LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO

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DATE: **FEBRUARY 10, 2009**

FROM: **KATHLEEN ROLLINGS-McDONALD, Executive Officer**
SAMUEL MARTINEZ, Senior LAFCO Analyst

TO: **LOCAL AGENCY FORMATION COMMISSION**

SUBJECT: **AGENDA ITEM #6 – LAFCO 3113 -- REORGANIZATION TO INCLUDE FORMATION OF COUNTY SERVICE AREA 120 AND DISSOLUTION OF COUNTY SERVICE AREA 70 IMPROVEMENT ZONES OS-1 AND OS-3**

INITIATED BY:

Resolution of the San Bernardino County Board of Supervisors

INTRODUCTION

The February hearing is anticipated to provide the final Commission review of the proposal to form County Service Area 120 (hereafter CSA 120). The staff's presentation includes an evaluation of the services to be provided as well as the financial implications of the proposed formation. This evaluation will include a review of issues outlined by the County Service Area Law (Government Code Section 25210 et seq.) and by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Section 56000 et seq.), as well as a number of Commission policy issues relevant to the review of the formation of a single purpose county service area. The actions proposed in LAFCO 3113 are:

- Formation of CSA 120, a single purpose agency with the power to provide open space and habitat conservation services. The reorganization site includes two separate areas, identified as Area #1 and #2, encompassing a total of approximately 9,557 acres. CSA 120 is generally located north of the 210 Freeway and west of the I-15 Freeway, along the foothills of the San Gabriel Mountains. The individual areas are described as follows:

  Area #1, as modified at the November hearing to include an additional 300 acres, includes approximately 8,972 acres. This area includes territory within the City of Rancho Cucamonga's unincorporated sphere of influence, territory within the existing boundaries of the City of Rancho Cucamonga, and territory within the extreme north of the area outside the City of Rancho Cucamonga sphere of influence. Included within this area of the reorganization is the habitat conservation

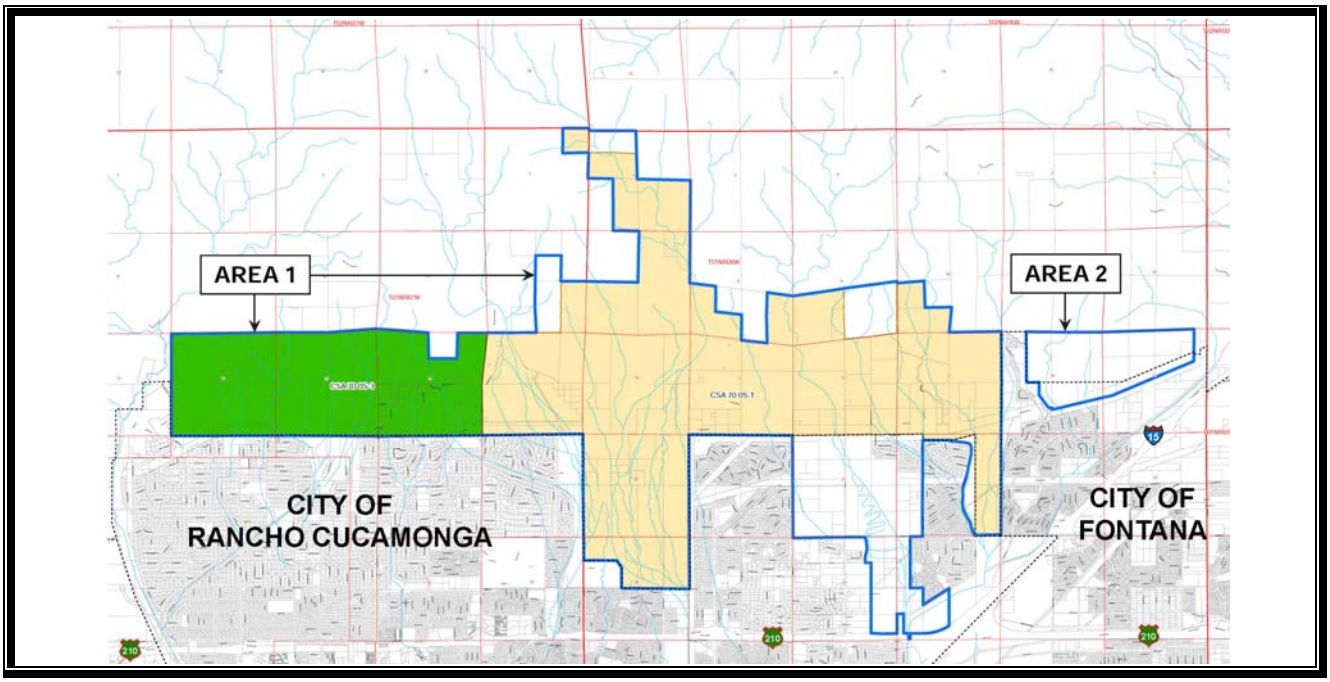
area commonly known as the "North Etiwanda Preserve".

Area #2 includes approximately 585 acres generally located within portions of the City of Fontana's northern sphere of influence including territory within the City's corporate boundaries.

