

LOCAL AGENCY FORMATION COMMISSION COUNTY OF SAN BERNARDINO

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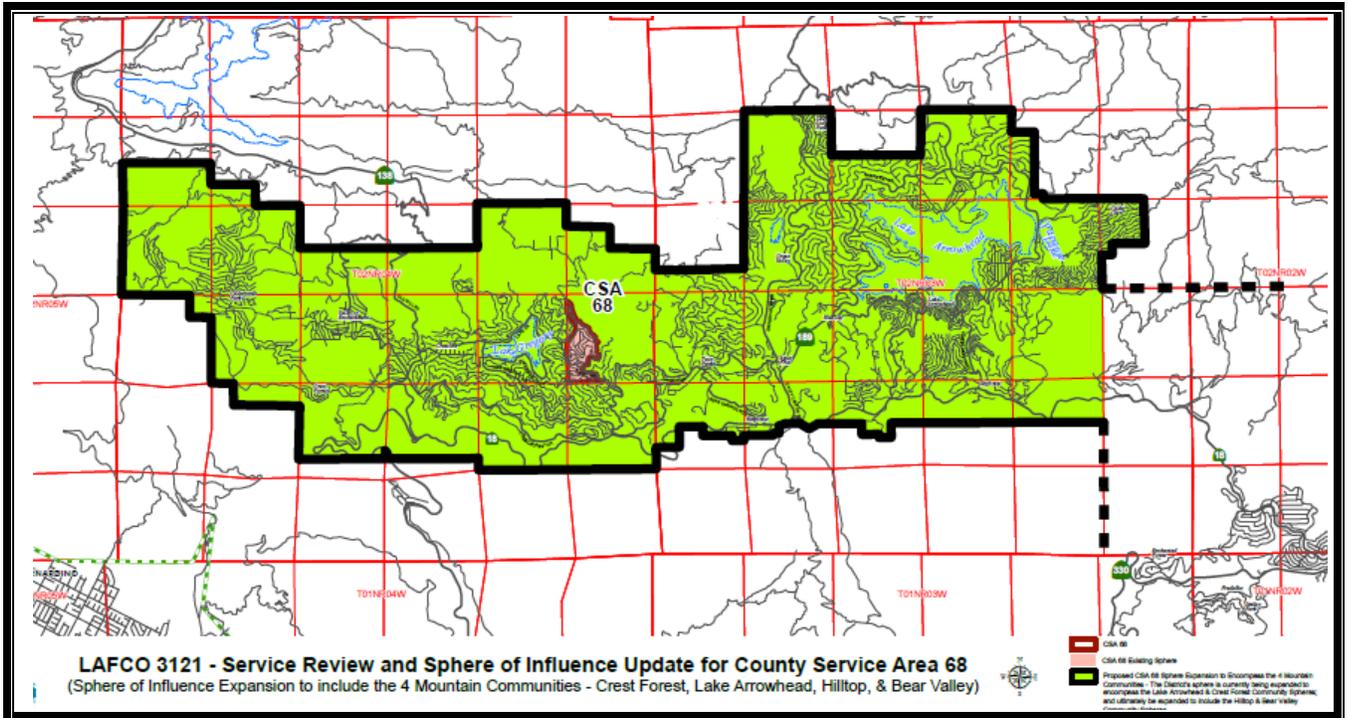
TO: LOCAL AGENCY FORMATION COMMISSION

