent management could have a significant adverse effect on imperiled plant and animal species and their habitats in the proposed sphere boundary and outside the boundary.

I do not agree with issuing a Mitigated Negative Declaration for the above project for the following reasons:

2-2

- Lack of funding to operate existing CSA 120 to a standard needed to provide for management and monitoring of the habitat to provide for species protection, much less take on a huge new area with the same low developer fees. I attended meetings of the Special Districts Etiwanda Preserve and heard from staff and field managers that although they are trying hard to manage the area properly, they do not have adequate funding to patrol and protect the area as it currently exists. Biological monitoring of plant and animal populations is not funded. County biological staff is being significantly reduced and there is no botanist on staff. In their own words, they are just in survival mode with the current budget for management of the Etiwanda Preserve. What indicates that there would be a change that would allow adequate management of such a large new area? As I understand it, mitigation costs to developers would be less with this proposal, resulting in proportionately less management funds in the

RESPONSES TO COMMENTS
LETTER #2
MR. STEVE LOE, CERTIFIED WILDLIFE BIOLOGIST

- 2-1 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project.
- 2-2 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please note that the establishment of a Sphere of Influence does not grant an agency automatic authority to annex territory within its boundaries. It establishes a planning boundary only. However, as explained on page 3 of the Initial Study, the establishment of a Sphere is an essential step to future annexations, and sufficient evidence was submitted by agencies and the public that inadequacy of future funding could be translated into future physical impacts on the conserved land. Thus, the Commission Staff was aware of the concern expressed in this comment prior to preparing the Initial Study for the proposed project. This concern was the basis for imposing mitigation measure IV-1. The Staff defined this measure with the intent of ensuring that, if approved, any future lands acquired by CSA 120 would receive sufficient funds (endowment) to manage properties over the long term in accordance with criteria established by the California Department of Fish and Wildlife (CDFW). The Commission Staff believes that this measure addresses the concern expressed in this comment for any future property that may be acquired by CSA 120 for conservation management.

2-2
cont.

larger area. The County does not have the biological staff necessary to conduct and carry out the monitoring, and with current budget issues the County has been significantly reducing its biological staff. A realistic budget and plan for being able to fund the necessary budget needs to be agreed to with the Agencies and openly discussed with the public prior to adopting this proposed Service Area.

- Appearance of a Conflict of Interest, perception of corruption, favoritism, in dealing with Pharris (Lytle Develop Company) with the original application, boundaries and proposed plan being developed and paid for by the developer/major landowner in the area without full public and agency involvement. Adding to the appearance of a conflict of interest/corruption is the fact that the proposed management plan and proposal was developed by former County Planner, Randy Scott, who was hired by Pharris immediately after his county employment/contract and work on directly related projects. This could have been done with full disclosure and public and agency involvement, but this was not the case. It was done largely in secret and unveiled at the same time Lytle Development Company was proposing a significant and connected biological disaster for the Lytle Creek Wash in the form of a huge, wash altering development (Lytle Creek Ranch).

2-3

- Boundaries of the proposed SOI appear to have favored the developer, Lytle Development (Pharris) without proper involvement of other agencies, landowners etc. to arrive at the best biological and fair boundary for all. The boundary chosen leaves out some biologically important areas that should have and would have been included in a true multi-agency, multi-species approach. This could have a significant effect on imperiled plants and animals.
- The designation appears to have unfair and uncalled for benefits for the landowner/developer at the potential expense of the biological resources it was designed to protect. It has potential to significantly benefit the landowner/developer, reducing their mitigation costs, increasing the value of their vast properties as both developable and

2-3 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. This comment references a connection between a specific property and the CSA 120 Sphere of Influence application. This issue was also raised in the comment letters submitted to the Commission and provided in Appendix 1 of the Initial Study. This connection between the application and a specific property with a potential for future conservation was part of the rationale for concluding that a Statutory Exemption would not be a sufficient CEQA environmental determination for this project. However, it is the potential for indirect physical changes in the environment, not the issues raised in this comment, that justified compilation of an Initial Study and recommending that a Mitigated Negative Declaration be adopted by the Commission as the appropriate environmental determination for CEQA compliance.

2-3
cont.

undevelopable mitigation lands, and failing to protect the resources. This could have a significant effect on plants and animals. The County needs to back off of this developer driven proposal and work with the public and agencies to develop a real HCP/NCCP for the area. That process can identify needed conservation lands and mitigation rather than be developer driven.

2-4

- There is a need for a species driven, not developer driven, Habitat Conservation Plan (HCP and NCCP) for this area and the species needing protection. The County, all of the landowners, the Agencies and the public should work together toward a Multi-species plan that is equitable to the landowners and provide protection to the resources. I would like to be included in this process.

2-5

Thank you for the opportunity to comment on this proposal. Please keep me informed of the progress on this application. I hope there are continued discussions leading to a real HCP/NCCP planning process that we can all be a part of. We have been asking the County for this for decades.

Steve Loe

909-809-4726

- 2-4 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. The recommendations in this comment go beyond the scope of the LAFCO's evaluation in this Initial Study. The logical entity to consider the recommendations in this comment is the County Board of Supervisors.
- 2-5 Based on your submittal of comments, the Commission will ensure that you are notified of future actions on CSA 120's application, including any future hearing to consider the application for a decision.

COMMENT LETTER #3



State of California - Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Blvd., Suite C-220
Ontario, CA 91764
(909) 484-0459
www.wildlife.ca.gov

EDMUND G. BROWN, Jr., Governor
CHARLTON H. BONHAM, Director



RECEIVED
NOV 26 2013

LAFCO
San Bernardino County

November 26, 2013

Ms. Kathleen Rollings-McDonald
Local Agency Formation Commission for San Bernardino County
215 North D Street, Suite 204
San Bernardino, CA 92415-0490

Subject: Mitigated Negative Declaration
Sphere of Influence Establishment for County Service Area 120 (LAFCO
3157)
State Clearinghouse No. 2013101088

Dear Ms. Rollings-McDonald:

3-1

The Department of Fish and Wildlife (Department) appreciates the opportunity to comment on the Mitigated Negative Declaration (MND) for the Sphere of Influence Establishment for County Service Area 120 (LAFCO 3157) Project (Project) [State Clearinghouse No. 2013101088]. The Department is responding to the MND as a Trustee Agency for fish and wildlife resources (California Fish and Game Code Sections 711.7 and 1802, and the California Environmental Quality Act [CEQA] Guidelines Section 15386), and as a Responsible Agency regarding any discretionary actions (CEQA Guidelines Section 15381), such as the issuance of a Lake or Streambed Alteration Agreement (California Fish and Game Code Sections 1600 *et seq.*) and/or a California Endangered Species Act (CESA) Permit for Incidental Take of Endangered, Threatened, and/or Candidate species (California Fish and Game Code Sections 2080 and 2080.1).

Project Description

3-2

The MND proposes an expansion of the sphere of influence for County Services Area (CSA) 120. CSA 120 currently encompasses an area of approximately 9,557 acres, which generally includes the northeastern area of the City of Rancho Cucamonga and a northern portion of the City of Fontana, south of the San Bernardino National Forest. The proposed change of jurisdictional boundaries to CSA 120 will result in an expansion to include an area of approximately 45,302 acres, covering an area of approximately 71 square miles, located along the foothills of the San Gabriel Mountains, south of the Angeles and San Bernardino National Forests, east of the San Bernardino/Los Angeles county lines, north of the 210 freeway, and west of the 215 freeway, including portions of the northerly boundaries of the Cities of Upland, Rancho Cucamonga, Fontana, Rialto, and the northwesterly boundaries of the City of San Bernardino.

**RESPONSE TO COMMENTS
LETTER #3
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

- 3-1 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project.

- 3-2 This is an accurate summary of the proposed project. Please note that CDFW's August 23, 2012 letter was taken into consideration in the decision to prepare an Initial Study for this proposed project and a copy of this letter is included in Appendix 1 of the Initial Study.

Mitigated Negative Declaration

Sphere of Influence Establishment for County Service Area 120 (LAFCO 3157) Project
SCH No. 2013101088

Page 2 of 5

3-2
cont.

The MND states that CSA 120 is a single purpose Board-governed (San Bernardino County Board of Supervisors) Special District that performs open space and habitat management services. Administrative functions for CSA 120 are performed through San Bernardino County Special Districts Department. Open space and habitat conservation management services are the only authorized function provided by CSA 120. The range of services provided by CSA 120 is documented to include: acquisition, preservation, maintenance, and operation of land to protect unique, sensitive, threatened, or endangered species, or historically significant properties.

The Department previously provided comments on the San Bernardino County Local Agency Formation Commission's (LAFCO) Application # 3157, Initiation of Sphere of Influence Establishment for County Service Area 120 on August 23, 2012. The Department's comments on the MND are similar to those previously conveyed in the August 23, 2012 letter.

Sensitive species and habitats

3-3

As previously stated by the Department, the proposed CSA 120 expansion area contains multiple sensitive habitats, including a Significant Natural Area, and sensitive species, including those listed as threatened, endangered, and/or candidate by the CESA. Conveyance of fee title of mitigation lands or conservation easements associated with an Incidental Take Permit (ITP), or Lake or Streambed Alteration (LSA) Agreement to CSA 120, or any other entity, requires pre-approval by the Department. Department policy requires that any mitigation lands associated with a CESA permit must be occupied by the covered species and permanently protected either through fee title dedication of land to a Department-approved entity, recordation of a Department-approved conservation easement held by the Department, or the recordation of a conservation easement held by a Department-approved entity with the Department named as a third party beneficiary. To meet the CESA adequate funding and full mitigation standards, the Department requires these acquired lands to be managed in perpetuity to maintain and improve habitat quality to ensure persistence of the target species. Furthermore, in some cases, the Department may recommend that the entity managing certain mitigation lands apply for a CESA ITP for the incidental take of listed species due to necessary land management activities. Issuance of an ITP is subject to CEQA documentation; therefore the Department recommends that the CEQA document identify and analyze potentially significant impacts, propose measures to mitigate impacts to less than significant levels, and include a mitigation monitoring and reporting program. If proposed land management activities have the potential to impact CESA-listed species, early consultation with the Department is encouraged.

3-4

California Government Code Section 65967 requires the Department to perform a due diligence review of any non-profit organizations or other government entities who are interested in holding conservation easements and/or mitigation lands. In addition to establishing a conservation easement, a mitigation land holder is required to provide a

- 3-3 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to comment letter #8 which presents a different interpretation of the requirement for pre-approval by the Department. The remainder of this comment focuses on some of the specific requirements that the Department may impose on an entity it authorizes to receive land for conservation purposes. Please note that since the action before the Commission is establishment of a Sphere of Influence, not the specific annexation of land proposed for conservation. Accordingly, it is not possible to address any specific environmental issue since these facts are not available. The Commission did take the Department's comments into consideration and established mitigation measure IV-1 to address the future necessity to confer with and obtain pre-approval from the Department.
- 3-4 The Commission Staff designed mitigation measure IV-1 to fulfill the requirements described in this comment.

3-4
cont.

management plan; perform a Property Analysis Record (PAR) or PAR-like analysis to determine annual funding needed for enhancement, management and monitoring; establish an endowment for long-term management; and if needed, provide funding for initial protection and enhancement of the property.

LSA

3-5

The Department also previously commented that mitigation lands associated with impacts to Department jurisdictional areas under the LSA Program require that the land is permanently protected either through fee title dedication to a Department-approved entity or recordation of a conservation easement held by a Department-approved entity. The Department requires that LSA mitigation sites be protected and managed in perpetuity. Protection includes, but is not limited to, installation of appropriate fencing and signage around the perimeter, and except for uses appropriate to a habitat conservation area, as approved by the Department, the public shall not have access to the mitigation site. Long-term management shall include, at a minimum: removal of nonnative plant species, trash, and debris; erosion control; irrigation, where necessary; repair and maintenance of fencing and signage; biological surveys; invasive control (plant and animal); adaptive management; and monitoring and reporting. Management may also include remedial actions for catastrophic events, such as fire, flood, and earthquakes.

Summary of Department Concerns

3-6

The Department's August 23, 2012 letter stated that following review of financial documents and the North Etiwanda Preserve Management Plan, submitted in support of CSA 120's Sphere of Influence Expansion proposal, the Department was concerned that CSA 120 was not sufficiently funded to protect and manage, in perpetuity, mitigation lands required through the CESA and LSA Program. The Department stated that the submitted documents did not identify funding for staff, assessment and monitoring of species and associated vegetation, or restoration of degraded areas. Because of these concerns the Department recommended that LAFCO obtain copies of CSA 120's property analysis record (PAR), or PAR-like analysis that was used to calculate CSA 120's non-wasting endowment fee of \$2,500/acre (specified in the District's Fee Schedule). The Department also recommended that LAFCO request copies of annual reports and work plans for the mitigation lands managed by CSA 120 under their \$2,500/acre endowment fee structure.

3-7

Because this information was not provided with the MND, the Department reiterates its concern regarding the analysis used to derive CSA 120's per acre non-wasting endowment fee. The Department contends that without the provision of a PAR or PAR-like analysis, or specific management plans designed using CSA 120's per acre endowment fee, the Department will continue to be concerned that CSA 120's endowment fees are not based on actual land management costs and that the amount is inadequate to protect and manage mitigation lands in perpetuity. The Department

- 3-5 The Commission Staff designed mitigation measure IV-1 to fulfill the requirements described in this comment regarding Lake and Streambed Alteration Agreements.
- 3-6 The Commission Staff has obtained as much of the recommended information as is available from CSA 120. This information, and its indirect impact on the North Etiwanda Preserve, is relevant to past operations and is essential to the Staff's development of a recommendation to the Commission regarding the application. However, the information identified in this comment addresses past actions or circumstances that already exist. This information, although pertinent, does not directly affect future actions that are the focus of an environmental evaluation and would not normally be included in an environmental document. Regardless, the Commission Staff will make all the information obtained from CSA 120 available to the Department under separate cover if it is still needed.
- 3-7 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to mitigation measure IV-1 which addresses the Department's concerns for any future proposed annexations and property acquisition on behalf of CSA 120.

3-7
cont.

strongly encourages LAFCO to request copies of CSA 120's specific land management plans, for all of the lands CSA 120 manages, to analyze the management activities that are being performed, and to determine whether these land management activities are sufficient to fulfill the services stated to be provided by CSA 120: namely, "...preservation, maintenance, and operation of land **to protect unique, sensitive, threatened, or endangered species**, or historically significant properties."

3-8

Page 14 of the MND states: "CSA 120's role is generally passive from the land conservation standpoint. Its role is to serve as a recipient of land offered for conservation by some party and subsequently assume management responsibility for the open space and habitat values within such properties." Because the MND did not include a PAR or PAR-like analysis, or annual reports and work plans for the mitigation lands managed by CSA 120 the Department is concerned that CSA 120 may not be fulfilling habitat management responsibilities, and habitat conditions on mitigation lands managed by CSA 120 may have declined.

3-9

As previously noted in the Department's August 23, 2012 letter, the Department requires the development of individual management and monitoring plans, for mitigation sites, to ensure that species, habitat, and resources specific to the mitigation site are appropriately protected and conserved. Any organization that wishes to take on the responsibility for a mitigation site must demonstrate that they have the necessary personnel, funding, equipment, and expertise to implement management and monitoring plans in the short and long term. The Department has the obligation to ensure that an accepting organization can meet our criteria. To date the Department is unaware that CSA 120 has created a minimum criteria template management plan for review, and as such the Department continues to be concerned that CSA 120 lacks the expertise to develop and implement an appropriate management plan for individual mitigation areas. Also, because a PAR or PAR-like analysis has not been provided, the Department is further concerned that CSA 120's fee schedule is inadequate to protect and manage mitigation lands in perpetuity.

3-10

The Department previously requested that LAFCO provide clarification on how the overlapping boundaries of CSA 120's proposed sphere expansion and potential annexation area, and the existing jurisdictional boundary of the Inland Empire Resource Conservation District (IERCD), will function for mitigation purposes. However, an analysis was not provided in the MND. The Department reiterates its request to LAFCO regarding clarification of potential impacts to biological resources from competing mitigation entities (including mitigation and/or conservation banks and land management entities other than the IERCD) operating within the same jurisdictional sphere, particularly given the differences in funding availability and criteria used to formulate appropriate funding needs, management and monitoring strategies, staffing, and organizational oversight.

3-11

It is outside of the Department's purview to select a preferred alternative from those proposed in the MND, however it is within the Department's purview to comment on

- 3-8 Please refer to the comments in comment letter #2. Based on the information submitted by CSA 120, it appears that CSA 120 does not have sufficient funds for the existing property that it currently manages. However, the Commission does not have the authority to change this existing circumstance and the environmental review process is not the appropriate mechanism or process to correct this existing situation. However, through the Sphere of Influence process the Commission can consider the future potential effects of adding additional area to CSA 120's Sphere of Influence. The Staff believes this has been accomplished through imposing mitigation measure IV-1, which is designed to ensure adequate funding, with Department participation, for any future properties acquired by CSA 120 if the expanded Sphere is approved by the Commission.
- 3-9 This comment reflects the existing condition or functions of CSA 120. As noted in previous comments, the Commission Staff generally agrees with the concern raised in this comment, and established mitigation measure IV-1 to ensure that adequate resources would be provided for any future property that CSA 120 acquires for long-term conservation.
- 3-10 The concern expressed in this comment seeks to have a comparison between a single entity with responsibility for managing conserved lands and having two entities. Although duplication of services within an area is not generally preferred by LAFCO, the Staff concluded that if adequate endowment is provided for an individual property as is assumed under mitigation measure IV-1, there would be no adverse environmental consequences of having overlapping jurisdiction.
- 3-11 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project.

Mitigated Negative Declaration

Sphere of Influence Establishment for County Service Area 120 (LAFCO 3157) Project
SCH No. 2013101088

Page 5 of 5

3-11
cont.

potential negative impacts to fish and wildlife resources in its role as a Trustee (Fish and Game Code sections 711.7 and 1802, CEQA Guidelines section 15386) and Responsible Agency, regarding any discretionary actions (CEQA Guidelines section 15381; Fish and Game Code sections 1600 *et seq.*, 2080 and 2080.1). As previously stated, CSA 120 has not submitted a due diligence review application to the Department, and has not obtained a Lake or Streambed Alteration Agreement. As such, at this point in time, other than the original land acquisition of the North Etiwanda Preserve, CSA 120 is not authorized to hold conservation easements and/or mitigation lands associated with the CESA or LSA, or perform habitat restoration or enhancement activities within Fish and Game Code 1600 *et seq.* jurisdictional areas within its current jurisdictional boundary, or within any proposed sphere expansion area.

3-12

Thank you for the opportunity to review and comment on the MND for the Sphere of Influence Establishment for County Service Area 120 (LAFCO 3157) Project. If you have any questions regarding this matter, please contact Joanna Gibson at (909) 987-7449 or Joanna.Gibson@wildlife.ca.gov.

Sincerely,



Jeff Brandt
Senior Environmental Scientist

cc: Joanna Gibson, CDFW
State Clearinghouse, Sacramento

3-12 This letter and your comments have been noted and filed for the record and if any questions arise, we will contact Ms. Gibson.

COMMENT LETTER #4

November 25, 2014

RECEIVED
NOV 27 2013

Kathleen Rollings-McDonald, Executive Officer
Local Agency Formation Commission For San Bernardino County
215 North "D" Street, Suite 204
San Bernardino, CA 92415-0490

LAFCO
San Bernardino County

SUBJECT: Notice of Availability and Intent to Adopt a Mitigated Negative Declaration for
LAFCO 3157 Sphere of Influence Establishment for County Service Area 120

Dear Mrs. Rollings-McDonald,

4-1 Thank you for the opportunity to comment on the above referenced notice for CSA 120. Initially, my opening question regarding the possible approval of the application to expand CSA 120 sphere of influence to encompass nearly five times as many lands as already are within the influence of CSA 120 is: What is the compelling reason and need for such an expansion? As far as I can ascertain from the documents and letters that I have reviewed is that there isn't one compelling reason or need.

4-2 The only nefarious need deals with a private developer Ron Pharris, of Lytle Development, who not only has initiated and paid for the application, but would be the primary beneficiary of the expansion. His land holdings in Lytle Creek are vast. Cheap mitigation land through CSA 120 would potentially reduce his costs for mitigation of over 800 acres for his Lytle Creek Ranch Project. Where is the public benefit with this expansion? There isn't one. The benefit is to one man only.

4-3 While it may not come as a surprise to you that a private citizen has both initiated and paid for the CSA 120 application to expand the Sphere of Influence, it came as a surprise to many Board members of NEP at the April 19, 2012 meeting when the name of the person paying was revealed. Why didn't the entire Board know who had done what? Those members expressed concerns about what appeared to them to be a conflict of interest and were uncomfortable with this knowledge. That is one of my concerns as well.

4-4 The expansion of CSA 120 intrudes on conservation groups and lands already established in the Lytle-Cajon area. The Inland Empire Resource Conservation District (IERCD) and Vulcan already serve the needs in this arena. Why would the area need a duplication of services? The only need comes from a private developer who would financially benefit if the application is approved. He would then attempt to establish his own ideas with *The Conservation Strategy for the Lytle-Cajon Creek Area, A Public/Private Collaboration* (LCCS) to change the way habitat lands are mitigated to substantially reduce his obligation and costs. This has no basis in California Environmental laws. IERCD is by far the better choice to understand and have the resources to manage open spaces and sensitive habitat into perpetuity.

4-5 The Board of CSA 120 is underfunded, understaffed and over extended in their efforts to fulfill the original intent and purpose of CSA 120 to mitigate impacts to the California gnatcatcher and preserve the biological habitat of the Etiwanda Preserve. Those needs appear to have been lost since CSA's inception. To date, the Board mostly handles the results of vandalism and destruction of property. The need to maintain and mitigate for endangered species seems furthest from the

RESPONSE TO COMMENTS
LETTER #4
LYNN M. BOSHART

- 4-1 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. The questions raised in this comment ignores the fact that the Commission is obligated to conduct a review and consider approval of any application submitted for its consideration. CSA 120 is not currently assigned a Sphere of Influence and the Commission is responsible for this assignment in a timely manner. CSA 120's application establishes the agency's preferred Sphere boundary, but as indicated in the Initial Study the Commission may consider other alternatives for the Sphere.
- 4-2 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. In fact, the Commission Staff has identified mitigation measure IV-1 to ensure that adequate funding would be provided if the Sphere is established as requested in the application and if the Lytle Creek property is annexed to CSA 120 in the future. Ultimately, with the proposed mitigation the benefit would accrue to society as important habitat could be permanently preserved and managed to meet adequate conservation management objectives in perpetuity.
- 4-3 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. This content of this comment and the question it raises falls outside of the scope of the CEQA process for CSA 120's application. The sole focus of LAFCO's CEQA document for CSA 120 is whether there could be adverse physical changes in the environment from approval of the proposed Sphere of Influence. We believe the documentation made available for public review addresses this question and where physical changes in the environment could occur through indirect impacts, LAFCO has identified mitigation to address these impacts. See mitigation measures IV-1 and V-1 of the Initial Study.