- Dissolution of County Service Area 70 Improvement Zone OS-1 (hereafter CSA 70 OS-1) formed in 1994 to provide for habitat preservation. CSA 70 OS-1 assumed responsibility for the maintenance and preservation of the North Etiwanda Preserve (originally 762 acres). Over the last fourteen (14) years the County has acquired an additional 440 acres of mitigation lands for habitat conservation, bringing the total land holdings to 1,202 acres (1.88 square miles). The boundary for CSA 70 OS-1 encompasses approximately 5,560+/- acres, generally located within the City of Rancho Cucamonga's eastern and central unincorporated sphere of influence, including territory north of the City's sphere.

- Dissolution of County Service Area 70 Improvement Zone OS-3 (hereafter CSA 70 OS-3) formed in the late 1990s to provide for habitat preservation. CSA 70 OS-3 has not been operational, has no budget and has title to no mitigation lands. The boundary for CSA 70 OS-3 encompasses approximately 1,880+/- acres, generally located within the City of Rancho Cucamonga's northwestern unincorporated sphere of influence.

The map below shows the modified boundaries for LAFCO 3113, which also illustrates the boundaries of the two improvement zones of CSA 70 proposed for dissolution:



BACKGROUND:

On May 6, 2008 the San Bernardino County Board of Supervisors adopted Resolution 2008-071 initiating the proposal to form CSA 120 for the purpose of providing for habitat conservation and open space management services as provided under the auspices of Government Code Section 25210.4(g). As outlined at the November hearing, those provisions authorized San Bernardino County to provide open space and habitat conservation services but excluded its ability to impose a per parcel service charge for the service.

Since the application was initiated, County Service Area Law has been modified through the signing of Senate Bill 1458. Effective January 1, 2009, County Service Area Law now includes the authority to provide open-space and habitat conservation services within any County in the State through Government Code Section 25213(x). This section reads as follows:

> *"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."*

LAFCO 3113 anticipates the formation of CSA 120 as a single purpose special district with its authorized service limited to that of open-space and habitat conservation services. In the evaluation of this proposal, State law requires that the Commission's decision must include, but is not limited to, answers to the following questions:

1. Do the boundaries of the proposed new district make sense from a service delivery perspective for current and future growth? Are the boundaries reasonably recognizable? Do they promote efficient service delivery? Do they represent a community of interest? Do the proposed boundaries infringe on other established spheres of influence that might impede achievement of Commission goals in those areas?

2. Would the formation of the new district impair the ability of any other agency to continue providing services? Would there be any adverse financial or service impacts on other agencies that would damage their ability to maintain service levels in other areas?

3. Is the proposed new district financially feasible? Can it, at least, maintain the pre-formation service levels that are currently provided within the study area?

4. Does the proposed formation represent the best available service option for the community? Are there better alternatives for the provision of the range of services within the study area? Does the proposed formation provide for a more efficient and accountable form of government?

5. Would the proposed formation have any adverse environmental effects that cannot be mitigated to a level of non-significance? If it does, can those adverse effects be overridden by other benefits?

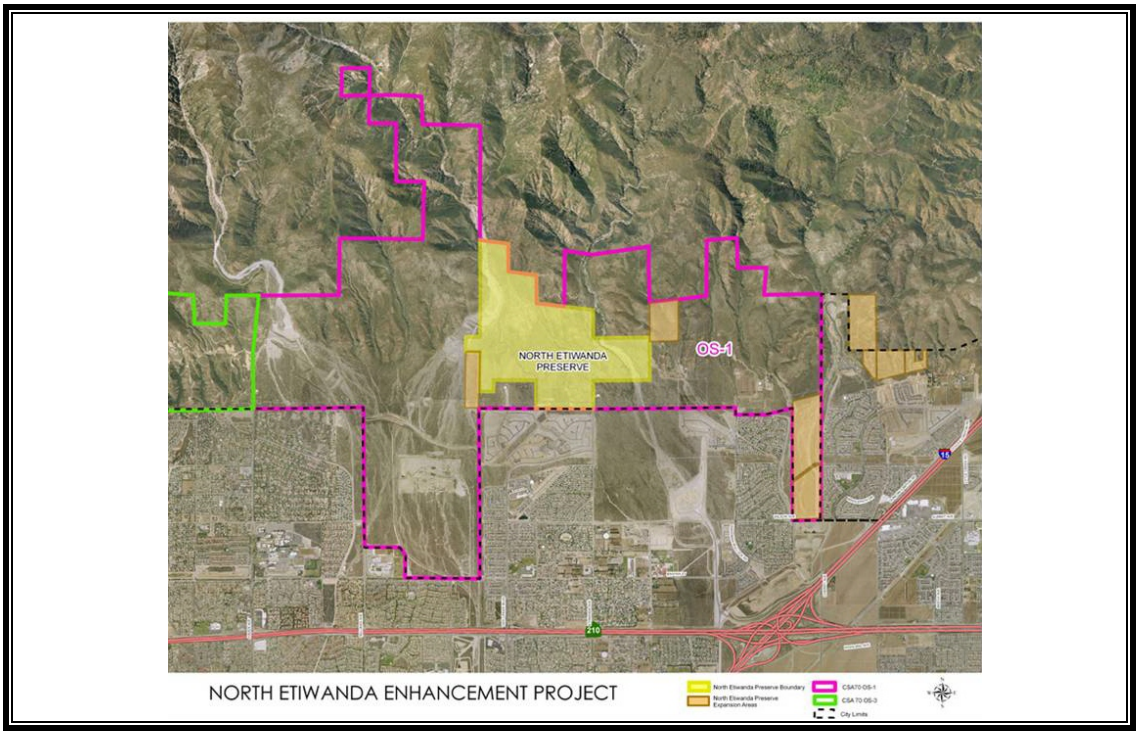
The evaluation of this proposal began at the November 19, 2008 hearing with a review of boundaries and questions related to service delivery and financial considerations. At the November hearing it was determined that the boundaries of LAFCO 3113 should be expanded to include the approximately 300 acres owned by Habitat Trust for Wildlife and the consideration was continued to the February hearing to allow for preparation of a new map and legal description and to receive revised service information.