**SUBJECT: AGENDA ITEM #7: CONTINUED CONSIDERATION OF MOUNTAIN
REGION REVIEW OF ROAD AND SNOW REMOVAL SERVICES**

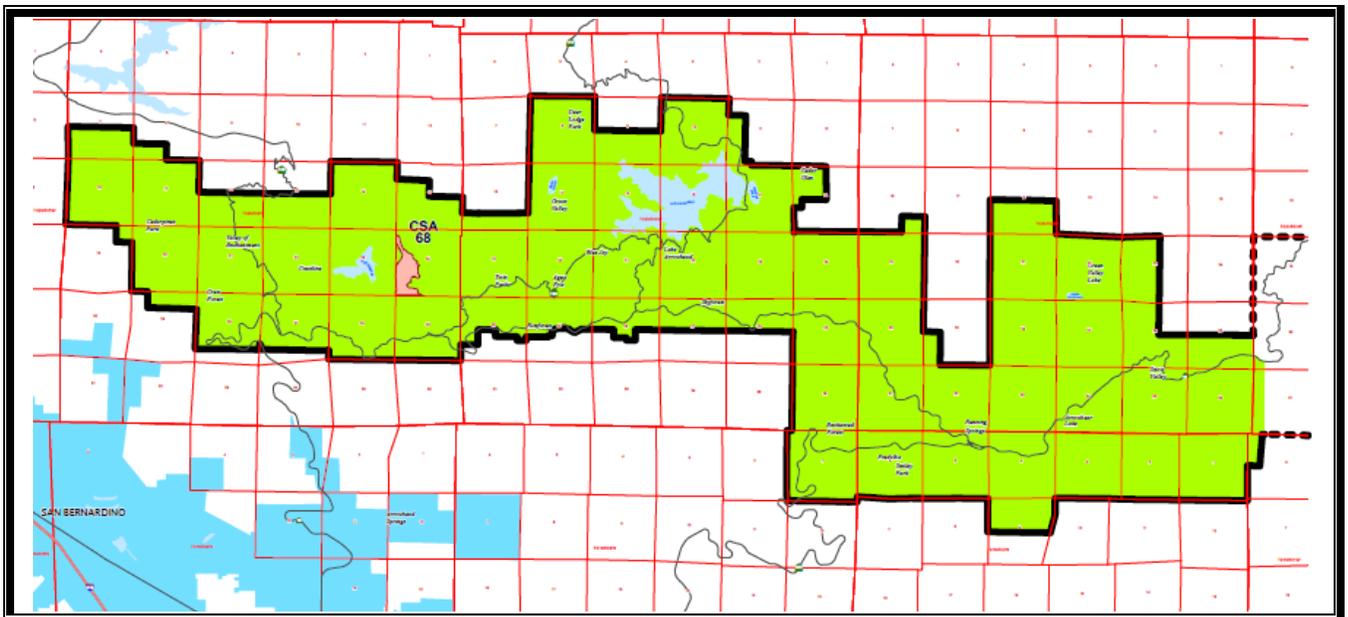
BACKGROUND:

At the December 8, hearing the Commission began its consideration of the mandatory service reviews for the Mountain Region, and identified the need for a more comprehensive regional review of road maintenance and snow removal services. At that hearing, the staff presented its report (a complete copy of which is included as Attachment #1) which identified a recommendation for the development of a single County Service Area (CSA) sphere of influence encompassing all of the various providers which would signal the Commission's position that a future reorganization would be beneficial. At the hearing, Mr. Jeff Rigney, Director of the County Special Districts Department charged with administration of the agencies, requested a continuance of the matter to allow for his staff to review in greater detail the items within the LAFCO report, provide their response to them and present alternatives to those outlined by LAFCO staff. At the conclusion of the hearing, the Commission determined to continue the entire proposal to the March 16, 2011 hearing as requested by the County Special Districts Department.

To summarize, at the December hearing, the staff recommended that the Commission begin the process by proposing to expand the sphere of influence of CSA 68 to include the areas identified for the Crest Forest and Lake Arrowhead communities. This recommendation area is shown on the map below (included as a part of Attachment #2):



Agenda Item # 6 on today's agenda is proposing a community designation for the Hilltop community. In keeping with the staff suggested direction from the December hearing, staff would propose that the sphere of influence for CSA 68 also be expanded to include the area of the Commission defined Hilltop community as well. That modification in direction is shown on the map below, which is also included in Attachment #2:



In the interim between hearings, representatives of the County Special Districts Department, Auditor Controller, County Counsel and LAFCO Counsel have been contacted by LAFCO staff and/or have met to review the questions outlined in the December staff report. The issues to be resolved are:

1. The question of ongoing liability for roads once a Zone of a County Service Area or a County Service Area providing road maintenance and snow removal is dissolved.
2. The Special Districts response on the potential for expansion into a single County Service area for service. Along with additional questions on what appears to be a “functional” consolidation of road maintenance and snow removal services between various County governed districts and the County Public Works Department.
3. Service alternatives to those outlined within the LAFCO staff report.

