

**STAFF REPORT**  
**DATED SEPTEMBER 10, 2014**  
**FOR LAFCO 3157**

**Attachment 2**

# LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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**DATE:** SEPTEMBER 10, 2014

**FROM:** KATHLEEN ROLLINGS-McDONALD, Executive Officer  
SAMUEL MARTINEZ, Assistant Executive Officer



**TO:** LOCAL AGENCY FORMATION COMMISSION

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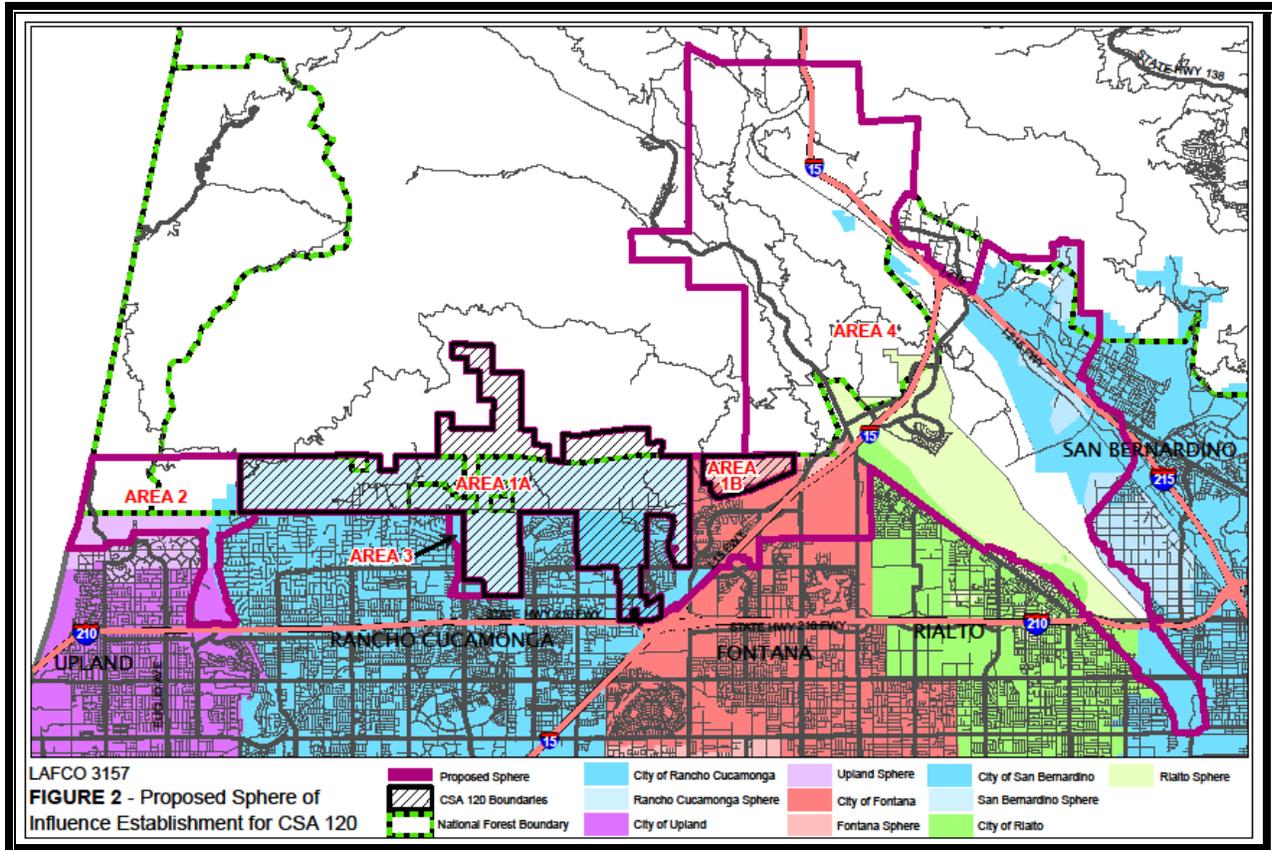
**SUBJECT:** AGENDA ITEM #11 – LAFCO 3157 – SPHERE OF INFLUENCE  
ESTABLISHMENT FOR COUNTY SERVICE AREA 120 (HABITAT  
PRESERVATION AND HISTORICAL RESOURCES – NORTH  
ETIWANDA)

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## INTRODUCTION

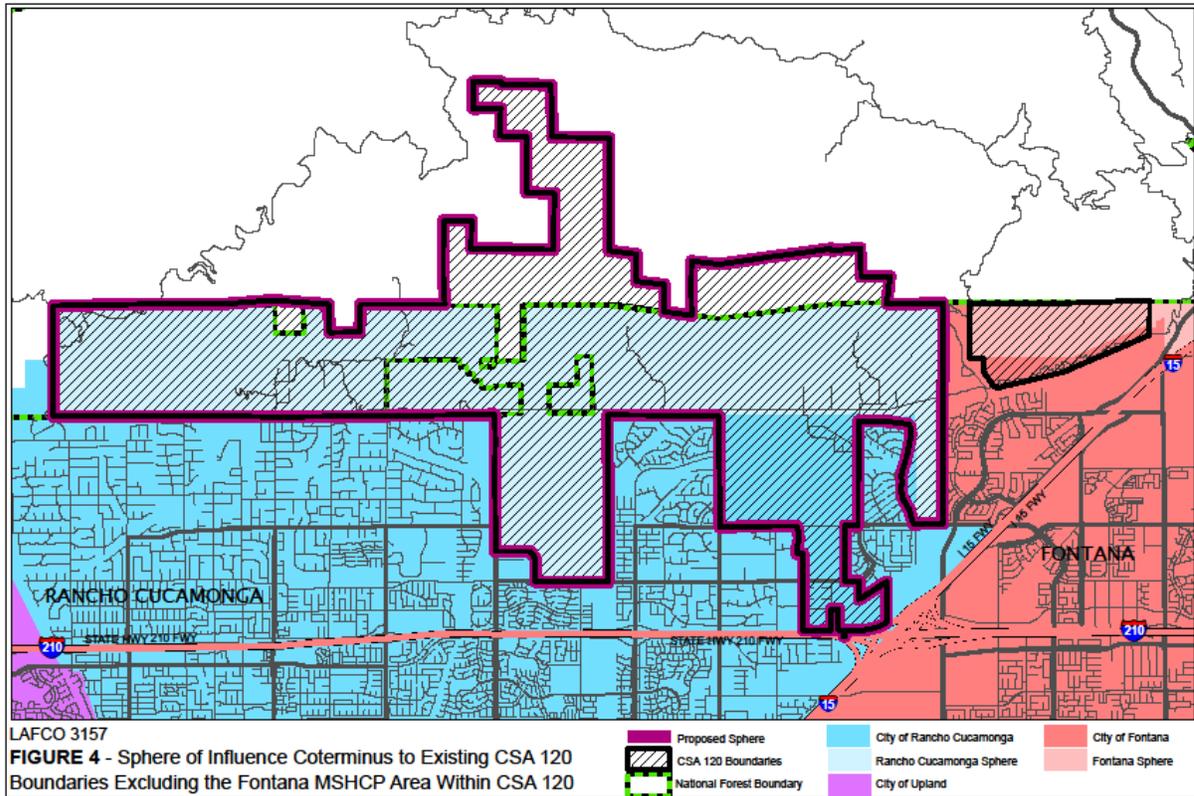
In April of 2010, as required by law, the Commission initiated the sphere of influence establishment for County Service Area 120 (hereafter shown as CSA 120). CSA 120 was formed on July 1, 2009 to succeed to the operations of CSA 70 Zones OS-1 and OS-3, districts created to acquire mitigation properties associated with development in the west valley portion of the County. The original letter provided to the County Special Districts Department identified that the Commission was proposing to initiate a coterminous sphere of influence for the district as it had only been in operation for a year and expansion was not anticipated (copy included as Attachment #1). The County responded that it wished to submit a proposal for an expanded sphere of influence and would forward that request along with the appropriate filing fees to the Commission for further processing. LAFCO staff agreed to work with the County to move forward with an expansion request.