This hearing will provide the Commission with the information needed to answer the questions identified above and to make the determinations required by State law related to the proposed formation.

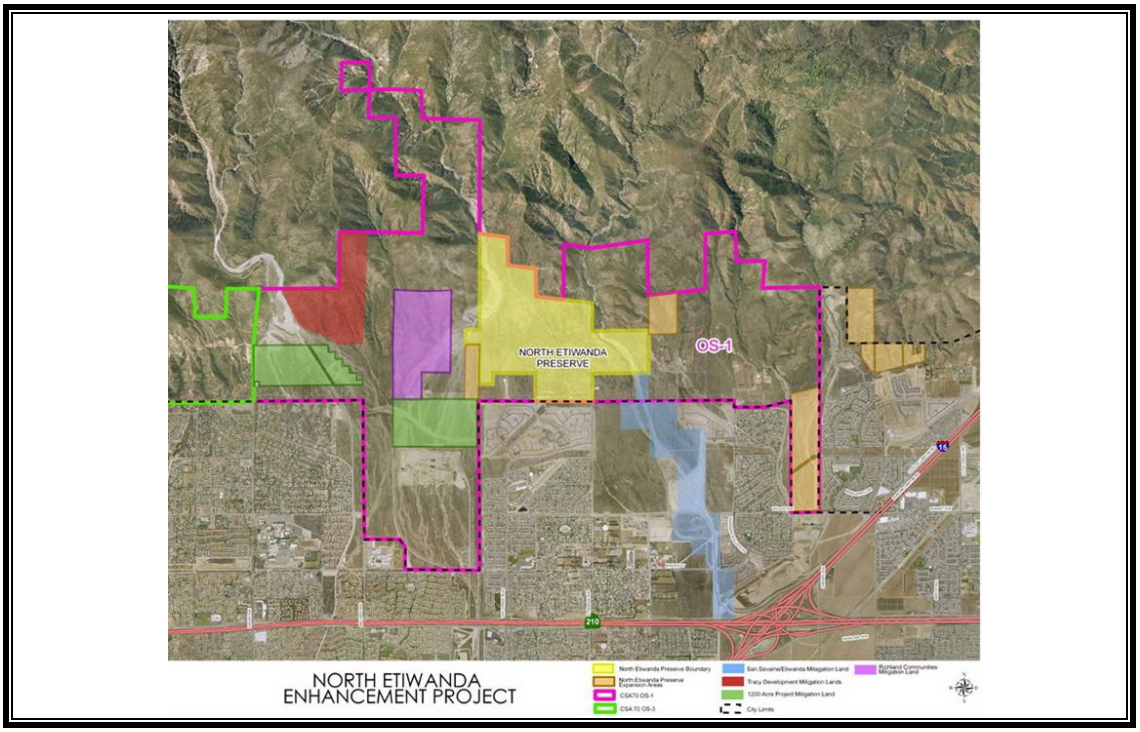
BOUNDARIES:

At the November hearing the Commission determined to expand the boundaries of CSA 120 to include the entirety of CSA 70 OS-1. The prior exclusion area is under the ownership of the Habitat Trust for Wildlife, an independent habitat conservation provider. No other questions or concerns regarding the boundaries of CSA 120, as modified, have been provided in the interim between hearings.

The boundaries as modified include the lands currently owned by the County through either CSA 70 OS-1 or CSA 70 (the parent district) which are shown on the map below.



In addition, the County Special Districts Department has identified additional lands for future acquisition in order to mitigate development proposals processed by the City of Rancho Cucamonga (shown on the map below identified as the Tracy Project and Richland Project) and the County Flood Control District for the San Sevaine/Etiwanda channel. These lands are also included within the boundaries of CSA 120 as modified.



The boundaries as presented for CSA 120 consolidate the current habitat conservation land holdings and those anticipated for future acquisition under a single agency which can be retained within the boundaries of a City as future annexation occurs.

The reorganization includes territory within both the City of Rancho Cucamonga and the City of Fontana. As required by Government Code Section 25211.4(c)(1) (former Government Code Section 25210.10a) each City has adopted a resolution consenting to the overlay of CSA 120. Copies of the resolutions are included as Attachment #2 to this report. In addition, SANBag and the Endangered Habitats League have provided letters in support of the formation of CSA 120 (copies also included as a part of Attachment #2).