LIABILITY QUESTION:

In response to Item #1, LAFCO staff, Legal Counsel, representatives from County Special Districts, County Counsel and the Second and Third District offices met on February 23 to discuss the questions related to ongoing liability and the disposition of roads installed through the auspices of the County. These roads are limited to non-county maintained roads which are paved through County Special Districts’ department contracts and are financed either through board-governed districts funds or an assessment district created for financing. LAFCO staff requested Legal Counsel to address the question of ongoing liability once actions to remove or divest the agency of the service or dissolve the agency are proposed.

A written response from LAFCO Counsel, dated February 9, 2011 (copy included as Attachment #3), indicates that there is no obligation to provide road maintenance service on non-county maintained roads, there is no liability for failure to maintain unaccepted roads and further states:

“...Section 831.3 (Streets and Highways code) merely states that if public entities perform an act of maintaining, grading or repairing unaccepted roads, they may be liable if the work is not done with reasonable care and if the work leaves the road in a more dangerous or unsafe condition than it was in before the work began. ...

This position of LAFCO Legal Counsel will answer almost all of the questions, except the instance where the road is actually installed through the auspices of the County and/or where the County identifies that the road is an asset of the dissolving agency, such as in the case of CSA 59. In the case of County Service Area 70 (CSA 70) Zone R-5 in the Sugarloaf area, it installed the roads, paving them through an Assessment District of the County, specifically AD 91-1 which was concluded in FY 2006-07. The Assessment District charged 3,848 properties \$1,438.93 each for a total assessment for road installation of \$5,537,000. Staff will defer presentation of a response to this particular situation for the discussion of the Bear Valley region scheduled for the May 18, 2011 Hearing.

At the February 9 meeting, staff discussed the potential for County inclusion of the findings identified by LAFCO Legal Counsel related to any dissolution. Specifically the determinations

would be that any work performed was done with reasonable care and that the roadway is no more dangerous or unsafe than it was before any work was performed by the dissolving entity. The representatives present from the Special Districts Department identified the position that there is no obligation to provide the service so that it can be withdrawn without further obligation. So, there appears to be a mechanism to remove the provision of this service from areas previously served with limitation on future liability. However, the one recent instance for this circumstance, the dissolution of CSA 70 R-11, made no such determinations related to the Streets and Highway Code sections identified above.

SPECIAL DISTRICTS RESPONSE:

The County Special Districts Department has submitted its response to the November 30, 2010 staff report, copy included as Attachment #4, dated March 3, 2011. LAFCO staff has not had adequate time to review and respond to the information which states that the anticipated cost savings identified by LAFCO staff through a single audit could not be achieved, that there would be significant processing costs for the proposal without commensurate benefit, the administrative structure would not change through such a proposal and the desire for unique standards for the mountain region could be achieved without the LAFCO staff recommendation changes and the commensurate expenses. However, a cursory position for each of the items is discussed below:

Audit Savings:

The first item identified in the response by the Special Districts Department is there would not be audit savings through the proposal identified by LAFCO staff. The memorandum submitted identifies the need for separate audits based upon adoption of separate budgets for the zones which provide for road maintenance and snow removal. The response identifies that this information has been provided by the County Auditor-Controller staff. However, the response received by LAFCO staff from the Auditor-Controller was not so clear cut, stating the need for legal opinion upon the single audit option.