- 4-4 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Actually before any land can be absorbed by CSA 120, mitigation measures IV-1 requires that this agency obtain approval from CDFW and demonstrate adequate funding to manage the conserved property in perpetuity. This is a separate property and with sufficient funding CSA 120 could manage the Lytle Creek property without intruding on any other agency. Regardless, the Commission must consider establishment of a Sphere for CSA 120, whether it includes Lytle Creek property or not.
- 4-5 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. As far as is known, there are no real estate interests involved in managing the NEP. CSA 120 provides as much management as possible given the current level of funding and the inability to encroach on the NEP's endowment.

4-5
cont. Board's capabilities and intentions. While the committee formed to manage NEP has handed over to San Bernardino County Special Districts the task of managing conservation lands and the endowment funds, attention to biological conservation as once a mandate of CSA 120 has been set aside in favor of real estate interests.

4-6 NEP isn't financially capable of maintaining and improving habitat quality over time when faced with the financial problems of vandalism within its boundaries. The contrast between the cost of mitigating lands within CSA 120 at \$2,500 versus what others charge is glaring. Those dollars, forced into the County investment pool will never yield enough income to save what viable habitat still exists within NEP let alone the additional 35,000 plus acres of lands that would be enclosed in the proposed SOI.

4-7 On page 43 of the Initial Study a summary of Mitigation Measures under Biological Resources addresses future annexation applications beyond the pending SOI application, obligating California Department of Fish and Wildlife (CDFW) to review all management and funding documents. CDFW's April 23, 2012 letter already has addressed the inadequacies of funding to protect and manage mitigation lands in perpetuity for this expansion of CSA 120. Funding is woefully lacking for the 9 thousand plus acreage that NEP already has within its boundaries. Yet incredibly the application requests that the size of NEP be enlarged 5 times that amount.

4-8 The Initial Study repeatedly begins many statements with "If the CSA 120 . . .," suggesting a great deal of uncertainty with whatever the Board of CSA 120 plans to do in the future to receive approval for their property management plans with CDFW. There are no guarantees that CDFW will approve CSA 120's application to become a mitigation banking entity and even if that is allowed, monies would be needed to finance the program and staffing. "If it has access to adequate funding . . ." Those "if's" loom large for this expansion, when the primary mover on this application intends to spend as little as possible to mitigate for his projects. Might he mitigate for his projects with his own lands within the newly defined CSA 120? He could then benefit two fold; cheaply buy mitigation lands that he already owns and controls for his own LCS project.

4-9 Really there isn't a pressing or compelling need to expand the Sphere of Influence of CSA 120 for the public good. Other agencies in the Inland Empire already are better equipped to handle the in-perpetuity management of open space and habitat resources in the area. For full government transparency, allowing a private developer to dictate the size and scope of CSA 120's SOI, isn't in San Bernardino County's best interest.

4-10 Until there is a compelling public need for the expansion of CSA 120's Sphere of Influence to well over 40 thousand acres, this application should be withdrawn or denied.

Sincerely,



Lynn M. Boshart
5529 Larch Ave.
Rialto, CA 92377
(909) 877-6005

- 4-6 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project.
- 4-7 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to response to comment #3-8. Based on implementation of mitigation measure IV-1, the Commission assumes that any future annexations to CSA 120 would occur with an adequate management plan and adequate funding to implement the management plan in perpetuity.
- 4-8 Under mitigation measure IV-1, if CDFW does not approve CSA 120 as a management agency and approve the proposed funding to support adequate management of a specific property, then the annexation would not proceed and the issue identified in this comment could not occur.
- 4-9 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project.
- 4-10 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project.

To Kathleen Rollings-McDonald

COMMENT LETTER #5

RECEIVED
DEC 02 2013

RE. LAFCO 3157 S10 for CSA 120

LAFCO
San Bernardino County

I haven't had the opportunity to review the entire 140 page Initial Study, but I want to make a few comments on what I've read.

5-1

I have real concerns about LAFCO recommending or determining that a Mitigated Negative Declaration is the appropriate CEQA environmental determination for the proposed project. CSA 120 purpose is to perform habitat management services and open space management. It seems to me there is

5-2

a conflict of interests and goals by initiating the SOT for CSA 120. One of largest stakeholders in the expansion of CSA 120 is Lytle Development, it would be in their best interest to have this initiated for future mitigation on their holdings.

5-3

I noticed in the Biological check list it was less than significant with mitigation incorporated that was checked. CSA 120 will have significant effect on the biological resources. Aside from the biological issue, my other major concern is the ability of the expansion of CSA 120 to have adequate funding for habitat maintenance and management. There.

Etiwanda Preserve already has an ^{inadequate} sparse encumbrance. CESA requires adequate funding to maintain and improve habitat quality. In closing, this habitat needs protection, but not by this project.

(Riverside
Affluent
Sage habitat)

Thank you
Jane Hunt

RESPONSE TO COMMENTS
LETTER #5
JANE HUNT

- 5-1 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. With the implementation of mitigation measure IV-1 the Commission Staff concluded that CSA 120 would have adequate funding to properly manage any property accepted into its jurisdiction in perpetuity. The Sphere of Influence designation does not commit any properties to CSA 120 and if CSA 120 prepares management plans acceptable to the CDFW, the Staff concluded that any future annexations could be implemented in a manner that would properly protect future conservation lands. Based on the data currently in the administrative record, Staff still supports issuance of a Mitigated Negative Declaration for the proposed project.
- 5-2 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Based on implementation of mitigation measure IV-1, adequate funding must be provided to properly manage conserved land in perpetuity. This is the key assumption that allows the Commissioners to consider approval of the Sphere of Influence proposed by CSA 120.
- 5-3 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project.



**RANCHO
CUCAMONGA**

December 4, 2013

COMMENT LETTER #6

RECEIVED
DEC 04 2013

LAFCO
San Bernardino County

Mayor L. DENNIS MICHAEL • Mayor Pro Tem SAM SPAGNOLO
Council Members WILLIAM J. ALEXANDER, MARC STEINORTH, DIANE WILLIAMS
City Manager JOHN R. GILLISON

THE CITY OF RANCHO CUCAMONGA

RECEIVED
DEC 04 2013

LAFCO
San Bernardino County

Kathleen Rollings-McDonald, Executive Officer
Local Agency Formation Commission
215 North D Street, Suite 204
San Bernardino, CA 92415

SUBJECT: Notice of Intent to adopt a Mitigated Negative Declaration for a Change of Jurisdictional Boundaries LAFCO Application 3157 Sphere of Influence for County Service Area 120 (North Etiwanda Preserve)

Dear Ms. Rollings-McDonald:

Thank you for the opportunity to comment on the above-noted project for the County Service Area (CSA) 120 boundary change within the City of Rancho Cucamonga and within the Sphere of Influence. After reviewing the Mitigated Negative Declaration (MND), the City requests that the following comment be addressed:

Biological Resources:

6-1 | The MND states that the "expansion of the CSA 120 SOI potentially offers more protection for biological resources than not authorizing the expansion." The expansion of the SOI will cause a redundancy in the environmental management responsibilities of the Inland Empire Resource Conservation District (IERCD) and CSA 120 as there will be an overlap in their areas of responsibility. Furthermore, the management of the biological resources requires reliable, long-term funding. The funding source for the IERCD is superior to the funding source for CSA 120. The IERCD has a more flexible revenue stream that does not rely on only one source for funding. This contrasts with CSA 120 which relies on a single source of revenue. Further, the CSA 120's ability to manage existing and future mitigation land with the current funding is still a concern of the City. The proposed mitigation measure (IV-1) is vague; potential funding sources should be identified and an analysis of each should be provided to determine if the CSA 120 will have adequate funding for maintenance of resources. Additionally, this mitigation measure is deferring the CSA 120's ability to demonstrate adequate funding to the future project approval of annexation.

6-2 | The City feels that it is appropriate to support the original position of LAFCO for a coterminous sphere of influence for the CSA 120 and object to the sphere expansion due to the lack of sufficient mitigation fees collected to manage the NEP and future mitigation land. The Etiwanda North Preserve improvements were installed and opened to the public in 2009. Since the dedication there has been a continued degradation of the improvements due to vandalism and a lack of funds for maintenance. Increasing the responsibility area of CSA 120 to accept additional mitigation land will further burden the existing strained budget and may cause further degradation of the preserve.

6-3 | The City believes that there is a potential conflict of interest since the County Flood Control District has mitigation land that would likely be offered to the CSA 120, a Special

**RESPONSE TO COMMENTS
LETTER #6
CITY OF RANCHO CUCAMONGA**

- 6-1 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. This comment is accurate; establishing the Sphere of Influence at the boundaries requested by CSA 120 would increase the area of overlapping jurisdiction between CSA 120 and the IERCD. It is also an accurate statement that IERCD has a more flexible revenue stream than CSA 120. However, this point is moot because both agencies are required to establish management plans for conserved properties and obtain adequate funding to support managing each property in perpetuity in accordance with the management plan. Everything equal, IERCD's funding, and availability of separately funded staff, could reduce the endowment requirements relative to CSA 120.

The Staff does not concur that mitigation measure IV-1 is vague for the following reasons. The action before the Commission is the establishment of a Sphere of Influence, not the annexation of a specific property for long-term conservation. Mitigation measure IV-1 addresses the requirements for submitting future annexation applications because it specifically requires the management and funding documents be submitted and approved prior to initiating future annexations. The specific content of such documents is also defined and is based on input received from the CDFW. This is as specific as LAFCO can be at this stage of the decision-making process. LAFCO concluded that the performance standards in mitigation measure IV-1 are sufficient to provide adequate resources for any future annexation to CSA 120 and that placing this responsibility on CDFW is the appropriate allocation of responsibility to ensure effective long-term management of any future conserved properties annexed to CSA 120.

- 6-2 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to response to comment #3-8 regarding the difference between existing and future properties for long-term management and what is within the scope of the Initial Study.
- 6-3 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. The Commission concluded that with implementation of mitigation measure IV-1 the fee structure for such mitigation would have to be adequate for long-term conservation management.

6-3 | District of the County (Etiwanda Preserve) because of lower mitigation and endowment
cont. | fees.

6-4 | Additionally, with duplication of services by multiple agencies and private entities
including IERCD, Vulcan Conservation Bank, and other conservation plans, the CSA 120
is not an appropriate multi-species resource conservation agency with sufficient dedicated
staff to manage the sphere expansion. Because of the lower mitigation fees, developers
will tend to have the CSA 120 accept mitigation land over IERCD or other agencies.

6-5 | Further, the City of Rancho Cucamonga would support LAFCO if they made a determination
that Project Alternative number 5 is the environmentally superior alternative that proposes the
dissolution of the CSA 120 and the management services be assumed by the City of Fontana
and the IERCD.

6-6 | If you have any questions, please contact Candyce Burnett, Planning Manager, by phone at
(909) 477-2750, ext. 4308, Monday through Thursday from 7:00 a.m. to 6:00 p.m., or e-mail at
candyce.burnett@cityofrc.us at your convenience.

Sincerely,



John R. Gillison
City Manager

cc: Janice Rutherford, 2nd District Supervisor, County of San Bernardino

- 6-4 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to response to comment #6-3.
- 6-5 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project.
- 6-6 Future communications with the City will be coordinated through Ms. Candyce Burnett as requested.

COMMENT LETTER #7

Rollings-McDonald, Kathleen

From: Millington, Tim
Sent: Tuesday, November 05, 2013 9:16 AM
To: Rollings-McDonald, Kathleen; Martinez, Samuel
Cc: Rigney, Jeff
Subject: CSA 120

RECEIVED
NOV 05 2013

LAFCO
San Bernardino County

Good morning,

7-1

The section I spoke of yesterday where the initial study indicates that there could be greater impacts if CSA 120 sphere is reduced from areas of the city as proposed is contained within the Biological Resource Review Section of the document beginning on page 15. The statement occurs in the Substantiation #1, specifically paragraph 2 of the section on page 16. Based on the information presented the results of this Initial Study substantiate CSA 120 and the overlay of the biological resources found to reside within the City boundaries and or city sphere areas.

7-2

Also see "Discussion of Alternatives" under the same section pages 18-19 of the Initial Study. The statement is found or referenced in all alternatives considered except for Alternative 4 which is a coterminous sphere with the IERCD. It could be viewed as a contradiction if LAFCO is to recommend anything but alternative #1 Sphere as Proposed or #4 coterminous w/IERCD if the intent is to protect the Biological Resources of the area. Based on how the Initial Study is presented, the recommendation of another unstudied LAFCO alternative could be viewed as counter to findings of the Initial Study and discount the validity of the findings as presented in the alternatives outlined within the Initial Study. Also, based on the findings of the Initial Study anything short of proposed "could expose biological resources to potentially greater impacts than that identified for establishment of the SOI or a future annexation" (Reference: Tom Dodson & Associates; Initial Study For the Sphere of Influence Establishment For County Service Area 120, page 19, paragraph 1).

Just an observation relative to the Initial Study.

Timothy L. Millington
Regional Manager
County Special Districts Department
(909) 387-5877

**RESPONSE TO COMMENTS
LETTER #7
COUNTY SPECIAL DISTRICTS DEPARTMENT**

- 7-1 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. The analysis referenced in this comment was specifically focused on the potential resources located within the City of Fontana. The City has concluded that compensatory mitigation outside of the City is preferable since it could allow development in accordance with the General Plan. This is obviously one method of compensatory mitigation that can be utilized to offset impacts due to future development; however, to the extent that such mitigation could be accomplished on suitable quality habitat in the City, CSA 120 or IERCD could be more protective of those resources located within the City.
- 7-2 Although the text reference in this comment is correct, it does not preclude the Commission Staff making a recommendation to the Commissioners to adopt any of the alternatives. The ultimate decision of the Commission regarding the boundaries of the Sphere of Influence are not dictated by the environmental findings or documentation. The Commission must simply take the environmental documentation and findings into consideration as part of their deliberations. In other words, CEQA does not dictate a decision; it's purpose is to ensure the Commissioners are fully informed about the environmental consequences of the various alternatives available to them for establishing a Sphere of Influence for CSA 120.

COMMENT LETTER #8

O'NEIL LLP

ATTORNEYS AT LAW

DEAN DUNN-RANKIN
SANDRA A. GALLE
WILLIAM E. HALLE
ANDREW K. HARTZELL
LAWRENCE J. HILTON
JOHN D. HUDSON

19900 MACARTHUR BOULEVARD, SUITE 1050
IRVINE, CALIFORNIA 92612
(949) 798-0500 • (949) 798-0511 (FAX)
EMAIL: counsel@oneil-llp.com

DENNIS D. O'NEIL
JAY F. PALCHIKOFF
PAUL A. ROWE
WILLIAM L. TWOMEY
JOHN P. YEAGER

WRITER'S DIRECT DIAL: (949) 798-0714
EMAIL: ahartzell@oneil-llp.com

December 2, 2013

RECEIVED
DEC 02 2013

VIA EMAIL, U.S. MAIL AND FACSIMILE

LAFCO
San Bernardino County

Ms. Kathleen Rollings-McDonald, Executive Officer
San Bernardino Local Agency Formation Commission
215 North "D" Street, Suite 204
San Bernardino, CA 92415-0490

Re: Notice of Intent to Adopt a Mitigated Negative Declaration for LAFCO
3157 - Sphere of Influence Establishment for County Service Area 120

Dear Ms. Rollings-McDonald:

8-1 The San Bernardino LAFCO (LAFCO) is considering the establishment of a Sphere of Influence (SOI) for County Service Area (CSA) 120. CSA 120 was formed under LAFCO Resolution No. 3056, effective July 1, 2009. CSA 120 is a Special District governed by the San Bernardino County Board of Supervisors that performs open space and habitat management services. Administrative functions for CSA 120 are performed through the San Bernardino County Special Districts Department (Special Districts). Open Space and Habitat Conservation management services are the authorized functions provided by CSA 120. The range of management services includes acquisition, preservation, maintenance and operation of land to protect unique, sensitive, threatened, or endangered species, habitats, or historically significant properties.

8-2 This firm represents Lytle Development Company (LDC), a landowner with various properties within San Bernardino County, including land located within the proposed SOI for CSA 120. We are submitting the comments set forth herein on LDC's behalf.

As we will explain in more detail below:

- 8-3
1. LAFCO should adopt Special Districts's proposal to establish the SOI for CSA 120 as an approximately 71 square mile area as shown in Figure 2 of the Initial Study.
 2. LAFCO should find that this approval is *not* subject to review under CEQA (as it has no reasonably foreseeable physical impacts on the environment) or find that it is categorically exempt from CEQA.

RESPONSE TO COMMENTS
LETTER #8
O'NEIL, LLP ATTORNEYS AT LAW

Preface:

Although it is not unusual to receive comments on an environmental document from an attorney, it is unusual to receive comments that attempt to make a case that no environmental determination is needed for a project to comply with the California Environmental Quality Act (CEQA), in other words the CEQA statute does not apply to the establishment of a Sphere of Influence (SOI or Sphere) for County Service Area (CSA) 120 (LAFCO 3157). The Commission Staff carefully considered whether the proposed establishment of the CSA 120 Sphere could result in a physical change in the environment. A decision was made that LAFCO 3157 is a project (refer to Section 15378 of the State CEQA Guidelines) for three reasons.

First, the approval of the Sphere is an initial action in a chain of decisions that can result in reasonable foreseeable indirect physical changes in the environment. The SOI requested by CSA 120 is clearly designed to encompass the Lytle Creek mitigation area owned by Lytle Development Company and the Company's objective of having CSA 120 assume responsibility for management of this mitigation property was widely known to the public. Refer to the comments submitted to LAFCO provided as Appendix 1 to the project Initial Study. With so much information in the public forum, the LAFCO Staff concluded that it could not ignore the connection between the proposed SOI and the future annexation of this property to CSA 120.

Second, it was common knowledge that the North Etiwanda Preserve and other nearby properties under CSA 120's current responsibility have apparently had insufficient funds to actively manage these open space and conservation purposes. Again, the comment letters submitted to LAFCO regarding LAFCO 3157 clearly indicate that many agencies questioned the ability of CSA 120 to manage lands within its responsibility and to effectively protect the biological resources found on these properties. Based on this recent history of inadequate funding, the Commission Staff concluded that an indirect potential for adverse impacts to biological resources could result by expanding the Sphere as requested by CSA 120. In other words this indirect impact is a reasonably foreseeable indirect physical change in the environment if the proposed Sphere was approved without mitigation. This conclusion was also the basis for crafting mitigation measure IV-1 which is designed to ensure that adequate funding will be available if or when CSA 120 is allowed to accept property in the future for long-term conservation management.

Third, LAFCO 3157 is clearly controversial because the comment letters in Appendix 1 of the Initial Study constitute substantial evidence before LAFCO that the approval of LAFCO 3157 might have a significant effect on the environment. The Commission Staff concluded that LAFCO 3157 meets the test of potential significant impact outlined in Section 15064(f)(4) of the State CEQA Guidelines.

Finally, the Commission Staff concluded that it would be prudent to conduct a CEQA evaluation for LAFCO 3157 because such documentation and determination would be more protective of the Commission as it deliberates the merits and alternatives of LAFCO 3157. With so much controversy in the public record, it made sense to summarize the issues of concern related to future indirect environmental impacts for the Commission to consider. In the end it is this role to inform decision-makers that is at the heart of CEQA. Given the comments in the preceding seven letters, the Commission Staff believes it selected the correct course of CEQA compliance for LAFCO 3157.

Responses to specific comments submitted in the O'Neil LLP letter follow.

- 8-1 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. This is an accurate summary CSA 120's functions and management responsibilities.
- 8-2 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project.
- 8-3 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to the comments in the preface regarding the rationale behind the decision to prepare a Mitigated Negative Declaration for compliance with CEQA for LAFCO 3157. In contrast to the comment that biology mitigation measure IV-1 is unnecessary, the Commission Staff believes it is essential to mitigate the potential indirect effects to biological resources. Further, given the role of the California Department of Fish and Wildlife (CDFW) in managing sensitive habitat and species in the State, CDFW is clearly the appropriate agency to oversee implementation of mitigation measure IV-1, not the County Board of Supervisors.

3. **If LAFCO unnecessarily proceeds to subject its proposed action to CEQA review, it should adopt a Negative Declaration, instead of a Mitigated Negative Declaration (as the establishment of the SOI would not have any physical impacts on environmental resources).**

8-3
cont. 4. **Furthermore, if LAFCO proceeds unnecessarily to adopt a Mitigated Negative Declaration, it should first eliminate the proposed biological resource mitigation measure, as the proposed measure is unnecessary (no significant impacts would occur), unworkable and imprudent as a practical and policy matter.**

5. **Finally, if LAFCO is insistent on unnecessarily adopting a biological mitigation measure as part of an MND, LAFCO should, at a minimum, revise the mitigation measure so as to make it a practical, rational and workable measure.**

8-4 I. LAFCO Should Approve the County Special Districts Department's Proposal, as Urged by the County Board of Supervisors, to Establish the SOI.

The establishment of the CSA 120 SOI has the ability to significantly benefit the public, substantially assist with the long-term preservation of conservation open space in the County, constitutes good public policy and should be approved by LAFCO.

8-5 There exists a need for more than one entity in the proposed SOI to be able to hold fee title to conservation property and manage that property in perpetuity for conservation purposes. There is no reason to believe that any single entity (public or private) should have a monopoly on the ability to hold fee title to conservation property and manage it appropriately for conservation purposes in perpetuity. Monopolies rarely, if ever, prove to be beneficial to the general public or to provide the most efficient operations and results. In fact, landowners in southern California looking for qualified entities with good prospects for enduring over the long-term as conservation property owners and stewards generally have too few options, and this is the case for those portions of San Bernardino County being considered for inclusion in the SOI. No entity (public or private) is currently obligated to accept fee title to proposed conservation property in the proposed SOI area or to provide long-term management of such properties' biological resources. The current problem in this area of the County is that there are too few potential entities that can perform these functions, not – as the IERCD might suggest – too many.

8-6 In fact, when LAFCO authorized the creation of CSA 120 in 2009 – just four years ago – it did not find that establishing CSA 120 would result in an inappropriate duplication of services, even though it was establishing CSA 120 in the IERCD's service area. Also, the IERCD does not seem to take issue with the fact that the Western Riverside County Resource Conservation Agency (RCA) exists and can own and manage conservation properties within portions of Riverside County which are also within the IERCD service area. Furthermore, in its April 21, 2013 letter to LAFCO, the IERCD states that it does not see a problem with multiple management entities available to manage conservation properties within the same service area. Similarly, CSA 120's current 15 square mile service area has not created any inappropriate duplication of services, even though this service area overlaps with the IERCD's service area.

