

**ACTION MINUTES OF THE  
LOCAL AGENCY FORMATION COMMISSION  
HEARING OF SEPTEMBER 17, 2014**

**REGULAR MEETING**

**9:00 A.M.**

**SEPTEMBER 17, 2014**

**PRESENT:**

**COMMISSIONERS:** James Curatalo, Chair  
Kimberly Cox, Vice-Chair  
Steve Farrell, Alternate  
Larry McCallon

Sunil Sethi, Alternate  
Acquanetta Warren, Alternate  
Diane Williams

**STAFF:**

Kathleen Rollings-McDonald, Executive Officer  
Clark Alsop, LAFCO Legal Counsel  
Holly Whatley, Special Counsel  
Samuel Martinez, Assistant Executive Officer  
Michael Tuerpe, Project Manager  
Rebecca Lowery, Clerk to the Commission  
Joe Serrano, LAFCO Analyst

**ABSENT:**

**COMMISSIONERS:** Jim Bagley  
Robert Lovingood

James Ramos  
Janice Rutherford, Alternate

**CONVENE REGULAR SESSION OF THE LOCAL AGENCY FORMATION  
COMMISSION – CALL TO ORDER – 9:05 A.M. – SAN BERNARDINO CITY COUNCIL  
CHAMBERS**

Chairman Curatalo calls the regular session of the Local Agency Formation Commission to order and leads the flag salute.

Chairman Curatalo requests those present who are involved with any of the changes of organization to be considered today by the Commission and have made a contribution of more than \$250 within the past twelve months to any member of the Commission to come forward and state for the record their name, the member to whom the contribution has been made, and the matter of consideration with which they are involved. There are none.

Executive Officer Kathleen Rollings-McDonald, Executive Officer, notes that Commissioner Bagley is not present due to injuries he sustained in an airplane crash in San Diego County. Ms. McDonald notes that he is now at home and recuperating from his injuries.

**CONSENT ITEMS – APPROVE STAFF RECOMMENDATION:**

The following consent items are expected to be routine and non-controversial and will be

acted upon by the Commission at one time without discussion, unless a request has been received prior to the hearing to discuss the matter.

1. Approval of minutes for Regular Meeting of July 16, 2014
2. Approval of Executive Officer's Expense Report
3. Ratify Payments as reconciled for months of July and August 2014 and Note Cash Receipts
4. Approval of contract with Rosenow Spevacek Group (RSG) for Financial Study for Potential Incorporation of Rim of the World Communities
5. Review and approve request to County Auditor-Controller/Treasurer/Tax Collector to collect Outstanding City and/or District Apportionment Amounts from First Proceeds of Tax Revenues for Fiscal Year 2014-15
6. Ratification of Platinum Sponsorship for the CALAFCO Conference by San Bernardino LAFCO
7. **TO BE CONTINUED TO OCTOBER 22, 2014 HEARING:** Review and Consideration of Amendment to LAFCO Conflict of Interest Code

LAFCO considered the items listed under its consent calendar. Copies of each report are on file in the LAFCO office and are made part of the record by their reference herein.

Executive Officer Kathleen Rollings-McDonald notes that no items have been requested to be deferred for discussion.

Commissioner McCallon moves approval of the consent calendar, second by Commissioner Cox. There being no opposition, the motion passes unanimously with the following vote: Ayes: Cox, Curatalo, McCallon, Sethi, Williams. Noes: None. Abstain: Cox on Item 1. Absent: Bagley (Mr. Sethi voting in his stead).

**PUBLIC HEARING ITEMS:**

**ITEM 8. CONSENT ITEMS DEFERRED FOR DISCUSSION**

No Items Deferred For Discussion.

**ITEM 9. CONTINUED FROM JULY 16, 2014 HEARING; TO BE CONTINUED TO OCTOBER 22, 2014 HEARING: CONSIDERATION OF: (1) CEQA STATUTORY EXEMPTION FOR LAFCO 3180; AND (2) LAFCO 3180 – REORGANIZATION TO INCLUDE ANNEXATIONS TO COUNTY SERVICE AREA 54, DETACHMENT FROM COUNTY SERVICE AREA SL-1 AND DISSOLUTION OF COUNTY SERVICE AREA 73 AND ZONE A OF COUNTY SERVICE AREA 53 (STREETLIGHT REORGANIZATION FOR THE MOUNTAIN REGION)**

Chairman Curatalo says that the public hearing on this item is still open.

Assistant Executive Officer Samuel Martinez presents the report for LAFCO 3180, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here.