During the processing of the application, concern was expressed regarding the effect of this formation on the future use and acquisition of lands by local water agencies; specifically, the Cucamonga Valley Water District, Inland Empire Utilities Agency and the joint powers authority known as the Chino Basin Watermaster. The concerns were conveyed to the County which has indicated that the formation of the District will in no way impede access to or use of lands currently owned by the agencies in providing their services. However, future acquisition by CSA 120 with overlay of conservation easements may have an impact but that potential effect

exists at the present time. In addition, the City of Fontana, as a condition of its consent to the overlay of the district within its boundaries, has indicated the requirement that the City receive notice prior to any future acquisitions of land by CSA 120. County Special District Department representatives have indicated that they will share information on CSA 120's future acquisitions with the water agencies and the City of Fontana. The County staff has further indicated its willingness to work with the water agencies regarding questions of access and recharge use for the future.

Therefore to answer the boundary questions posed at the beginning of this report, it is the staff's position that:

1. The boundaries of the proposed new district make sense from a service delivery perspective for current and future growth for the single purpose of open-space and habitat conservation.

2. The boundaries are recognizable based upon the parcel configuration, but include lands within canyons not easily known without a map and legal description.

3. The boundaries as presented include the lands currently under conservation easement and those identified as potential mitigation lands which promotes the delivery of the service contemplated for this district.

4. The proposed boundaries do not infringe on other established spheres of influence that might impede achievement of Commission goals in those areas since consent to the overlay has been received from both the City of Rancho Cucamonga and the City of Fontana.

SERVICE DETERMINATIONS:

The Plan for Service identifies that the rationale for the formation of CSA 120 is to consolidate the open space habitat conservation management functions performed in the West Valley area under a single agency umbrella. No change in the mechanisms for maintaining the acreage is anticipated. This position is outlined in the County's determination that the policies and procedures currently utilized for management of the North Etiwanda Preserve will be utilized for all holdings as delineated in the letter dated February 2, 2009 (copy included as Attachment #3).

CSA 120 is not the typical district formed to provide services to a community; the formation precludes the need for permanent infrastructure such as roads, water, sewer and other types of utilities with a concentration on habitat conservation and open space management. The formation will consolidate existing land holdings and maintenance needs for the mitigation lands. In addition, the District will require that any future acquisition will be based upon assessment of the lands to meet mitigation needs and the payment of endowment funds to offset future management of the lands.

Three items regarding the service delivery of the agency are in need of specific discussion as outlined in the discussion at the November 19, 2008 hearing. They are:

Advisory Commission:

CSA 70 OS-1 has an advisory commission established through adoption of Resolution No. 95-72 on April 11, 1995 (copy included as Attachment #4). The existing advisory commission is made up of five members who are recommended by the member of the Board of Supervisors representing the majority of the territory within CSA 70 OS-1 (Second Supervisorial District). However, this body's makeup is further defined according to the terms within the "Cooperative Management Agreement Regarding Ownership and Management of the North Etiwanda Preserve" adopted by the County February 10, 1998 (copy included as a part of Attachment #3). Under Section 4.2.1 Formation of that document, the membership of the "District Board", which is the advisory commission, is required to be made up of the following representatives – two from recognized environmental groups or professional biologists, a representative of the County Board of Supervisors, a member of the City of Rancho Cucamonga City Council and a local landowner.

According to the Plan for Service, the County proposes to maintain an advisory commission as required by the Cooperative Management Agreement for the operation of CSA 120. The language of the plan indicates the anticipation of simply transferring the existing advisory commission for CSA 70 OS-1 to that of CSA 120 with the possibility of expanding the membership to include a representative from the Cities of Fontana and Upland. However, the resolution of consent to the overlay submitted by the City of Fontana identifies as a condition the designation of a representative of the City being seated on the advisory commission. The position of the County supports the requirement, but needs to be included in the affirmative at the time that the formation takes place. However, LAFCO staff questioned the expansion to include a representative of the City of Upland since no lands within that City or its sphere of influence are affected. County Special District staff indicated that in the future, areas of the City of Upland sphere may be included within the sphere or boundary of CSA 120 and the voice of that agency should be added to the advisory commission.

Based upon the position of the County to transfer the obligations of the advisory commission for CSA 70 OS-1 which is the "District Board" under its cooperative Management Agreement, and the requirement of the City of Fontana that a representative of the City be placed on the District Board, LAFCO staff proposes that the formation of CSA 120 include the following condition pursuant to the authority provided in Government Code Section 56886 Subsection (k):

> *"Upon the effective date of the reorganization to include formation the advisory commission for CSA 70 OS-1 shall be reconstituted with six members to be determined by the member of the Board of Supervisors in which the majority of the District's territory exists to provide for representation as follows: two from recognized environmental groups or professional biologists, a representative of the County Board of Supervisors, a member of the City of Rancho Cucamonga City Council, a member of the City of Fontana City Council and a local landowner."*

Should territory within the City of Upland or its sphere of influence be added to CSA 120 at a future date, the makeup of the Advisory Commission can be altered by action of the Board of Supervisors to add a City of Upland representative.

Conservation Easements:

As noted in the staff report for the November hearing, the four acquisitions of additional lands between 2003 and 2005 did not include the recordation of conservation easements for habitat conservation. In response to these concerns, on December 16, 2008, the County Board of Supervisors approved the conveyance of conservation easements on these properties (a sample included as Attachment #5). As a condition of approval all lands owned by CSA 70 OS-1 and those owned by CSA 70 in the Fontana area, with the recorded conservation easements, will be transferred to CSA 120 upon the effective date of its formation.