- 8-4 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project.
- 8-5 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. The position stated in this comment appears to ignore that a substantial portion of LAFCO's responsibility is to minimize duplication of services within an area to reduce overall costs to the public. If it is assumed that management of open space is a public service, and since CSA 120 is performing this role it must be considered a public service, the concept of competition, which applies to private enterprise, may not be an appropriate model.
- 8-6 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. The reference to the Western Riverside County Resource Conservation Agency (RCA) is somewhat misplaced in this comment. The RCA performs a role in direct support of the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) which creates a specific conservation model for that County. In San Bernardino County there is no such plan and biological mitigation is highly project specific, rather than pre-planned (reference the assembly of property within individual cells under the MSHCP). Further, it may be possible to have more than one entity receive and manage conservation properties, as long as all of them subscribe to and follow guidelines that provide sufficient funding for comprehensive management of biological resources (refer to comment #8-1)

8-7

Moreover, approval of the proposed SOI for CSA 120 would not result in an unnecessary duplication of agency services. For one, the IERCD operates under a mission statement¹ that is unique to its organization and which does not compel it to undertake conservation management and maintenance responsibilities for any particular, newly proposed conservation lands in the SOI area and which does not direct it to take all reasonable steps to accept conservation property offered or to accept the responsibility to manage all conservation property within the SOI area, even if it is given adequate funds to manage such property. These facts are not meant as a criticism of the IERCD. Certainly it is entitled to decide which proposed conservation properties it wishes to manage, and under what terms. But these facts do underscore the need for more than one public agency or entity to exist which is willing and able to take on these functions.

8-8

Other potential differences between the possible services provided by the IERCD and CSA 120 as a conservation land steward include: (1) as an organization, IERCD has a mission focus beyond San Bernardino County, (2) IERCD is an agency that was not originally designed to be a conservation land owner or manager (having been originally established as a soil and water conservation service), and Cal. Pub. Resources Code §§ 9151-52 suggest that soil and water conservation should remain the primary focus of resource conservation districts, (3) IERCD's Mission Statement specifically notes that it reserves the right to avoid involvement in projects which its Board does not like for any reason, the right to avoid involvement with projects that members of the public object to or which the Board believes would negatively impact its "identity," and the right to avoid involvement with projects which it believes would lessen its public support as an agency, (4) the IERCD's Mission Statement places a low priority on it becoming involved in enhancement projects or on lands that are currently under some form of conservation protection, and (5) the IERCD's Mission Statement directs it not to be involved with mitigation banking. Thus, LAFCO staff's suggestion that the IERCD has an obligation to accept fee ownership or accept management responsibilities for proposed conservation land within the proposed SOI for CSA 120 is simply incorrect. Furthermore, the conservation property services that the two entities can or would offer in any particular circumstance are not necessarily the same.

8-9

Another potentially important distinction between the IERCD and CSA 120 is that, to date, the IERCD has appeared reluctant to accept fee title interests to conservation property, preferring rather to accept conservation easements. This reticence towards accepting fee title interests seems to be echoed in its August 29, 2012 letter to LAFCO. But in any number of cases, persons interested in setting aside property for biological conservation may be desirous of the conservation manager taking fee title to the property. In contrast, CSA 120 has shown a willingness to hold fee title to conservation property.

¹ "Inland Empire Resource Conservation District Mitigation Program Report," approved February 13, 2008 (herein "Mission Statement") (copy enclosed).

- 8-7 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. As far as is known, there is no requirement that CSA 120 must take any property offered to it for management. The County Board of Supervisors, as the governing board for CSA 120, has the option of accepting or not accepting property into CSA 120.
- 8-8 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Inland Empire Resource Conservation District (IERCD) sought and was recently granted authority by CDFW to accept mitigation properties, and the Riverside Corona Resource Conservation District (RCD) previously received similar authorization. As far as is known, these are the only public agencies in San Bernardino County authorized to assume this responsibility. This indicates that these agencies intend to play a role in future conservation and management of properties within the County. As far as the Staff can determine, there has not been a claim that IERCD or any other agency must accept property conserved through dedication or compensation by individual projects in San Bernardino County. Each entity must make its own decision regarding individual properties offered for long-term conservation management based on the individual facts in each instance.
- 8-9 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project.

8-10 The need for more conservation steward entities in San Bernardino County is illustrated, in part, by IERCD's own acknowledgement that it has been in existence for more than 70 years, but that it currently has accepted management of only approximately 2,000 acres of land within an 825,000 acre service area; in other words, it has accepted the management of much less than half of one percent (< 0.5%) of the land within its service area.

8-11 LAFCO should not view the IERCD and CSA 120 as having competing (or adversely overlapping) capabilities. Rather, LAFCO should recognize that having more than one entity capable of holding, owning, and managing conservation properties in this area of the County is a positive - - not a zero-sum game. The fact that land within the proposed SOI might be able to be managed by either the IERCD or CSA 120, depending upon the particular circumstances and the ability or willingness of the entities to manage the property, would facilitate property being placed into conservation and properly managed when a landowner chooses to have her land placed into permanent conservation for biological resources.

8-12 Establishment of the SOI would not preclude Fontana (or any other city or the County) from approving development projects within the SOI². Establishment of the SOI does not mean that all of the lands, or any particular land, within the SOI would ultimately have to be used for biological conservation. It simply would provide a potential option for CSA 120 to serve a role as a conservation property steward, should the landowner desire that particular property be placed into permanent conservation. Thus LAFCO's approval of the SOI would simply provide more flexibility for conservation property management options within the SOI area in the future, and enable CSA 120 to manage and hold land for conservation purposes *if* the existing land owner desires that its land be used or managed for conservation purposes and *if* the landowner desires CSA 120 to perform these services on her land.

In light of the above, it can readily be seen that establishing the proposed SOI would not prevent the Fontana Interim MSHCP plan from functioning as intended, and would not require any adjustment to that plan.

II. LAFCO Should Find the Sphere Establishment Proposal Exempt from CEQA Review and Decline to Adopt Either a MND or an ND.

A. The Proposed Action is Not a "Project" under CEQA.

8-13 LAFCO should not adopt a Mitigated Negative Declaration (nor a Negative Declaration) in connection with approving the SOI, since the proposed action (i.e., establishment of the SOI) is not a "project" under the California Environmental Quality Act (CEQA). The proposed action does not have any potential for physical impact on the environment, and therefore it is not subject to CEQA review. Whether a particular activity constitutes a "project" under CEQA is a question of law. *Black Property Owners Assn. v. City of Berkeley*, 22 Cal.

² Confirmation of this fact is evidenced, for example, in the City of Fontana's July 25, 2012 letter to the LAFCO Executive Director.

- 8-10 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to response to comment #8-8 for additional information in response to this comment.
- 8-11 Assuming that mitigation measure IV-1 is implemented, this is the conclusion reached in the Initial Study.
- 8-12 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. The Initial Study notes (page 17) that excluding Fontana from the Sphere could result in greater effects on biological resources within the City of Fontana. This finding was based on the fact that the City's MSHCP seeks to provide mitigation outside of the area it has set aside for development. Since CSA 120 would not have to accept properties within Fontana, this potential conflict with the City is possible, not assured.
- 8-13 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to the Preface to these responses which discusses the LAFCO Staff's analysis of this issue. However, the point made in this comment is correct; the Commission could make a finding that this project is not subject to CEQA and overrule Staff.

8-13
cont.

App. 4th 974 (1994); *Simons v. City of Los Angeles*, 63 Cal. App. 3d 455 (1976). The determinative factor is *not* whether agency staff or the agency decision-makers presumed the agency action to be a project *nor* whether the agency produced a Negative Declaration or Environmental Impact Report to analyze the potential environmental impacts of the action. None of those agency actions estop the agency from later concluding (or a court from determining) that the action is not subject to CEQA.

LAFCO is *incorrect* to determine that a Mitigated Negative Declaration (MND) is the appropriate CEQA environmental determination for its proposed action (i.e., the establishment of the SOI for CSA 120). As LAFCO correctly noted in its notice:

8-14

Since the establishment of a SOI for an agency only creates a planning boundary, i.e., it does not mandate extension of service by the agency to any area outside of the jurisdictional boundary, the designation of a SOI either through expansion or in this case, the establishment of a SOI, rarely has the potential for "causing significant effect on the environment." This is because the SOI does not authorize any agency to proceed with physical modification to the environment unless steps are taken to annex a SOI area into the agency's actual service area.

LAFCO, Notice of Intent to Adopt a Mitigated Negative Declaration, pg. 2.

8-15

An agency action is not a "project" subject to review under CEQA unless it fits within CEQA's definition of a "project." For a public agency action to constitute a "project" requiring CEQA review, that agency action must cause a direct (or reasonably foreseeable indirect) physical environmental change. Cal. Publ. Res. Code § 21065; 14 Cal. Code Regs §§15060(c), 15378(a), and 15002. This limitation on which agency actions are subject to CEQA stems from the fact that CEQA is concerned with effects on the physical environment. In this case, the mere establishment of CSA 120's SOI simply cannot be reasonably found to cause a direct, or reasonably foreseeable indirect, physical environmental impact. The establishment merely allows for the *possibility* of later, independent discretionary decisions by LAFCO (such as whether to approve a particular annexation) and CSA 120 which might enable CSA 120 play a role as a holder of conservation properties (from a willing landowner) or the role of a steward (providing maintenance and management tasks) of conservation properties -- or both -- subject to such specific terms as would be determined at the time of such annexation or later, but certainly not at this early stage.

8-16

There simply is no direct -- or reasonably foreseeable indirect -- physical change to the environment that can or would result from establishing the SOI, and establishing the SOI is the only action before LAFCO at this time. As the Initial Study correctly notes at page 13, ". . . *the establishment of the SOI for CSA 120 does not authorization [sic] CSA 120 to conduct any physical activities other than planning for future annexations.*" This same reasoning, which the Initial Study uses to conclude that there would be "No Impact" from the agency action on Air

- 8-14 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project.
- 8-15 As outlined in the Preface to responses to comment letter #8, the general knowledge of a preference by Lytle Development Company for annexation to CSA 120 was deemed by LAFCO Staff to constitute more than a possibility.
- 8-16 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. As described in Subchapter IV of the Initial Study, the issue for biological resources would be CSA 120 not having sufficient funds to perform the management services identified on page 1 of this comment letter. It was also noted that some management activities might generate some air emissions, such as regrading eroded land, but due to the infrequency of such events, a finding of No Impact was recommended. Staff does not concur that potential air quality impacts and biological resource impacts are equivalent.

8-16
cont. | Quality, should be equally and consistently applied by the Initial Study in its analysis of potential impacts on Biological Resources, to reach the same conclusion: "No Impact."

8-17 | Nor does a decision by LAFCO to establish the SOI commit the agency to later approve any annexation (or any particular annexation) of lands into CSA 120. LAFCO retains complete discretion as to whether to approve or deny any potential future annexation proposals of land into CSA 120. See, for example, *Kaufman & Broad-South Bay, Inc., v. Morgan Hill Unified Sch. Dist.*, 9 Cal. App. 4th 464 (1992) (formation of community facilities district to provide funding for district activities is not approval of a "project," because agency was not committed to course of action relating to expenditure of funds); *Sustainable Transp. Advocates of Santa Barbara v. Santa Barbara County Ass'n of Gov'ts*, 179 Cal. App. 4th 113 (2009) (adoption of mechanism for funding proposed projects that may be modified or not implemented depending on the outcome of future CEQA review and other factors not approval of "project"); *Friends of the Sierra R.R. v. Tuolumne Park & Recreation Dist.*, 147 Cal. App. 4th 643 (2007) (agency's approval of sale of historical railroad right-of-way was not approval of project when no development plans for right-of-way were before agency); *City of Irvine v. County of Orange*, 2013 Cal. App. LEXIS 947 (County's application to State for funds to construct jail did not constitute a project approval under CEQA because it did not commit the County to a definite course of action regarding the construction of the jail).

In fact, courts have specifically found that LAFCO decisions to adopt spheres of influence need not be subject to CEQA review, especially where such adoption is not necessarily a first step in development and will not necessarily result in a change in the physical environment. *City of Agoura Hills v. LAFCO*, 198 Cal. App. 3d 480 (1988).

8-18 | It is important to recognize that *even if* land were to later be annexed into CSA 120, even the act of annexation itself would not have any direct or reasonably foreseeable physical impacts on the environment. This conclusion is well-illustrated by the fact that CSA 120 encompasses more than 9,000 acres, but only roughly 1,200 acres are subject to CSA 120 management at present. More than 80% of lands within CSA 120's existing service area *may* ultimately be developed or used for purposes other than biological conservation open space. The fact that a parcel of land lies within CSA 120's service area does not, of itself, dictate in any way how such parcel may be used or physically impacted (now, or in the future).

8-19 | Potential, specific annexations of properties into CSA 120 at some future time could properly be subject to CEQA review if such actions would have the potential for physical changes to the environment, and those potential impacts would be more identifiable and could be analyzed by the agency at that time. But any future impacts to the physical environment would be far too speculative at this stage. In this case, the mere designation of the SOI cannot constitute a "project" as defined by CEQA.

8-20 | The establishment of the SOI would not require any properties within the SOI to be placed into permanent conservation, nor would it allow or prevent property within the SOI to be developed. Even within the existing 15 square mile service area of CSA 120, lands within that

- 8-17 Staff concurs with the comment that establishing an SOI does not commit the Commissioners to approve future annexations. However, there is an implicit assumption that if a Sphere is assigned to an agency, future annexations within the Sphere must be given fair consideration. Staff concluded that by imposing mitigation measure IV-1 for future annexations, the Commission would be better informed to perform its fair consideration responsibilities.
- 8-18 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project.
- 8-19 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to the Preface to responses to comment letter #8. Staff does not concur with the comment letter's conclusion.
- 8-20 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to the Preface to responses to comment letter #8.

8-20
cont.

area are not restricted in terms of their current or future uses merely because they are located within that area. Nor would the SOI establishment preclude a property owner within the SOI area from having the IERCD (or another conservation organization) manage her property for conservation purposes or accept a conservation easement on the property.³ The establishment of the SOI would not dictate whether any conservation entity would take an interest in or manage any property within the SOI, nor would it direct the types of maintenance and management activities on the property, nor would it interfere with the use of lands within the SOI area for any other non-conservation use (ex., development, agriculture, mining, etc.). Furthermore, the SOI establishment would *not* constitute a major policy shift relating to where growth would occur or whether certain lands would be developed, in contrast to the facts associated with the specific sphere expansion in *City of Livermore v. LAFCO*, 184 Cal. App. 3d 531 (1986). Moreover, the SOI establishment does not dictate the specific maintenance, management and monitoring program, property protection program, etc. that CSA 120 would apply to any particular land annexed into it in the future. Those particulars would be developed at a later date, and can be expected to be specific and tailored to the particular proposed conservation properties at issue, the nature of any associated development project that may be the impetus for the conservation of the property, and any state, local or federal resource agency approvals which might dictate in part how the conservation property is to be maintained and managed.

Attempting to conduct a CEQA review in the absence of details regarding what property would be managed by CSA 120 in the 71 square mile SOI and under what conditions, management programs, and funding mechanism, etc. would not provide meaningful information; it would be an exercise of extreme speculation at best, further demonstrating why this LAFCO action ought not be subject to CEQA review. See *Friends of the Sierra R.R. v. Tuolumne Park & Recreation Dist.*, 147 Cal. App. 4th 643 (2007).

B. Even If the Proposed Action Were a "Project," It Would Be Exempt from Analysis Under CEQA.

8-21

Not only is the proposed LAFCO action exempt from CEQA, since it is not a "project" as defined under CEQA, the action is also exempt under CEQA's "Common Sense" exemption. CEQA Guidelines §15061(b)(3).⁴ That is, CEQA applies only to projects which have the potential for causing a significant effect on the environment. Since, as explained in this letter, the SOI establishment has no potential for causing a significant effect on the environment, the proposed LAFCO action is exempt from CEQA under §15061(b)(3). See, for example, *Muzzy Ranch Co. v. Solano County Airport Land Use Comm'n*, 41 Cal. 4th 372 (2007).

³ This fact was confirmed again in the Special Districts Department's letter to the LAFCO Executive Director, July 10, 2012, pg. 3.

⁴ CEQA is codified in the California Public Resources Code at Sections 21000, *et seq.* CEQA is further implemented through the CEQA Guidelines. All references to "CEQA Guidelines" sections or "Guidelines" sections herein (unless otherwise clearly stated) refer to the CEQA Guidelines codified at the Title 14 of the California Code of Regulations §§ 15000, *et seq.*

8-21 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to the Preface to responses to comment letter #8.

8-21
cont.

Also, the proposed LAFCO action is sufficiently similar to several recognized CEQA categorical exemptions so as to lend further support to a decision that the proposed action is not subject to CEQA review. Those categorical exemptions are: (1) transfers of ownership of interest in land to preserve open space, habitat or historical resources [Guidelines §15325], (2) the acceptance of easements or fee interest to maintain the open space character of an area [Guidelines §15317], (3) acquisition of land for fish and wildlife conservation purposes [Guidelines §15313], (4) the acquisition or sale of land to create parks [Guidelines §15316], (5) actions by regulatory agencies to ensure the maintenance, restoration, enhancement or protection of the environment [Guidelines §15308], and (6) actions by regulatory agencies to maintain, restore, or enhance a natural resource [Guidelines §15307]. LAFCO may properly find that the proposed action fits within one or more of those categorical exemptions.

The above-cited categorical exemptions – and the proposed action’s similarity to those categories and its even less impactful nature as regards the physical environment -- also further support the use of the “Common Sense” exemption in this instance. That exemption is designed to guard against the possibility that an obviously exempt type of project might be required needlessly to comply with the requirements of CEQA, as would be the situation here. *See Myers v. Board of Supervisors*, 58 Cal. App. 3d 413 (1976).

For the above reasons, LAFCO should determine that its proposed action is exempt from CEQA and should file a Notice of Exemption with the State Clearinghouse to this effect.

III. If LAFCO Decides to Take the Unnecessary Steps to Adopt a Negative Declaration, LAFCO Should Adopt an ND and not an MND, Since the Proposed Action Will Not Have Any Significant Impacts on the Physical Environment.

8-22

As explained in Part II above, LAFCO’s proposed action is not subject to CEQA review. If LAFCO decides (unnecessarily) to subject the proposed action (SOI establishment) to CEQA review and analyze (unnecessarily) the potential environmental impacts of the proposed action, LAFCO ought to adopt a Negative Declaration (ND), finding that the proposed action would not have any significant impacts on the environment. However, LAFCO is instead proposing to adopt an MND, since it is incorrectly concluding that the action could have some significant impacts on the environment, without mitigation. An accurate and fair analysis of the LAFCO proposed action, however, demonstrates that it will *not* have any significant impacts on the physical environment. The proposed findings in the Initial Study regarding potential biological resource impacts from the SOI establishment are incorrect, are not supported by substantial evidence, and should be corrected to reflect that the establishment of the SOI will not have any significant impact on any biological resources.⁵

⁵ For the reasons explained below (pertaining, in particular, to the analysis regarding Biological Resources), the proposed LAFCO action also would not have any significant impacts to Cultural Resources (under Section V of the Initial Study) or other aspects of the physical environment and would not trigger any Mandatory Findings of Significance (under Section XVIII of the Initial Study). Accordingly, the Initial Study findings would need to be corrected on all these environmental categories, as substantial evidence does not exist to support the current staff

8-22 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to the Preface to responses to comment letter #8. The Preface lays out the substantial evidence that was used by the Commission Staff to determine that, based on the past record, CSA 120 has not had sufficient funds to carry out all of the conservation management tasks described on page 1 of this comment letter. Extrapolation of this potential impact to future annexations is logical and the imposition of mitigation to address this potential flaw in past operations is both appropriate and substantive.

A. There Is No Evidence of Potentially Significant Adverse Environmental Impacts.

Several comments have been made by CDFW and the IERCD suggesting that establishing an SOI for CSA 120 can be reasonably foreseen to result in negative impacts to biological resources, presumably because – they assert – CSA 120 will not (or may not) sufficiently maintain or manage future conservation properties that it might conserve and/or manage sometime in the future within the SOI area. This assertion is entirely speculative, and there is no substantial evidence in the record to support their bald assertions. It is entirely reasonable and proper for LAFCO to expect that any land which is requested to be managed and/or protected by CSA 120 within the SOI in the future will be managed and protected in accordance with the various applicable statutory and regulatory requirements that would pertain to protection, maintenance, and management of conservation property at the time of such conveyance.

8-23

It is simply a red-herring for CDFW, IERCD, or others to point to the North Etiwanda Preserve (NEP) maintenance and management financing program (and funding amounts) as somehow being indicative of the management activities, financing program or management funding levels which CSA 120 would provide for conservation properties which it would protect, maintain, and/or manage in the area of the proposed SOI at some undetermined future dates. The NEP conservation lands were set aside with a management program and funding level which were specific to a unique set of circumstances associated with a particular transportation project (Route 30) in 1998 and the resource agency and government agency approval processes, statutes and regulations which were applicable to the conservation effort at the time. *The CDFW concurred with the conservation program and funding levels at the time the preserve was established*, and it was a signatory to the Cooperative Management Agreement Regarding the Ownership and Management of the North Etiwanda Preserve, dated February 1998. However, there is nothing to indicate, and no reasonable basis upon which to believe, that CSA 120 would seek to impose the same management program and management funding levels on future conservation property that it might manage, take fee title to, or take a property interest in, within the SOI areas. In short, neither CSA 120 nor the County Special Districts Department have suggested that the NEP management program or funding levels would be used for other future conservation lands placed under CSA 120's stewardship in the SOI areas.

8-24

In fact, CSA 120 and Special Districts have stated the exact opposite. As the Initial Study recognizes at page 18, Special Districts confirmed to LAFCO in a July 10, 2012 letter that it is prepared to implement appropriate and sufficient measures to ensure the adequacy of

proposed findings of "Less than Significant with Mitigation Incorporated" in the draft Initial Study. Based on the evidence in the record, LAFCO should find that the proposed action will not have any significant impacts on the environment, even *without* the imposition of any mitigation measures or, alternatively, "No Impact." The Initial Study proposes only two mitigation measures (one for cultural resources, one for biological resources), but neither mitigation measure is necessary, as the proposed action would not have any impact on the environment, let alone any significant impact on the environment.

- 8-23 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to the Preface to responses to comment letter #8. There is also not any mechanism in place to ensure that adequate funding to effectively manage conservation lands would be required. Thus, the imposition of mitigation measure IV-1 which will ensure that all parties involved in establishing compensatory mitigation measures and involved in long-term maintenance and enhancement of conserved biological resource will participate in future annexations to CSA 120.
- 8-24 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to the Preface to responses to comment letter #8. The Commission does recognize the statements by CSA 120/Special Districts committing to effective management of conserved properties in the future. But through its review authority over the establishment of CSA 120's Sphere, the Commission has the responsibility and authority to ensure that this commitment is fulfilled.

funding for future annexations. (See Initial Study, at pg. 18). In that July 2012 letter⁶, Special Districts stated:

CSA 120 acknowledges that fees, conservation easements, operational plans, and allowance of public use, could all vary with CADFG CESA and LSA projects based on differing mitigation requirements. CSA 120 would implement CADFG approved procedures and fees when undertaking CADFG CESA and LSA property management responsibilities. A Property Analysis Record (PAR) or similar analysis would be conducted to determine appropriate mitigation fees in order to sustain management efforts. . . . CSA 120 has the ability to implement fees that are site and project specific when necessary. . . . CSA 120 acknowledges the need for site specific plans in instances where habitat and species management requirements differ from the existing CADFG and USFWS approved CSA 120 North Etiwanda Preserve management plan. CSA 120 would work with the wildlife agencies to develop such plans in order to assure viability of habitats and species to be protected.