Over the next roughly two years the County deliberated about the application; what territory would be proposed, the funding for payment of the mandatory LAFCO filing fees, etc. 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 map which follows identifies the territory proposed for the initial sphere of influence encompassing the area of the original CSA 120 and three additional areas for a total of 71 square miles (45,440 acres). The map below shows the area proposed.



LAFCO staff undertook the necessary procedures to evaluate and analyze the application received; this included, but was not limited to, the initiation of a service review as required by Govt. Code Section 56430, environmental processing, and collaboration with other agencies. In January 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 the agency, and in February the Commission was presented with the environmental documents prepared for the project, a mitigated negative declaration, outlining the potential alternatives to be evaluated and mitigation measures necessary, which were adopted. In the discussion at the February hearing the LAFCO staff concerns were referenced: financial sustainability, fulfillment of governmental requirements for authorization to accept mitigation lands, and questions on mitigation reporting.

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 evaluated by the Commission's environmental consultant. The amendment is defined as being coterminous with the existing boundaries of CSA 120 excluding the territory included within the City of Fontana's Multi-Species Habitat Conservation Plan. This amendment request was based upon ongoing discussions between LAFCO staff, County Administrative and Special District Department staffs. The amendment request for the sphere establishment territory is shown below:



Item 10 on the September 17 agenda is a presentation on the County’s Vision Program Environmental Element and SanBAG study identified as the “Habitat Conservation Framework for San Bernardino County”. The purpose of the collaborative study is to explore a more comprehensive approach to conservation management, the primary emphasis of the state mandated service reviews required of LAFCO. In the report, staff is recommending that the service review required by Govt. Code Section 56430 for the sphere of influence establishment for CSA 120 be deferred until the final report on the Framework is completed. This will allow for a comprehensive and collaborative approach to the evaluation of alternatives for this service as well as further discussion of habitat preservation so that the Commission can be apprised of the recommended framework for the delivery of this service as it reviews the public systems in place to manage the lands. However, LAFCO staff is moving forward with the sphere of influence establishment, which will complete the Commission’s obligations under state law as outlined in Government Code Section 56426.5, in order that any change of organization proposed for the affected area can be processed. State law requires that all agencies within an area have a sphere of influence assignment before processing can be completed.

The following discussion will evaluate the proposals against the mandatory criteria the Commission is required to review as set forth in Government Code Section 56425.

## **BACKGROUND:**

A sphere of influence is defined by Government Code Section 56076 as “a plan for the probable physical boundaries and service area of a local agency as determined by the Commission”. This Commission in its policies related to assignment of a sphere of influence has indicated the purpose is to “to encourage economical use and extension of facilities by assisting governmental agencies in planning the logical and economical extension of governmental facilities and services, thereby avoiding duplication of services” and “to promote coordination of cooperative planning efforts”. To that end, the assignment of a sphere of influence for CSA 120 will provide the framework to continue efforts to manage the mitigation lands required in this valley as developments further impact the unique flora and fauna of this region.

For the past two years LAFCO, County Administrative, Second District and Special Districts Department staffs have worked on the processing and analysis of the County’s application to establish the sphere of influence for CSA 120 to include its formation boundary and an expansion area extending from the County line eastward along the foothills of the San Gabriel Mountains into the Lytle and Cajon Creeks area, encompassing approximately 71 square miles. LAFCO staff outlined its concerns on the expansion during this process to include, but not be limited to, questions of funding, operational questions on the ability to acquire additional mitigation lands, and whether or not the duplication of service providers in the area was the most efficient and effective mechanism for service delivery.