Mr. Martinez states that LAFCO 3180 was continued from the July 16, 2014 Hearing and says that LAFCO staff has discovered that there are streetlights currently located outside of the existing boundaries for County Service Area (CSA) 54. He says that the addition of these areas as part of the overall reorganization proposal will require that LAFCO re-advertise the proposal to comply with the requirement of State law. He asks that the item be continued to the October 22, 2014 hearing.

Commissioner Cox moves approval of continuing LAFCO 3180 to the October 22, 2014 hearing, second by Commissioner Williams. There being no opposition, the motion passes unanimously with the following vote: Ayes: Cox, Curatalo, McCallon, Sethi, Williams. Noes: None. Abstain: None. Absent: Bagley (Mr. Sethi voting in his stead).

**ITEM 10. PRESENTATION OF SANBAG STUDY FOR HABITAT CONSERVATION FRAMEWORK FOR SAN BERNARDINO COUNTY BY STEPHANIE STANDERFER, SENIOR PROJECT MANAGER, DUDEK AND CONSIDERATION OF CONTINUATION OF SERVICE REVIEW FOR HABITAT PRESERVATION SERVICES WITHIN THE VALLEY REGION**

Chairman Curatalo opens the public hearing.

Executive Officer Kathleen Rollings-McDonald presents the report for the SanBAG Study for Habitat Conservation Framework study ("Framework"), a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here.

Ms. McDonald says that in December 2013, LAFCO staff became aware of SanBAG's undertaking of a Countywide Habitat Preservation/Conservation Framework study. She states that staff has attached a copy of the SanBAG report dated December 11, 2013, which outlines the project's purpose in support of the County's Vision Program. Ms. McDonald says that LAFCO staff has invited Ms. Stephanie Standerfer, Senior Project Manager with Dudek, consultant preparing the Framework study, to present the Commission with an outline of the project and its current status. Ms. McDonald introduces Stephanie Standerfer.

Ms. Standerfer presents an update on the Development of a Countywide Habitat Preservation/Conservation Framework Study through a slide presentation (a complete copy of which is available in the LAFCO office). She reviews the purpose of the study, what the study is and is not, what has been learned, the proposed schedule and what the next steps are.

Commissioner Cox questions for the subareas what kind of boundaries are included, to which Ms. Standerfer says that they can be based on watersheds, governmental

boundaries, or a multitude of other boundaries.

Commissioner McCallon questions Ms. Standerfer's comment on no large scale transportation projects, to which Ms. Standerfer responds that at the presentation to the SanBAG Board of Directors this issue was outlined relating to the E-220 project. Commissioner Farrell asks for clarity of agencies contacted in the mountain area, to which Ms. Standerfer provides a general outline of the different agencies contacted.

Executive Officer Kathleen Rollings-McDonald says the framework will be a comprehensive report and that LAFCO staff has provided all the information they have gleaned to Dudek. In addition, Ms. McDonald notes that the staff is recommending that the Commission separate the service review for habitat conservation services from the processing of LAFCO 3157 to allow for completion of the Framework. Ms. McDonald notes that staff will return to the Commission with the service review after completion and adoption of the Framework study.

Chairman Curatalo calls upon those wishing to speak to this item.

Steve Loe, member of the public, says that he supports multispecies planning.

Jane Hunt, member of the public, says that she is pleased to hear that LAFCO will be separating the service review for Open Space and Habitat Conservation Services from the Sphere of influence Establishment for CSA 120.

Commissioner Williams moves approval of staff's recommendation, second by Commissioner McCallon. There being no opposition, the motion passes unanimously with the following vote: Ayes: Cox, Curatalo, McCallon, Sethi, Williams. Noes: None. Abstain: None. Absent: Bagley (Mr. Sethi voting in his stead).

Clark Alsop, Legal Counsel for the Commission, leaves the dais; Holly Whatley, from Colantuono, Highsmith & Whatley, PC, Special Counsel for the Commission, takes his place.

**ITEM 11. CONSIDERATION OF: (1) ADOPTION OF MITIGATED NEGATIVE DECLARATION AND (2) LAFCO 3157 – SPHERE OF INFLUENCE ESTABLISHMENT FOR COUNTY SERVICE AREA 120 (HABITAT PRESERVATION AND HISTORICAL RESOURCES -- NORTH ETIWANDA)**

Chairman Curatalo opens the public hearing.

Executive Officer Kathleen Rollings-McDonald presents the staff report for LAFCO 3157, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here.