8-24
cont.

The Initial Study ought to recognize the position of CSA 120 and Special Districts in this regard in its analysis of potential impacts – but to date, it has failed to do so.

In fact, for LAFCO to assume that CSA 120 would not provide adequate maintenance and management activities and not ensure that it had adequate funds to perform these activities in perpetuity would be to ignore the typical processes by which agencies such as CSA 120 would find themselves asked to preserve, protect, and/or manage conservation lands for biological resources and the standard conditions that local governments and applicable resource agencies typically now require.⁷

8-25

Realistically, and as a practical matter, CSA 120 would be asked to assume a property interest in and/or provide stewardship services for a particular parcel of land proposed for conservation in one of two scenarios. Either: (1) a property owner would simply desire to dedicate her land as conservation property voluntarily and in perpetuity for purely altruistic reasons, or (2) a property owner would desire to have certain land owned and/or managed in

⁶ Special Districts Department letter to the LAFCO Executive Director, July 10, 2012, page 2.

⁷ And as noted below, land which is now in undeveloped, unprotected open space, is not being actively protected or managed to preserve its biological values, so expanding the SOI would not, and could not, have any reasonably foreseeable detrimental impact on those physical resources compared to current conditions. *Even if* those lands and their biological resources were managed and protected in the future at a level below which CDFW or some other person would prefer, that level of active management, protection and maintenance *would be more than what presently occurs* on such lands, since they are not proactively managed or protected currently. CEQA requires that any potential impacts from a proposed project be analyzed under existing conditions.

8-25 CSA 120 has management plans for the 1,200 acres for which it presently has responsibility and cannot fulfill these management responsibilities without expending non-wasting endowment funds under present returns. The issue is not whether non-management of conserved lands is less or more protective than not conserving such lands. Both the CDFW and IERCD can provide pro-active management of such properties that can sustain and enhance the biological values of a property. This is the appropriate comparison to utilize, not an unprotected parcel. It must be understood that under most mitigation circumstances, the conserved land must be protected before development can occur, i.e., the resources being compensated for cannot be disturbed until the conservation plan is in place.

perpetuity as conservation land in order to satisfy a permit condition or project approval condition for a land use or development activity on other land.

8-25
cont.

In the first scenario, there would be no realistic potential for adverse impacts to biological resources under CEQA, because CEQA impacts are to be evaluated in terms of potential impacts relative to existing conditions. Accordingly, the land targeted for conservation would currently be existing in unprotected and unmanaged open space in its existing condition. Therefore, any future protections or management measures provided by CSA 120 - - at any level - - would constitute a neutral affect or positive enhancement to native biological resources on the land, compared with the existing conditions.

Under the second scenario, the land targeted by the landowner for conservation by CSA 120 would be addressed by the conditions established under one or more state, federal or local authorizations, permits or approvals, and the terms of these authorizations for the development or land use project would set the appropriate standards necessary for the conservation property in terms of the required maintenance and management activities which were to be implemented on the property and the level of funding and mechanisms of funding that would be required to be provided for the conservation property.

8-26

Typically, under the second scenario, a property owner looks to an entity such as CSA 120 (or the IERCD, the Riverside Land Conservancy, etc.) to protect and manage particular lands for biological conservation to fulfill a mitigation requirement or permit condition of one or more government agency approvals that the individual has obtained in connection with some sort of development project or activity (large or small, public or private). Such permits or approvals could include one or more of the following: a Section 404 Clean Water Act (CWA) permit from the U.S. Army Corps of Engineers, a Streambed Alteration Agreement (LSA) from the CDFW under Section 1600 of the California Fish and Game Code, a Section 401 CWA authorization from the Regional Water Quality Control Board (RWQCB), a Section 10(a) incidental take permit under the federal Endangered Species Act (ESA) from the U.S. Fish and Wildlife Service (USFWS), a mitigation measure(s) established through the local agency adoption of an EIR or MND, a California Endangered Species Act (CESA) incidental take permit from CDFW, or conditions associated with a Biological Opinion issued by the USFWS. Those various governmental agencies - through the terms and conditions (and imposed mitigation measures) of their various permits or authorizations -- will, collectively, *establish* the conservation property protection and management measures, management funding levels, funding mechanisms/guarantees, etc. that must be associated with the property that the conservation entity is being asked to protect and manage. Those specifics will be determined by the various government agencies in accordance with the corresponding "development" project's impacts on biological resources, and the specific characteristics and needs of the conservation land(s) being provided to serve as mitigation for project impacts. And although not all of the above governmental agencies will necessarily be issuing authorizations in all cases (i.e., for any particular project), some of those agencies *will* - in each instance - and those agencies will ensure (through their permitting mechanisms) that the conservation land will be protected and managed and that funding for both will be properly provided and/or assured at appropriate levels and in accordance with all

8-26 The conservation agencies can develop management plans for conserved lands and also develop cost estimates for conservation in perpetuity. However, it is incumbent upon the entity receiving property and funds for management to prepare a plan indicating how it will accomplish conservation in perpetuity. It is this information that is required by mitigation measure IV-1. This measure would not be implemented until CSA 120 agrees to assume responsibility for long-term conservation of a property and then submits a proposal to LAFCO for annexation. This timing ensures that the Commission would have all information before it when it considers a future annexation to CSA 120.

8-26 | applicable statutes and laws. This is now standard practice by government agencies, and
cont. | LAFCO and the Initial Study should recognize this fact.⁸

Significantly, the Initial Study accepts this red-herring argument from CDFW, and thereby ventures off-course into faulty analyses, presumptions and conclusions regarding the potential for the LAFCO proposed action to significantly impact biological resources. This can be seen at page 16 of the Initial Study, which states:

8-27 | *CDFW questions the adequacy of CSA 120's endowments. The underlying rationale behind this concern is that CSA 120 may not have sufficient funds to properly manage the conserved biological resources in perpetuity. This concern is the transition link between the proposed action and the potential for physical impact at the SOI stage of review. If the CSA 120 SOI is authorized and future annexations are not adequately funded, adverse physical impact to open space and habitat resources could indirectly result from this action.*

Initial Study, page 16 (emphasis added). But, as noted herein, it is quite premature to be able to ascertain the various maintenance and management activities which may be provided to any particular property ultimately annexed into CSA 120 within the proposed SOI, and what level of funding will be necessary to provide adequately for those actions in perpetuity. And it is also premature, speculative and without adequate foundation to jump to a conclusion that CSA 120 would not require that sufficient funds be made available to it (from the land donor or others) to properly manage and conserve biological resources in perpetuity on those properties.⁹ Special Districts noted this fact as well in its July 12, 2012 letter to LAFCO:

8-28 | *. . . site specific mitigation requirements normally dictate the plan and the conservation efforts implemented. CSA 120 would develop Advisory Boards and Management Plans to coincide with the management needs of particular areas and utilize strategies that best suit the conservation goals to be achieved. . . . CSA 120 has always complied with all laws, rules, regulations and obligations associated with mitigation properties. . . . CSA 120 will continue to follow all requirements under the law. . . .*

⁸ Of note, LAFCO staff and the Initial Study recognize that common practices (e.g., conducting a Phase I environmental report before accepting conservation property) or standards (e.g., legal requirements or standard permit conditions exist ensuring cleanup of hazardous materials would take place) can be relied on by staff to find less than significant impacts. In a similar fashion, the individual project approval process by a resource agency now typically requires adequate management funding as a condition of the particular permit approval.

⁹ In fact, it is entirely appropriate for LAFCO to presume that a local government and government agency will comply with appropriate laws. See, for example, *Erven v. Board of Supervisors*, 53 Cal. App. 3d 1004, 1012 (1975); *City of Beaumont v. Beaumont Irr. Dist.*, 63 Cal. 2d 291, 297 (1965); *San Bernardino County Flood etc. Dist. v. Superior Court*, 269 Cal. App. 2d 514, 521 (1969).

- 8-27 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project.
- 8-28 For the reasons outlined in the Preface to responses to comment letter #8, the Commission Staff concluded that it is neither premature or speculative to address the chain of actions that could lead to inadequate funding for CSA 120 property conservation in future annexations. That chain was validated by previous actions of CSA 120 and Lytle Development Company. In an ironic way, these comments on behalf of the Company are more substantive evidence of the link between these two entities.

8-28
cont.

The management activities and funding available for the NEP is not relevant to evaluating the LAFCO proposed action; the establishment of the NEP and its management program and funding occurred more than 15 years ago, and CDFW concurred with the maintenance, management and funding for the NEP. The establishment of the NEP in 1998 has no influence over the management measures and management funding that would be provided for future conservation lands which CSA 120 may protect or manage.

The Initial Study is *incorrect* to conclude, as it does at page 17, that “the effects of the ultimate action, annexation, must be evaluated [at this time under CEQA].” Any possible future impacts are simply too speculative and unknowable at this stage.

The Initial Study is also incorrect in its reasoning, set forth below, to conclude a potentially significant impact by the SOI establishment unless mitigation is imposed at this stage:

The key issue appears to be adequate funding to support preparation of management plans; ongoing protection and maintenance of habitat values within conserved areas; and enhancement of habitat to better support the special status species for which an areas has been conserved. . . . As described above, the key player in this process is CDFW which has the ultimate responsibility for managing all of the plant and animal resources of the State of California. CDFW has the responsibility to perform a due diligence review of nonprofits or governmental agencies (California Government Code Section 65965) that assume responsibility for managing open space and conservation lands.

8-29

The above quote from the Initial Study is incorrect in several important respects. First, the issue of ensuring adequate funding for conservation land is an issue (as explained herein) which now is addressed as a standard procedure in securing government authorizations from resource agencies to impact biological resources.¹⁰ That issue would be properly addressed at a more appropriate and later stage of the process of actually adding land into CSA 120’s stewardship portfolio. And that issue will be addressed as part of the issuance by various government agencies¹¹ of authorizations under their regulatory programs. Second, as explained in Part III(B) below, CDFW has *not* been given blanket authority to perform due diligence of government agencies under the Cal. Government Code or any other statute or regulation. In fact, State law provides CDFW with due diligence authority only in limited circumstances, associated with the CDFW’s issuance of two particular authorizations that it may provide – Streambed Alteration Agreements (SAA)¹² under the California Fish and Game Code Sections 1600 *et seq.*

¹⁰ This has been a common practice of state and federal resource agencies for more than a decade.

¹¹ For example, USFWS, USACOE, RWQCB, CDFW and/or a local government.

¹² In this letter, the terms “LSA” and “SAA” are used interchangeably to refer to a “Lake or Streambed Alteration Agreement” (also known as a “Streambed Alteration Agreement”) under Cal. Fish & Game Code Sections 1600 *et seq.*

8-29 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Staff concludes that under mitigation measure IV-1 there will be sufficient information in the record for consideration of future CSA 120 annexations, and such information might not be available without this mitigation measure.

8-29
cont.

and Incidental Take Permits issued under the California Endangered Species Act. In fact, relatively few development projects may need to obtain a CESA permit from CDFW, and many projects may not need a SAA from CDFW. For all of those projects, in particular, an agency (State, federal, or both) *other than CDFW* will be the proper agency/ies to review the adequacy of the conservation property management measures, funding levels, funding mechanisms, etc. Third, and related, the Initial Study is incorrect in its understanding of the relevance of Government Code Section 65965 *et seq.* to this issue and the SOI designation for CSA 120.

8-30

Merely establishing the SOI, and therefore merely allowing the possibility for CSA 120 to potentially play a role in protecting and/or managing future conservation lands in a larger area within the County, does not preclude, in any way, other conservation organizations from serving as the conservation land protector or manager for conservation lands within the SOI area. To repeat a point made previously, the SOI establishment merely has the *potential, at some unknown future time*, of providing for the availability of an additional, *possible* conservation land manager, protector or steward. Not only is any physical impact on the environment at some point in the future as a result of the proposed action highly *speculative*, the action doesn't identify or reasonably predict the manner, source or nature of any impact on land. There is simply no sufficiently concrete, reasonably foreseeable, physical change to land or the environment to analyze. Of note, any future conservation actions would have to be in conformance with the requirements and standards of the laws and statutes guiding the protection and management of conservation property which are applicable at that time. Interestingly, at times, the Initial Study seems to recognize this reality, such as at page 16 where it states:

... expansion of the CSA 120 SOI does not cause open space and habitat to be conserved/preserved. CSA 120's role is generally passive from the land conservation standpoint. Its role is to serve as a recipient of land offered for conservation by some party and subsequently to assume management responsibility for the open space and habitat values within such properties. Thus from a biological resource standpoint, expansion of the CSA 120 SOI potentially offers more protection for biological resources than not authorizing the expansion.

Initial Study, pg. 16. However, the Initial Study later appears to forget this fact.

8-31

Other findings in the Initial Study concerning potential biological resource impacts are similarly incorrect and without substantial evidence in the record to support the finding. For example, as for Finding IV(d) [Initial Study, pg. 15], there simply is no evidence to demonstrate that the SOI establishment could have any impact on (let alone any significant impact on) the following threshold: "Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites." Yet, remarkably and without adequate support, the Initial Study finds that mitigation is necessary to reduce the impact of the SOI establishment to a less than significant level on this biological resource issue. Similarly, for

- 8-30 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to the Preface to responses to comment letter #8.
- 8-31 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to the Preface to responses to comment letter #8. Given the findings in the Preface, a logical extrapolation from inadequate funding for management is the potential degradation of wildlife corridors and potential to conflict with local policies and ordinances.

8-31
cont.

Finding IV(e) [Initial Study, pg. 15], there simply is no evidence to demonstrate that the SOI establishment could have an impact (or a significant impact) on the following: "Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance." Again, the findings of the Initial Study need to be corrected in this regard. Similarly for Finding IV(f) [Initial Study, pg. 15], there simply is no evidence to demonstrate that the SOI establishment could have any impact on (let alone any significant impact on) the following threshold: "Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan." We explained in Part I, above, that establishing CSA 120's SOI could not interfere with the City of Fontana's North Fontana Interim MSHCP Plan, and there is not any other approved conservation plan of this nature in the proposed SOI area. Again, the findings of the Initial Study need to be corrected in this regard.

B. The Initial Study Misreads and Misapplies California Law.

The Initial Study also misunderstands the role and authority of CDFW under California law with respect to lands placed into permanent conservation for biological resources. This misunderstanding, in turn, has led the LAFCO staff to incorrectly view the proposed action as having potentially significant impacts on biological resources, and has also misled the staff to propose an ill-advised mitigation measure to "address" a non-existent impact/problem.

8-32

The Initial Study cites Govt. Code §65965 (and the CESA and LSA statutes) to support its claim that California law provides that the CDFW is to review and approve the qualifications of all conservation land stewards and to review and approve the adequacy of all long-term management plans and the funding levels for the long-term management of all conservation lands in California. However, the Initial Study's characterization and understandings of these laws (and how they may relate to the proposed action) are incorrect, and *they significantly overstate the extent of CDFW's authority* in reviewing and approving management plans and funding amounts and mechanisms for long-term maintenance and management actions on conservation property.

CDFW and the Initial Study are mistaken to suggest that State law requires that CDFW pre-approve the long-term management funding for conservation property in all instances in which CSA 120 may acquire property for conservation and management. And even in those cases where CDFW may have authority to review the level of funding for long-term management, those statutes are designed to allow CDFW to engage in that review function at the time a particular development project requests the Department grant a LSA permit or CESA incidental take permit¹³, and they do not require some blanket approval authority be given to the CDFW and at such an early, speculative stage of the process – as LAFCO and the MND propose to do here.

¹³ The statute and regulations governing the requirements for the CDFW to issue a CESA Incidental Take Permit (ITP) can be found at Cal. Fish & Game Code Sections 2080.1 and 2081 *et seq.* and 14 Cal. Code Regs. § 783.

8-32 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to the Preface to responses to comment letter #8. In order to adequately protect biological resources, the LAFCO Staff believe it is appropriate to involve the CDFW in long-term conservation of biological resources and therefore imposed mitigation measure IV-1. We also believe that the on its face Section 65965 does require CDFW to "perform a due diligence review of any non-profit organizations or other government entities who are interested in holding conservation easements and/or mitigation funds for mitigation lands." This is an obvious role for this agency and the Commission Staff concluded that involving them in future management of such lands would be protective of such lands.

Since CDFW's position and the Initial Study's reasoning for finding a potentially significant impact and proposing the biological mitigation measure (TV-1) is based on three California statutes,¹⁴ it is helpful to review the scope and limitations on CDFW's authority under each.

To begin with, it is important to recognize that Govt. Code §§ 65965 *et seq.* have been further amended by the Legislature since the time the CDFW wrote its letter to LAFCO in April 2012, by SB 1094 (which became effective Sept. 12, 2012).¹⁵

Of note, it is not clear that Cal Gov. Code §§ 65965 even applies to CSA 120, as it is not a "special district" within the definition of Section 65965(k). Putting that issue aside, with respect to Section 65966(b), that subsection provides that:

any local or state agency [which could include CDFW, among others] may identify how the funding needs of the long-term stewardship of the property [i.e., conservation land used for mitigation] will be met. Nothing in this chapter shall be construed as otherwise precluding other methods of funding for the long-term stewardship of the property.

8-33

Cal. Govt. Code § 65966(b) (*emphasis added*). However, as Section 65966(b) also makes clear, the permissive authority granted by § 65966 pertains only to particular instances (identified in Section 65967(a)&(b)), which for our discussion purposes mainly pertains to those instances where "a state or local agency requires a project proponent to transfer property to mitigate any adverse impact upon natural resources caused by permitting the development of a project or facility. . . ." Cal. Govt. Code § 65967(a). And, in those instances, "a state or local agency [which may or may not include CDFW in any particular instance] shall exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources." Cal. Govt. Code § 65967(c). Accordingly, so far in the structure of SB 1094, the CDFW is not given any elevated role in these powers or determinations over or above any other local or state agency which may be granting some form of development authorization.

Moving to the final section of this statute (i.e., Chapter 4.6), Section 65968 similarly does not give CDFW some sort of elevated status above other local or state agencies. Section 65968 simply holds, in pertinent part, that the holder of certain endowments in certain situations "shall certify to the project proponent or the holder of the mitigation property or a conservation easement and the local or state agency that required the endowment that it meets [a set of specific requirements]." Cal. Govt. Code § 65968(e). So this law provides *for the endowment holder*, such as CSA 120, *to certify* to the project proponent and permitting agency that it has

¹⁴ Cal. Govt. Code §§65965 *et seq.* [SB 1094, pertaining to endowments for conservation mitigation lands], Cal. Fish and Game Code §2080 *et seq.* [CESA Permits], and Cal. Fish and Game Code §1600 *et seq.* [LSA Permits]).

¹⁵ Those statutory changes also post-date the letters to LAFCO from the IERCD, dated April and August 2012.

8-33 Please refer to the previous comment. The objective is to ensure that if CSA 120 is granted the requested SOI, it has other agency involvement with pertinent expertise to oversee the adequacy of future funding.

satisfied certain requirements, but it specifically does *not* require the opposite – it does not require that the permitting agency (such as CDFW) issue some sort of “approval” of these qualifications. Rather, Section 65968(f) states that “*if a governmental entity . . . special district, [or] nonprofit organization . . . meets the requirements of this chapter, it is qualified to be a holder of the endowment for the purpose of obtaining any permit, clearance, or mitigation approval from a state or local agency.*” Also of significance, this statute states that:

8-33
cont.

A state or local agency shall not require, as a condition of obtaining any permit, clearance, agreement, or mitigation approval from the state or local agency, that a preferred or exclusively named entity by the state or local agency be named as the entity to hold, manage, invest, and disburse the funds in furtherance of the long-term stewardship of the property for which the funds were set aside.

Cal. Govt. Code § 65968(k). To summarize, Cal. Govt. Code Sections 65965 *et seq.* do not provide CDFW with any unique or elevated agency power with regard to the review or approval of management plans, or levels of funding or funding structures, for the long-term management of conservation property.

8-34

With regard to a CESA Incidental Take Permit (ITP), such a permit is generally only required in those instances in which a development or land use activity would result in death or injury to one or more members of a species listed by the State as either “threatened” or “endangered” (or listed as a “candidate” for such listing). Most development projects and land use activities in California and within San Bernardino County do not involve actions that would kill or injure individuals of State-listed species, and so many projects – likely the vast majority – would not need a CESA ITP from CDFW. For those that would, the CESA statute provides a process for obtaining such a permit, and that process will enable CDFW to ensure, to its satisfaction, that any conservation land set aside for long-term conservation stewardship will be funded at a sufficient level and managed according to an acceptable management plan to its liking, as a condition for such permit issuance. So the CESA ITP permitting process itself provides a mechanism to ensure that any conservation stewardship actions that CSA 120 would take related to the issuance of a CESA ITP would not have any significant adverse impact on biological resources. See 14 Cal Code of Regs §783.3¹⁶

¹⁶ “. . . the Department will act as the lead agency for purposes of CEQA where issuance of the [ITP] is the only public agency action subject to CEQA that will be taken with regard to the project or activity for which the permit is sought. Where the Department will act as a lead agency for purposes of issuing an [ITP], the permit applicant, in addition to the information required by section 783.2, shall provide sufficient information to enable the Department to determine whether the project or activity for which a permit is sought, as proposed, may result in significant adverse environmental effects in addition to the impacts of taking analyzed pursuant to section 783.2, and, if so, whether feasible alternatives or feasible mitigation measures would avoid or substantially lessen any such significant adverse effects. In such cases, each application shall include an analysis of all potentially significant adverse environmental effects which may result from the project or activity, and either (1) a discussion of feasible alternatives and feasible mitigation measures to avoid or substantially lessen any significant adverse

8-34 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. This is considered to be a backstop to mitigation measure IV-1 when a CESA ITP is involved in land conservation mitigation.

8-35

With regard to authorizations given by CDFW under the LSA program, neither that statute, nor any State regulation, requires that the permit applicant provide conservation land as a condition of obtaining a LSA Permit from the Department. When the Department decides to require conservation land be provided by a permit applicant as a condition of the LSA Permit, the Department also can include in the permit conditions those terms which it believes necessary to protect fish or wildlife resources, or otherwise mitigate for the expected project impacts from use of the LSA Permit.¹⁷ Such terms could include requiring the permit applicant or the conservation land steward (such as CSA 120) to provide a management plan and/or maintenance/management funding structure (and/or funding guarantees) that meet with the Department's satisfaction. Again, however, the LSA Permit process itself provides those built-in mechanisms to allow the Department to assure adequate management and management funding of the conservation property at an appropriate stage in its environmental review process.

As the preceding discussion demonstrates, the Initial Study is *incorrect* in its statement that the CDFW has a "mandate to pre-approve future conservation lands for placement under CSA 120's jurisdiction." Initial Study, at pg. 5. This mistaken understanding of the CDFW's authority relative to lands which may be placed under the conservation or stewardship of CSA 120 has led the Initial Study to propose an unnecessary and ill-advised "mitigation measure" for misperceived biological resource impacts.