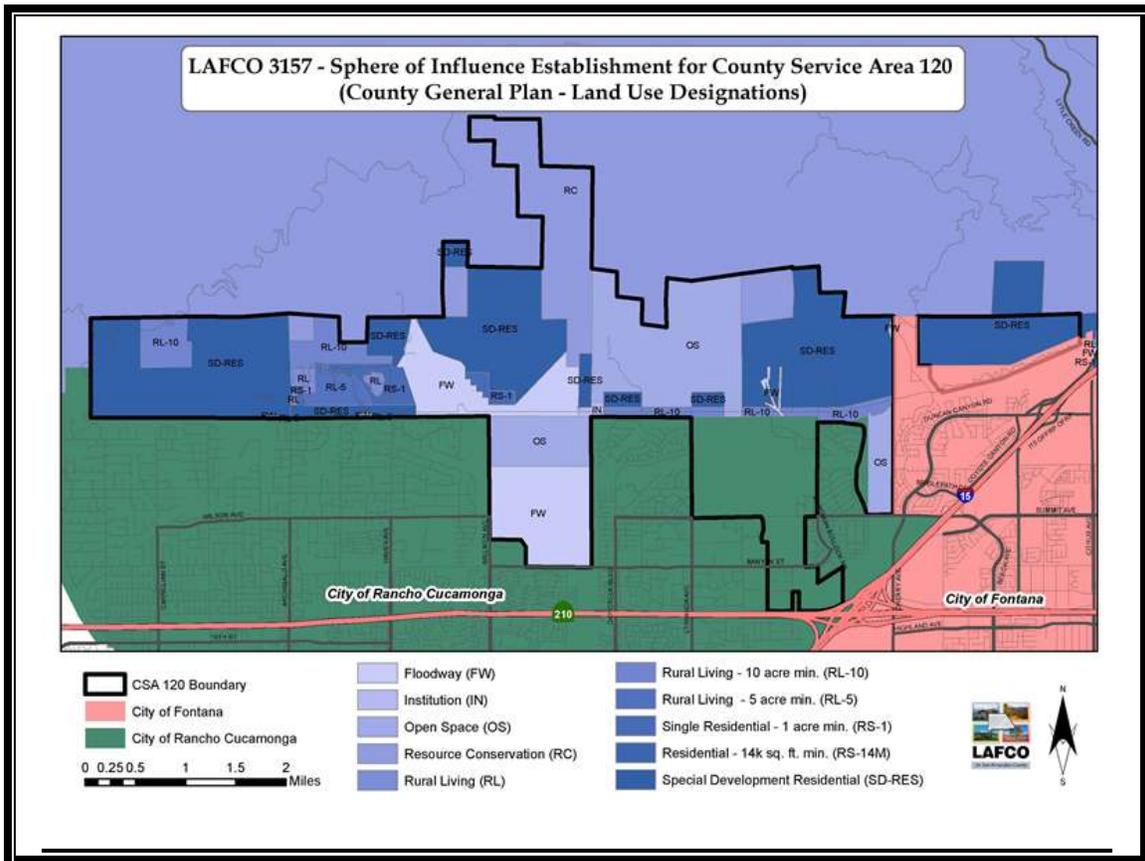
In response to the concerns expressed by LAFCO staff and the Commission’s environmental consultant, the County has requested that its proposal be amended to include only the existing territory of CSA 120 not a part of the City of Fontana’s Multi-Species Habitat Conservation Plan, encompassing approximately 8,972 acres. At this hearing the Commission will evaluate and make determinations on the factors outlined in Government Code Section 56425 for LAFCO 3157. 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 government structure for the distribution of efficient and effective public services”.

## **FACTORS OF DETERMINATION:**

Government Code Section 56425(e) requires that the Commission make a written statement of its determinations on the factors outlined in the statute. For an entity such as CSA 120 these determinations are far more subjective than when confronted with determinations for an agency which provides for infrastructure or direct health and safety services for the residents or travelers within an area. For CSA 120, LAFCO staff has reviewed this criteria against the need for an ongoing mitigation management entity which allows for the development process within the Valley region to continue. The following narrative provides the staff’s analysis of these factors for CSA 120:

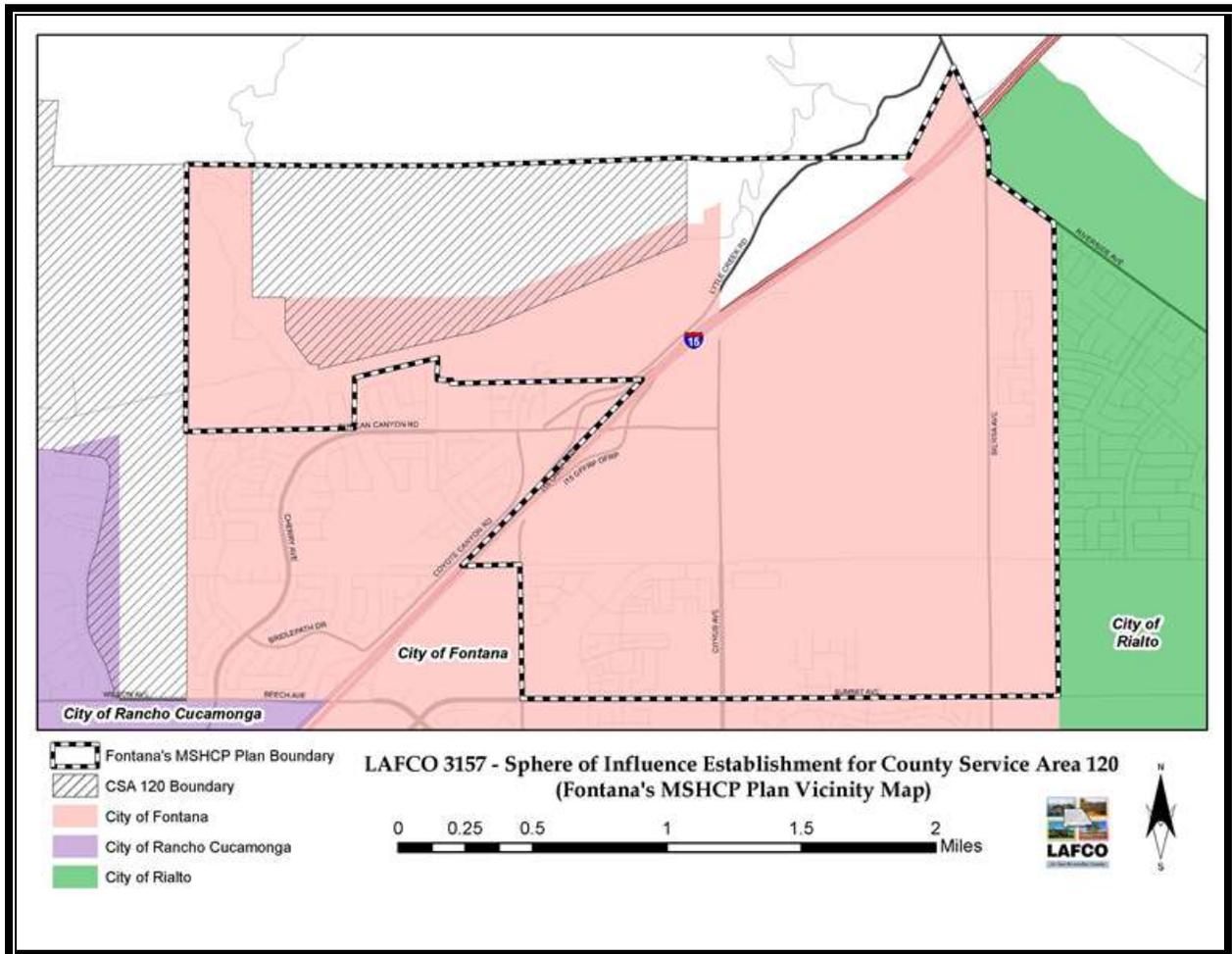
**The present and planned land uses in the area, including agricultural and open space lands;**

The present and planned land uses within the boundaries of CSA 120 include identification of open space uses and some rural level of residential development under the County General Plan. These uses are shown on the map below. Open space and Floodway designations within the area include those lands associated with flood control uses within Day Creek and the mitigation properties associated with the North Etiwanda Preserve as defined in 1998. However, the properties within the City of Fontana sphere of influence and within the boundaries of CSA 120, including mitigation lands deeded to CSA 120, along with most of the additional lands acquired for mitigation purposes in the Rancho Cucamonga sphere of influence have a SD-Res (Special Development - Residential) land use assignment by the County General Plan, contrary to the perpetual nature of the mitigation/conservation easement.