Ms. McDonald reviews the history of the proposal. She says that in 2009, the Commission initiated the sphere of influence establishment for CSA 120 as required by law and notified the County of its intent to establish a coterminous sphere of influence as

was the Commission/s practice. The County responded that it would be requesting an expanded sphere of influence and LAFCO staff agreed to work with the County to move forward with the expansion request. Over the next two years the County deliberated about the application – what territory would be proposed, the funding for payment of the mandatory LAFCO filing fees and such. She says that in March 2012 the County of San Bernardino Board of Supervisors initiated the application and the filing fees were submitted by the Lytle Development Company. The sphere of influence establishment submitted encompassed a total of 71 square miles.

Ms. McDonald says that in January 2014 the Commission held a workshop to review the requirements which would point toward the need for dedication of mitigation lands so that the Commission could understand the purpose of CSA 120 and in February 2014 the Commission was presented with the environmental documents prepared for LAFCO 3157. She says that a mitigated negative declaration was approved.

Ms. McDonald says that at the February hearing the Commission received a letter, dated February 13, 2014, from the Board of Supervisors Chair, proponent for the action, requesting amendment of the application to reflect the alternative #2 of the environmental assessment document that excludes the territory included within the City of Fontana's Multi-species Habitat Conservation Plan. She reminds the Commission that at this hearing, the Commission will evaluate and make determinations on the required factors outlined in Government Code Section 56425. These determinations will be guided by the Commission's stated mission statement which is "to ensure the establishment of an appropriate, sustainable and logical municipal level of government structure for the distribution of efficient and effective public services".

Ms. McDonald reviews the factors of determination. She provides a description of the County's land use designations noting that the City of Fontana General Plan assigns an open space designation to the territory within CSA 120 recognizing the future potential for habitat preservation.

Ms. McDonald says that the North Etiwanda Preserve Management Plan adopted in 2010 builds upon its predecessor Cooperative Management Agreement of 1998. The mitigation lands now include approximately 1,207 acres and the management plan has divided the acreage into Unit 1 (original 762 acres of North Etiwanda Preserved) and Unit 2 (445 acres outside that boundary). The acquisition of additional lands for mitigation management are regulated by the California Department of Fish and Wildlife through its state mandated due diligence process to review the qualifications of entities to manage endowments and to perform the mitigation management activities designed in a mitigation agreement. This process is undertaken through the completion of an "Application for governmental entity, special district or nonprofit organization requesting to hold and manage mitigation lands." To date, CSA 120 has not submitted this report; therefore, it is not able to acquire additional mitigation properties for which an endowment is proposed. She says that without the authorization, no new service can be provided. In order to address the issue, LAFCO staff is proposing a condition that within six months of the approval of the sphere of influence establishment County Service Area 120 shall have completed the due diligence process with the California Department of Fish and Wildlife

to be declared an available recipient of mitigation properties in the future. And that failure to do so will require a further analysis of the sphere of influence assignment.

She says that the funding for the operations of CSA 120 is limited to the interest earned on the endowment funds received at the time that the properties are transferred to its ownership for management. The statutes require that the funds be used for the purposes identified in managing the mitigation properties from which the endowment is derived. Based upon these factors the question of the solvency of the district and the need to return endowment funds not utilized in performing services on the properties from which they were derived. LAFCO staff has identified that approximately \$112,000 needs to be returned to the endowment fund.

Ms. McDonald says there will be no change to CSA 120's authorized powers.

Tom Dodson, Environmental Consultant for the Commission, presents the environmental element of the staff report. He says that for environmental review, the initial study evaluated will not have a significant adverse impact on the environment. He says that the findings were appropriate. He also responds to the information that was received from Metropolitan Water District of Southern California.

Ms. McDonald says that the staff is recommending that the Commission direct the Executive Officer to file the Notice of Determination within five days of the Commission's decision on the project. She says that such filing must be accompanied by the payment of California Department of Fish and Wildlife Fee in the amount of \$2,231.95 and that staff will not submit the required filing until such time as the County Special Districts Department transfers the required funds to LAFCO for processing. Failure to file within the required five days of action will lengthen the period for legal challenge to 180 days rather than the 30-day statute of limitations period for CEQA challenges when timely filed.

Ms. McDonald states that the determinations outlined in this report come with the acknowledgement that there are significant funding issues for CSA 120 to overcome to continue to operate, and failure to address them could result in a determination of insolvency. She reviews the recommendations and conditions for the project.

Commissioner Cox asks what the funding mechanism was when the District was formed. Ms. McDonald says that it was endowment funding.