8-36

In sum, there are many circumstances under which an entity such as CSA 120 might be asked to play a role as a conservation land manager and/or steward which would *not* be a function of a condition or requirement of an authorization being issued by the Department of Fish and Wildlife. Other state and local agencies may, as a condition of their authorizations, require that an applicant set aside conservation land and provide appropriate stewardship of that land in perpetuity. In those instances, their approval processes can take those steps and provide those terms as they deem necessary to ensure that the stewardship entity (such as CSA 120) will provide an appropriate level of management of the property in perpetuity and that it will have adequate funding to perform those tasks. In fact, the MND's proposed biological mitigation measure (IV-1) could well interfere and conflict with the intended structure of Govt. Code §§ 65965 *et seq.*, in that it elevates CDFW above other state and local agencies (and federal agencies) which might require that *they* be given this review and approval authority in the course of their permitting processes. California law does *not* require that CDFW be given some

environmental effects or (2) a statement that, because the applicant's analysis of the proposed project showed that the proposed project would not have any significant or potentially significant effects on the environment, no alternatives or mitigation measures are proposed to avoid or substantially lessen significant effects on the environment. This statement shall be supported by documentation describing the potential effects examined in reaching this conclusion"

¹⁷ It is important to note that the Department's description of what actions are necessary to achieve "protection" and "long-term management" of conservation lands under the LSA Permit program (page 3 of CDFW April 12, 2012 letter to LAFCO) do not derive from any statutory or regulatory requirements. Rather, the actions described in the letter reflect current policy preferences, at most. No statute or regulation requires that these particular actions occur, or be funded, on conservation property, and any particular action described may not apply in all circumstances.

8-35 Refer to response to comment #8-34.

8-36 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. In the interest of protecting biological resources set aside for compensation that involve other agencies, the requirement that CSA 120 prepare management plans; funding plans; enhancement plans for approval of CDFW does not necessarily conflict with any other agencies authority. It simply ensures that at least one entity that has responsibilities for managing biological resources will be directly involved in any future annexations of compensatory mitigation property by CSA 120. Commission Staff concluded that this is appropriate and in conformance with cooperative efforts to ensure land conserved in perpetuity can be effectively and comprehensively managed.

8-36
cont.

sort of blanket approval authority over the management plans, maintenance/management funding levels and funding structures associated with each new conservation parcel established, and LAFCO should not grant CDFW such new, expanded, and unnecessary power through the adoption of a MND for the proposed SOI establishment.

IV. The MND's Proposed Mitigation Measure for Biological Resources is Unnecessary and Ill-Advised, and Should Not Be Adopted.

8-37

As explained in Part II above, it is entirely unnecessary for LAFCO to subject its proposed action to review under CEQA and entirely unnecessary to decide to adopt a Negative Declaration for the proposed action (SOI establishment). Furthermore, as explained in Parts II and III above, adopting a Mitigated Negative Declaration is entirely unwarranted and unnecessary for LAFCO's proposed action, because the action will have no impacts on the physical environment (neither direct, nor reasonably foreseeable indirect) and certainly will not have any significant impacts on the physical environment. Accordingly, no mitigation measures of any kind (under any category of potential environmental effect) are warranted.

Furthermore the draft MND's proposed biological resource mitigation measure (IV-1) is unnecessary, represents bad public policy, is poorly crafted and would be impractical in its implementation. If not eliminated all together – as it should be – at a minimum it would have to be revised.

8-38

LAFCO's ill-advised biological resources mitigation measure (IV-1) rests on an overly expansive interpretation of CDFW's authority and responsibility under California law with regards to property not owned by the State which is dedicated to long-term conservation. Starting from this initial mistake, the mitigation measure proceeds to put the cart before the horse. The measure fails to recognize that if property is being dedicated to biological conservation open space in connection with a condition stemming from a LSA or CESA permit, CDFW will have already crafted conditions in the permit to ensure that the conservation land is maintained and managed properly in perpetuity (and that adequate funding has been provided for that activity), and that such measures will be properly tailored to the specific property being placed into conservation and the impacts associated with the associated development activity. So CDFW already will be able to ensure via existing statutes that before CSA 120 accepts property for mitigating impacts requiring a LSA or CESA permit, adequate funding meeting its approval will be provided. LAFCO shouldn't require CDFW review, approval and blessing for those instances where CSA 120 is not managing property pursuant to a requirement of a CDFW-issued permit.

Moreover, as discussed in Parts II and III above, many development or land use projects in San Bernardino County may not require CESA or LSA permits from CDFW. The mitigation measure fails to recognize and accommodate the reality that other state and federal agencies (and local governments) may - - and in most cases will - - condition their permits, authorizations or approvals on a project to address their requirements for maintenance, management and funding for the mitigating conservation property. A property owner or project developer may need CSA

8-37 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to the Preface to responses to comment letter #8. Staff does not concur that this measure is poorly crafted or difficult to implement. This measure has a performance standard, demonstration of adequate funding, and it must be implemented before any future annexation submittal to the Commission. Thus, the Commission would have documentation, reviewed and approved by the State Trustee Agency for biological resources, that would accompany any annexation application from CSA 120. The Commission would have sufficient information to document the adequacy of long-term funding for the conservation of a given property proposed for annexation and long-term management by CSA 120. This eliminates the adequacy of funding issue prior to submittal of any future annexation to the Commission and allows the Commission to make a fully informed decision on the annexation.

8-38 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to the above rationale for keeping CDFW involved in the long-term management of property proposed for conservation, regardless of whether a CDFW permit is involved or not.

8-38
cont.

120 to provide long-term management or own fee title in order to comply with other federal agency approvals, local government approvals or other state agency approvals. But in each of those instances, as in those instances where a CESA permit or LSA permit is required, the issuing government agency can (and does now as standard practice) condition issuance of that authorization with obtaining appropriate assurances that sufficient funding for long-term management will be provided for that conservation property and that adequate maintenance and management plans have been established. This is done on a project-by-project basis – as it should be – since each development project’s set of impacts and each conservation property should be evaluated for its particular level of impacts and necessary offsetting management measures by the government entity most familiar with the impacts and mitigation being provided by a project.

8-39

Moreover, the proposed mitigation measure *does not tie* the specifics regarding the necessary activities associated with the conservation property’s maintenance and management programs and the amounts necessary for “adequate funding” of these activities *to any applicable statutory or regulatory standard*; rather, the adequate types and levels of activities are left to CDFW’s total discretion – unchecked, and unreviewable. CDFW is not given any time-frame by which it is to complete its review and give its approval, nor is any process (procedures and timelines for re-consideration) established to appeal the CDFW’s disapproval of maintenance, management and funding amounts and plans. CSA 120 could be left indefinitely in limbo in seeking to obtain the approval contemplated by the LAFCO mitigation measure, and CSA 120 would have no protection against unreasonable demands of CDFW.

8-40

Strangely, the mitigation measure seems to anticipate that CSA 120 would submit property management and funding documents for CDFW approval that would cover and address *all* of the lands within each of the 4 “distinct areas” (Areas 1 – 4) at one time, and prior to the first annexation of land from that “distinct area” into CSA 120. This expectation is evidenced in the last sentence of the mitigation measure: “Copies of approved documents shall accompany future LAFCO application for annexation of property to CSA 120.” However, as discussed above, management plans, funding levels for long-term management, funding structures, etc. should all be unique and tailored to the specific lands being conserved and the specifics of the impacts from associated development on land uses that are impacting biological resources.

Accordingly, although *no* mitigation measure should be adopted by LAFCO at this time, if a measure were to be imposed it ought to be redrafted to provide the following:

Prior to obtaining any property interest in or stewardship role over new conservation property, CSA 120 shall demonstrate to the County Board of Supervisors’ satisfaction that it has prepared an adequate maintenance and management program to provide for the long-term conservation of biological resources on that property and shall demonstrate to the County Board of Supervisors’ satisfaction that it has sufficient financial resources available to it, using an appropriate analysis, to enable it to

- 8-39 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to the Preface to responses to comment letter #8. The purpose of this comment appears to be to ensure that CDFW does not pocket veto a management package by not acting in a reasonable amount of time. There is a mechanism to correct this situation. CSA 120 can petition the Commission as the lead agency for an annexation application to waive mitigation measure IV-1 and deem the application complete based on finding in Section 15074.1 of the State CEQA Guidelines. This would allow both CSA 120 and CDFW to present their arguments before the Commissioners to demonstrate compliance with the intent of the mitigation measure. This may seem a high bar to surmount, but it is consistent with the concept of protecting biological resources in perpetuity.
- 8-40 This comment misrepresents the content of mitigation measure IV-1. It clearly states that the review and approval by CDFW should occur prior to initiating a future annexation before LAFCO. To Staff the meaning is clear. That is, prior to any annexation in the future, the documentation required for that specific annexation shall be completed and approved by CDFW. If there was any confusion, the explanation provided above should clarify the intent. Regarding the proposed revision to measure IV-1, the Staff does not concur with the language provided. This would essentially substitute the review by the State's Trustee Agency for biological resource with a political body that has no vested interest in such resource protection. Staff supports the language in mitigation measure IV-1 as is.

8-40
cont.

perform the necessary long-term stewardship for that conservation property.

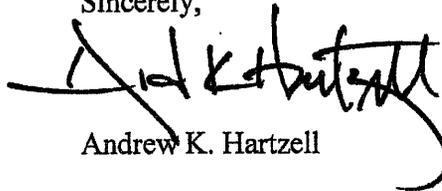
V. Conclusion.

8-41

LAFCO should adopt the County Special Districts Department's proposal to establish the sphere of influence for CSA 120 in accordance with the approximately 71 square mile area shown in Figure 2 of the Initial Study. Moreover, LAFCO should recognize that its approval of this sphere of influence is not subject to CEQA review as it is not a "project," and that even if it were, it would be categorically exempt from CEQA review. Furthermore, LAFCO should recognize that the proposed action has no potential for significant environmental effects. Accordingly, it is unnecessary for LAFCO to adopt an MND or attempt to establish mitigation measures for the proposed action. Instead of adopting an MND or ND for the proposed action, LAFCO should file a Notice of Exemption pertaining to this action.

We appreciate your thoughtful consideration of these comments. Please notify us in advance should LAFCO intend to schedule any further action on Matter 3157. Should you have any questions regarding any of the above, please contact the undersigned.

Sincerely,



Andrew K. Hartzell

AKH/jah
Enclosure

cc: Jeff Rigney, County Special Districts Department (w/o enclosure)
Tim Millington, County Special Districts Department (w/o enclosure)
Tom Hudson, County of San Bernardino Land Use Services Department (w/o enclosure)

8-41 This letter and your comments have been noted and filed for the record and will be provided to the Commission for consideration prior to a decision on the proposed project. Please refer to the Preface to responses to comment letter #8.

INLAND EMPIRE RESOURCE CONSERVATION DISTRICT
MITIGATION PROGRAM REPORT



INLAND EMPIRE



RESOURCE
CONSERVATION DISTRICT

SPECIAL THANKS TO:

THE SOLANO LAND TRUST
THE INLAND EMPIRE RCD MITIGATION COMMITTEE

MITIGATION COMMITTEE MEMBERS:

CHERYL AVENT
PAUL WILLIAMS
TIM JOHNSON

DOCUMENT SOURCE:

THIS DOCUMENT IS BASED UPON THE SOLANO LAND TRUST MITIGATION PROGRAM REPORT. COPIES OF THE REPORT CAN BE FOUND AND PURCHASED AT WWW.SOLANOLANDTRUST.ORG.

APPROVED FEBRUARY 13TH, 2008

Executive Summary

Inland Empire Resource Conservation District Mitigation Program Report

A wide variety of development and construction activities impact land and natural resources, which has prompted the need for a mitigation program within the Inland Empire Resource Conservation District (IERCD) service area. Federal, state and local agencies with permitting authority, as well as project proponents, are asking IERCD to consider involvement in preparation, evaluation, implementation, and perpetual management of mitigation projects. The projects can take a wide variety of forms, ranging from IERCD accepting conservation easements or land in fee title, to allowing a restoration project on existing IERCD lands.

IERCD has accepted several mitigation projects. This report describes a comprehensive program that will inform and guide IERCD's activities in relation to mitigation projects. Mitigation projects require careful consideration and specific steps to avoid any adverse impact upon the District's identity, fiscal position, and credibility. The issues are described in the report as well as actions to avoid or minimize problems.

It is to IERCD's advantage to accept mitigation projects that meet its mission, goals and funding requirements. IERCD will not become substantively involved in mitigation projects until after the relevant permitting agency(s) has identified the specific mitigation requirements for the project. IERCD reviewed four types of mitigation and will consider accepting the following:

- Protection – fee title and conservation easements. They are conveyed to IERCD.
- Enhancement – restoration and enhancement projects. The priority projects are those planned on lands that are designated for conservation in perpetuity. IERCD will consider projects that involve the creation of wetlands or habitat but they may require additional evaluation, and it will consider acceptance of creation projects for perpetual management after they have been created and stabilized by other entities.
- Mixed Projects – projects that involved both protection and enhancement elements.
- Mitigation Fees – ad-hoc fees, in-lieu fee programs (through SAWA), legal settlements. Ad-hoc fees are one-time fees for a project; a fee program is an established system for collecting fees in-lieu of specific performance. IERCD will not consider the creation of mitigation banks, but will consider acceptance of sold-out mitigation banks for management in perpetuity.

A dozen criteria encapsulating the overall goals of the IERCD have been identified for evaluation of projects. These include IERCD mission and priorities, funding, expertise, existing plan, consistency with existing requirements, other values, due diligence, project size, contiguity, manageability, surrounding land uses, and landowner relations. Some projects, such as those already held by other entities, have additional criteria.

A three phase decision-making process is proposed with several steps within each.

Executive Summary

- The first phase is a screening process to identify those projects that warrant further consideration.
- The second phase is preparation and evaluation of mitigation projects. This phase concludes with a recommendation for final acceptance or rejection of the projects.
- If the project is accepted, the third phase is execution, such as signing and recording of a conservation easement or posting of contingency funds before beginning a restoration project.
- IERCD will reserve the right to reject any project at any point in the process. The board of directors also reserves the right to reject any project at any point in the process.

A critical factor in IERCD's acceptance of mitigation projects is whether the project will have adequate funding. The funding needs of each project will be individually determined, and will include items such as acquisition costs, one-time capital improvements, and management and stewardship costs in perpetuity. These are the minimum costs necessary for the project to be executed and managed. In addition, project proponents will have to cover the cost for IERCD personnel resources to screen, prepare and evaluate the mitigation projects including any necessary consultant or legal review.

Adopting a mitigation program will require a number of actions and organizational changes to IERCD. The Implementation section of the report provides discussion for five different areas:

- Staffing and organizational requirements
- Management of financial resources
- Participation, outreach and education
- Preparation of model easements
- Preparation of enhancement opportunities

Throughout the report, 38 recommendations are made. The majority are concerned with the program itself: types of projects, project evaluation, decision-making process and funding. Twelve recommendations are made in the Implementation section. The nine recommendations identified below are high priority and require immediate action to create IERCD's mitigation program.

- IERCD is creating a mitigation program and will undertake the necessary actions to implement and maintain it. [R1]
- IERCD will establish specific fees and billing rates for the mitigation program. The fees and rates will be regularly reviewed and adjustments made as needed. [R24]
- The IERCD will dedicate a full-time staff or contract position to the mitigation program. [R27]
- The Mitigation Committee will be created as a standing committee of the IERCD board to provide oversight of, and direction to, the mitigation program. A scope of authority and specific duties will be identified. [R29]
- IERCD will evaluate its current financial and accounting system, and establish the appropriate systems for creating and maintaining sufficiently detailed records for each mitigation project. [R30]

Executive Summary

- IERCD will deposit mitigation funds into the Local Agency Investment Fund (LAIF). [R31]
- IERCD will prepare and adopt an investment and management policy for mitigation-related funds. [R32]
- Whenever possible, IERCD will participate in all known development or construction project planning that could affect its mitigation program. [R34].
- IERCD will take the initiative in communicating the mitigation program to permitting agencies, project proponents, and IERCD friends, supporters and landowners. [R35]

Many important lands and natural resources with significant conservation values have the potential to become involved in mitigation projects. IERCD is a local public agency with strong expertise in creating conservation projects and managing lands and easements in perpetuity. A strong mitigation program can help IERCD advance its mission and goals. IERCD can also assist permitting agencies, project proponents, partnering conservation agencies and the public by offering high quality professional organization that can assure that mitigation projects within District boundaries are well designed, have adequate financial resources, and are competently managed.

1- Introduction

INTRODUCTION TO MITIGATION

IERCD lands and natural resources within IERCD boundaries are being adversely impacted for a variety of reasons. Among these are projects and activities ranging from construction of new housing, business and commercial facilities to new infrastructure.

Some of the changes require mitigation under one or more local, state or federal laws, such as the Clean Water Act or Endangered Species Act.

Mitigation projects often result in land being permanently protected or can result in a variety of habitat enhancement projects on lands that have already been protected. Such projects require competent, long-term managers experienced with conservation lands and projects.

IERCD has accepted a number of mitigation projects and is regularly requested to accept new mitigation projects or funds. The board of directors formed a Mitigation Committee to determine a systematic approach of whether IERCD should accept mitigation projects. This report is the result of its analysis, and it is designed to serve as the "Policies and Procedures" for the IERCD Mitigation Program. The program has been created in response to the mitigation needs in San Bernardino and Riverside Counties and to further IERCD's mission of resource conservation.

Overview of Project Mitigation

Local governments are increasingly requiring mitigation as a condition of approval for projects when the project results in the loss or degradation of natural resources. Public agencies at regional, state and federal levels also require project mitigation. Many projects proposed by developers, landowners, energy companies, and other types of for-profit companies are compelled to provide real property or partial interest in real property (i.e., conservation easements), fund or implement restoration activities, purchase credits from a mitigation bank, or provide cash in order to proceed. Many project proponents do not want to hold property; neither do some public agencies. When land or conservation easements are created, there is often a search for long-term holders and managers of these real property interests.

Resource Conservation Districts can become a recipient of such properties. If designed properly, the mitigation program may help advance the RCD's goals. However, mitigation projects raise significant issues, concerns and costs. As research has shown, a RCD should only enter into this area after due consideration and creation of a "program" for determining types of projects that can be accepted, delineation of drafting and management roles and responsibilities, evaluation criteria and decision-making process, and the types of costs it must calculate for each project.

Local Entities

Project mitigation occurs within a dynamic context of many factors. Agencies have their own interest, authority and expertise. The following are agencies that IERCD typically interacts with during the course of the mitigation process.

1- Introduction

- Federal and state resource agencies, such as U.S. Fish and Wildlife Service and the California Department of Fish and Game. These agencies have the responsibility to conserve natural resources, and hold authority to impose conditions and regulations under specific statutes, such as the California Endangered Species Act.
- Federal and state agencies concerned with infrastructure, such as the U.S. Army Corp of Engineers, Bureau of Reclamation, and California Department of Transportation. In addition to their executing their own projects that may require mitigation (e.g., a CalTrans freeway widening project), these agencies may also have responsibility for resource protection, such as the U.S. Army Corps of Engineers under the Clean Water Act. Their responsibilities include permitting of projects proposed by other entities.
- Local agencies and entities, such as the Santa Ana Regional Water Quality Control Board, County of San Bernardino and any of its cities. Similar to the distinction made above, local governments can have permitting authority as well as be engaged in their own projects which require mitigation. The most common relationship that IERCD will have with local government is through their authority in the land use approval process.
- Nonprofit organizations
- For-profit corporations
- Private landowners

RATIONALES FOR CREATING A MITIGATION PROGRAM

- **Mitigation resources can contribute to IERCD's own goals and capacity.** "The purpose of the Inland Empire Resource Conservation District is to promote the understanding that the quality of the environment determines the quality of life. In cooperation with landowners, local, state and federal agencies, the agricultural community, environmental and community groups, we will promote good stewardship of our soil, water and other natural resources. We will provide strong educational programs that will encourage today's youth to accept the responsibility of conserving our natural resources for tomorrow's generations."
- **Mitigation can provide significant resources to help achieve the RCD goal mentioned above.** The specific nature of the resources will vary - land or easement, restoration or enhancement projects, or cash. IERCD can also ensure that any mitigation projects it accepts include the appropriate level of funding for perpetual management or defense. By building a portfolio of these projects, the RCD will reach the level at which certain economies of scale can be achieved to support staff with certain types of expertise, such as land managers or ecologists.
- **IERCD has the necessary expertise.** IERCD is focused upon the preservation and management of land for conservation purposes. It has the expertise to prepare and evaluate projects at each stage, including project formation, easement drafting, enhancement restoration, and management in perpetuity.

1- Introduction

- **IERCD can provide close and frequent monitoring of the project site.** In the past, mitigation projects required by resources agencies were often held by the state and federal agencies that imposed the requirements. The permitting agency offices are typically far from project sites, and their staffs are responsible for vast territories. Their geographical distance tends to preclude close oversight of projects. In contrast, the District's geographical scope is limited to parts of San Bernardino and Riverside counties. IERCD can provide close and frequent oversight of the project site and can be more aware of changes to the project site, adjacent properties, and the area's resources.
- **Mitigation is going to occur and conservation benefits can result.** Regardless of any involvement or action by IERCD, impacts from a wide range of projects will occur. Some projects will negatively impact lands or resources with conservation values, such as agricultural lands or wildlife habitat. Mitigation is required to provide the public benefits being lost or compromised by the project. If IERCD is involved, the project is more likely to secure the conservation values and retain these values over time.
- **Protect the reputation of conservation projects.** The general public doesn't distinguish between protected lands held by varying organizations. For instance, if mitigation requires that a certain amount of vernal pool habitat be protected, the public doesn't distinguish between whether the land is held by IERCD or another entity. If the land is poorly managed, if the proposed restoration project never occurs, or if there is an easement violation, the public and some landowners will view the project negatively. A view may develop that "restoration doesn't work" or "conservation easements can be violated with impunity".

If the District is well known in the area, many may assume that it is a district project. Therefore, IERCD has an interest in ensuring that projects involving land conservation or resource enhancement or management within the district's boundaries are implemented and managed responsibly.

