

**Response from County Special Districts  
Department Dated March 6, 2015**

**Attachment 2**



# Interoffice Memo

DATE: March 6, 2015

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FROM: TIMOTHY L. MILLINGTON  
Interim Division Manager  
Special Districts Department

TO: KATHLEEN ROLLINGS-MCDONALD  
Executive Director  
Local Agency Formation Commission

RECEIVED  
MAR 06 2015

LAFCO  
San Bernardino County

**SUBJECT**

LAFCO CONDITIONS OF APPROVAL FOR CSA 120 SPHERE OF INFLUENCE ESTABLISHMENT

SPECIAL DISTRICTS ACTION SUMMARY

February 19, 2015

- 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 Special Districts Department (Department) is still in the process of preparing the application to the California Department of Fish and Wildlife (CDFW) and gathering items needed for inclusion in CSA 120's submission to the State as part of the due diligence process. Submission of the completed application is projected to occur in April of 2015. The Department is not aware of the length of the State's review process and decision timeline. The requirement of an application to hold and manage mitigation land with the CDFW is only required if CSA 120 chooses to expand its mitigation property portfolio

- Within six months of the approval of the sphere of influence establishment County Service Area 120 shall have completed all reporting required by State law for the management of mitigation properties.

LAFCO has indicated that reporting is required by Government Code section 65968 amended and effective as of September 28, 2012<sup>1</sup>. All properties were brought into CSA 120 prior to the effective date established under the law. After speaking with County Counsel, it is our opinion that the current laws cannot be applied retroactively and, therefore, are inapplicable to properties acquired prior to the passage of the

<sup>1</sup> Government Code section 65965 et seq was added in 2011 through Senate Bill (SB) 436 and subsequently amended by SB 1024 and effective September 28, 2012.

current law. Therefore, there is no reporting required by State law for the management of mitigation properties now held by CSA 120. Since the current laws were passed, CDFW representatives attending quarterly CSA 120 Board Meetings haven't voiced their concerns relative to this statutory law. Additionally, no agency has ever indicated that CSA 120 is in violation of Government Code section 65968. It appears that LAFCO has interpreted the law to be retroactive. However, the law as enacted does not contain a provision for retroactive application of its requirements. CSA 120 will provide required reports pertaining to any new property, it may acquire if approved under the CDFW due diligence process enacted under the new law.

**Within six months of the approval of the 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.**

When the Legislature enacted SB 1094 (Gov. Code §65965 et seq), it intended for eligible entities "to hold, manage, invest and disburse endowments in furtherance of the long-term stewardship of the property set aside for mitigation purposes." CSA 120 properties have all been accepted in the same vicinity of like-habitat under the North Etiwanda Preserve Management Plan (NEPMP). The NEP's Endowment and Management Plan has always been constructed so that additional properties could be accepted and added under a similar management plan. CSA 120 currently manages properties that were accepted prior to enactment of the current laws. All CSA 120 properties are interrelated within the same geographic area and represent a similar habitat type with similar degree of management under the NEPMP approved and signed by the CDFW and United States Fish and Wildlife Service (USFWS) in 2010.

The Wildlife Agencies collectively agreed under the NEPMP that the combining of funds and properties is the best way to manage properties of similar habitat type in the same geographic area. SB 1094 was seemingly created to restrict organizations from using monies designated for one mitigation property in an entirely different area with no geographic or management connectivity. CSA 120 properties are both connected managerially by the NEPMP and geographically connected as neighboring properties of the same ecological community. The addition of properties and funding under the NEPMP was intended to improve the financial position of the Endowment through an economies of scale. Economies of scale is a term that refers to the reduction of per-unit costs through an increase in production volume. Economies of scale leverage both the operational and financial aspects of CSA 120 by working in concert. The NEPMP stipulates that additional properties would be added over time and that the area would benefit from combined management of additional resources, as it provides a more comprehensive management approach for the region. None of the regulatory agencies have expressed concerns relating to the violation of Government Code section 65968, or asked that CSA 120 divide properties and funds in this fashion. To comply with SB 1094, CSA 120 will segregate all future properties that it accepts as an approved mitigation property holder according to Government Code section 65968. CSA 120 will however continue to manage current properties under the NEPMP as intended, with all new properties being segregated as desired by the Wildlife Agencies.<sup>2</sup> There is still value to combined management and CSA 120 will seek

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<sup>2</sup> In the execution of its duties, CSA 120, when it makes sense, will recommend (?) joint (?) management of all the properties and would seek CDFW permission to do so(??)

CDFW approval on consolidation of these efforts when it makes sense. To segregate funds of previously accepted properties would have detrimental impacts to CSA 120's land holdings.

- **Within six months of the approval of the sphere of influence establishment County Service Area 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.**

The improvements constructed through the 2008-2009 State Park grant were constructed in accordance with the Cooperative Use Agreement (CMA) and CSA 120 NEPMP. The CMA is a Ownership and Management Agreement developed at inception of the NEP in 1998 that was signed by San Bernardino Associated Governments, CADFG now CADFW, USFWS, California Department of Transportation, County of San Bernardino, and County Special Districts as County Service Area 70 OS-1. Both Wildlife Agencies (USFWS and CDFW) were involved in the process of preparation of the Cooperative Use Agreement, NEPMP, Initial Study and the Mitigated Negative Declaration filed for the NEP Enhancement project. The Enhancement project was designed to eliminate harmful activities occurring within the North Etiwanda Preserve (Preserve) as a measure of protection through responsible use. Regulated public access is a component of the NEPMP used to aid and protect the environmental assets of the area. It has been commonly understood and noted in the CMA and NEPMP that endowment funds would be used to support the overall health and needs of the Preserve which also includes responses to public activity and impacts. The trails support education and define use of the area which keep people on designated routes and out of habitat areas of greater sensitivity. The project allowed the installation of gates to address OHV incursion, designated trail paths to define permissible areas of pedestrian travel, and installed signs for both regulation and education purposes. The enhancement has allowed recover of previously disturbed habitat, eliminated environmental degradation from trail blazing and OHV, and increased environmental awareness through education. The lack of such designed use would prove to be more detrimental to the area if additional funding hadn't been secured for these efforts of management.

The Wildlife Agencies have never notified CSA 120 that it has misused the properties or funds it is managing, nor have they indicated that the use of funds to provide signs for interpretation and education, removal of graffiti, or holding Preserve clean-ups was not allowed. Rather, the Wildlife Agencies has indicated that there has been the lack of funding available and asked that the fee methodology be changed to provide funding for future management. The management activities for which endowment funds have been used coincide with provisions under the NEPMP and CMA.

Structures built through the Enhancement Project within the Preserve were built with State grant funds and didn't require use of Endowment Funds. Nevertheless, the structures were designed to provide public education relative to the environment within the Preserve. The areas were designed as stops for education purposes and have interpretive panels at each to explain the area's significance to visitors and to encourage them to take a more active role in helping preserve the site.

Cc: Jeffrey O. Rigney, Director  
Dawn Messer, Deputy County Counsel  
CSA 120 Board Members