

**LOCAL AGENCY FORMATION COMMISSION  
COUNTY OF SAN BERNARDINO**

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**DATE:** NOVEMBER 9, 2011

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

**TO:** LOCAL AGENCY FORMATION COMMISSION

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**SUBJECT:** **Agenda Item #7:** LAFCO 3167 – Activation of Solid Waste Powers for the Phelan Piñon Hills Community Services District

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**INITIATED BY:**

Resolution of the Board of Directors of the Phelan Piñon Hills Community Services District

**RECOMMENDATION:**

Staff recommends that the Commission make the following determinations:

1. With respect to environmental review, certify that the proposed activation of solid waste functions and services for the Phelan Piñon Hills Community Services District is statutorily exempt from the provisions of the California Environmental Quality Act and instruct the Executive Officer to file a Notice of Exemption within five (5) days of this action;
2. Approve the activation of the solid waste function and service for the Phelan Piñon Hills Community Services District with the condition that the Certificate of Completion shall not be issued until the Commission receives a signed copy of the franchise agreement between the Phelan Piñon Hills Community Services District and CR&R Waste and Recycling Services and
3. Authorize the amendment of the “Rules and Regulations Affecting Special Districts – Exhibit A” to indicate the following as the authorized functions and services for the Phelan Piñon Hills Community Services District:

	<b><u>FUNCTION</u></b>	<b><u>SERVICES</u></b>
<b><u>Phelan Piñon Hills</u></b> <b><u>(District formed 3/18/08)</u></b>	Water	Supply water for any beneficial use as outlined in the Municipal Water District law of 1911 (commencing with Section 71000) of the Water Code
	Park and Recreation	Acquire, construct, improve, maintain and operate recreation facilities, including, but not limited to, parks and open space, in the same manner as a recreation and park district formed pursuant to the Recreation and Park District Law (commencing with Section 5780) of the Public Resources Code
	Streetlighting	Acquire, construct, improve, maintain and operate streetlighting and landscaping on public property, public right-of-way, and public easements
	Solid Waste and Recycling	Collect, transfer, and dispose of solid waste and provide solid waste handling service, including, but not limited to, source reduction, recycling, composting activities, pursuant to Division 30 (commencing with Section 40000), and consistent with Section 41821.2 of the Public Resources Code.

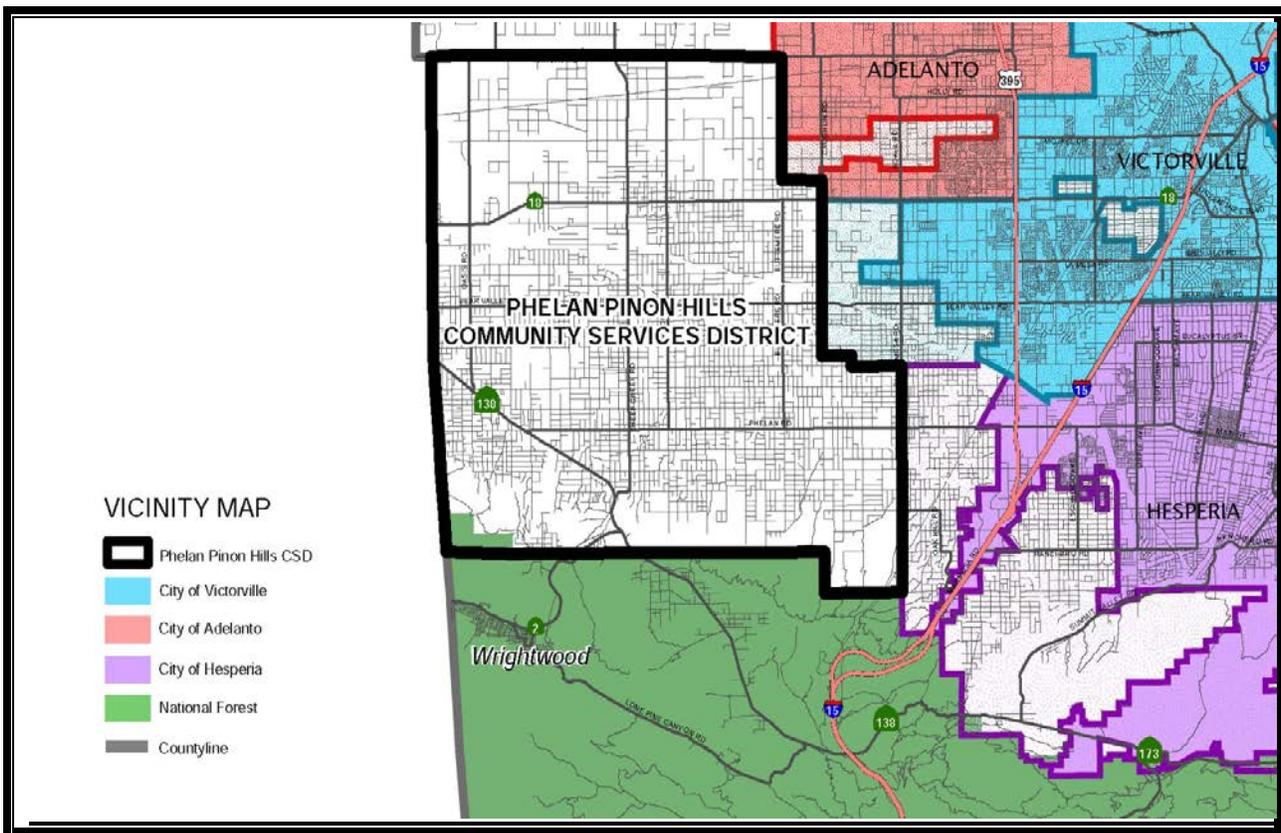
4. Adopt LAFCO Resolution No. 3153 reflecting the Commission’s findings and determinations.