The City of Fontana General Plan assigns an open space designation to the territory within CSA 120 recognizing the future potential for habitat preservation. In addition, the City of Fontana has adopted a Multi-Species Habitat Conservation Plan (hereafter shown as MSHCP) and have indicated that the Interim MSHCP establishes a fee in-lieu of dedication to address mitigation needs (copy of the letter, dated July 25, 2012, and

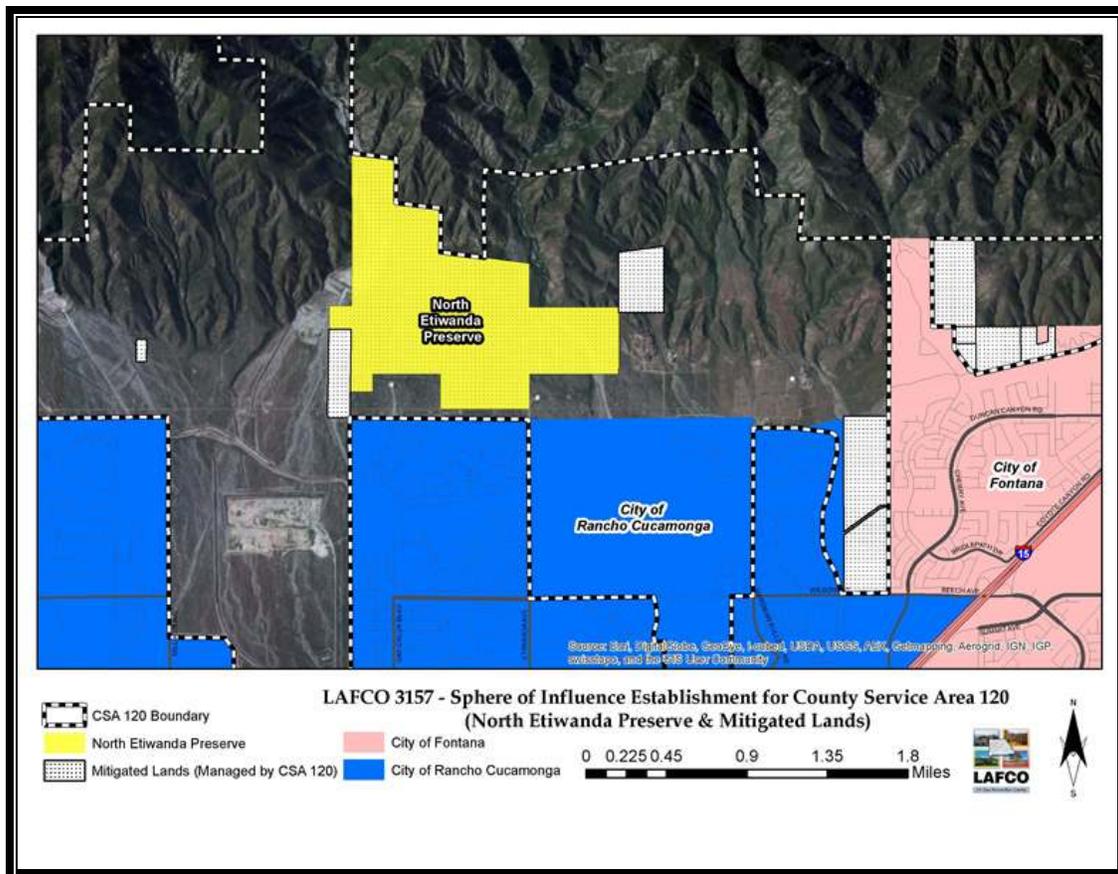
attachments from the City of Fontana are a part of the environmental documentation included in Attachment #7 to this report). During the environmental assessment of the proposal, LAFCO's environmental consultant, Tom Dodson of Tom Dodson and Associates, reviewed an alternative that excluded the territory within the City's MSHCP. The map below shows the relationship of the MSHCP territory to the existing boundaries of CSA 120.



**The present and probable need for public facilities and services in the area;**

Since 1998, mitigation lands have been managed by the County through its system of board-governed special districts. From 1998 through 2009, it was through CSA 70 Zones OS-1 and OS-3 and CSA 70 itself. From July 1, 2009 through the present day, it has been through CSA 120 in the area along the San Gabriel Mountains. These activities are managed under the auspices of the North Etiwanda Preserve Management Plan adopted in 2010 building upon its predecessor Cooperative Management Agreement of 1998. The 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). A map of these areas is included in Attachment #4 to this report. The management of these lands is through deeded transfers of land ownership to CSA 70 OS-1 and CSA 70 (no quit claim transfer to the successor agency CSA 120 has taken place) and conservation easement transferred to the County of San Bernardino. (A copy of the adopted plan and the Board Agenda Item transferring Conservation Easement is included as Attachment #5 to this report). A map of the lands under habitat management are shown below:



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”. A copy of this application is included as Attachment #6 to this report. 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. The only approved entities to manage mitigation lands within San Bernardino County are: Inland Empire Resource Conservation District, Center for Natural Lands Management, Southwest Resource Management Associates and Transition Habitat Conservancy.