1- Introduction

ISSUES AND CHALLENGES

Mitigation projects are not without a set of issues and challenges that the Mitigation Committee considered carefully. Specific steps can be taken to address these concerns.

a. Organization Identity and Reputation – In accepting mitigation projects, some individuals of the public may view District activities as enabling or facilitating projects that produce negative impacts on lands that have significant conservation values. There may also be misperception that IERCD has regulatory powers. IERCD can take four steps to avoid this:

- Proactively describe its decision to continue accepting mitigation properties. Explain the value of the conservation lands and natural resources, the District's role, and how it will help advance the District's mission.
- The District can carefully identify and limit its role. To avoid any actual involvement in facilitating projects, the District will explicitly avoid involvement prior to the permitting agency's determination of the mitigation requirements.
- Retain the authority to reject projects for any reason (see "b" below).
- IERCD must capture all of the costs for the project to ensure that the District does not subsidize mitigation projects (see "d" below).

b. Avoid Any Compromise of Independence- The district will want to retain independence in determining which projects it will accept as well as requirements for any project element, such as project selection, design or management endowment. This must include the right to reject a project for any reason. For example, IERCD may choose not to accept some projects that involve destruction of irreplaceable resources, those with a very large public opposition, or for other similar reasons that could have an unacceptable negative impact on the District's identity or community support.

c. Project Viability – Some mitigation projects suffer from characteristics that undermine their long-term viability. The difficulties can be rooted in project design, location, implementation failure, legal creation or inadequate funding. Many restoration and enhancement projects are not completed or do not function in the way they should. IERCD will want to take all steps within its expertise and authority to ensure that well-designed and high quality mitigation projects are created and fully implemented. Such steps include case-by-case reviews of mitigation projects, as well as IERCD involving itself as early as possible in the process of determining project viability.

d. Adequate Funding – IERCD is taking on perpetual responsibilities to manage land and easements, or to execute and manage restoration and enhancement projects. IERCD must take steps needed to fully calculate the short- and long- term costs of the project. These costs should be fully born by the project proponent.

Financial adjustments are very difficult – and usually impossible – to make after the mitigation project has been accepted. However, the District can take three steps to help identify and support adequate funding for mitigation projects:

1- Introduction

- First, it can be challenging to calculate all costs, but the district should make its best effort to do so. Every 12 to 18 months the District should review its cost structure and make adjustments as needed. Tracking its real costs on all projects will be an important source of information for the annual review.
- Second, most project proponents will expect fairly detailed explanations and justification of funds they are asked to provide. If approached as a business transaction, the District will educate project proponents about the costs involved, convey its competency as an entity, and communicate the content in a way that the project proponent understands and will find persuasive.
- Third, the District must have a financial management system and other policies necessary for tracking and managing the funds, as well as a system and investment policy to manage the permanent endowment funds. This will require regular tracking and financial summaries by the accountant and/or District Manager.

e. IERCD has considered where it wants to enter the mitigation process. In general, IERCD will begin working with project proponents after the permitting agency has determined the mitigation requirements. This is to protect IERCD's identity and avoid a large time investment before any specifics are known. At the same time, IERCD wants to be open to information exchange and informal communication. For example, before decisions are made by the permitting agency, the District could provide general information to project proponents about IERCD's program and process. The District staff may also seek information about the agency's authorities and process, or to generally discuss available mitigation opportunities.

f. Mission – The District is focused on resource conservation and education. The District will monitor its overall dedication of resources to mitigation projects and the types of projects it is accepting to ensure comfort with the level of mitigation activity and that it is not accepting projects unrelated to its mission. The latter should be accomplished if the projects meet IERCD's evaluation criteria.

g. Time Investment – It may be difficult to consistently and accurately forecast which projects will consume an inordinate amount of time. Mitigation projects can vary considerably in size, complexity, and the individual personalities involved. The time spent by District staff should be funded by the project proponent, and tied to the specific time worked. In some cases, it can be more efficient for project proponents to take the lead in designing a mitigation project, and in other cases, the project and IERCD's long-term stewardship interests are advanced by IERCD's substantive involvement in project preparation. Extensive documentation exchange between IERCD and the project proponent will be required in an effort to avoid complications surfacing long after both parties are heavily invested in the project.

h. Fulfilling Terms of Mitigation – Permitting agencies require proof that the mitigation requirement has been fulfilled. In all categories of mitigation projects except *Mitigation Fees*, this should be the responsibility of the project proponent. The District will readily provide any information or documentation about the project.

i. Funder Relationships – The District receives a percentage of its funding from property tax revenues, grants awarded by private foundations and public agencies. Nearly all of this funding is restricted, and extreme caution has to be exercised if considering any grant funding in relation to a mitigation project. For example, if a grant

1- Introduction

allowed a land purchase, and mitigation funds were subsequently utilized for a mitigation project on the property it is imperative to have documentation ensuring there is no “double-dipping” occurring. The district needs to make certain funding from two different sources does not pay for one specific task.

j. Building Relationships with Permitting agencies – In entering into a mitigation program, the District will be working closely with the agencies requiring the mitigation. Both need to understand each other’s goals and processes. There is also the opportunity to create agreements with permitting agencies that streamline the processes involved for all parties.

k. IERCD’s Relationships with Key groups – Beyond possible impacts to the District’s identity and reputation (see point “a” above), key groups with whom the District works may have particular concerns about the mitigation and/or District’s acceptance of projects.

2 Mitigation Program

This section of the report describes the program that will inform and guide IERCD's engagement with mitigation projects. Throughout the report, specific recommendations are indicated in the following way:

- R0 This is how a recommendation will be depicted.

The final section of the report includes (1) the recommendations that warrant priority or immediate action, and (2) a complete listing of the recommendations.

PROGRAM DESCRIPTION

The Inland Empire RCD will consider accepting mitigation projects that result from the land use approval process, and from environmental quality, natural resource protection, and other relevant laws and regulations. It will work with permitting agencies and project proponents to consider, prepare, evaluate, execute and perpetually manage mitigation projects. Each project will be evaluated by IERCD to ensure that it meets the District's goals and funding requirements. The District reserves the right to not accept any project.

- R1 IERCD is creating a mitigation program and will undertake the necessary actions to implement and maintain it.
- R2 IERCD will consider and accept mitigation projects that meet its mission, goals and perpetual funding requirements, and which pass screening and evaluation processes.

GOALS

In creating a mitigation program, IERCD's goal is to advance its mission to conserve natural resources. Its specific objectives are to:

- Create high-quality projects that preserve important lands and natural resources in compensation for the loss or degradation of land and resources due to project impacts.
- Provide long-term management and stewardship of land and related conservation values with a solid endowment and management plan.
- Create or adopt a management plan from the consultant firm for each property that IERCD holds in fee-title or conservation easement.
- Maintain standards for land conservation projects, tools and organizational operations.
- Provide lasting benefit to the residents within the District boundary through ensuring high-quality mitigation projects, thorough execution, and perpetual management.
- Continue the growth of IERCD's conservation, ecological and management expertise and capacity. This specifically includes training as well.

THE TYPES OF PROJECTS THAT THE DISTRICT WILL CONSIDER INCLUDE THOSE REFLECTED IN IT MISSION:

- Open space includes lands containing wildlife habitat scenic attributes, recreation, or various types of buffers
- Wetlands include any lands that have hydrology sufficiently persistent at any time of the year (including ephemerally or seasonally) to have any of the plants and animals known to be indicative of wetlands. This may include any creeks, rivers, lakes, ponds or bay, as well as the riparian areas surrounding these water bodies even in urban settings.
- Agricultural farm and ranch lands include land that is used to produce any form of crop, such as row crops, orchards, vineyards, grass or wood, to generate income for the farm or ranch

IERCD'S ROLE IN THE MITIGATION PROCESS

The District has no authority to require or impose mitigation, to determine the types or amount of mitigation required, or to approve a project as fulfilling the permitting agency's requirements. All of these factors are solely within the purview of a permitting agency with regulatory authority. The district will have no formal involvement in mitigation projects until the permitting agency determines that mitigation is required and the type and/or amount. Until these decisions are made by the permitting agency, the district's involvement will be limited to providing information to the agency or project proponent about the District's program, goals, process and costs, and general mitigation opportunities.

After the permitting agency has made its decisions, the district will work with the project proponent and agency to prepare, evaluate, and implement, a project. The District's capacity and expertise in the process includes:

- Expertise in land/easement negotiation and preparation, and in executing fee simple and conservation easements.
- Some experience in habitat enhancement and restoration, including project design. Such projects may often require additional expertise depending upon their particular biological, physical, engineering or hydrological requirements.
- Professional expertise and organizational capacity to ensure management and stewardship in perpetuity.
- A local presence, which allows a high level of awareness, responsiveness and cost-effectiveness for project implementation and for management and stewardship activity.

IERCD has a responsibility to ensure that any mitigation it accepts meets its conservation goals and standards, and that it includes adequate resources for long-term management. The District will evaluate each potential project and make a decision regarding its acceptance. It may decline to accept any project.

- R3 IERCD's substantive involvement in mitigation projects will not begin until the permitting agency has determined that mitigation is required and the type and amount of mitigation.

2- Mitigation Program

- R4 IERCD will individually evaluate each proposed project according to District evaluation criteria, and will make a decision regarding its acceptance.
- R5 IERCD will identify the project types and the sub-types of which it will consider acceptance in order to guide the screening and evaluation processes.

TYPES OF MITIGATION PROJECTS

The types of projects that IERCD will encounter can be organized into four categories. Each of these types has sub-types that will be further delineated below.

- 1. Protection**
- 2. Enhancement**
- 3. Mixed**
- 4. Mitigation fees**

1. Protection Projects

Protection projects are the acquisition of real property interest, typically fee title or a conservation easement. The protection must occur in perpetuity to qualify for IERCD acceptance. A wide variety of factors will influence the preferred protection tool (e.g., fee title or conservation easement). These factors may include ownership patterns, surrounding land uses, and urban impacts.

Fee Title

The fee title to a property can be secured in several ways:

- Purchase of fee title by the project proponent or District. If the project proponent purchases the land, it will be subsequently assigned to the District.
- Assignment of fee title that is currently owned by the project proponent to the District.

Key concerns with fee title will be to ensure that the deed is properly conveyed, due diligence to examine a variety of factors (e.g., presence of hazardous waste), the size of the property, foreseeable management issues, biologic or agricultural viability and adequate funding for creation of a management plan and land management in perpetuity. Long-term issues about the management of the property will be addressed through in a management plan for each property.

Conservation Easements

For mitigation purposes, a conservation easement can be acquired two ways:

- Purchase of easement by the project proponent or District. If the project proponent purchases, it will subsequently assign to the District.
- Creation and assignment of easement on fee title that is currently owned by the project proponent to the District.

Key concerns with a conservation easement are drafting a document that meets current district practices, landowner understanding of easement and stewardship, potential for productive relationship with landowner, any concerns raised through the due diligence process, and adequate funding for stewardship and defense. The permitting agency and project proponent are likely to be concerned only with the conservation purposes they are seeking to mitigate. However, IERCD may want additional or secondary purposes

2- Mitigation Program

identified in the easement document so that its ability to retain the easement in future years under changing conditions can be strengthened.

Easement Holding Issues - In some instances, the agency that required the mitigation will want to co-hold the easement or hold a reversionary interest in the easement. Co-holding arrangements can be configured in a range of ways. IERCD will accept a co-holding arrangement if the terms are acceptable to IERCD, particularly with regard to full authority to steward and defend/enforce the easement. IERCD may separately account for stewardship and defense funds on its conservation easements, and may manage the funds or contract with a third party to manage the funds, ordinarily the Local Agency Investment Fund (LAIF).

Another variation that may occur is that the permitting agency (or another agency, such as a city) may accept the fee title lands in mitigation, and ask IERCD to hold a conservation easement. Further, either agency may ask IERCD to manage the land. In this case, IERCD will negotiate the conservation easement. Its costs for the easement (including stewardship and defense) will be determined, as will the costs of managing the property. The management agreement may be long-term and permanent or it may be on a short-term (e.g., five year) contract basis.

Conservation Interests Previously Protected

Other organizations may have accepted fee title or conservation easements that were required for mitigation in the past, or such properties may be accepted in the future. Examples include public agencies, a nonprofit, or a for-profit mitigation bank. These organizations may seek to assign the properties to IERCD for management. As a local manager of land and natural resources for conservation purposes, assignment to IERCD may often make sense.

A number of questions arise for such projects, including:

- If IERCD has limited resources to evaluate and accept projects, is a property that is already protected a high priority in terms of carrying out the district's mission?
- If the property is already protected, does the additional increment of improved protection or management justify the assignment?
- Is there adequate funding that can be transferred to IERCD with the property?
- Is the project advancing a habitat type of concern in the county?
- Does the documentation of the project meet IERCD standards, such as the terms of the conservation easement or the existence of a baseline document?

These projects will be evaluated by the same criteria they would under any other new protection project along with five additional criteria. Projects that enjoy the highest priority are (1) lands adjacent to lands already owned or managed by IERCD, or (2) lands that are part of a landscape identified by the District staff as a high priority.

In conclusion, for each of these types of protection projects, IERCD has an interest in the project design or negotiations that may commence before IERCD can be substantively involved. IERCD will encourage project proponents to not engage in extensive negotiations or transactions until IERCD can be involved, particularly in the case of mitigation project design. IERCD's early engagement in such activities will increase the likelihood that the project will meet IERCD's requirements and be accepted.

2- Mitigation Program

- R6: Protection projects are a class of mitigation projects that IERCD will consider accepting. Fee title and conservation easements are eligible. Land or easements already held by another entity will be considered but are subject to additional evaluation criteria.
- R7: Protection projects must be in perpetuity.
- R8: IERCD will identify priority areas based upon its existing goals and plans.

2. Enhancement Projects:

Many mitigation projects involve some form of manipulation of the physical, chemical or biological characteristics on land that may or may not be permanently protected. The different types of projects can be defined and grouped into several categories. For example, a common set of definitions and categories has been articulated by the U.S. Army Corps of Engineers and is excerpted in Table 1 below.

The definitions apply to the Corps' responsibilities to regulate impacts to aquatic resources, but the definitions readily apply to terrestrial projects as well. For ease of discussion herein, unless otherwise noted, the term "enhancement" is used to encompass all the types of mitigation projects that consist of manipulating natural characteristics.

IERCD's chief concerns about enhancement projects include the project design, who performs the work (e.g., consultant, IERCD staff), project oversight, approval of modifications, and interim monitoring.

Figure 1.

U.S. Army Corps of Engineers Definitions (excerpts)

1. **Creation.** The manipulation of the physical, chemical or biological characteristic(s) present to develop a wetland on an upland or deepwater site, where a wetland did not previously exist. Creation results in a gain in wetland acres.
2. **Restoration.** The manipulation of the physical, chemical or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. For the purpose of tracking net gains in wetland acres, restoration is divided into:
 - Re-establishment. The manipulation of the physical, chemical or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in rebuilding a former wetland and results in a gain in wetland acres.
 - Rehabilitation. The manipulation of the physical, chemical or biological characteristics of a site with the goal of returning natural or historic functions to a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres.
3. **Enhancement.** The manipulation of the physical, chemical or biological characteristics of a wetland (undisturbed or degraded) site to heighten, intensify, or improve specific function(s), or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in wetland function(s) and can lead to a decline in other wetland functions, but it does not result in a gain in wetland acres. The term includes activities commonly associated with enhancement, management, manipulation and directed alteration.

2- Mitigation Program

Concerns are rooted in the fact that enhancement activities may occur on lands owned by IERCD; it has a responsibility to ensure that projects are well designed and fully implemented, thus striving to avoid unintended consequences. These projects will meet identified needs on IERCD lands, and not be determined solely by the preferences of the permitting agency. The District wants avoid a "following the dollars" phenomenon and to ensure that unnecessary or duplicative work is not undertaken.

Identification of Enhancement Opportunities. An obvious source for enhancement projects is on land held in fee or conservation easement by IERCD or other conservation organizations. This program includes the recommendation that IERCD adopt a goal to create management plans for its current and future lands. Each management plan will include identification of possible enhancement projects. The management plan should identify specific enhancement needs and opportunities.

Sites other than IERCD's properties also exist for enhancement projects. One source to be explored fully is enhancement opportunity on land in private ownership over which IERCD holds a conservation easement. *Only with the permission of the landowner and regulatory agencies*, and according to available resources, IERCD will consider working with interested landowners to generate a list of possible projects on easement-protected properties. This process can have considerable brokering costs for IERCD as well as possibly creating a new permanent obligation upon IERCD to monitor the improvement in perpetuity. However, it can be an additional benefit that IERCD can offer to landowners who have previously sold or donated a conservation easement to the District. One cost-efficient strategy may be to include this as part of creating a baseline document.

IERCD can also identify lands that may be suitable for enhancement projects where the landowner is willing to consider both enhancement and permanent protection (e.g., conservation easement). With this list, IERCD would have a ready list of possible sites that can be matched to the mitigation needs of project proponents. This process would act as an additional vehicle to conserve important conservation lands in the county, and would provide a service to landowners. However, IERCD's labor would have to be supported and it would detract from enhancement projects on IERCD's lands.

Delayed Acceptance of Projects with Enhancement Element. Some projects may have initial periods of 5 or 10 years during which the project proponent is responsible for enhancement or habitat construction. After this period, it may be contemplated that IERCD will assume responsibility for the project. In projects of this type, IERCD may impose conditions, such as:

- The permitting agency must provide final approval of the mitigation project and completion of all requirements associated with it. This is often done through issuance of a final letter of approval.
- IERCD will inspect the property and meet with the landowners (if applicable) as part of its evaluation process.
- During the interim period, and depending upon the project, the project proponent may have to provide IERCD with an annual stipend to support staff to accompany the project proponent (or its consultant) to evaluate the project's progress, identify and discuss problems, and so forth.
- IERCD will reserve the right to decline to accept the project at the end of the interim period in the event that the project is not functional or for other reasons.

2- Mitigation Program

In such cases, any endowments will be returned and IERCD's relationship to the project will end.

Projects on non-IERCD Lands. The District may also be asked to consider enhancement projects on lands held by organizations other than IERCD. This is a very low priority for IERCD, but it may, on occasion, warrant consideration

Factors in IERCD's consideration will include:

- Is a long-term involvement contemplated for IERCD and/or will the property be assigned to IERCD at a future point?
- Is the property contiguous with IERCD lands?
- Does the property contain critical resources within the county?
- Does the project's conservation value justify diversion from other IERCD projects?

Habitat Creation. These projects seek to create habitat with certain characteristics that do not currently exist (see Figure 1). This can be a controversial area with some types of projects not well-understood and mixed track records of success. Yet, some types of creation projects can be well understood and have good rates of success. The District recognizes some of the controversies in this area, especially in the creation of wetlands.

Even in some cases that IERCD chooses not to be involved in a habitat creation project, other entities in the county will undertake such projects. IERCD will consider accepting such projects for long-term holding and management if they are successful and stabilized. IERCD will evaluate these projects as it would any other protection project.

- R9: Enhancement projects are a class of mitigation projects that IERCD will consider accepting. Enhancement, restoration and rehabilitation projects are eligible.
- R10: Creation projects are also eligible for consideration although complex projects may require additional evaluation time or criteria. IERCD will also consider management and ownership of creation projects after they have been successfully created and stabilized.
- R11: Enhancement or restoration projects on lands held by other organizations are a low priority for IERCD but can be considered.
- R12: Management plans will be prepared for (1) IERCD's existing properties, and (2) any new mitigation properties accepted. New properties must include funding for a management plan with a supplemental endowment. The consultant firm's Habitat Management and Monitoring Program (HMMP) may also be used.
- R13: Each management plan will include identification of enhancement and restoration opportunities for the property. IERCD will review the plans periodically.
- R14: As resources and priorities allow, IERCD may create a list of enhancement needs on properties on which the District holds a conservation easement. If resources and priorities allow, IERCD may also consider creating a list of non-protected properties where the landowner may be interested in mitigation opportunities.
- R15: Project proponents will be encouraged to propose projects that are consistent with needs identified in management plans.

3. Mixed Projects

Some projects contain both protection and enhancement elements, such as permanently protecting a property through fee title or conservation easement acquisition and undertaking enhancement activities at the same time. This is a common occurrence in mitigation projects, and such projects have already been proposed to the District.

In reviewing these proposed projects, the District will distinguish the protection and enhancement elements and evaluate each according to the criteria for that type of project. Funding for these projects will have to be appropriate to cover the full range of costs for all elements. In summary:

- ❖ R16: Mixed projects are a class of mitigation projects that IERCD will consider accepting.
- ❖ R17: Each component of a mixed project (i.e., protection, enhancement) will be evaluated according to the evaluation criteria for that component.

4. Mitigation Fees

Mitigation fees are a payment of cash (or other liquid assets) by the project proponent. Rather than require specific performance, the project proponent is able to move forward with his/her project after conveying the mitigation fee. The fee is held until a mitigation project is fashioned and executed.

Mitigation fees fall into three categories:

- a. Mitigation fees—ad-hoc and in-lieu fee program
- b. Mitigation banks
- c. Legal settlements

a. Mitigation fees: Ad-hoc fees.

Ad-hoc fees are negotiated for an individual project. The fees are disbursed to IERCD for protection or enhancement types of projects. An ad-hoc agreement will be evaluated as would any project type. Fees can be disbursed to IERCD for protection or enhancement types of projects. Fees can be desirable for several reasons:

- To mitigate “small” impacts that are insufficient for supporting a viable, stand-alone project
- To direct projects to particular areas to assemble large protected areas that offer greater biological viability and management efficiencies.
- To allow a project proponent to move forward when a mitigation project will take some time to identify and execute.

On the other hand, mitigation fees also raise at least two concerns. One concern is whether there are good projects that can be executed if mitigation fees are available. In some built-out areas, there may no be viable alternatives close to the project location. Second, there needs to be the organizational capacity and systems to expend the fees in a timely manner. Otherwise, the fees can languish and not provide the mitigation intended.

A common example of how a fee project works is that the permitting agency collects a fee that is calculated to cover the cost of the mitigation project (e.g., land acquisition), the transaction costs, and the management endowment. Approval is granted for the

2- Mitigation Program

project proponent to proceed. The District will seek an appropriate opportunity (e.g., suitable fee title or easement to purchase or an enhancement opportunity) in response to the mitigation sought. The District creates the project and the permitting agency approves use of the funds.

Timing. There is always a timing issue in fee projects. The project is allowed to proceed although the mitigation is not in place. Although IERCD will work diligently, it is not IERCD's responsibility to ensure that the mitigation conditions required by the agencies are achieved.

For instance, the permitting agency may have required the purchase of a conservation easement on 20 acres of agricultural lands with prime soils. However, adequate funding for 20 acres may not have been collected or changes in land prices between the fee collection and the easement purchase may reduce the acreage that can be purchased. IERCD cannot forego recovery of its expenses to compensate for inadequate acquisition funds.

Process. Another important issue is the process between the District and the permitting agency in preparation and approval of the projects. The project goals and evaluation criteria need to be clearly understood between the two. This will prevent the District from fashioning projects with little chance of approval. However, circumstances unforeseen by the agency staff can arise, such as political pressure against an acquisition. The question of what occurs if the project is not approved ultimately should be addressed as part of the overall process.

On the funding question, the standard costs associated with assuming property or management responsibility (e.g., management in perpetuity, easement defense, administration) needs to be incorporated as part of the fee schedule. Similarly, the District will incur transaction costs in identifying, negotiating, and executing projects, and these costs must also be an approved expense for IERCD to recover.

b. Mitigation fees: In-Lieu Fee Program (Through SAWA)

In contrast to ad-hoc mitigation fee, an in-lieu fee program takes a programmatic approach to fees by creating a process in which a fee option is routinely available to project proponents for certain types of mitigation projects. For example, a certain city may say that the conversion of lands with riparian value will have to be mitigated, and that the project proponent can provide a per-acre fee rather than specific mitigation performance.

