

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
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TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #11 – Status Report on Conditions Imposed on
LAFCO 3157 – Sphere of Influence Establishment for County Service
Area 120

RECOMMENDATION:

Staff recommends that the Commission:

1. Continue to monitor County Service Area 120's compliance with the conditions outlined in Resolution No. 3190;
2. Provide another status report as part of the Service Review for open-space and habitat conservation, with direction to evaluate a sphere reduction to zero if any of the conditions still have not been met; and,
3. Note receipt of the Status Report and file.

BACKGROUND:

At the March 18, 2015 Commission hearing, LAFCO staff was to apprise the Commission on the status and/or the progress of County Service Area (CSA) 120 in meeting the conditions that were imposed on its sphere of influence establishment. A few days before the staff report was to be published, the County Special Districts Department (hereafter "County SDD") provided a response letter that prompted LAFCO staff to request for a continuance of the item to the April 2015 hearing in order to provide staff and its Special Legal Counsel the ability to fully evaluate the positions taken regarding each of the conditions (copy included as Attachment #1).

Unbeknown to LAFCO staff, the Commission's Special Legal Counsel for LAFCO 3157, Holly Whatley from Colantuono, Highsmith & Whatley, PC, could not be available for the April 2015 hearing due to a prior commitment. Therefore, the Commission agreed to once again continue the item to the May 2015 hearing.

Sphere of Influence Establishment Conditions for County Service Area 120:

At the September 17, 2014 LAFCO hearing, the Commission approved LAFCO 3157, the sphere of influence establishment for CSA 120 which was followed by the Commission's adoption of Resolution No 3190 for LAFCO 3157. Included within that resolution (copy included as Attachment #2) were conditions imposed on CSA 120's sphere establishment, which are outlined below:

1. 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;
2. 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;
3. Within six months of the approval of the sphere establishment, County Service Area 120 shall have completed all reporting required by State law for the management of mitigation properties;
4. 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; and,
5. Direct LAFCO staff to provide ongoing monitoring of the completion of these activities with periodic updates provided to the Commission.

The first four are conditions that directly relate to CSA 120 operations, which addresses questions on solvency, operational issues, and management of endowment funds. The fifth condition is the reason this status report is being provided to the Commission as part of its on-going monitoring of CSA 120.

DISCUSSION:

As outlined at the outset of the report, in response to staff's request for an update on the conditions identified above, the County SDD submitted a letter to LAFCO dated March 6, 2015 (copy included as Attachment #2) which was presented to the Commission at its March 18 hearing. On March 24, 2015, LAFCO staff together with its Special Legal Counsel met with County SDD's staff and its legal counsel to go over its response letter. Based on the response letter submitted to LAFCO and the discussions that were made in the March 24, 2015 meeting, staff is providing the Commission with an update on the status of compliance with the conditions imposed on the sphere of influence establishment, as well as a discussion of the County SDD's response:

1. With regard to Condition No. 1, it responded that it is still in the process of preparing its Application for Requesting to Hold and Manage Mitigation Land (due diligence application) to the California Department of Fish and Wildlife (CDFW) and had projected that a completed application would be submitted in April 2015. In the March 24, 2015 meeting, the County SDD staff restated its position that it will comply with this requirement.

However, to date, LAFCO staff is not aware that the County has submitted its application to CDFW. Without CDFW authorization to hold and manage mitigation properties, LAFCO staff would question the rationale for having a sphere of influence if no new additional mitigation lands can be acquired.

2. With regards to Condition No. 2, the letter reiterates the positions taken by County SDD at the September hearing. Its response does not offer a mechanism to maintain and operate the improvements constructed through the 2008-09 State Park grant, as required by the condition. Instead, it outlines its justification for the use of endowment funds to support the needs of the North Etiwanda Preserve (NEP) overall. In the March 24, 2015 meeting, one of the statements that was reiterated was that, because the Wildlife Agencies (both the California Department of Fish and Wildlife and the United States Fish and Wildlife Services) were involved in preparing the Cooperative Use Agreement, the North Etiwanda Preserve Management Plan (NEPMP), including the initial study and Mitigated Negative Declaration prepared for the NEP Enhancement Program, the Wildlife Agencies were fully aware of the funding structure and that both agencies never notified CSA 120 that it questioned the funds available for its use.

LAFCO staff's response to the reiteration of the statements made at the September hearing is that we do not believe that it is the responsibility of the Wildlife Agencies to raise the funding issues related to the management of the NEP especially since the Cooperative Use Agreement and the 2010 NEPMP specifically state that the

management of the NEP, which is the sole operation of CSA 120, was to be limited to the interest amount of the endowment funds.