Without this authorization, the need for a sphere of influence, even a coterminous one, is questionable as no new service can be provided. Therefore, to address this issue, LAFCO staff is proposing that the Commission adopt the following condition as a part of the review process:

- **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. Failure to do so will require a further analysis of the sphere of influence assignment.**

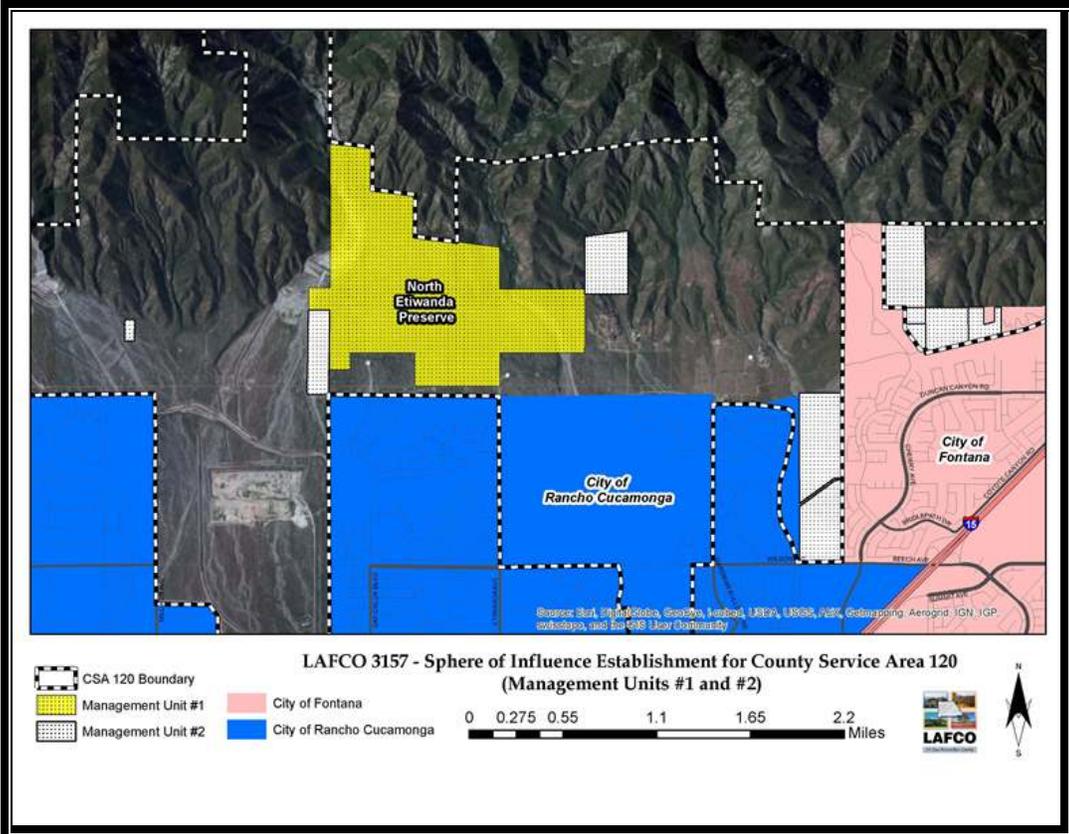
**The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide;**

The discussion of the determination identified above for a single purpose County Service Area authorized to provide habitat management and historic preservation must revolve around the question of funding for the provision of mitigation management services envisioned in the mitigation management agreement or other contractual arrangement. In evaluating this determination, LAFCO staff has looked at the funding mechanism for CSA 120 and the annual expenditure/revenue picture for the agency. While LAFCO staff is identifying significant concerns, it should be noted that the management of the district has attempted to continue its operations under the significant duress of the recession. As the materials which follow identify, the interest earnings for this agency have plummeted making its ability to perform its mandated role difficult if not insurmountable. It is within this context that LAFCO staff is identifying its concerns.

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. In addition, CSA 120 has an adopted fee schedule that proposes a two-tier approach to funding, the endowment for long term management and a payment for management activities necessary to bring the property into compliance for perpetual management. The County fee schedule for CSA 120 is to identify the formula for determining the endowment amount; however, this element of the fee schedule is currently being reviewed by the California Department of Fish and Wildlife so it is not available for review at this time.

Since the inception of CSA 120 (through its predecessor agencies CSA 70 OS-1 and OS-3) it has acquired the primary properties identified as the "North Etiwanda Preserve" the 762 acres set aside for habitat mitigation by SanBAG and Caltrans for the development of the I-210 Freeway (acquired in 1998) and five other properties transferred for management between 2003 and 2010 related to housing development habitat mitigation requirements imposed by the State and other agencies as a part of the development process. As was outlined in the narrative above, these properties are deeded to CSA 70

OS-1 and CSA 70 with the conservation easement required held in the name of the County of San Bernardino. Included as a condition of the approval in the formation of CSA 120 in 2009 was the requirement that the agency update the Management Plan for the North Etiwanda Preserve to address the management requirements for the additional 440 acres. In October 2010 the County Board of Supervisors, as the governing body of CSA 120, approved the revised Management Plan. This plan identified that the original 762 acre North Etiwanda Preserve would be identified as “Unit 1” and all other properties would be “Unit 2”. Page 4 of the plan states “Regardless of future designations, all lands within the original 762 acre Preserve boundary is subject to any terms of this management plan specified for Unit 1, and all lands outside the original 762 acre Preserve are subject to any terms specified for Unit 2.” The map below identifies the location of the mitigation lands held by CSA 120.



The chart which follows outlines the individual mitigation properties, the endowment for their perpetual management, and the interest earned by each property for the period of Fiscal Year 2007-08 through Fiscal Year 2012-13. This information is taken from the audits received as a part of the application process which are on file in the LAFCO office. Of concern to LAFCO staff is that on several occasions during the processing of this proposal, information was requested on the work performed on those properties identified as Unit 2 and the response has always been that no mitigation work has been performed.

Government Code Section 65968(c) specifies the disbursement of the interest earnings be limited to the property which funded the endowment; the section reads as follows:

*“(c) The special district or nonprofit organization shall hold, manage, invest and disburse the funds in furtherance of the long-term stewardship of the property for which the funds were set aside.”*

Therefore, the interest earned on each of the properties can only be used for activities related to the specific property. However, the interest earnings related to CSA 120 have been consolidated and used for the purpose of maintaining the original 762 acres of the North Etiwanda Preserve. The following chart has been developed by LAFCO staff to determine the interest earnings attributable to each of the endowments received by CSA 120 using the percentage that the endowment bears to the whole. The chart identifies the interest which would need to be returned to the five endowments that comprise Unit 2 to make them whole, which is approximately \$112,884.