The amount of the fee is determined by the mitigation required and some amount per unit, such as 1 acre of mitigation required at a rate of \$50,000/acre (SAWA, 2007). However, the specific mitigation project is not determined at the time the fee is collected. For example, an in-lieu fee program may require a project proponent to contribute a per acre amount for each acre of mitigation required plus a percentage for transaction costs (e.g., negotiation, legal, appraisal) and management costs.

2- Mitigation Program

c. Mitigation Banks

A bank can be established by for-profit or non-profit organizations and must be approved by the appropriate state and/or federal agencies. It typically requires a considerable up-front expenditure by the organization. Some mitigation banks also involve the creation of new wetlands or habitat where it did not exist previously. Others purchase land with intact resources. A permitting agency can approve the purchase of "credits" by a project proponent in relation to the mitigation requirements. The mitigation bank sells credit to project proponents to capture the acquisition and management costs of a property. The advantages of mitigation banks are that it allows better conservation planning and will focus upon protection of a large area as opposed to small, scattered mitigation sites.

For IERCD, there are several concerns: the District does not have the up-front expenditure required to establish a bank, banks have been overbuilt and underutilized in some counties, and many mitigation banks are created and operated as a business operation by for-profit corporations which might impact IERCD's identity as a public agency.

Most of these concerns are insurmountable for the District at the present time. Therefore, IERCD will not anticipate creation of mitigation banks for the foreseeable future. If needs or opportunities change, this idea could be reconsidered.

Even without operating a mitigation bank, IERCD may have a role to play. One or more mitigation banks currently exist within the Inland Empire. If the banks are built, the credits may eventually be exhausted and the owner of the bank will look for a local entity to assume ownership for management purposes. IERCD will consider acceptance of such "sold out bank" that meets the District's mission. The project would have to be gifted to IERCD with the appropriate funding for management in perpetuity. It would be evaluated as any other protection project. Although it would not then be serving to mitigate a proposed project, it was nevertheless rooted in the mitigation process.

d. Legal Settlements

Legal settlements are sometimes made in cases involving damage to the environment or the breaking of environmental laws. The settlements may include punitive damages. The courts determine the amount and parameters for the use of a settlement. On occasion IERCD may receive legal settlements in the form of funds from the District Attorney's office or the Santa Ana Regional Water Quality Control Board.

IERCD has no ability to influence court decisions, although the District can be prepared to respond to inquiries. For example, IERCD can have its list of possible mitigation projects available (e.g., enhancement projects identified in IERCD's management plans). IERCD can also self-identify as an entity for receiving such settlements and provide descriptions of its programs, geographic boundaries, expertise and so forth on its website.

As with the other projects, IERCD will have transaction and administrative costs in utilizing legal settlements, and the resulting projects will have perpetual management obligations. These costs should be identified as with any other project. However, it should be clear in any documentation that IERCD is flexible on these points. A court holds authority to shape legal settlement funds, and it may not wish to allow transaction

2- Mitigation Program

or management costs. In such cases, the District may choose to raise the transaction and management costs from other sources.

- R18: Mitigation fees are a class of mitigation projects that IERCD will consider accepting. Ad-hoc fees, in-lieu fee programs and legal settlements are all eligible for consideration.
- R19: IERCD is willing to explore creation of in-lieu fee programs with permitting agencies but currently the U.S. Army Corps of Engineers is not issuing any new in-lieu fee programs at this time. Any programmatic agreements will be memorialized.
- R20: IERCD does not anticipate creating mitigation banks in the foreseeable future. It will consider ownership of sold-out mitigation banks, and consideration will follow the standard evaluation process as will any other protection project.

PROJECT EVALUATION CRITERIA

IERCD will evaluate each project independently to determine its suitability and viability for acceptance. The particulars of an individual project may necessitate additional factors of evaluation. IERCD has identified the following factors for evaluating projects:

- **IERCD Mission and Priorities-** Does the project further IERCD's mission and priorities?
- **Funding-** Is there adequate funding for all immediate and perpetual costs of the mitigation project?
- **Expertise-** Does the District have the knowledge to work with the project proponent, evaluate, and manage the property effectively? Does the proposed mitigation project require additional staff and/or specialized knowledge or expertise?
- **Existing Plan-** Does the property fall within an existing District plan or is it an area identified by IERCD as high conservation priority? Is the property in an area identified by another conservation organization as high conservation priority?
- **Consistency with Existing Requirements-** Is the mitigation project consistent with the land requirements, obligations to donors, contract terms, and management regimes for the property. (This is primarily applicable to enhancement projects).
- **Other Values-** Does the project have other conservation values not associated with the mitigation requirements, but which IERCD values, such as increasing public awareness to conservation issues.
- **Due Diligence-** Are any problems discovered during the due diligence process, such as hazardous materials?
- **Project size-** Is the property sufficiently large to achieve its purposes? Does the size impose disproportionate management costs? Small properties can have very significant conservation values, such as riparian corridors or properties that buffer riparian corridors. However, as a general class, small properties are less likely to be biologically or agriculturally viable, and tend to require proportionally greater management expenses.
- **Contiguity-** Is the project adjacent to a property already protected by IERCD or by another conservation entity? Properties that are contiguous with other

2- Mitigation Program

protected properties are of higher conservation value because they can function as part of a larger protected landscape. Also, projects that have lands adjacent that could potentially be protected by IERCD are also of high value.

- **Manageability-** Will the property require management efficiencies?
- **Surrounding Land Uses-** Are the surrounding land uses compatible with the project's conservation purposes? Are other surrounding land uses foreseeable (e.g., residential subdivision)? Will the current or future land uses negatively impact the property or increase management costs dramatically?
- **Landowner Relations-** Does the current landowner understand and support IERCD's stewardship responsibilities (in the case of a conservation easement)?

Special Criteria. For properties that already have some form of protection, but which the holding entity may seek to assign IERCD, the following factors will also be considered:

- **Priority-** Is the property a high priority in terms of carrying out IERCD's mission?
- **Justification-** Does the additional increment of improved protection or management justify the transfer?
- **Funds for Transfer-** Is there sufficient funding for the costs of management in perpetuity? (In many cases, the other entity may not have secured adequate funds originally).
- **Regional Concern –** Is it advancing protection of a particular habitat type(s) or resource of concern in the county?
- **Existing Documentation-** Does the documentation meet IERCD standards, such as the terms of a conservation easement or the existence of a baseline document?
 - **R21:** IERCD will evaluate each project individually to determine its suitability and viability for acceptance. IERCD will utilize a set of evaluation criteria and any additional factors necessitated by the particulars of the project. The board of directors has the right to not accept a conservation easement.

DECISION-MAKING PROCESS

Mitigation projects will have a wide variety of elements and time frames. Project proponents will also need to know what IERCD's process is for evaluation and decision-making.

IERCD's general process for mitigation projects is for the board of directors to adopt the general process, criteria and routine fees. Relying upon this policy direction, the District staff will (1) evaluate individual projects and make recommendations to the full board, and (2) annually review the mitigation program and fees and make recommendations to the board as needed. Staff will prepare the screening reports and project portfolio, and work with the mitigation committee and board of directors to secure decisions and execute implementation.

The decision-making process consists of three phases with six steps. IERCD will follow the specific steps to consider any proposed mitigation projects. These steps are:

1. **Staff receives initial inquiry and project proponent submits application.** A project proponent will contact IERCD about its willingness and process to accept

2- Mitigation Program

mitigation projects. Staff will send an application packet to the project proponent. Staff will spend a minimum of time on the phone or in meetings in advance of the project proponent reviewing the packet or submitting an application.

Any entity can submit an application to the District. Projects clearly inconsistent with IERCD's mission and evaluation criteria for mitigation projects may be advised about the low chance of success. For the application to be reviewed, several items must be received by IERCD: a complete application form with appropriate submission of permits, application fee and signed agreement.

2. **Application Review.** IERCD staff will review each application that is submitted, with the required information and application fee. As needed, staff will seek additional information from the project proponent, permitting agency(s) or others. Staff will confirm the project is ripe for consideration, i.e., the mitigation requirements have been determined by the permitting agency. Staff will prepare a Screening Checklist that includes the information from the project proponents as well any other pertinent information collected by staff.
3. **Screening Decision by District Staff.** Using the information provided and IERCD's criteria for mitigation projects, staff will review the screening checklist. The staff will approve or deny the application.

Approval of the application means the IERCD will work with the project proponent to further consider the project, collect more information, participate in preparation of the project (e.g., easement drafting), and evaluation. A denial of the application means that IERCD is not interested in participating in any further evaluation of the project.

If the project is accepted for further consideration, the project proponent will be notified. Staff will determine whether to classify it as a "major" or a "minor" project based on the definitions from appendix A of this document. A work agreement and estimate will be provided to the project proponent with a request for a deposit to begin the next phase. If the project is denied, the project proponent is notified.

If a project is accepted at this stage, there is a strong likelihood that it will ultimately be accepted by IERCD. However, it is important to understand that IERCD provides no guarantee. A project may appear to meet all of IERCD's criteria at the outset. As it is fashioned by the project proponent and evaluated by IERCD, changes may occur or decisions made that substantively affect the project. For example, if an easement is to be assigned, the easement document may have terms that are unacceptable to IERCD, or sufficient funding for a management endowment is not available. IERCD will work with the project proponent diligently and in good faith to find a way for a mitigation project to be accepted.

4. **Project Portfolio is Prepared.** For projects that pass the screening, the project proponent will demonstrate its willingness to move forward with IERCD by submitting a written agreement and deposit to IERCD. Upon receipt of these two items, IERCD will begin working with the project proponent and permitting agency to create a Project Portfolio.

2- Mitigation Program

If it is a protection project, the specific properties will be identified, legal documents drafted, perpetual management costs calculated, and so forth. For enhancement projects, a detailed project design plan will be prepared (usually by the project proponent's consultants), locations and suitable contractors identified, and so forth.

The Project Portfolio will be reviewed by the permitting agency (s) to identify any potential problems and receive their approval. The goal is to complete all the necessary work so that if IERCD accepts the project, implementation can begin immediately.

Staff will prepare the Project Portfolio, although the project proponent or the agency may provide various pieces of it. Staff will seek the information it requires for analysis and preparation of the project. It may consult with the mitigation committee or the board, as needed, as well as contracting for needed professional services (e.g., attorney, ecologist).

5. **Final Decision by Board of Directors.** The Board may accept or reject the recommendation of the mitigation committee and District Staff, it may request additional information before making a decision, it may provisionally approve a project subject to specific directives, or it may undertake a detailed review of the proposed project.

Staff will notify the project proponent of the Board's decision. If more information is needed from the project proponent, it will be collected and conveyed to the Board for a final decision. If the project is provisionally approved, staff will initiate steps to satisfy the board's directives, such as further negotiations. If the project is rejected, IERCD will provide a final accounting of its services along with a refund of any unused amount of the deposit.

6. **Mitigation Project Execution.** Once the project has been approved, the agreement between the project proponent and IERCD will be executed. The project proponent will provide funding to IERCD according to the agreed upon timeline. Property interests can be executed and conveyed to IERCD. If applicable, contractors will be hired. Work can begin on any enhancement projects, and upon capital improvement or management tasks for protection projects. Finally, IERCD will be the last signature on the documents but the IERCD will not sign the conservation easement or mitigation agreement until final dispersal of all funds.

This three phase, six-step process may seem clear and distinct. However, some projects will present unusual circumstances or needs that will require a different process. IERCD reserves the right to vary its process if needed.

IERCD will establish its mitigation program and complete several projects through the regular decision-making process before implementing any expedited processes.

2- Mitigation Program

- R22: IERCD will undertake a three-phase decision-making process (1) screening, (2) preparation and evaluation, and (3) execution. Six specific steps are identified in this process and key decision come at the end of steps three and five.
- R23: The Mitigation Committee and District staff can make recommendations to the Board at any point. It is anticipated that in the typical project, the staff will approve or reject projects at the end of step three, and that the staff will make a recommendation on project acceptance for the Board of Director's decision in step five.

FUNDING

The creation and perpetual management of mitigation projects require funding. The costs of an individual project will vary according to the specifics of each project. Each type of project has a set of costs associated with it. The variation will be considerable between different types of projects.

IERCD will have two basic fees for reviewing and evaluating projects: an application fee and a fee for preparation and evaluation of a project. The fees fund the time and expenses of IERCD to work on the proposed mitigation projects. They will be reviewed regularly by IERCD and revised as needed.

Beyond the fees, a set of costs associated with the execution and perpetual management of mitigation project will be identified. The costs for project implementation and perpetual management of the project will be calculated for each project. Projects will vary considerably, and not all costs can be identified in advance.

The following types of costs will be typical and can be anticipated:

Project Screening. IERCD must screen each project to determine if it appears to be worth further preparation and evaluation, and whether it has a reasonable chance of final acceptance by the district. IERCD will provide an application form and information about IERCD mitigation program to any interested party. Upon receipt of the application form and fee, IERCD will review the project to determine if it passes the screening.

1. **Preparation and evaluation of mitigation project.** IERCD will work with the project proponent and the permitting agency to prepare a project portfolio for IERCD's evaluation. IERCD final decision about acceptance of the project will be based upon the portfolio. A deposit from the project proponent will be required to begin this phase. IERCD will Charge a billing rate for its work on the project against the deposit. If the project requires more work or additional expertise than the deposit would support additional funds will be requested. If the project is accepted before the initial deposit is exhausted, the balance will be applied to the overall endowment fee.
2. **Acquisition costs.** Protection projects require the purchase, assignment or granting of fee title lands or conservation easements. In cases of purchase and depending upon the project design, the project proponent may provide funds to IERCD for the purchase or buy the land/easement itself. Acquisition costs will

2- Mitigation Program

often include legal, appraisal, assessment (e.g., baseline documentation) and other expenses. IERCD can provide figures to project proponents of typical land and easement costs for different parts of the county or types of land (e.g., vernal pool).

3. **One time or capital improvement costs.** Protection projects are likely to have certain costs beyond acquisition. These one time costs may be of several types. One, they may be related to assessment and management of the property. Examples may include preparation of baseline documents or management plans, or a one-time acceptance fee for accepting a conservation easement. Two, they may be expenses related to establishing proper management of the property and realization of conservation values, such as signage, removal of structures, construction of fencing or public use facilities. Management may also require specialized equipment or contribution to equipment purchases. Three, one-time expenses may be for enhancement of the property's natural resources, such as erosion control or removal of invasive non-native vegetation. (Depending upon the particulars of the mitigation project, these costs can also be recurring and so may be included in long-term management funds).
4. **Management and stewardship in perpetuity.** IERCD will assume responsibility for the management of land and stewardship of conservation easements in perpetuity. These costs will occur each year in perpetuity. To meet these obligations, IERCD will require funds that can be invested to generate an annual income to support the perpetual management and stewardship of the property. IERCD will calculate the likely annual costs, figure a reasonable rate of return, and include a small amount whose income can be reinvested to maintain the purchasing power of the fund.
5. **Easement defense.** Conservation easements will occasionally require legal proceedings to defend or enforce the terms. When mitigation projects include a conservation easement, funds for easement defense will be required.
6. **Enhancement element.** The focus of an enhancement project is the tasks that are necessary to enhance the natural resources and/or natural functions of the property. The costs will vary widely depending upon the nature of the project. Projects can include planting/seeding, grading, fencing, bank stabilization, vegetation removal, stock pond enlargement, construction and so forth. The scope of the projects may be very sophisticated restoration of habitat that has been substantially degraded or destroyed, or it may be projects more akin to management to ensure the continued viability of a habitat type of species. In many cases, the project proponent may contract with a consulting firm to create an enhancement plan. In all cases, IERCD reserves the right to approve the contractor, the enhancement plan, and to hire, if necessary, professional services to review the plan. If IERCD does not perform the work itself, it will still require resources to monitor progress and completion of the project.
7. **Short – term management.** It is expected that enhancement projects will be occurring on lands which IERCD holds fee title or a conservation easement.. Enhancement projects will often require additional management for a short period (e.g., five to seven years) to ensure their success. For example, newly planted vegetation may require monitoring until established, monitoring of

2- Mitigation Program

riparian enhancements through the first few seasons of precipitation to ensure that the enhancements perform as intended, or monitoring of areas where invasive non-native species were removed to eliminate new recruits. Contractors may perform the work, although it may be expected that IERCD will undertake the short-term management.

Some projects may not perform as designed. To assure the necessary resources are available to respond to problems, IERCD may require the project proponent to provide a remediation plan as part of the mitigation project's design or contingency resources. Construction bonds are often used, but they are not readily usable (can be difficult to cash and use). An alternative is for the project proponent to set aside a contingency amount into a Certificate of Deposit that the permitting agency holds authority to release. After the short-term management period ends, the contingency resources are released back to the project proponent.

8. Other Costs. IERCD will incur other costs in relation to accepting and managing mitigation projects. For example, IERCD must maintain adequate insurance to cover its liability both for its employees and volunteers, as well as for the general public that may visit the property (legally or not).

It should be noted these costs are only for IERCD. The permitting authority may impose additional costs upon the project proponent in relation to a mitigation project. For example, projects that mitigate for the loss of wildlife may include a component of performing species counts or other tasks to monitor the effectiveness of the project. Depending upon the nature of the requirements, the project proponent may contract with IERCD or a professional firm for such services.

- R24: IERCD will establish specific fees and billing rates for mitigation program. The fees and rates will be regularly reviewed and adjustments made as needed.
- R25: The two primary costs to a project proponent before IERCD makes a final decision on project acceptance is (1) a one-time, non refundable fee that accompanies the application before any screening of the project can occur and (2) a deposit for work to be performed in the preparation and evaluation phase by IERCD and/or its sub-contractors.
- R26: The project proponent will also be required to fund the full costs of the mitigation project. The amount will be determined by the particulars of the project.

3. PROGRAM IMPLEMENTATION

There are a number of actions IERCD will need to undertake to implement the program. These can be organized in the following way:

1. Staffing and Organizational Requirements
2. Management of Financial Resources
3. Participation, Outreach and Education
4. Preparation of Model Easements
5. Preparation of Enhancement Opportunities

1. STAFFING AND ORGANIZATIONAL REQUIREMENTS

Undertaking a mitigation program will require increased personnel resources and some organizational changes. Types and levels of personnel resources will grow and change from time-to-time as IERCD's portfolio of mitigation projects grows.

Personnel Resources

To carry out the work of the program, IERCD will need personnel resources to meet at least four types of expertise and knowledge: (1) program management, (2) land management, (3) ecological restoration, and (4) legal. The first can be an IERCD employee or a contractor to manage the program. This person will work with project proponents and agencies, collect information and evaluate projects, identify and supervise any necessary consultants, and coordinate the organization's decision-making (e.g., board of directors and mitigation committee). Based on the level of mitigation inquiries and projects the IERCD is already receiving, a full-time staff person or contractor could be supported now, and the position is expected to quickly grow into a full time position. This position will require considerable knowledge and communication skills. Ideally, the person will be knowledgeable and experienced in ecology and restoration, should have experience in budgeting and forecasting costs, as well as enough knowledge to review and understand policy, regulatory processes and legal agreements. The program manager will need good communication and negotiation skills.

Additional land management staff will inevitably be needed. Land Managers, experienced in land and natural resource management, will likely be necessary. The particular configuration of staffing resources in this area will be determined by regularly reviewing the needs of the mitigation properties.

Third, most projects are likely to require some additional professional expertise, such as restoration ecologists and attorneys. For example, attorneys will be needed to draft and/or review property deeds, conservation easements, contracts, and other legal agreements; restoration ecologists will be needed to either design restoration projects or review the plans prepared by the project proponent's consultants. The program manager would determine the expertise needed for any individual project, and hire the appropriate professionals on a contract basis.

3- Program Implementation

Board and Committee Roles

IERCD will also need to consider the additional workload that the mitigation program will place on the board of directors. The board will have additional matters of policy and programs to consider. For example, the board will identify the policies to guide the implementation and management of the mitigation program, and it will need to review fees and outreach materials for the program, as well as any programmatic agreements with permitting agencies. Additionally, the mitigation program also requires board approval of each project. The board may choose to carefully understand the particulars of each project.

The proposed responsibilities of the mitigation committee would include:

- When needed, working with staff throughout the process of screening, preparing and evaluating mitigation projects.
- Regularly reviewing the overall mitigation program, including fees, personnel resources, and communication strategies and materials. Make recommendations for board action as needed.
- Consider programmatic agreements with agencies, such as in-lieu fee programs or agreement on model conservation easements.
- Design future components of IERCD's mitigation program, such as streamlined decision-making process for some types of projects.

It is useful for staff to have a sounding board to discuss some of the more questionable or controversial projects or project elements. The staff will sometimes be faced with decisions that require a very rapid response to which committee members can respond. On the other hand, a committee can require considerable time and attention by the staff. It is recommended, therefore, that the mitigation committee consists of three board members designated for immediate and ongoing contact by staff.

- R27: IERCD will immediately dedicate a full-time staff or contract position to the mitigation program.
- R28: As IERCD's mitigation program changes, the need for personnel resources will be regularly reviewed and evaluated.
- R29: The Mitigation Committee will be created as a standing committee of the IERCD board to provide oversight of, and direction to, the mitigation program. A scope of authority and specific duties will be identified. It will remain small to minimize staff management time and to provide ready availability to staff.

2. MANAGEMENT OF FINANCIAL RESOURCES

Financial Management

Several issues arise in the area of managing the financial resources that will accompany the mitigation projects. First, the District has evaluated its financial and accounting systems to ensure that distinct and detailed records (including timesheets) can be maintained for each mitigation project. The District uses Microsoft Access to track staff hours and also uses Quickbooks, Job Costing for the accounting records. The one time costs for each project will need to be tracked separately.

It will be critical that IERCD use systems that facilitate the incorporation of all expenses associated with the mitigation programs and the District's billing rate for personnel into project costs. For example, the mitigation program will be using office space, equipment, telephone, fax, internet, supplies, and reception and accounting services.

Considerable time can be required to manage the various consultants to a project. Without careful attention, it will be easy for the organization to slip into a position of providing indirect support for the projects.

Endowment Issues

Another set of issues arises for the funds collected for management and stewardship in perpetuity. These issues are more complex and difficult to resolve. For the properties and easements that come through the mitigation program, IERCD would prefer to create sub-accounts for individual mitigations.

However, difficulties can arise from the permitting agencies. Some agencies want the "endowment" for each mitigation project held and managed separately. More problematically for IERCD, some will want to hold the endowments themselves and reimburse IERCD on a periodic basis for its costs. Unfortunately, this system is not responsive to the realities of land management nor has its implementation for other non-profits worked well. It also implicitly gives the agency final authority about management, stewardship and legal defense long after the mitigation has been implemented- IERCD is left with responsibility for the lands and easements but without the assured authority to act. IERCD will not accept the mitigation project unless endowment funds are paid up front.

Investment Policy

Finally, IERCD needs to create and/or review its applicable investment policy and strategy for management of the funds. The agencies may want to review the policy(s) and some may want to approve it. Project proponents may be interested as well.

- R30: IERCD will evaluate its current financial and accounting systems, and establish the appropriate systems for creating and maintaining sufficiently detailed records for each mitigation project.
- R31: IERCD will ordinarily deposit mitigation funds into the Local Agency Investment Fund (LAIF).
- R32: IERCD will prepare and adopt an investment and management policy for mitigation-related funds.