In addition, LAFCO staff would point to the audits currently and/or historically performed for CSA 56, CSA 79 and CSA 53 as going against the position stated in the response. At present, CSA 79 and its Zone R-1 (with individual budgets) receive a single audit with R-1 (with .75 mile of road) to be charged \$145 in Fiscal Year 10-11 for its share. LAFCO staff compared that to the charge for R-16 which has 1 mile of road in the Hilltop area which was charged \$664 in FY 09-10 for auditing (the FY 10-11 budget does not identify the individual audit charge for R-16). This auditing system is also used for CSA 53 Zones A and B, which have separate budgets but a single audit and CSA 56 and its Zone F-1 for the years prior to the Zone F-1 dissolution had a single audit but separate budgets. In LAFCO staff's opinion, the use of this methodology actually provides for a clearer understanding of the service costs to specific locales, such as Green Valley Lake, Fawnskin and historically the Wrightwood Piñon Hills area and supports the staff position for increased transparency for service delivery costs for these communities.

It is the position of staff that this issue needs further review and clarification, based upon the differences outlined above.

Administrative Structure:

On page 2 of the Special District response it correctly identifies LAFCO staff concerns related to the apportioning of charges to the various zones and CSAs providing road maintenance and snow removal services. It further states that the administrative charges apportioned to these agencies are by a "formula reviewed by the CEO's (County Executive Officer) office and approved by the Board of Supervisors". On several occasions, LAFCO staff has requested information on such a formula or a copy of the formula for apportioning these costs. A comparison of costs charged to the various entities shows it is difficult to determine a standardized formula from the information provided in the budgets. To date, no such information has been provided; therefore, no change in the position of LAFCO staff regarding this issue is proposed. The chart included in the December 8 report regarding the road maintenance and snow removal providers in the Mountain region has been corrected based upon updated information on special tax issues (copy included as Attachment #5), but the columns related to the apportioning of costs based upon the FY 10-11 Budget are unchanged.

It is hoped that additional materials are provided for review by LAFCO staff on the issue of apportioning costs and the formulas which have been identified by the Special District Department memorandum so that the final consideration of this item at the May hearing provides the needed information for a Commission determination.

Standards of Service:

The Special District Department response states that County Planning identifies the standards for roads requiring them to be built to County Standards and taken into the County-maintained system. However, as the need for development of the entities to provide road maintenance through zones and county service areas illustrates many, if not most, of the roads in the mountains are not built to the County standards and are not county maintained. This is the area in which the December LAFCO staff report identified the need for development of standards for the delivery of road maintenance service. The position of LAFCO staff is that the development of a single agency for the mountain region would allow for the development of regional standards. We do not disagree that CSA 70 could develop these standards, it could have done so at any time over the last 30 years in which it has provided this service through development of zones. However, that has not been the case.

It remains the position of LAFCO staff that this is needed so that those coming to the Special Districts Department seeking road maintenance and snow removal in the mountains understand the minimum standard for delivery of service, the minimum costs, and the premium to be paid for administrative support. Staff believes that additional work is needed before the final hearing on this matter in May to outline these needs.

Significant Processing Cost:

The response identifies that the benefits to be achieved through the reorganization as proposed by LAFCO staff do not justify the processing costs. We do not disagree that the approximately \$22,000 charge is substantial (LAFCO staff would identify that the \$6,000 potential additional charge for environmental review is not expected). As identified, the

submission of the application would include the request for reduction in overall processing fee for LAFCO to the amount identified.

However, we disagree that there would be no benefit achieved for the residents which fund these services, or those in the future seeking an organized means for road maintenance and snow removal service. The mountain region of San Bernardino County is the most densely populated urban forest west of the Mississippi River. As technological advances allow people to work away from the primary place of business, we don't see a reduction in the overall population of the mountains but a continuing increase. Assisting the Special Districts Department in responding to the service needs of these areas is an important effort, one which may cost something upfront, but whose benefits will last for years to come. Ultimately, the judgment on whether to move forward or not will rest with the County.

FUNCTIONAL CONSOLIDATION:

In the interim since the December hearing, LAFCO staff has learned of instances of functional consolidations for the provision of service, some in place for some time and some brand new. Specifically, the County Public Works Department and Special Districts Department have contracted with each other to provide for snow removal services in all of the Mountain Region Communities. The Board of Supervisor Agenda Items which outline these efforts are included as a part of Attachment #6 to this report.