Unfortunately, this enhancement program was put in place without a funding source for maintenance and operation. As LAFCO staff has stated several times in the past, the use of endowment funds for the maintenance and operation of these facilities is a concern. Therefore, staff reiterates its questions regarding the ability of CSA 120 to maintain and operate this trail system without any additional funding source. Nonetheless, the County SDD's response identifies that it will not comply with this specific condition imposed on CSA 120.

3. With regards to Condition No. 3, County SDD's position is that there are no reporting requirements for the management of its mitigation properties, indicating that it is the staff's interpretation that the current laws cannot be applied retroactively and that the law is inapplicable to the properties it acquired prior to the passage of the current law.

To be clear, the condition imposed does not relate to the current laws, it relates to the lack of documentation on work performed in response to the mitigation conditions imposed through the development process. As outlined in the staff report, the conditions that were imposed on the sphere establishment for CSA 120 are not tied to the Statute. The County SDD presentation at the September hearing included the presentation of this argument to the Commission before it made its determination (see Attachment #3 to this report). Therefore, it is LAFCO staff's opinion that the condition regarding the need to report on the mitigation activities is a valid condition and that the County SDD's response identifies that it does not intend to comply with this condition. Therefore, this direction will need to be addressed as a part of the ongoing service review for habitat conservation within LAFCO 3157A.

4. Finally, with regard to Condition No. 4, the County SDD's response does not provide any means of restoring the endowment balances for those mitigation properties where mitigation work has not been performed but interest earnings used. Instead, the letter states that CSA 120 will continue to manage current properties without segregating the funds, indicating there is economies of scale in doing so. Again, this was the position presented at the September Commission hearing which was not persuasive to the Commission in making its determination.

In addition, for this particular condition, LAFCO staff even changed its position on repayment of funds, changing its original condition to restore the endowment based on the revised NEPMP, which was adopted in 2010 instead of going back to 2003. This compromise was discussed by the Commission prior to adopting the resolution in October 2014 and staff from County SDD provided information at that hearing.

In the March 24, 2015 meeting, it was again reiterated by the County SSD staff that the Wildlife Agencies signed off on the NEPMP, and that both entities have not expressed any concerns regarding combining the endowment funds. Yet, the 2010 NEPMP specifically provides a clear distinction between Unit 1 (original 763 acre Preserve) and Unit 2 (all lands outside the original 763 acre Preserve). Even so, the County SDD's response implies it will not comply with this specific condition imposed on CSA 120.

CONCLUSION:

At the September 17, 2014 LAFCO hearing, the County SDD staff voiced its opinion on the same issues that were raised in its letter dated March 6, 2015. Its position was heard and discussed, and the Commission took the action to approve the sphere establishment but the adoption of the resolution was continued to the October 22, 2014 hearing to include the corrected audit numbers and the revised condition that took the repayment of funds from when the revised NEPMP was implemented - reducing the obligation from \$112,884 to \$14,752. At the October hearing, the Commission took the adoption of the resolution off the consent calendar in order to open the item for discussion; however, no one raised any further issues beyond LAFCO staff's changes. The 30-day reconsideration period took effect after the Commission adopted the resolution, and again, no one requested a reconsideration of the item.

Based on the response provided by the County SDD on behalf of CSA 120, it is LAFCO staff's understanding that Condition 1 will be accomplished at some point in the future, date not identified. However, for Conditions 2, 3, and 4, it is LAFCO staff's interpretation that CSA 120 will not comply with these conditions that were imposed upon the establishment of its sphere of influence.

At the September hearing, staff recommended 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 of the County's Vision Environmental Element Group and SanBAG's "Habitat Conservation Framework for San Bernardino County" was completed. Since the framework study has now been completed, the Commission can move forward with its service review for open-space and habitat conservation in the Valley Region. LAFCO staff will consider the positions of the County SDD as a part of this service review and the alternative of designating a zero sphere of influence for CSA 120 because it has not fulfilled the conditions that were imposed on its sphere establishment. Designation of a zero sphere of influence would signal the Commission's position that the CSA 120 should no longer be considered to provide this service and that others within the area should consider assumption of these services through a jurisdictional change.

In conclusion, staff is recommending that the Commission take the actions outlined on page one of this staff report to continue to monitor the activities of CSA 120 in reference to the conditions imposed through adoption of LAFCO Resolution 3190.

KRM

Attachment:

1. [Response from County Special Districts Department Dated March 6, 2015](#)
2. [LAFCO Resolution No. 3190](#)
3. [Excerpts from Minutes of September and October 2014 Commission hearings](#)