Commissioner McCallon asks who is requesting the City of Fontana's MSHCP area be excluded from CSA 120, to which Ms. McDonald says that it is the City of Fontana who is requesting exclusion from the project.

Commissioner Williams asks what if the proponent does not complete the items of continuance within the six month timeline. Ms. McDonald says that LAFCO staff will continue to monitor and will report back to the Commission. She says that County Special Districts has indicated that they will work with staff to complete the conditions required.

Commissioner Cox asks if CSA 120 has the means to repay the monies to the endowment fund, to which Ms. McDonald responds in the negative noting that it would need an infusion of funds from another source.

Commissioner Williams asks if there are any legal parameters to recoup the funds; is the District legally entitled to look for other funding. Ms. McDonald says that the District is entitled to look for other funding and that they would need to be responsible for looking for other funding sources that may be available to possibly help the District repay the monies to the endowment fund.

Commissioner Farrell asks what distinguishes the CSA 120's powers from park district powers. Ms. McDonald says that not much, but that the attribute was to provide opportunities for educational pursuits for the community to understand the habitat that is being preserved and that LAFCO staff's concern is that the endowment funds are to be used to maintain the habitat not the maintenance of park benches, kiosks, trails and the like. There are other sources to fund those types of things. Commissioner Farrell asks if a review of the interest accumulated from 1994 has been conducted, which Ms. McDonald says that the endowment was \$700,000 and that at the time it was understood that the amount was insufficient for long term management but it was all that was available. Commissioner Farrell asks what type of oversight LAFCO has on CSA 120, to which Ms. McDonald says that LAFCO is charged with reviewing whether or not they are performing the service that they are authorized to perform and that they have adhered to the management plan through the advisory board, which reports to the County Board of Supervisors.

Tim Millington, Special Districts Representative, Interim Division Manager, says with regard to the condition to provide a mechanism for the maintenance and operation of the improvements constructed through the 2008-09 State Park grant without the use of established endowment funds, that the North Etiwanda Enhancement Project was born out of a need to address illegal activities taking place in the preserve and to control environmental damage. He says that to the lay person it would appear as a recreational project on the surface, but that the strategies gained support of all the environmental groups. He says that a full initial study was prepared and that the study indicated that the project was a better alternative than the destructive behaviors and uses within the property. He says that the project educates and control use of the area in an environmentally responsible way.

Mr. Millington says that interest from the endowment is used to manage and control use and to support responsible stewardship. He says that it would not be in the best interest of the area to further deplete resources and that placing a financial constraint on CSA 120 would put a strain on what little funding resources are currently available. He says that CSA 120's management plan has support from various agencies. He says that there are many examples of mitigated land being used for public purpose. He says that California Fish and Game Code Section 2779.5 states that land set aside for conservation must allow responsible public access. He says that the enhancement project fulfills that requirement.

Mr. Millington says that with regard to the condition of developing funding plans to restore endowment balance for those mitigation properties where mitigation work has not been performed but interest earnings used, the endowment management plan has been constructed in a way that it allows for the acceptance of funding from multiple agencies. He says that Government Code Section 65968 which is referred to in the LAFCO staff report, was not enacted until January 1, 2012, so those properties accepted prior to that date would be potentially exempt.

Mr. Millington says that he does not feel that directing LAFCO staff and CSA 120 to continue to work together should be a condition. He also says that with regard to some items noted in the staff report, that he would like to clarify on page 10 for the 2012 report that it states that the interest earnings were \$17,516 and then on page 12 it shows the earnings at considerable less. He wants to make sure that there are no discrepancies within the staff report.

Chairman Curatalo asks LAFCO Counsel Holly Whatley with regard to the comments made by special districts, if there are any items that the Commission should consider.

Ms. Whatley says that CSA 120 has developed a way to use the funds and that there is room for a difference of opinion and interpretation of the law on the issue.

Executive Officer Kathleen Rollings-McDonald states that LAFCO staff stands behind the staff report.

(It is noted that Commissioner Cox leaves the dais.)

Steve Loe, member of the public, makes comments of understanding the issues from both views.

(It is noted that Commissioner Warren leaves the dais.)

Jane Hunt, member of the public, asks for clarification of the modification of the proposal and asks who will monitor the on-going mitigation lands if an expansion is proposed.

Executive Officer Kathleen Rollings-McDonald states that the North Etiwanda Advisory Board monitors the lands and that the modification of the proposal excludes Fontana's Multi-Species Habitat Conservation Plan. She says that no expansion is proposed.

(it is noted that Commissioner Cox returns to the dais.)