Policies and Procedures for Operation of Agency:

The November 19, 2008 hearing staff report identified the staff's concern that it was unclear that the policies and procedures for managing the "North Etiwanda Preserve", the original 762 acre acquisition, would be applied to the balance of the acquisition of mitigation lands. Specifically these policies and procedures are defined by the "Cooperative Management Agreement Regarding the Ownership and Management of the North Etiwanda Preserve" dated February 1998, adopted by the Board of Supervisors and its Management Plan adopted in November 1998 by the District Advisory Board (copies included as a part of Attachment #3). In practice, the advisory commission established for the North Etiwanda Preserve also administers and provides management direction for the additional 440 +/- acres. LAFCO staff requested that the County provide additional information that indicates that the governing body of OS-1 and CSA 70 formally adopt policies and procedures for the management of these additional lands and that CSA 120 will utilize these management policies and procedures for the future CSA 120.

On February 3, 2009, staff received a response from the County (copy included as a part of Attachment #3) which indicates that the North Etiwanda Preserve Management Plan adopted by the Advisory Commission on November 17, 1998 provides for the ability to expand the Preserve to encompass additional lands (Section 16.1 on page 18). County staff indicates that for all practical purposes upon acquisition of additional mitigation lands they are administered under the policies and procedures of this document even though no official action to expand the preserve has been taken by either the Advisory Commission or the Board of Supervisors. The Commission cannot reach into the future operations of the district related to the policies and procedures for management of the preserve. However, staff recommends that a finding be included in the resolution of approval that indicates that an official action of the District Advisory Commission and/or the Board of Supervisors should be taken to clearly expand the Preserve for the mitigation lands in their entirety at this time and upon acquisition of additional mitigation lands in the future.

Based upon the information submitted by the County and reviewed in this report, it is the staff's position that the Commission can make the following determinations related to the services of the proposed CSA 120:

1. As to the question of whether the formation represents the best available service option for the delivery of open-space and habitat conservation, the staff response is in the affirmative on the basis that it provides for a single entity to provide the service of open space and habitat conservation management and allows for the continuation of the agency during a municipal change of organization.

2. The reorganization provides for an advisory commission representing the affected entities to advise the County Board of Supervisors, governing body of the CSA, to provide input on the delivery of its service, the acquisition of additional properties, and the terms and conditions for those services.

3. The alternative to the reorganization including formation is the continuation of the status quo with the creation of multiple improvement zones to CSA 70. In addition, the status quo would require the exclusion of territory within cities since the expansion of the multi-function CSA 70 into City territory goes against the direction of LAFCO statutes to eliminate duplicate service providers, to provide for the most efficient and effective service delivery. It is the staff's opinion that the creation of this single purpose County Service Area will assist the region in the preservation of habitat for endangered species, both flora and fauna.

FINANCIAL CONSIDERATIONS:

The County has submitted a Plan for Service outlining its proposed operation of CSA 120 following formation which includes a three-year budget projection for the operation of CSA 120 (copy included as Attachment #6). The Plan for Service has been augmented through the submission of supplemental information (audits and financial reports) and revised data to address questions of LAFCO staff. The Commission is required to review these materials and make specific determinations as to the sustainability of the proposed CSA 120. The LAFCO staff response to these determinations is as follows:

1. The formation of CSA 120 is financially feasible;

2. The District has the ability to maintain the existing service levels provided by the dissolving entities and has the ability to sustain those levels of service for the future; and,

3. The District will have a reasonable reserve for the first three years of its existence.

The following provides the information related to these determinations:

Property Tax Transfer:

The first determination required of the Commission when reviewing a proposed formation relates to the property tax transfer for the agency pursuant to the provisions of Government Code Section 56810. As required by this Code Section, LAFCO staff contacted the County Auditor/Controller-Recorder and requested information regarding the property tax revenues attributable to the affected agencies – CSA 70 OS-1 and OS-3. The Auditor's response indicated that neither agency received a share of the ad valorem property tax; therefore, no transfer will be required. A copy of the response, as modified for the change in boundaries, is included as Attachment #7 to this report.

Appropriation Limit:

Government Code Section 56811 requires that the Commission provide for a provisional appropriation limit for the District. However, since CSA 120 will receive no share of property tax revenues there would be no requirement for an appropriation limit under the terms of Article XIIIB of the Constitution. The terms and conditions included in the final resolution will document this situation.

Revenues and Expenditures:

With these determinations made, the Commission can now turn its attention to the discussion of whether or not the formation of County Service Area 120 is financially feasible and whether or not, according to Commission policies, it can maintain pre-formation levels of service. In order to make these determinations, the Commission is required to review the Plan for Service presented by the proponents, with the supplemental documentation provided at the request of LAFCO staff such as audit reports, against the requirements of Cortese-Knox-Hertzberg Local Government Reorganization Act and the policies of the Commission.

Staff has prepared a table which illustrates the revenue and expenditure data evaluated in the application – the Plan for Service revenue and expenditure information -- and prior year budget documents related to the operation of CSA 70 OS-1 for the prior three years, and LAFCO staff's determinations based upon supplemental information and discussions during the processing of this proposal. In the table below, staff has removed the Contingency Account identified in the proposed budget since it is not anticipated for use.