Name of Owner	Date Acquired	Total Acreage	Endowment Funds Received	Interest Earned by Endowment Funds for Specific Properties						Total Interest by Conservation Property	% of Total Interest from 2008-13
				2008	2009	2010	2011	2012	2013		
<b>UNIT #1 - CSA 120 MANAGEMENT PLAN</b>											
SANBAG	2/27/1998	762	\$700,000	\$33,073	\$23,262	\$16,037	\$6,015	\$2,793	\$7,637	\$88,817	43.93%
<b>UNIT #2 - CSA 120 MANAGEMENT PLAN</b>											
Lennar Communities	10/21/2003	33	\$85,600	\$3,759	\$2,643	\$1,822	\$731	\$339	\$928	\$10,222	5.06%
A&J Resources and Rancho Etiwanda 685 LLC	3/1/2004	172	\$220,000	\$10,523	\$7,402	\$5,103	\$1,890	\$877	\$2,400	\$28,195	13.94%
Granite Homes/Rancho 2004 LLC	9/13/2005	86	\$215,400	\$10,523	\$7,402	\$5,103	\$1,849	\$858	\$2,347	\$28,082	13.89%
CENTEX Homes	10/2/2005	149	\$373,250	\$17,288	\$12,160	\$8,383	\$3,201	\$1,486	\$4,064	\$46,582	23.04%
Western Slope & Mineral Company	12/14/2010	5	\$12,500	\$0.00	\$0.00	\$0.00	\$110	\$51	\$140	\$301	0.15%
<b>Total Interest Earned</b>				<b>\$75,166</b>	<b>\$52,869</b>	<b>\$36,448</b>	<b>\$13,796</b>	<b>\$6,404</b>	<b>\$17,516</b>	<b>\$202,199</b>	<b>100.00%</b>
<b>Total Non-Wasting Endowment</b>			<b>\$1,606,750</b>								
<b>Amount to be returned to Endowment for Unit #2 due to lack of work performed on specific properties</b>				<b>\$ 42,093</b>	<b>\$29,606</b>	<b>\$20,411</b>	<b>\$7,282</b>	<b>\$3,612</b>	<b>\$ 9,880</b>	<b>\$112,884</b>	

Unfortunately, as the following chart outlines, there is no funding available to repay this amount due to the limitations of the revenue stream directly available to CSA 120. So the question is: How will this situation be rectified? How will the SanBAG dedicated properties repay the other endowments or will reports for management and operation of the other properties be provided that show some of the funds used for the appropriate

purpose? LAFCO staff is recommending that conditions be imposed on this sphere of influence establishment to clarify this situation, to read as follows:

- **Within six months of the approval of this sphere establishment County Service Area 120 shall have completed all reporting required by State law for the management of mitigation properties.**
- **Within six months of the approval of this sphere of influence establishment County Service Area 120 will have developed funding plans to restore endowment balances for those mitigation properties where mitigation work has not been performed but interest earnings used.**

As the Commission is well aware after several years of service reviews, the question that the staff has sought to answer is whether or not the agencies under the Commission's purview are financially sustainable. If an entity is consistently expending more than it receives, its long term viability is suspect. The chart which follows identifies the expenditures and revenues for the three accounts associated with CSA 120 – general, endowment, and capital projects. The data is taken from audits for the years 2006 through 2013 and budget data for years 2014 and 2015. The one major project within this time period was the development of the North Etiwanda Preserve trail system – design/environmental work in 2007 and 2008 and construction in 2009. This project entailed the construction of a trail system, kiosks, benches, and historic preservation. The maintenance of this system has become one of the primary operations of CSA 120 but comes without any source of funding for maintenance and operation. The following table includes the costs for the development of this facility:

County Service Area 120										
	Audit Data								Budget Data	
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
<b>GENERAL</b>										
<b>EXPENDITURES</b>										
Salaries & Benefits	\$ 4,824	\$ 5,788	\$ 4,826	\$ 12,752	\$ 13,277	\$ 7,733	\$ 7,037	\$ 1,734	\$ 18,310	\$ 47,429
Services & Supplies	\$ 63,172	\$ 58,106	\$ 70,810	\$ 35,052	\$ 22,520	\$ 14,095	\$ 10,547	\$ 13,066	\$ -	\$ 23,376
Contingencies									\$ 3,515	\$ 13,699
Transfer Out	\$ 3,942	\$ 814,996		\$ 1,361,553					\$ 3,515	\$ 13,699
<b>Total Expenditures</b>	<b>\$ 71,938</b>	<b>\$ 878,890</b>	<b>\$ 75,636</b>	<b>\$ 1,409,357</b>	<b>\$ 35,797</b>	<b>\$ 21,828</b>	<b>\$ 17,584</b>	<b>\$ 14,800</b>	<b>\$ 21,825</b>	<b>\$ 84,504</b>
<b>REVENUES</b>										
State Assistance				\$ 659,309			\$ 1,082		\$ 10,032	\$ 25,000
Federal Assistance							\$ 4,330			
Investment Earnings	\$ 17,954	\$ 42,323	\$ 3,111	\$ 4,828			\$ 81	\$ 399	\$ 126	\$ 138
Intergovernmental				\$ 700,000						
Other	\$ 839,342		\$ 59,597	\$ 23,060		\$ 16,325		\$ 3,339		
Operating Transfer In					\$ 26,059	\$ 19,664	\$ 9,965	\$ 5,635	\$ 6,032	\$ 8,000
County Transfer In								\$ 30,000		
<b>Total Revenues</b>	<b>\$ 857,296</b>	<b>\$ 42,323</b>	<b>\$ 62,708</b>	<b>\$ 1,387,197</b>	<b>\$ 26,059</b>	<b>\$ 35,989</b>	<b>\$ 15,458</b>	<b>\$ 39,373</b>	<b>\$ 16,190</b>	<b>\$ 33,138</b>
<b>Excess Revenues Over (Under) Expenditures</b>	<b>\$ 785,358</b>	<b>\$ (836,567)</b>	<b>\$ (12,928)</b>	<b>\$ (22,160)</b>	<b>\$ (9,738)</b>	<b>\$ 14,161</b>	<b>\$ (2,126)</b>	<b>\$ 24,573</b>	<b>\$ (5,635)</b>	<b>\$ (51,366)</b>
<b>Fund Balance</b>										
Beginning	\$ 98,210	\$ 883,568	\$ 47,001	\$ 34,073	\$ 11,913	\$ 2,175	\$ 16,336	\$ 14,210	\$ 38,783	\$ 32,866
Ending	\$ 883,568	\$ 47,001	\$ 34,073	\$ 11,913	\$ 2,175	\$ 16,336	\$ 14,210	\$ 38,783	\$ 33,148	
<b>ENDOWMENT FUND</b>										
<b>EXPENDITURES</b>										
Operating Transfer Out					\$ 26,059	\$ 17,914	\$ 7,234	\$ 5,635	\$ 6,032	\$ 8,000
Other			\$ 159,598	\$ 20,715						
<b>Total Expenditures</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 159,598</b>	<b>\$ 20,715</b>	<b>\$ 26,059</b>	<b>\$ 17,914</b>	<b>\$ 7,234</b>	<b>\$ 5,635</b>	<b>\$ 6,032</b>	<b>\$ 8,000</b>
<b>REVENUES</b>										
State Assistance				\$ 40,691						
Investment Earnings	\$ 25,262	\$ 37,230	\$ 75,166	\$ 52,868	\$ 36,448	\$ 13,797	\$ 6,405	\$ 17,517	\$ 5,184	\$ 10,000
Special Assessment							\$ 12,500			
Other										
Operating Transfer In		\$ 737,550								
<b>Total Revenues</b>	<b>\$ 25,262</b>	<b>\$ 774,780</b>	<b>\$ 75,166</b>	<b>\$ 93,559</b>	<b>\$ 36,448</b>	<b>\$ 13,797</b>	<b>\$ 18,905</b>	<b>\$ 17,517</b>	<b>\$ 5,184</b>	<b>\$ 10,000</b>
<b>Excess Revenues Over (Under) Expenditures</b>	<b>\$ 25,262</b>	<b>\$ 774,780</b>	<b>\$ (84,432)</b>	<b>\$ 72,844</b>	<b>\$ 10,389</b>	<b>\$ (4,117)</b>	<b>\$ 11,671</b>	<b>\$ 11,882</b>	<b>\$ (848)</b>	<b>\$ 2,000</b>
<b>Fund Balance</b>										
Beginning	\$ 805,797	\$ 831,059	\$ 1,605,839	\$ 1,521,407	\$ 1,594,251	\$ 1,604,640	\$ 1,600,523	\$ 1,612,194	\$ 1,612,194	\$ 1,612,065
Ending	\$ 831,059	\$ 1,605,839	\$ 1,521,407	\$ 1,594,251	\$ 1,604,640	\$ 1,600,523	\$ 1,612,194	\$ 1,624,076	\$ 1,610,065	
<b>CAPITAL PROJECTS</b>										
<b>EXPENDITURES</b>										
Construction in Progress				\$ 1,391,548	\$ 199,693					
Services & Supplies					\$ 389	\$ 204				
Improvement to Land		\$ 39,579	\$ 183,868			\$ 297	\$ 18,900			
Transfer Out						\$ 1,750	\$ 2,731			
<b>Total Expenditures</b>		<b>\$ 39,579</b>	<b>\$ 183,868</b>	<b>\$ 1,391,548</b>	<b>\$ 200,082</b>	<b>\$ 2,251</b>	<b>\$ 21,631</b>			
<b>REVENUES</b>										
Investment Earnings		\$ 294	\$ 4,251	\$ 12,836			\$ 36			
State Assistance					\$ 200,000					
Transfer in		\$ 60,000		\$ 1,361,553						
Other			\$ 200,000							
<b>Total Revenues</b>		<b>\$ 60,294</b>	<b>\$ 204,251</b>	<b>\$ 1,374,389</b>	<b>\$ 200,000</b>	<b>\$ -</b>	<b>\$ 36</b>			
<b>Excess Revenues Over (Under) Expenditures</b>		<b>\$ 20,715</b>	<b>\$ 20,383</b>	<b>\$ (17,159)</b>	<b>\$ (82)</b>	<b>\$ (2,251)</b>	<b>\$ (21,595)</b>			
<b>Fund Balance</b>										
Beginning		\$ -	\$ 20,715	\$ 41,098	\$ 23,939	\$ 23,857	\$ 21,606			
Ending		\$ 20,715	\$ 41,098	\$ 23,939	\$ 23,857	\$ 21,606	\$ 11			

The use of endowment funds for the purpose of maintenance and operation of these facilities is of concern to LAFCO staff. The responsibility for the operation should come from some other general sources of funding, such as a share of the general property tax levy, not the restricted revenues associated with the endowment properties. Therefore, LAFCO staff is recommending the inclusion of the following condition in the approval of the sphere of influence establishment:

- **Within six months of the approval of the sphere of influence establishment for CSA 120, management of the County Special Districts Department shall develop a mechanism to provide for the maintenance and operation of the improvements constructed through the 2008-09 State Park grant without use of the endowment funds established for mitigation purposes only.**

An additional ongoing concern for LAFCO staff is that the County Auditor-Controller has not updated the chart of accounts to acknowledge the existence of CSA 120. Case in point, up until 2013 the audits were issued for CSA 70 OS-1 and the "Budget Prep" documents provided by the County Special Districts Department with information necessary for the review of the 2014 and 2015 budget detail are titled "CSA 70 OS-1". While this may appear on the surface as a trivial matter, this directly impacts the County's reporting to the State Controller on the operations of special districts since CSA 70 and its various zones are reported as a single unit. One of the questions asked in the application to the California Department of Fish and Wildlife is whether or not the special district is current in its reporting requirements to the State Controller. To answer this question is now problematic for CSA 120 and the County.

As to the question of sustainability under the audit information outlined above, out of the eight years shown, six have operated at a deficit between revenues and expenditures within the fiscal year. In addition, the budget detail also shows that the district operates in the red without the infusion of funds from other sources. While LAFCO staff has outlined a condition of approval related to the repayment of the endowment funds, as the chart above outlines, there are no current revenues available to provide for this. The question then to be answered at the end of the six month period is whether or not CSA 120 is sustainable for the long term? And if not what then? It is the opinion of LAFCO staff that the service review to be presented in the future needs to answer these questions.

The final point in this discussion is that the County amendment for exclusion of the City of Fontana MSHCP from the sphere of influence establishment is an indication of the Commission's direction that the area should ultimately be removed from the boundaries of CSA 120. Such a future detachment would take with it the \$330,000 in endowment funds on deposit with CSA 120, representing approximately 20% of the endowment. The ramification of this change will need to be carefully addressed.

**The existence of any social or economic communities of interest in the area;**

In a typical sphere of influence review the question of social or economic communities of interest relates to the future development of the area and its associated identification with a specific community. However, for an entity that provides for the management of mitigation lands its economic community of interest would be the area from which mitigation properties could be assembled. That community would be the territory running along the foothills of the San Gabriel Mountains which support the endangered species identified by the local, state and federal wildlife agencies. This sphere of influence determination addresses a portion of this area.