LAFCO staff has indicated in its review the need for providing a clearer understanding of the costs for providing this service and how they are funded. In particular, the Agenda Item for December 14, 2010 identifies an increase in contract funding for the provision of snow removal services through Special Districts for county-maintained roads, an amendment to a contract approved in January 2010. In reviewing the audits for CSA 68, CSA 18, and CSA 69 for the mountains there are no increased revenues or costs discernible. It appears that all of the costs and revenues are being included CSA 70, a large agency which provides for funding of all personnel within the Special Districts Department serving all of the board-governed special districts and a myriad of Zones providing municipal level services throughout the County unincorporated area.

In addition, LAFCO staff has learned of budgetary shortfalls in snow removal services in the area, specifically for CSA 79 Zone R-1, which required a loan from the County Service Area Revolving Fund. This was approved in October 2010. The details in the Board Agenda Item identify that CSA 79 R-1 had received record snowfall during the Fiscal Years 2008-09 and 2009-10 which resulted in snow removal costs of \$60,000 over budget. However, the approval of the item provided a loan of \$30,000; it specified that it would be repaid over a period of ten years with interest accruing on the unpaid balance. In reviewing the budget and audit documents for CSA 79 R-1, there is no shortfall of \$60,000 as identified, and no mention in the materials found on the County website of the resolution of the additional \$30,000 shortfall not covered by the loan. Staff would like additional time to review how these shortfalls are covered. It appears that these shortfalls are covered through CSA 70 which may or may not be clear to the residents of the area.

SERVICE ALTERNATIVES:

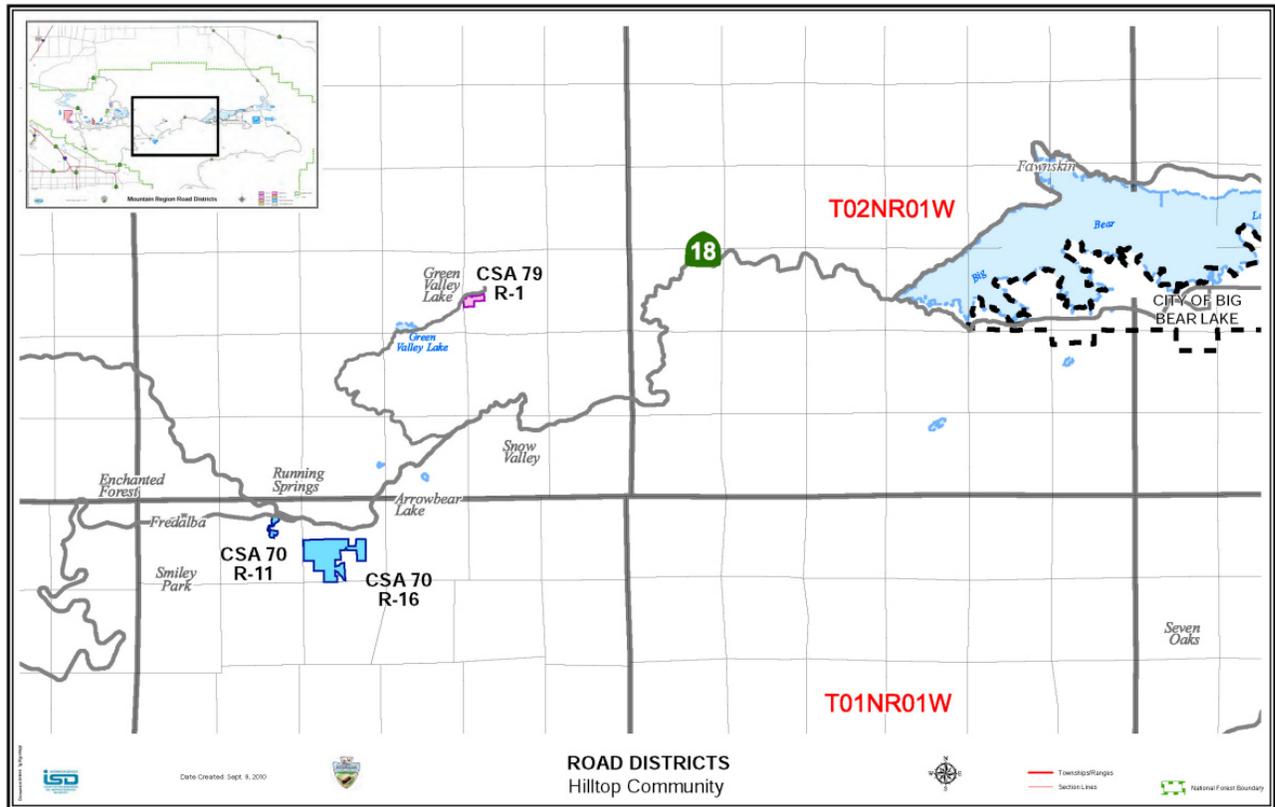
At the December hearing the Special Districts Department, in its memorandum to the Commission, identified that it would be providing alternatives to recommendations proposed by LAFCO staff. However, the response received March 3 provides no alternative for consideration, implying the preference for maintaining the status quo of a myriad of zones to CSA 70 to provide the service.