In addition, the first year of operation, FY 2008-09, identifies a substantial transfer out – $1,814,814 – to the Capital Improvement Program for the District. This provides the funding for the completion of the historic and cultural enhancements at the Preserve. On the revenue side, the information for FY 2008-09 identifies the provision of supplemental funding from Prop 40 and Prop 12 grant funds, $900,000, and operating transfer-out revenues of $914,814 comprised of $700,000 received in September through approval of a transfer from the 2008-09 County Board Elective Projects budget and what is identified as $214,814 from the CSA 70 OS-1 Endowment Fund as an advance towards completion of this project. LAFCO staff has expressed its concern to County Special Districts staff that the Endowment Fund must maintain a level of funding, currently set at $1,594,250, as these funds are impressed with a

public trust for the long-term maintenance of mitigation lands. If such a transfer of $214,841 is an advance, it is the LAFCO staff's opinion that CSA 70 OS-1 will need to redeposit the funds into the Endowment Fund prior to the close of the Fiscal Year.

	ACTUALS			PROPOSED		
	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
EXPENDITURES						
Services and Supplies	$68,720	$56,251	$86,295	$66,828	$89,262	$95,050
Transfers Out	-$724	$7,643	$6,766	$15,000	$15,450	$19,460
Operating Transfers Out	$3,942	$77,446	-$17,446	$1,814,814	$110,100	$110,100
	$71,938	$141,340	$75,615	$1,896,642	$214,812	$224,610
REVENUES						
Use of Money and Property	$23,810	$37,024	$2,224	$1,400	$2,212	$2,322
State, Federal, or Gov't Aid	$0	$0	$0	$900,000	$25,000	$25,000
Current Services	$0	$0	$0	$0	$110,100	$110,100
Other Revenue	$839,342	-$738,108	$60,484	$43,198	$82,462	$86,372
Operating Transfers In	$0	$0	$0	$914,814	$0	$0
	$863,152	-$701,084	$62,708	$1,859,412	$219,774	$223,794
FUND BALANCE	$889,220	$46,796	$33,889	($3,341)	$1,621	$805

As outlined in discussion of the operations of other County Service Areas, the administration of CSA 120 is proposed to be handled under the umbrella of County Service Area 70. There will be no employees of CSA 120; there will be no office for CSA 120, etc. The amount identified as a Transfer Out in the proposed budget is intended to pay the costs associated with County Special District Management and the repayment to the Bloomington Recreation and Park District for a shared employee.

As a part of the discussion of the transition of service and funds, LAFCO staff questioned whether the County wished to defer the effective date of this proposal until the start of the new Fiscal Year. This would allow for current year programs and budgets to complete with the new budget, fund units, etc. effective as of July 1, 2009. County Special District staff has indicated their preference for a deferred effective date of July 1, 2009 and a condition of approval will reflect this determination.

Endowment Fund:

The budget materials submitted for evaluation of this proposal do not include a description of the Endowment Fund. Specifically, it is not identified in the budget proposed for CSA 120 other than through a description of the "Other Revenue" account for the transfer of interest into the accounts for CSA 120. LAFCO staff has reviewed this question with County Special Districts staff who have identified that the endowment fund is set at $1,594,250 based upon mitigation lands received from 1998 through 2005. The table which follows identifies the

mitigation lands acquired, the year of acquisition, the acreage and the amount of Endowment Funds received:

Land Acquired	**Year of Acquisition**	**Acreage**	**Endowment Funds Paid**
SanBag Lands – Mitigation of Route 30 Improvements	1998	762	$700,00
Lennar Communities	2003	33	$85,600
A& J Resources, Rancho Etiwanda 685 and Rancho Etiwanda Estates	2004	172	$220,000
Granite Homes/Rancho 2004 LLC	2005	86	$215,400
Centex Homes (Coyote Canyon Project)	2005	149	$373,250
TOTAL		**1,202 ACRES**	**$1,594,250**

This amount is held in a separate account in the County Treasury and audited separately (see Audit Report for 2008 included as a part of Attachment #6). LAFCO staff questioned the closing balance of the Endowment Fund at June 30, 2008 since it was $1,521,407, $72,843 less than the amount identified as the balance of this account set at $1,594,250. The County Special Districts Department has supplied materials that a transfer in will take place during the current Fiscal Year to address this shortfall, acknowledging interest earned and operating transfers out during FY 2008-09. The following table takes information from the Audits for CSA 70 OS-1 outlining the Endowment Fund and provides for a projection of interest earnings and additional deposits into that account through the end of Fiscal Year 2010-11:

	ACTUALS			**PROPOSED**		
	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
FUND BALANCE BEGINNING	$805,797	$831,059	$1,605,839	$1,521,407	$1,594,250	$1,702,450
REVENUES						
Investment Earnings	$25,262	$37,230	$75,166	$76,070	$82,462	$86,372
Other						
EXPENDITURES						
Transfers			$159,598	$43,918	$86,462	$86,372
OTHER FINANCING SOURCES:						
Transfers In		$737,550		$40,691	$110,000	$110,000
FUND BALANCE ENDING	$831,059	$1,605,839	$1,521,407	$1,594,250	$1,702,450	$1,812,450

The Endowment Fund will be transferred to CSA 120 upon the effective date of its formation as a condition of approval. In addition, this account is impressed with a public trust and pursuant to Government Code Section 57642 the County Auditor/Controller-Recorder in conjunction with the Board of Supervisors as the governing body of the District are responsible for the maintenance of the integrity of this account until such time as its public trust is vacated,

abandoned or terminated as provided by law. It is the staff's understanding that "by law" as used in Government Code Section 57642 would be the provisions of the mitigation as identified as a part of the development process.