**AUTHORIZED POWERS:**

When adopting a sphere of influence for a special district, the Commission is required to establish the nature, location, and extent of any functions or classes of services provided by the district (Government Code §56425(i)). LAFCO staff recommends that the Commission affirm the service description for County Service Area 120 as identified in the *Rules and Regulations of the Local Agency Formation Commission of San Bernardino County Affecting Functions and Services of Special Districts*, as follows:

**CSA 120**

Open space and habitat conservation

Open space and habitat conservation including, but not limited to, the acquisition, preservation, maintenance, and operation of land to protect unique, sensitive, threatened, or endangered species, or historical or culturally significant properties. Any setback or buffer requirements to protect open-space or habitat lands shall be owned by a public agency and maintained by the county service area so as not to infringe on the customary husbandry practices of any neighboring commercially productive agricultural, timber or livestock operations.

**ENVIRONMENTAL CONSIDERATIONS**

For environmental review, the Commission's Environmental Consultant, Tom Dodson and Associates, prepared and LAFCO staff reviewed, advertised, and circulated the Initial Study and Mitigated Negative Declaration for this proposal pursuant to the requirements of the California Environmental Quality Act and Commission Environmental Policies. The Initial Study evaluated the project as proposed by the County, which indicate that approval of the

reorganization, including any of the four alternatives that were identified in the initial study, will not have a significant adverse impact on the environment.

On February 19, 2014, the Commission adopted the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program prepared for the project including the finding that the Commission may adopt one of the alternatives identified in the Initial Study. LAFCO staff is recommending approval of an alternative for LAFCO 3157, which was one of the alternatives identified and evaluated in the Initial study. In this case, the Commission can consider and approve this recommendation based on the Mitigated Negative Declaration that the Commission previously approved for the project because this alternative was fully considered in that environmental assessment.

Therefore, the Commission should direct the Executive Officer to file the Notice of Determination within five days of the Commission's decision on the project. Such filing must be accompanied by the payment of California Department of Fish and Wildlife Fee in the amount of \$2,231.95. 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.

A copy of the Initial Study, Mitigated Negative Declaration and Response to Comments and Mitigation Monitoring and Reporting Program are included as Attachment #7 to this staff report.

## **CONCLUSION**

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. Included in this report, is the recommendation that a condition of approval be adopted related to repayment of endowment interest earnings from the Unit 2 properties used in support of the Unit 1 property, the original North Etiwanda Preserve. This recommendation comes with the acknowledgement that there are no revenues available to accommodate the repayment. These determinations could cause State and Federal agencies to question the ability of the CSA 120 to continue to manage the biological resource mitigation lands it currently holds; let alone expand its holdings. As has been identified in this report, the sphere of influence establishment allows for the consideration of other changes of organization which may affect the area and continues the dialogue on the future of CSA 120. LAFCO and County staffs need to take one step at a time to address the future and it is the opinion of LAFCO staff that its recommendation will be that first step.

Staff believes that the materials provided in this report and other presentations shows that approval of the proposal as amended by the County in its letter of February 2014 along with the inclusion of the conditions as identified in this report will provide for CSA 120 to continue with its current activities. The inclusion of language requiring the ongoing

participation of LAFCO staff to monitor the conditions imposed and report back to the Commission will assure that answers are provided. Therefore, staff recommends approval of the County's modified proposal for sphere of influence establishment for CSA 120 (LAFCO 3157) which is a coterminous sphere of influence with the existing boundary except for the exclusion of the territory included within the City of Fontana's Multi-Species Habitat Conservation Plan, as outlined below:

## **RECOMMENDATION**

LAFCO staff recommends that the Commission take the following actions:

1. For environmental review, direct the Executive Officer to file the Notice of Determination for the environmental assessment and Mitigated Negative Declaration that the Commission previously adopted for LAFCO 3157 within five days of the Commission's approval of the project, provided the County Special Districts Department submits the funds necessary to pay the required California Fish and Wildlife Filing Fee of \$2,231.95.
2. Approve the establishment of the sphere of influence for County Service Area 120 as coterminous with its existing boundary except for the exclusion of the territory within the City of Fontana's Multi-Species Habitat Conservation Plan with the following conditions:
  - a. Within six months of the approval of the sphere of influence establishment County Service Area 120 shall complete the due diligence process with the California Department of Fish and Wildlife to be declared an available recipient of mitigation properties in the future. Failure to do so will require further analysis of the sphere of influence assignment;
  - b. Within six months of the approval of the sphere of influence establishment for CSA 120, management of the County Special Districts Department shall develop a mechanism to provide for the maintenance and operation of the improvements constructed through the 2008-09 State Park grant without use of the endowment funds established for mitigation purposes only;
  - c. Within six months of the approval of this sphere establishment County Service Area 120 shall complete all reporting required by State law for the management of mitigation properties;
  - d. Within six months of the approval of this sphere of influence establishment County Service Area 120 will have developed funding plans to restore endowment balances for those mitigation properties where mitigation work has not been performed but interest earnings used; and
  - e. Direct LAFCO staff to provide ongoing monitoring of the completion of these activities with periodic updates provided to the Commission;

3. Continue the adoption of LAFCO Resolution reflecting the Commission's findings and determinations to the October 22, 2014 hearing to be presented as a consent item.

KRM:SM

Attachments:

1. LAFCO Letter Dated April 27, 2010 to County Special Districts Initiating Sphere Establishment and Staff Report Date April 1, 2010 for Initiation of Sphere of Influence
2. Map of LAFCO 3157 Sphere of Influence Establishment Request as Amended February 2014
3. Letter Dated February 13, 2014 Amending County Application for Sphere of Influence Establishment; Copy of Original Resolution No. 2012-29 Initiating LAFCO 3157
4. Maps of: CSA 120, Location of Mitigation Lands, and North Etiwanda Management Plan Units 1 and 2;
5. Board of Supervisors October 19, 2010 Agenda Item 65 Approving County Service Area 120 Management Plan and Board of Supervisors December 16, 2008 Agenda Item 89 Conveying Conservation Easements to the County of San Bernardino
6. California Department of Fish and Wildlife Application for Government Entity, Special District, or Nonprofit Organization Requesting to Hold Mitigation Lands and California Department of Fish and Wildlife Mitigation Endowment Facts
7. Letter from Tom Dodson of Tom Dodson and Associates Regarding Environmental Determination; LAFCO Staff Report Dated February 11, 2014 on the Adoption of the Mitigated Negative Declaration for LAFCO 3157`