**BACKGROUND:**

When Independent Special Districts were approved for seating on the San Bernardino LAFCO in 1976, the Commission was required by law to adopt “Rules and Regulations Affecting Special Districts” which established the “active” and “latent” powers for each of the special districts under its purview. Active powers were those defined as being actually provided by the special district at that time; latent power were those powers authorized the district by its respective principal act but which were not being actually provided at the time. The Rules and Regulations required a process to be undertaken thereafter to expand the “active” powers of an agency.

In 2008, as a part of legislation addressing overall changes to Cortese-Knox-Hertzberg Local Government Reorganization Act, the activation or divestiture of a function and/or service for a special district became a “change of organization”. Such actions require a full application review – property tax transfer process, environmental assessment, protest hearing and filing of a certificate of completion.

LAFCO 3167 is a proposal filed by the Phelan Piñon Hills Community Services District (hereafter shown as “PPHCSD” or “District”) to activate solid waste services as allowed by Government Code Section 61100 (c). The activation anticipates that the service will be provided within the entirety of the District, as shown on the map below:



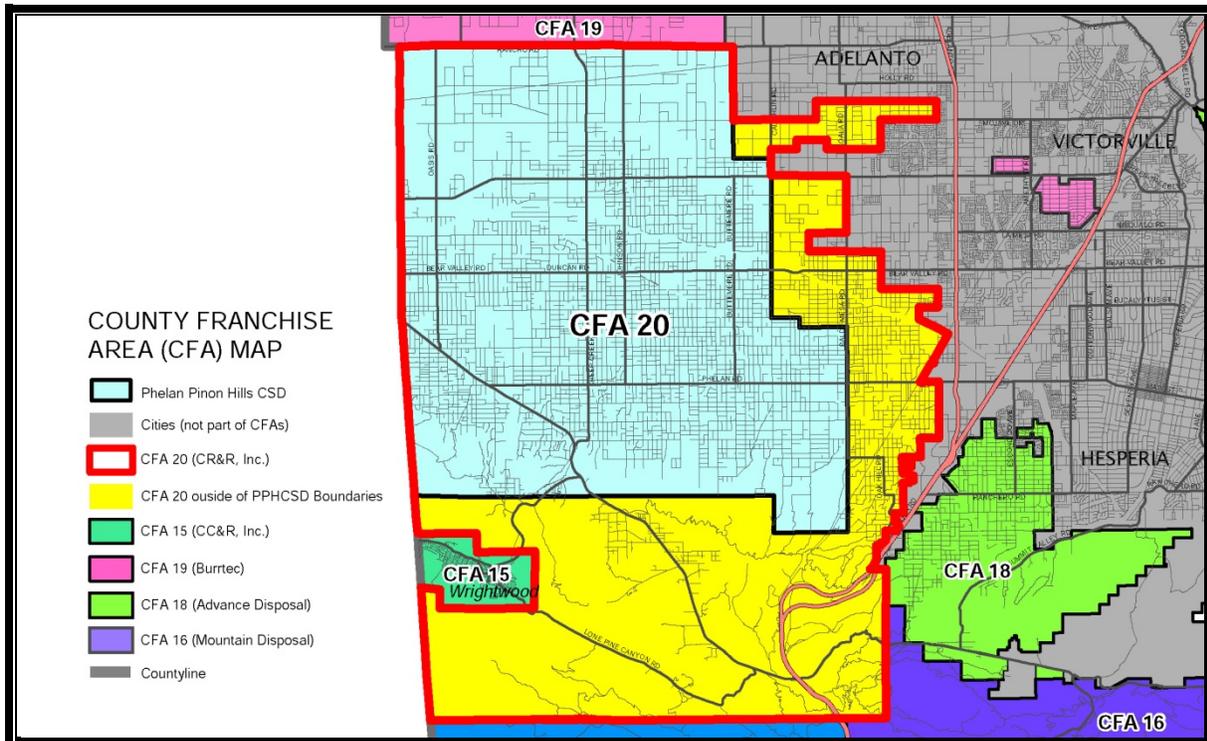
**DISCUSSION:**

On February 28, 2011, the Board of Directors of the PPHCSD adopted Resolution No. 2011-02 requesting that the Local Agency Formation Commission take the actions necessary to expand the District’s authorized function/service to include the collection, transfer and disposal of solid waste and recycling as defined by Government Code Section 61100(c). The resolution includes a request for inclusion of a term and condition which specifies that “All applicable legal requirements concerning the District’s generation of revenues to fund the costs of

providing the additional services sought herein". The application was submitted for processing by LAFCO on March 11, 2011. The application materials and documents solicited by staff for evaluation of the application are provided as attachments to this report identified as:

- #1 – Maps of the boundaries of the PPHCSD and the relationship of the District to CFA 20;
- #2 District application which includes Resolution 2011-02, Justification and Supplement Forms, Memorandum dated February 22, 2011 from Stan Hoffman and John Davis, consultants for PPHCSD, providing feasibility analysis for establishment of Solid Waste services as an active function for the district; and,
- #3 Letters from CR&R and County Solid Waste Management Division as to its position on the application.

The application materials submitted outline the District's request to assume responsibility for the solid waste collection and disposal contract currently administered by the San Bernardino County Solid Waste Management Division through assignment of a "franchise". The franchise contract is currently held by CR&R Incorporated for an area identified as County Franchise Area 20 (hereafter identified as "CFA 20") as shown on map below. The territory of the PPHCSD is within this area. Approximately 92 square miles of CFA 20 are outside the boundaries of the PPHCSD and includes territory within the western spheres of influence of the Cities of Adelanto, Victorville and Hesperia and including territory within the National Forest surrounding the community of Wrightwood and the community of Cajon Valley.