Fee Schedule:

As identified in the Board Agenda Items for the acquisition of additional properties, revenues are received to allow for ongoing maintenance and preservation of the lands. The information provided in the Plan for Service identifies that the County Special District Department utilizes "Property Analysis Record (PAR)" software as the mechanism for determining the endowment fund contribution necessary. LAFCO staff questioned whether or not this methodology for the determination of the funds required has been adopted as a Fee Schedule for the current operation of Improvement Zones. On December 16, 2008 the Board of Supervisors approved the ordinance providing for the fee schedule (copy included as Attachment #8).

With the information presented under Financial Considerations, it is the staff's position that the Commission can make the following determinations:

1. The formation of CSA 120 is financially feasible, the Plan for Service and budget materials presented by the County as supplemented by additional information at the request of LAFCO staff shows that CSA 120 is sustainable;

2. The District has the ability to maintain the service levels provided by the dissolving entities and has the ability to sustain those levels of service for the future; and,

3. The District will have a reasonable reserve for the first three years of its existence through implementation of the provisions of its newly adopted Fee Schedule for providing for endowment funds in the future and the public trust required for the maintenance of the existing Endowment Fund established upon acquisition of the existing mitigation lands.

ENVIRONMENTAL REVIEW:

The Commission's Environmental Consultant, Tom Dodson and Associates, has determined that the reorganization to include formation is statutorily exempt from environmental review. The basis for this determination is that LAFCO 3113 does not have the potential to cause a significant effect on the environment, and therefore does not constitute a project as defined by CEQA. Mr. Dodson's response is included as Attachment #9.

DETERMINATIONS:

The following determinations are required to be provided by Commission policy and Government Code Section 56668 for all proposals considered:

1. The Registrar of Voters Office has determined that the reorganization study area is legally inhabited, containing 69 registered voters as of October 28, 2008.

2. The reorganization including formation does not conflict with the sphere of influence of any other agency. The reorganization includes territory within the sphere of influence of the Cities of Rancho Cucamonga and Fontana and those cities have consented to the overlay of County Service Area 120.

3. The County Assessor has determined that the value of land and improvements within the study area is $118,601,693 as of December 2, 2008.

4. Notice of the original hearing was advertised as required by State law through publication in The Sun and the Inland Valley Daily Bulletin, newspapers of general circulation in the area. As required by State law, individual notification was provided to affected and interested agencies, County departments, and those individuals and agencies wishing mailed notice.

5. In compliance with Commission policy and Government Code Section 56157, the Notice of Hearing for the original hearing on this proposal was provided by publication of an eighth-page (1/8 page) legal ad in The Sun, a newspaper of general circulation, and the Inland Valley Daily Bulletin, a local newspaper. Comments from landowners and any affected local agency have been reviewed and considered by the Commission in making its determination.

6. The proposed reorganization including formation does not conflict with the established County General Plan or the City of Rancho Cucamonga or City of Fontana General Plan for the area and has no direct impact on such land use designations.

7. The Commission Environmental Consultant, Tom Dodson of Tom Dodson and Associates, has indicated that the review of LAFCO 3113 is statutorily exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the finding that the Commission's approval of the action has no potential to alter the physical environment in any manner different from the existing environmental circumstance; and therefore, the proposal is exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15061 (b) (3). A copy of Mr. Dodson's report is included for the Commission's review as Attachment #9.

8. The local agencies currently serving the area are:

   County of San Bernardino
   City of Rancho Cucamonga
   City of Fontana
   Rancho Cucamonga Fire Protection District (subsidiary)
   Fontana Fire Protection District (subsidiary)
   San Bernardino County Fire Protection District and its Valley Service Zone
   Cucamonga Valley Water District and its Zone 5

West Valley Water District
Inland Empire Utilities Agency (formerly known as the Chino Basin Municipal Water District) and its Improvement Zones 1, C and Mid-Valley
Inland Empire Resource Conservation District
County Service Area 70 (multi-function agency) and its Improvement Zones OS-1 and OS-3

The affected agencies are CSA 70 Zone OS-1 and OS-3 which are to be dissolved. The other agencies are not affected by this reorganization as they are regional in nature or identified for service to a specific area.

9. The County of San Bernardino, as the proponent for LAFCO 3113, has submitted a Plan for Service which addresses the issues required by Government Code Section 56653. This document, including its amendments and supplements, shows that County Service Area 120 has sufficient revenues to provide its service of open space and habitat conservation upon formation. The Plan and its supplemental information have been reviewed and compared with the standards established by the Commission and the factors contained within Government Code Section 56668. The Commission finds that such Plan and its supplemental data conform to those adopted standards and requirements.

   However, the Commission determines that in order to clarify the internal operations of the CSA 120, it is recommended that an official action of the District Advisory Commission and/or the Board of Supervisors should be taken to identify that CSA 120 shall be managed and operated under the provision of the Cooperative Management Agreement adopted February 1998 and the North Etiwanda Preserve Management Plan adopted November 17, 1998. In addition, a determination should be made by the governing body that the North Etiwanda Preserve shall be expanded under the provisions of 16.1 of the Management Plan to include the entirety of the existing land holdings and upon acquisition of additional mitigation lands.