Ms. Hunt asks for clarification regarding the direction for County Special Districts to submit the necessary funds to pay the required California Fish and Wildlife Filing fee prior to the Executive Officer filing the Notice of Determination. Ms. McDonald says that staff is requesting approval for the directive from the Commission that the County Special Districts, like any other applicant, make or confirm payment of the \$2,231.95 California Fish and Wildlife Filing Fee before the Executive Officer files the Notice of Determination with the Clerk of the Board of San Bernardino County, as is adopted in the LAFCO fee schedule and Policies and Procedures.

Lynn Boshart, Save Lytle Creek Wash, thanks staff for the information received and for the clarification of the item. She says that she is glad that the financial concerns are being addressed.

**Chairman Curatalo calls for further public testimony, there being none closes the public hearing.**

Commissioner McCallon moves approval of staff recommendation, second by Commissioner Williams. There being no opposition, the motion passes unanimously with the following vote: Ayes: Cox, Curatalo, McCallon, Sethi, Williams. Noes: None. Abstain: None. Absent: Bagley (Mr. Sethi voting in his stead).

LAFCO Legal Counsel Clark Alsop returns to the dais.

**DISCUSSION ITEMS:**

**ITEM 12. TO BE CONTINUED TO OCTOBER 22, 2014 HEARING:  
CONSIDERATION OF ANNUAL REVIEW OF POLICY AND PROCEDURE MANUAL**

Chairman Curatalo opens the public hearing.

Executive Officer Kathleen Rollings-McDonald presents the staff report for the annual review of the LAFCO Policy and Procedure Manual, a complete copy of which is on file in the LAFCO office and is made a part of the record by its reference here.

Ms. McDonald says that staff has been advised that the updates of the Policy and Procedure Manual requires advertisement and issuance of a Notice of Exemption from CEQA, therefore the item must be continued to the October 22, 2014 hearing so that the required advertised legal notice can be provided.

Commissioner McCallon moves approval of continuing the consideration of the annual Policy and Procedure Manual review to the October 22, 2014 hearing, second by Commissioner Cox. There being no opposition, the motion passes unanimously with the following vote: Ayes: Cox, Curatalo, McCallon, Sethi, Williams. Noes: None. Abstain: None. Absent: Bagley (Mr. Sethi voting in his stead).

**INFORMATION ITEMS:**

**ITEM 13. LEGISLATIVE UPDATE REPORT**

Executive Officer Kathleen Rollings-McDonald presents the report of pending legislation. She reviews SB 614 (Wolk) and says that CALAFCO has sent a letter of support for SB 614. She reviews SB 628 (Beall and Wolk), AB 1739 (Dickenson)/ SB 1168 (Pavley) both related to Groundwater Basin Management Sustainability. Ms. McDonald reviews SB 69 (Roth)/AB 1521 (Fox) related to Vehicle License Fee Adjustments. She also reviews AB

2443 (Rendon) related to Mutual Water Companies.

She asks that the report be received and filed.

**ITEM 14. EXECUTIVE OFFICER'S REPORT:**

- a. PRESENTATION OF OBJECTIONS SUBMITTED TO PROTEST PROCESS FOR LAFCO 3172 – REORGANIZATION TO INCLUDE ANNEXATION TO BIG BEAR CITY CSD (ET AL);**
- b. STATUS UPDATE FOR CALAFCO ANNUAL CONFERENCE**

Executive Officer Kathleen Rollings-McDonald presents an oral report. She presents information regarding a member of the public's objections to the LAFCO protest process for LAFCO 3172. She also presents a letter of complaint from a resident of Morongo Valley regarding the operations of the Morongo Valley CSD. Ms. McDonald notes that staff will return at a later date with a response to the complaint. She gives an update of the CALAFCO Annual Conference which is being hosted by the Commission and says that the registration is currently at 153.

**ITEM 15. COMMISSIONER COMMENTS**

Commissioner McCallon comments that Ms. Standerfer's presentation was incorrect with regard to not having large transportation projects in the County.

Commissioner Williams says that flowers should be sent to Mr. Bagley on behalf of the Commission, wishing him a quick recovery.

**ITEM 16. COMMENTS FROM THE PUBLIC**

No comments.

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION THE HEARING IS ADJOURNED TO THE CALAFCO ANNUAL CONFERENCE IN ONTARIO -- OCTOBER 15 THROUGH 17, 2014 AT 11:09 A.M.**

**ATTEST:**

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**REBECCA LOWERY**  
Clerk to the Commission

**LOCAL AGENCY FORMATION COMMISSION**

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**JAMES CURATALO, Chairman**