The request from the PPHCSD states that the service requested for activation is solid waste and recycling with the services to be provided identified as follows:

“Collect, transfer, and dispose of solid waste and provide solid waste handling service, including, but not limited to, source reduction, recycling, composting activities, pursuant to Division 30 (commencing with Section 40000), and consistent with Section 41821.2 of the Public Resources Code.”

The District’s application materials identify that the application is in response to requests from the District’s constituents for it to provide a broader range of service within its boundaries. The following information provides the staff’s analysis of the four areas of consideration required for any proposal for change of organization: boundaries, land uses, services and environmental considerations.

**BOUNDARIES:**

As noted above the District proposes to assume responsibility for solid waste collection and recycling within the boundaries of the District, approximately 128 square miles (81,920 acres). The territory is a part of CFA 20 defined by the County and franchised to CR&R Waste & Recycling Service. The easternmost territory of CFA 20 is within the spheres of influence of the Cities of Adelanto, Victorville and Hesperia and will not be included in assumption of service by the PPHCSD. The southern territory of CFA 20, the Cajon Valley and mountains

surrounding the community of Wrightwood will continue to receive service through the CFA 20 contract. The community of Wrightwood is within CFA 15, which is also under contract with CR&R Inc. for service and unaffected by this proposal. The District's sphere of influence is to be established at the November hearing and staff is recommending a coterminous sphere, so no change in service is anticipated for the future.

### **LAND USE:**

The land use anticipated within the overall Phelan Piñon Hills Community Plan identifies the retention of a rural development standard and lifestyle. The territory identified as the urban core of the community will be developing with commercial uses over time and will benefit from the services for recycling and waste stream reductions to be offered through the District. The approval of this proposal will have no direct impact on the land uses currently identified within the San Bernardino County General Plan and Phelan Piñon Hills Community Plan.

### **SERVICES:**

The PPHCSD has provided a Plan for Service as required by Commission policy which includes an evaluation of options for types of service under the proposed solid waste and recycling activation request. The materials identify that the provisions of the existing Franchise Agreement, entered into with the County in June of 2007, will continue for a minimum of five years or the end of the contract, whichever is shorter (Public Resources Code Section 49520). The current contract end date is June 30, 2017, which staff anticipates being the period at which a new franchise contract would be negotiated by the District pursuant to the provisions of State law. A copy of the contract is included as Attachment #4.