10. The reorganization area can benefit from the availability and extension of services, as evidenced by the Plan for Service.

11. This proposal complies with Commission and State policies that indicates that if a single purpose agency is proposed for formation a determination is made that no other agency could provide the needed service in a more efficient or accountable manner. The Commission has reviewed this question and determined that the unique nature of open space and habitat conservation should be limited to an agency that has no responsibilities related to development activities.

12. With respect to environmental justice, the proposed formation will not result in the unfair treatment of any person based on race, culture or income.

13. The maps and legal description, as revised are in substantial compliance with LAFCO and State standards through certification by the County Surveyor's office.

CONCLUSION:

Over the past four years, LAFCO staff has worked with staff members from the Special Districts Department and the Second District to develop a mechanism to provide for consolidation of mitigation land holdings within an agency which could be retained following a city annexation process. This problem was identified at the time that the City of Rancho Cucamonga had proposed the annexations of the Tracy and Richland projects in the north which resulted in detachments from CSA 70 (the parent multi-function district) and Improvement Zone OS-1. In responding to inquiries regarding the retention of OS-1 in the area, LAFCO staff indicated it could not support retention of CSA 70 with its full range of powers within the boundaries of a city. Therefore, the conversion of CSA 70 OS-1 to its own County Service Area was pursued.

The February hearing will culminate this review process and LAFCO staff supports the formation of this single purpose County Service Area to provide for open space and habitat conservation services.

RECOMMENDATION:

For the reasons outlined above and in the prior deliberations on this matter by the Commission, staff recommends that the Commission approve LAFCO 3113 by taking the following actions:

1. Certify that LAFCO 3113, as modified, is statutorily exempt from environmental review and direct the Clerk to file a Notice of Exemption within five days

2. Approve LAFCO 3113 – Reorganization to include Formation of the County Service Area 120 and Dissolution of County Service Area 70 Improvement Zones OS-1 and OS-3 as expanded by 300 acres to include the entirety of CSA 70 OS-1, as shown on the map attached to this staff report, with the following conditions:

    a. That the effective date of the reorganization shall be July 1, 2009;

    b. The County Service Area 120 shall be the successor agency and shall function under and carry out the authorized duties of a County Service Area as outlined in Government Code Section 25210 et seq.;

    c. That upon the effective date of the reorganization CSA 120 shall succeed to all rights, responsibilities, contracts, assets and liabilities including but not limited to cash reserves, real property which includes equipment, lands and buildings and appurtenances held by the dissolving entities. These shall be transferred to the successor agency pursuant to the provisions of Government Code Section 56886(h);

    d. Upon the effective date of the reorganization to include formation, the advisory commission for CSA 70 OS-1 shall be reconstituted with six members to be

determined by the member of the Board of Supervisors in which the majority of the District's territory exists to provide for representation as follows: two from recognized environmental groups or professional biologists, a representative of the County Board of Supervisors, a member of the City of Rancho Cucamonga City Council, a member of the City of Fontana City Council and a local landowner;

e. County Service Area 120 shall be authorized the following function and service as an active power: 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;

f. All previously authorized charges, fees, and assessments of CSA 70 Improvement Zones OS-1 and OS-3 in effect upon the effective date of this reorganization shall be continued and assumed by CSA 120, as the successor agency, in the same manner as provided in the original authorization;

g. Upon the effective date of this reorganization, any funds currently deposited for the benefit of CSA 70 OS-1 and OS-3 which have been impressed with a public trust, use or purpose shall be transferred to CSA 120, as the successor agency, and the successor agency shall separately maintain such funds in accordance with the provisions of Government Code Section 57462; and,

h. Pursuant to the provisions of Government Code Sections 56810 and 56811 there is no transfer of property tax revenue; therefore, there is no need for establishment of an appropriation limit as required by the State Constitution.

3. Adopt LAFCO Resolution No. 3051 reflecting the Commission's determinations and findings.

KRM

Attachments:

1. Maps of County Service Area 120 and Lands Owned for Mitigation Purposes
2. Resolutions of Consent to County Service Area 120 overlay from the City of Fontana and Rancho Cucamonga and Letters of Support for the Formation of CSA 120 from SanBag and Endangered Habitats League
3. Letter Dated February 2, 2009 from County Special Districts Regarding Policies and Procedures for CSA 120; copy of North Etiwanda Preserve Management Plan Dated November 17, 1998; and Cooperative Management Agreement Dated February 1998

4. San Bernardino County Board of Supervisors Resolution No. 95-72 Creating CSA 70 OS-1 Advisory Commission
5. San Bernardino County Board of Supervisors Agenda Item for Conveyance of Conservation Easements and Copy of Grant of Conservation Easement for APN 1087-041-05
6. Justification for Proposal Form, Plan for Service, Revised Budget Dated February 5, 2009, and Audit for CSA 70 OS-1 for Period Ending June 30, 2008
7. Memorandum From Property Tax Division of Auditor/Controller-Recorder on Estimated Property Tax Revenues
8. Board Agenda Item for Establishment of Schedule of Fees and Charges for CSA 70 OS-1
9. Letter from Tom Dodson and Associates on Environmental Determination Dated February 2, 2009
10. Draft Resolution No. 3051