CONCLUSION:

At the December hearing staff anticipated completing the service reviews for both the Hilltop community (Running Springs, Arrowbear Lake and Green Valley Lake) and the Bear Valley community. However, the Bear Valley report has been deferred to the May hearing for consideration. Therefore, staff is not prepared at this time to provide a final recommendation; therefore, LAFCO staff is recommending that the Commission continue the consideration to the May 18, 2011 hearing with direction to staff as follows:

1. Direct staff to conduct a meeting with representatives of the County Special Districts Department and its Budget Managers, County Executive Office, County Auditor-Controller and the Second and Third Districts to review questions related to shortfalls covered during the fiscal year and how they are repaid and other alternatives to those set forth by LAFCO staff; and
2. Direct staff to place the matter for final consideration on the May 18, 2011 Commission hearing agenda.

the action taken by the Board of Supervisors on November 2, 2010, the district has been dissolved. LAFCO staff has reviewed with representatives of the County Special Districts Department that the annual \$100 per parcel service charge was applied for FY 2010-11, it is being deposited in CSA 70 accounts to repay prior snow removal overruns, costs for the failed election for a special tax and audit charges.



At the December 8, 2010 Commission hearing staff presented its analysis of the issues involving the provision of road maintenance and snow removal for the Mountain Region. The materials identified three options for consideration with the staff recommending the use of a single County Service Area, identified as County Service Area 68, to provide for a better understanding of the delivery of the services, allowing for increased flexibility in addressing service needs and providing for a cost savings through such items as auditing. At this time, staff support for a single agency remains; however, additional review with representatives of the County Special Districts Department, Auditor-Controller's Office, County Executive Office and the Second and Third Districts is needed before presentation of the final report on this matter. Therefore, it is staff's recommendation that this matter be continued in its entirety to the May 18, 2011 Commission hearing.

KRM/SM/MT

ATTACHMENTS:

1. [Excerpt of the Minutes from the December 8, 2010 Hearing Related to the Regional Roads Report and LAFCO Staff Report Dated November 30, 2010 Related to the Mountain Region Roads](#)
2. Maps
 1. [Regional Map from December 8, 2010 Hearing for Road Services through CSA 68](#)
 2. [Update Regional Map for Road Services through CSA 68 to include Hilltop Community](#)
3. [Response from LAFCO Legal Counsel Dated February 9, 2011 Related to Dissolution of Road Maintenance Providers and Ongoing Liability](#)
4. [Memorandum in Response to November 30, 2010 Staff Report from Jeff Rigney, Director of Special Districts Department, Dated March 3, 2011](#)
5. [Road Agencies in the Mountain Region Chart Updated on March 6, 2011](#)
6. [Board Agenda Items Related to Regional Contracts with other County Departments](#)
7. [Service Review Information for County Service Area 70 Zone R-11](#)
8. [Service Review Information for County Service Area 70 Zone R-16](#)
9. [Service Review Information for County Service Area 79 Zone R-1](#)