3. PARTICIPATION, OUTREACH AND EDUCATION

Participation

The mitigation program requires that IERCD build relationships with organizations with whom it has limited or no contact and to interact in new areas. The obvious example is to begin and maintain relationships with permitting agencies. These agencies exist at a local, regional, state and federal level. IERCD will need to become knowledgeable about the law, regulation and processes of the agencies, and in turn, educate them about IERCD's program and process. From the agency perspective, it wants to see the lands and resources protected or enhanced. IERCD is assuming a responsibility that the agency would often rather not have. The basis exists for cooperative relationships to be built.

Similarly, IERCD will have to participate in deliberations and planning processes that affect how its mitigation is structured and implemented. To the extent practical, IERCD will want to provide information and comment to increase the likelihood that the requirements are informed by IERCD's practices and policies.

Outreach and Education

As noted at the beginning of this report, undertaking a mitigation program can have repercussions for the District's identity. It is important that IERCD take the initiative in communicating its program, role in the process, and rationale for accepting mitigation projects. The audiences include:

- **Permitting agencies-** At its most basic, the focus is to educate the agencies about IERCD's program: what types of mitigation projects it will consider, its funding requirements, process and timeline, and the point at which IERCD will become involved. At best, the communication with the agency can grow to include programmatic agreements, agency approval of IERCD's model conservation easements, two-way communication about quality and design of projects, and so forth. IERCD will prepare written materials for this group, but should also seek communication opportunities about the program. Note: The IERCD will begin with the U.S. Army Corps of Engineers conservation easement language template when drafting easement language.
- **Project proponents-** Much like the agencies above, IERCD needs to describe its program in detail. Model agreements, spreadsheets with possible costs, and examples of project design will help the project proponent respond to IERCD's required information and increase the likelihood of acceptable projects. Clear and concise information will help to reduce the costs of preparing and evaluating projects. Much of this communication will be in written form.

It is not unusual for project proponents to come to IERCD with legal documents already drafted. IERCD will encourage project proponents to consult early in the process with the District. Active outreach and information about IERCD's model documents can also inform project proponents of their existence and increase the likelihood that the model documents will be used.

- **District friends, supporters and landowners-** The purpose of communication with these audiences is to protect the district's identity and credibility among these key stakeholders. IERCD will want to explain the District's rationale for accepting

3- Program Implementation

mitigation projects, its role in the process, and the steps it is taking to assure successful projects.

- R33: IERCD will build and maintain relationships with permitting agencies.
- R34: Whenever possible, IERCD will participate in all known development or construction project planning that could affect its mitigation program.
- R35: IERCD will take the initiative in communicating the mitigation program to permitting agencies, project proponents, and IERCD friends, supporters and landowners.
- R36: Communication strategies will include written materials (e.g., brochures, newsletter articles) and meetings or presentations. The strategy for each audience will vary; for some audiences, for example, a website posting may be sufficient.

4. PREPARATION OF MODEL EASEMENTS

It will be tremendously advantageous for the District to invest in the creation of model easements for the mitigation program.

The District can consider creation of a model easement for conservation easements whose primary purpose is habitat protection. This is the type of mitigation project for which the District is already experiencing a significant demand. To streamline and expedite the process of creating a model easement, IERCD could begin with an easement from a permitting agency, such as California Department of Fish and Game, and modify it to address IERCD's concerns and preferences. Then it would work with the agency to consider whether it can receive preliminary approval. While the agency will still want to review and approve each easement, it can expedite the process by having pre-approval of the terms and issues that arise with all or nearly all easements. At a minimum, IERCD will inform the permitting agencies and project proponents about the model easement that currently exists.

- R37: IERCD will promote the use of its model easements for mitigation projects.
- R38: IERCD will create a model easement for habitat purposes and employ it several times to refine it. Then IERCD can work with permitting agencies to secure general approval of the model to expedite future projects.

5. PREPARATION OF ENHANCEMENT OPPORTUNITIES

As discussed above in the enhancement section, the District will identify a list of enhancement opportunities on the lands within the District boundaries, including lands that the District holds conservation easements or fee title. This will be done as part of the preparation or update of management plans. The lists will need to be reviewed periodically.

Identifying enhancement opportunities is highly recommended for the District. One, it will help ensure that the District doesn't "chase the dollars" in terms of what project proponents want to do. Two, it will also help IERCD sort through the relative priorities of the various enhancement opportunities that exist, and to direct mitigation projects to those of highest priority and/or best suited.

4. RECOMMENDATIONS

A Series of recommendations have been made throughout the report and they are collected in this section for ease of review. Before the complete list, however, a shorter list is offered of those items that require immediate action for creation of the mitigation program.

PRIORITY ACTIONS

- R1: IERCD is creating a mitigation program and will undertake the necessary actions to implement and maintain it.

- R24: IERCD will establish specific fees and billing rates for the mitigation program. The fees and rates will be regularly reviewed and adjustments made as needed.

- R27: IERCD will immediately dedicate a full-time staff or contract position to the mitigation program.

- R29: The Mitigation Committee will be created as a standing committee of the IERCD board to provide oversight of, and direction to, the mitigation program. A scope of authority and specific duties will be identified. It will remain small to minimize staff management time and to provide ready availability to staff.

- R30: IERCD will evaluate its current financial and accounting systems, and establish the appropriate systems for creating and maintaining sufficiently detailed records for each mitigation project.

- R31: IERCD will deposit mitigation funds into the Local Agency Investment Fund (LAIF).

- R32: IERCD will prepare and adopt an investment and management policy for mitigation-related funds.

- R34: Whenever possible, IERCD will participate in all known development or construction project planning that could affect its mitigation program.

- R35: IERCD will take the initiative in communicating the mitigation program to permitting agencies, project proponents, and IERCD friends, supporters and landowners.

ALL RECOMMENDATIONS

- R1: IERCD is creating a mitigation program and will undertake the necessary action to implement and maintain it.

Appendix A

- R2: IERCD will consider and accept mitigation projects that meet its mission, goals and perpetual funding requirements, and which pass screening and evaluation processes.
- R3: IERCD substantive involvement in mitigation projects will not begin until the permitting agency has determined that mitigation is required and the type and amount of mitigation.
- R4: IERCD will individually evaluate each proposed project according to IERCD's evaluation criteria, and will make a decision regarding its acceptance.
- R5: IERCD will identify the project types and sub-types of which it will consider acceptance in order to guide the screening and evaluation processes.
- R6: Protection projects are a class of mitigation projects that IERCD will consider accepting. Fee title and conservation easement are eligible. Land or easements already held by another entity will be considered but are subject to additional evaluation criteria.
- R7: Protection projects must be in perpetuity.
- R8: IERCD will identify priority areas based upon its existing goals and plans.
- R9: Enhancement projects are a class of mitigation projects the IERCD will consider accepting. Enhancement, restoration and rehabilitation projects are eligible for consideration.
- R10: Creation projects are also eligible for consideration although complex projects may require additional evaluation time or criteria. IERCD will also consider management and ownership of creation projects after they have been successfully created and stabilized.
- R11: Enhancement or restoration projects on lands held by other organizations are a low priority for IERCD but can be considered.
- R12: Management plans will be prepared for (1) IERCD exiting properties, and (2) any new mitigation properties accepted. New properties must include funding for a management plan.
- R13: Each management plan will include identification of enhancement and restoration opportunities for the property. IERCD will review the plans periodically.
- R14: As resources and priorities allow, IERCD may create a list of enhancement needs on properties on which the district holds a conservation easement. IERCD may also consider creating a list of non-protected properties where the landowner may be interested in mitigation opportunities.
- R15: Project proponents will be encouraged to propose projects that are consistent with needs identified in management plans.

Appendix A

- R16: Mixed projects are a class of migration projects that IERCD will consider accepting.
- R17: Each component of mixed project (i.e., protection, enhancement) will be evaluated according to the evaluation criteria for that component.
- R18: Mitigation fees are a class of mitigation projects that IERCD will consider accepting. Ad-hoc fees, in-lieu, fee programs and legal settlements are all eligible for consideration.
- R19: IERCD is willing to explore creation of in-lieu fee programs with permitting agencies. Any programmatic agreements will be memorialized.
- R20: IERCD does not anticipate creating mitigation banks in the foreseeable future. It will consider ownership of sold-out mitigation banks, and evaluation process as any other protection project.
- R21: IERCD will evaluate each project individually to determine its suitability and viability for acceptance. IERCD will utilize a set of evaluation criteria and any additional factors necessitated by the particulars of the projects.
- R22: IERCD will undertake a three-phase decision-making process of (1) screening, (2) Preparation and evaluation, and (3) execution. Seven specific steps are identified in this process and key decisions come at the end of steps three and five.
- R23: The Mitigation Committee and District staff can make recommendations to the Board at any point. It is anticipated that in the typical project, the staff will approve or reject projects at the end of step three, and that the staff will make a recommendation on project acceptance for the Board of Director's decision in step six.
- R24: IERCD will establish specific fees and billing rates for the mitigation program. The fees and rates will be regularly reviewed and adjustments made as needed.
- R25: The two primary costs to a project proponent before IERCD makes a final decision on project acceptance is (1) a one-time, non-refundable fee that accompanies the application before any screening of the project can occur, and (2) a deposit for work to be performed in the preparation and evaluation phase by IERCD and/or its sub-contractors.
- R26: The project proponent will also be required to fund the full costs of the mitigation project. The amount will be determined by the particulars of the project
- R27: IERCD will dedicate a full-time staff or contract position to the mitigation program.
- R28: As IERCD's mitigation program changes, the need for personnel resources will be regularly reviewed and evaluated.

Appendix A

- R29: The Mitigation Committee will be created as a standing committee of the IERCD board to provide oversight of, and direction to, the mitigation program. A scope of authority and specific duties will be identified
- R30: IERCD will evaluate its current financial and accounting systems, and establish the appropriate system for creating and maintaining sufficiently detail records for each mitigation project.
- R31: IERCD will deposit mitigation funds into the Local Agency Investment Fund (LAIF).
- R32: IERCD will prepare and adopt an investment and management policy for mitigation-related funds.
- R33: IERCD will build and maintain relationships with permitting agencies.
- R34: Whenever possible, IERCD will participate in all known development or construction project planning that could affect its mitigation program.
- R35: IERCD will take the initiative in communicating the mitigation program to permitting agencies, project proponents, and IERCD friends, supporters and landowners.
- R36: Communication strategies will include written materials (e.g., brochures newsletter articles) and meetings or presentations. The strategy for each audience will vary; for some audiences, for example, a website posting may be sufficient.
- R37: IERCD will promote the use of its model easement for mitigation projects.
- R38: IERCD will create a model easement for habitat purposes and employ it several times to refine it while working with the regulatory agencies.

APPENDIX A GLOSSARY OF TERMS

Baseline document- A document which describes the feature and conditions of property to which a conservation easement has been conveyed. It usually includes written text, maps and photographs. In the event of a violation, it is used to prove the features or conditions that were present at the time the easement was created.

Capital costs- In the context of conservation and land management, capital costs are those expenditures for land or easement acquisition, for the construction of major improvements, such as fencing, interpretive centers, roads, and so forth. They are often, but not necessary, one-time costs.

Conservation easement- Under California state law, a conservation easement "means any limitation in a deed, will or other instrument in the form of an easement, restriction, covenant, or condition, which is or has been executed by or on behalf of the owner of the land subject to such easement and is binding upon successive owners of such land, and the purpose of which is to retain land predominantly in its natural, scenic, historical, agricultural, forested or open-space condition." A conservation easement is described in a record and is perpetual in duration. It can only be acquired and held by a tax-exempt nonprofit organization qualified as a 501(c) 3 by the Internal Revenue Code, or by a public agency. See California Civil Code Section 815.

Although conservation easement is the term most often utilized, in California, a local government entity "cannot condition the issuance of an entitlement for use on the applicant's granting of a conservation easement pursuant" to Civil code Section 815. An easement created in this condition is an "open space easement" and is governed by California Government Code Section 51070-51097. They are recorded, and can be in perpetuity or for a term of years.

Easement Stewardship- The national standards and practices for districts identify a number of practices and resources that are necessary for the proper stewardship of conservation easements. This includes the preparation of a baseline document at the time of easement creation, regular monitoring, maintaining contact with landowners, enforcing easement terms when they are violated, and building an adequate source of funds for the perpetual monitoring and enforcement.

Endowment (or stewardship fund)- The perpetual ownership, management and stewardship of land and easements require funding. The only practical way to provide this funding – long past when any particular individuals and companies may exist – is to create an endowment. An endowment is a fund in which a sum is deposited of an amount sufficient which is conservatively invested to produce an annual income that is used to fund the costs of ownership and management and stewardship.

Enforcement – A district will have to enforce its ownership rights from time to time. On fee title lands, it may need to act against a trespasser, for instance. It is expected, however, that enforcement will be more common with conservation easements. A district has to enforce any violations to the purpose and terms of the easement. It may also be sued by a landowner and be forced to defend the easement.

Fee title- The most complete set of rights to a property, including the rights to occupy and to develop or convert it.

Land Management- Like any private landowner, a district assumes the full costs and duties of land ownership when it owns land. All of the responsibilities and activities are commonly referred to as land management. It includes a wide variety of responsibilities and activities, such as maintenance of all improvements (structures, roads, fences), prevention or cure of erosion, care

Appendix A

of resources on the property, prescribed burning (if appropriate), removal of exotic invasive vegetation and animals, payment of taxes and insurance, and so forth. A district may also contract to perform land management of property with conservation values that are held by another nonprofit or public agency; in such cases it does not assume all responsibilities of ownership, such as taxes or insurance.

Land trust- A private, nonprofit conservation organization formed to directly protect land through the acquisition of land and interests in land with any variety of conservation and natural resources. The acquisition may occur by purchase, donation, or may be conveyed to satisfy mitigation requirements imposed by permitting agencies.

Major Project: Any mitigation involving the acquisition of a conservation easement, either directly by IERCD or indirectly via another organization, for the purposes of protecting and preserving natural, scenic, historic, and/or cultural resources.

Minor Project: Any mitigation involving the enhancement of habitat, including the reestablishment or restoration of like habitat in exchange for the impact on natural resources as a result of development. Also includes mitigations involving fees paid by the project proponent in the form of ad-hoc fees, in-lieu fees, mitigation banks, or even legal settlements.

Mitigation ratio- Permitting agencies will often identify the ration of mitigation that is required based upon the impacts of a project. It may be based upon acreage or upon replacing the impacted functions. For example, a mitigation ratio may be that three acres of farmland must be preserved to mitigate for every acre of farmland that is converted to a non-agricultural use. The ratio may exceed one-to-one in order to ensure that there is no net loss of the natural resources of concern, that the ecosystem processes will be functional, and to allow an adequate margin of safety to reflect anticipated success. The ratio may also be less than one-to-one where the functions associated with the area being impacted are demonstrably low and the replacement area of higher function. This may also be referred to as "functional replacement".

Model easement- A model easement is a document that describes the terms and conditions of conveying a conservation easement, but which is in a general form and can be tailored to the particulars of an individual easement. It includes the standard terms acceptable to the District or public agency that created it.

Monitoring- The holder of a conservation easement has a responsibility to regularly inspect the property to identify any violations of the easement purpose and terms that may exist. Easement holders may lose their rights under the easement, in whole or part, if violations are unchallenged. The inspection is often called monitoring, and at least annual monitoring is the recommended practice for Districts. Each monitoring visit is recorded in a written form and often with photo documentation. In addition to identifying violations, another important reason to monitor is to build and maintain communication with the landowner.

Permitting agency- A federal, state, regional, or local public agency with holds authority to grant permits for various activities and can require mitigation to compensate for the loss, degradation or impact of the proposed activity. Examples include the U.S. Army Corps of Engineers, the California Department of Fish and Game, and the County of Solano.

Successor Landowner- Because conservation easements run in perpetuity, the owner of the underlying fee title to a conservation easement will change periodically. The landowner who sells or grants the conservation easement is commonly referred to as the "original landowner" or "original donor" by districts. All subsequent landowners are often referred to as "successor landowners". The research to date suggests that serious violations are far more likely with successor landowners than with the original landowner.

Appendix B

APPENDIX B

PROCESS FOR PROJECT TYPES

Below are descriptions of general processes that can be expected for different types of projects.

Protection Projects- Fee Title

- IERCD identifies priority areas based upon its existing goals and plans. To the extent feasible, project proponents are encouraged to identify properties in these areas. IERCD will also consider properties in other areas if the project proponent already owns the property or if the permitting agency requires the mitigation to occur in locales other than IERCD's priority areas.
- IERCD will work with the project proponent to gather the necessary information for the District evaluation.
- A decision is made regarding the acceptance of the mitigation project.

Protection Projects – Conservation Easement

- IERCD drafts a model easement(s) for use by project proponents and permitting agency.
- If appropriate, IERCD identifies areas for suitable easements.
- IERCD, project proponent and/or landowner negotiate terms of easement.
- If not included in the previous step, IERCD meets with landowner, discusses easement and explains stewardship elements.
- IERCD reviews easement document.
- All key parties- IERCD, permitting agency, project proponent, and the landowner- agree upon a final draft of the conservation easement.
- IERCD evaluates acceptance of project.

Enhancement Projects

- IERCD will review enhancement plans prepared by the project proponent or permitting agency. Depending upon the particulars of the project, IERCD staff may be involved in project design.
- IERCD must approve the design of, and modifications to, the project.
- In many cases, qualified individuals other than IERCD staff will implement enhancement and restoration projects with oversight by IERCD staff, such as consultants. Other qualified individuals or IERCD staff may also carry out management improvements. IERCD must approve any proposed subcontractors.
- Monitoring to meet permitting agency requirements (e.g., species counts for the first five years of the project) will be the responsibility of the project proponent and/or permitting agency. IERCD staff may be involved in conducting the mitigation, but this will vary, of course, based upon the particular features of a project.

Appendix B

- The project proponent must provide funding to cover IERCD's costs for any special expertise to evaluate the project design, monitoring the project during the course of the enhancement actions and contingency funds in the event that problems arise.
- Final approval by the permitting agency of the completed project remains the responsibility of the project proponent.

Mixed Projects

- The District will distinguish the protection and enhancement elements and evaluate each according to the typical process for that type of project.

Ad-Hoc Mitigation Fees

- IERCD prepares and executes agreement with project proponent and/or permitting agency that describes the project.
- The fees are paid directly to the District, to the permitting agency, or to a mutually acceptable third-party depending upon the project and the authority of the permitting agency.
- IERCD proposes a specific project that meets the purposes and criteria for available funds.
- If IERCD received the funds, it expends the funds for the project. If the fee was paid to the permitting agency, then IERCD applies to the agency for use of the fees. If a third-party holds the funds, the agency will approve expenditure of the funds (or whatever other process has been agreed upon).

In-Lieu Fee Program

- Permitting agency and District create an agreement.
- Fees collected by permitting agency.
- IERCD reviews and prepares projects – there is early review (e.g., “screening”) by permitting agency before mitigation project progresses very far.
- IERCD undertakes protection or enhancement project based upon available funding and permitting agency approval.
- Permitting agency gives final approval to project; disburses funding or approves use of the funds.

**LOCAL AGENCY FORMATION COMMISSION
FOR SAN BERNARDINO COUNTY**

NOTICE OF DETERMINATION

TO:

Clerk of the Board of Supervisors
County Government Center
385 North Arrowhead Avenue
San Bernardino, CA 92415-0130

Office of Planning & Research
State Clearinghouse
1400 Tenth Street
Sacramento, CA 95814

FROM:

Local Agency Formation Commission
215 North D Street, Suite 204
San Bernardino, CA 92415-0490

SUBJECT: Filing of Notice of Determination in Compliance with Section 21108 or 21152 of the Public Resources Code

PROJECT TITLE: LAFCO 3157- Sphere of Influence Establishment for County Service Area 120

STATE CLEARINGHOUSE NO.: 2013101088

LEAD AGENCY CONTACT: Local Agency Formation Commission Staff at (909) 383-9900.

PROJECT LOCATION: The proposed Sphere of Influence (hereafter shown as "SOI" or "sphere") establishment area for County Service Area (CSA) 120 encompasses approximately 71 square miles (15 square miles of which are presently located within the existing boundaries of CSA 120). The proposed SOI area is generally located along the foothills of the San Gabriel Mountains, east of the San Bernardino/Los Angeles county lines, north of the 210 Freeway, and generally west of the 215 Freeway, including portions of the northerly boundaries of the Cities of Upland, Rancho Cucamonga, Fontana, Rialto, and the northwesterly boundaries of the City of San Bernardino.

PROJECT DESCRIPTION: Within each county local agency formation commissions are assigned the responsibility for designating a "Sphere of Influence" for government agencies under its purview that provide services to an area. The San Bernardino Local Agency Formation Commission (LAFCO or Commission) is considering the establishment of a SOI for CSA 120.

CSA 120 was formed under LAFCO Resolution No. 3056, effective July 1, 2009. CSA 120 is a single purpose Board-governed (San Bernardino County Board of Supervisors) Special District that performs open space and habitat management services. Administrative functions for CSA 120 are performed through the San Bernardino County Special Districts Department. Open Space and Habitat Conservation management services are the only authorized function provided by CSA 120. The range of services includes acquisition, preservation, maintenance and operation of land to protect unique, sensitive, threatened, or endangered species, or historically significant properties.

The San Bernardino LAFCO initiated the SOI establishment for CSA 120 in April 2010 recommending a coterminous SOI. The County Board of Supervisors responded with a request for a larger SOI in March 2012. That request processed by the County Special Districts Department is to consider a proposed SOI establishment substantially larger than the agency's current service area boundary. Since the establishment of a SOI for an agency only creates a planning boundary, i.e., it does not

mandate extension of service by the agency to any area outside of the jurisdictional boundary, the designation of a SOI either through expansion or in this case, the establishment of a SOI, rarely has the potential for "causing significant effect on the environment." This is because the SOI does not authorize any agency to proceed with physical modifications to the environment unless steps are taken to annex a SOI area into the agency's actual service area. Due to the establishment of a new sphere that overlaps an agency with comparable services and concerns over adequate funding to manage conserved area, San Bernardino LAFCO concludes the establishment of an expanded CSA 120 SOI could have indirect adverse biological resources impacts.

This is to advise that the Local Agency Formation Commission of the County of San Bernardino, as lead agency, has approved the above-described project and has made the following determinations regarding the project:

1. The project will not have a significant adverse impact on the environment.
2. A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA. A copy of the Mitigated Negative Declaration may be reviewed at the Local Agency Formation Commission Office, 215 North D Street, Suite 215, San Bernardino, CA 92415-0490.
3. With regard to alternatives for this project, the Notice of Determination will be finalized after it makes its final decision on the project.
4. Mitigation measures were made a condition of approval of the project and a Mitigation Monitoring and Reporting Program was adopted.
5. A Statement of Overriding Considerations was not adopted by the Commission for this project.

DECISION DATE:

KATHLEEN ROLLINGS-McDONALD
Executive Officer

cc: Jeff Rigney, Director, San Bernardino County Special Districts Department