Public Resources Code 40000 et seq provides the State's legislative intent on waste management as a public health and safety concern as well as identifying that a cooperative regional approach is necessary to minimize the cost for service. As noted above, the provisions for service within the existing Franchise Agreement would remain following activation and the District would also be required to assume the following responsibilities related to solid waste collection and recycling:

1. Implementation of Public Resources Code 40059 by determining "aspects of solid waste handling which are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location and extent of providing solid waste handling services". The existing franchise contract defines those and prior to entering into a new agreement prior to June 30, 2017, the District would need to make its own determinations.
2. Compliance with Public Resources Code Section 41821.2. This would require compliance with the source reduction and recycling element and the

household hazardous waste element of the County. The District does not currently, and is not anticipated to, include incorporated territory. The District will also be required to provide information on its programs, the amount of waste disposed and reported to the disposal tracking system of the County and the amount of waste diverted – it would determine which identify the State's mandates for waste management.

The financial implications of this activation are the transfer of the existing franchise fees from the County to the PPHCSD. LAFCO staff has received correspondence from CR&R Waste and Recycling Service, current franchisee, that it has no objection to the application and the County's Solid Waste Management Division has no objection to the application noting that it retains the responsibility for the area of CFA 20 outside PPHCSD (copies of each are included as Attachment #3 to this report). The application identifies that the current franchise fee generated within District boundaries is \$82,775. Upon the issuance of the Certificate of Completion for this proposal and the verification of the contract transfer these monthly fees will be paid to the PPHCSD. Therefore, pursuant to Government Code Section 56824.14(a), the Commission determines that the receipt of these revenues will allow the District to fund development of programs for further source reduction and recycling efforts, potentially educational pursuits for the community in its efforts to reduce the waste stream going to the County landfill and necessary reporting requirements.

The application materials identify several service alternatives which may be considered in the future, such as assumption of billing for CR&R since the District currently provides billing for water service and the potential for assumption of the County's Equivalent Single Family Residence (ESFR) fees billed on the individual tax bill for solid waste disposal charges and operation of the Sheep Creek Transfer facility.

The alternatives identified above were evaluated for the District by consultants Mr. Stan Hoffman, who prepared the financial impact analysis and Mr. John Davis, who evaluated the various service alternatives for waste disposal (copies of which are included in Attachment #2 to this report). The ESFR fee assumption alternative was not requested by the District at this time and is not supported by LAFCO staff on the basis that the closed landfill which occupies a portion of the Sheep Creek Transfer Facility parcel has the potential for significant liability and the Transfer Station itself is a regional facility. As for assumption of billing responsibilities by the District, that would be subject to further negotiations between PPHCSD and CR&R Inc. to determine cost, whether or not it reduces the franchisee costs and simplifies its operations, including the impacts to the District's billing operations. The letter from CR&R Inc. identifies that it has experience with this type of operation in other jurisdictions and would be willing to meet and confer with the District regarding such a transfer. Should the District and CR&R reach agreement in the future no further LAFCO review would be required for implementation.

Staff supports the service activation with ultimate transfer of responsibility. If approved by the Commission, this proposal will move forward with a protest process which will determine the position of the landowners and registered voters within the boundaries of the PPHCSD on the activation and ultimate transfer of service. In addition staff is recommending, as a condition of approval, that prior to issuance of a Certificate of Completion the Franchise Agreement between CR&R Inc. and PPHCSD is signed and a copy presented to the Commission so that the transfer of funding can occur as seamlessly as possible.

**ENVIRONMENTAL CONSIDERATIONS:**

The Commission's environmental consultant Tom Dodson of Tom Dodson and Associates has reviewed the action to activate the solid waste collection and recycling function and service for the PPHCSD and has indicated that it is his recommendation that the matter is statutorily exempt from the California Environmental Quality Act (CEQA). This recommendation is based on the finding that the Commission's approval of the activation of solid waste collection and recycling service through the Phelan Piñon Hills Community Services District does not change the territory in which the service is provided; therefore, the project has no potential to cause an adverse effect on the environment. Based upon this determination, the project is exempt from the requirements of CEQA as outlined in the State CEQA Guidelines, Section 15061(b)(3) and the Commission's Environmental Guidelines. It is recommended that the Commission adopt the Statutory Exemption for this project and direct the Executive Officer to file a Notice of Exemption with the appropriate agency within five days.

**DETERMINATIONS:**

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

1. The Registrar of Voters Office has determined that the study area contains 9,906 registered voters as of April 14, 2011.
2. The County Assessor's Office has determined that the assessed valuation of land and improvements within the study area is \$1,311,171,969 (\$597,717,600 – Land; \$713,454,369 – Improvements).
3. In compliance with the requirements of Government Code Section 56157 and Commission Policy, LAFCO staff has provided for notice through publication of an 1/8<sup>th</sup> page legal advertisement in the *Daily Press* a newspaper of general circulation in-lieu of individual notice due to the number of landowners and voters exceeding 1,000. Comments from landowners, registered voters and any affected local agency have been reviewed and considered by the Commission in making its determination.

No protest or expression of opposition to this service expansion has been received.

4. Legal advertisement of the Commission's consideration has been provided through publication in the *Daily Press*, a newspaper of general circulation within the study area. Individual notice has been provided to affected and interested agencies, County departments, and those individuals and agencies having requested such notification.
5. The proposal does not conflict with the adopted County of San Bernardino General Plan or the Phelan Piñon Hills Community Plan both adopted in March 2007.
6. The Commission's Environmental Consultant, Tom Dodson of Tom Dodson and Associates has recommended that this proposal is statutorily exempt from environmental review. The basis for this recommendation is that the expansion of function and service authorized the Phelan Piñon Hills Community Services District to include solid waste collection and recycling will not alter the area in which service is provided and can be implemented without causing any identifiable physical changes to the environment or any adverse environmental impacts. Without identifiable physical changes in the environment, approval of this proposal is exempt from environmental review under the provisions of the California Environmental Quality Act (CEQA), Section 21080(b), the State CEQA Guidelines, Section 15268, and the Commission's adopted CEQA Guidelines.
7. The area in question is presently served by the following local public agencies:

County of San Bernardino  
Phelan Piñon Hills Community Services District  
San Bernardino County Fire Protection District and its North Desert Service Zone  
County Service Area 60 (Apple Valley Airport) (portion)  
County Service Area 70 (multi-function) and its Zones G (road maintenance), R-32 (road maintenance), R-38 (road maintenance), R-39 (road maintenance) and Zone G Permanent Road Division (road maintenance)  
Mojave Water Agency  
Mojave Desert Resource Conservation District (portion)

Only the County of San Bernardino and Phelan Piñon Hills Community Services District are directly affected by this application.

8. The Plan for Service submitted by the PPHCSD, including its financial impact analysis, has been reviewed and compared with the standards established

by the Commission and the factors contained within Government Code Section 56668 and 56824.12. The Plan identifies that the Phelan Piñon Hills Community Services District will assume implementation of the franchise contract for waste collection and recycling operations and in turn it will receive the franchise fees currently paid by CR&R Waste and Recycling Service to fund its obligations and reporting responsibilities. The Commission finds that such plan conforms to those adopted standards and requirements.

9. LAFCO 3167 complies with the directives of State law and Commission policies that articulate the need for multi-function special districts to serve identified communities within the County. The consolidation of services under the elected board of directors of the PPHCSD allows the residents and landowners of the communities of Phelan and Piñon Hills a forum to determine service levels and needs.
10. This application will have no effect on the ability of the County of San Bernardino to achieve their fair share of the regional housing needs assessment (RHNA). The County of San Bernardino has an adopted Housing Element, prepared in conjunction with its General Plan Update approved in March 2007.
11. With respect to environmental justice, the application study area will benefit from the consolidation of service responsibilities and authorities under a single multi-function special district. Approval of this action will not result in the unfair treatment of any person based upon race, culture, or income.

### **CONCLUSION:**

Approval of the expansion of function and services for the Phelan Piñon Hills Community Services District to include solid waste collection and recycling will:

1. Allow for local control and response to requirements of the State for collection of solid waste and source reduction and other types of recycling in the community.
2. Provide for consolidation of service under a single multi-purpose entity to serve the community. As outlined in the preamble to LAFCO law, the identification of a single service entity accountable for service needs and financial resources is the best mechanism for establishing the service priorities for a community.

For these reason and those outlined within the balance of this report, LAFCO staff supports the activation of solid waste and recycling functions and services for the Phelan Piñon Hills Community Services District.

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Attachments:

1. [Maps of Phelan Piñon Hills Community Services District and County Franchise Area 20](#)
2. [Phelan Piñon Hills Community Service District Application](#)
3. [Letters from CR&R and County of San Bernardino Solid Waste Management Division](#)
4. [Agreement Between County of San Bernardino and CR&R Water and Recycling Services for County Franchise Area 20](#)
5. [Letter from Tom Dodson and Associates Recommending Statutory Exemption for LAFCO 3167](#)
6. [Draft LAFCO Resolution No. 3153](#)