

EXECUTIVE OFFICER'S REPORT

To The

Local Agency Formation Commission

TO:

Commissioner **MARIA NAVA-FROELICH** [City] Commissioner **MICHAEL KELLEY**(Chair) [Supervisor]
Commissioner **JASON JACKSON** [City] Commissioner **RAY CASTILLO** [Supervisor]
Commissioner **DAVID WEST** (Vice-Chair) [Public]

Alt Commissioner **JACK TERRAZAS** [Supervisor]
Alt Commissioner **JIM PREDMORE** [City]
Alt Commissioner **RALPH MENVIELLE** [Public]

REPORT DATE: August 25, 16

FROM: Jurg Heuberger, AICP, CEP, Executive Officer 

PROJECT: Winterhaven Fire District MSR/SAP & possible Dissolution review

HEARING DATE: September 22, 2016

TIME: 8:45 AM

AGENDA ITEM NO: 10

HEARING LOCATION: El Centro City Council Chambers, 1275 Main Street, El Centro, CA

RECOMMENDATION(S) BY THE EXECUTIVE OFFICER (In Summary & Order)

OPTION #1: Conduct a Public Hearing to allow for public comments on the potential dissolution of the Fire District and provide direction to the EO as appropriate. This is an information and fact finding public input hearing only, with no decision to be made by the Commission on the potential dissolution.

Project Data:

DATA & FACTS:

Project ID: **WFD 1-15**

Project Name: **Winterhaven Fire District MSR/SAP & potential dissolution**

Applicant/Proponent: **LAFCO initiated action**

Application Type: **N/A**

Application Filed: **N/A (LAFCO Direction)**

Certificate of Filing: **N/A**

Area/Size: **See Plan**

Location/Legal: **Maps of the District Boundary and the SOI are included in this report.**

Population: **N/A**

Proposed Project: **Service Area Plan (SAP) / Municipal Services Review (MSR) Update & possible Dissolution.**

MSR/SAP: **The most recent version of the Winterhaven Fire District MSR/SAP is 2006.**

TAX AGREEMENT:

Board of Supervisors Action: **N/A**

City Resolution: **N/A**

Tax Split: **N/A**

CEQA:

Lead Agency: **LAFCO**

Documentation: **Exempt**

ANALYSIS

I: Legal Requirements (Historical information):

Cortese-Knox-Hertzberg Reorganization Act of 2000 (CKH), also referred to as Government Code 56000 et Seq., provides the legal basis for the requirement of the Sphere of Influence and the Service Area Plan or Municipal service Review (MSR) being considered within the scope of this hearing.

G.C. § 56425 (a) states in part; *“In order to carry out its purposes and responsibilities for planning and shaping the logical and orderly development and coordination of local governmental agencies so as to advantageously provide for the present and future needs of the county and its communities, the commission shall develop and determine the sphere of influence of each local governmental agency with the county and enact policies designed to promote the logical and orderly development of areas within the sphere.”*

G.C. § 56425 (b - i) provide the frame work within which the Commission may approve the sphere of influence and the process that needs to be followed.

G.C. § 56425 (e) states in part; *“In determining the sphere of influence of each local agency, the commission shall consider and prepare a written statement of its determination with respect to each of the following:*

- (1) *The present and planned land uses in the area.*
- (2) *The present and probable need for public facilities and services in the area.*
- (3) *The present capacity of public facilities and adequacy of public services that the agency provides or is authorized to provide.*
- (4) *The existence of any social or economic communities' of interest in the area if the commission determines that they are relevant to the agency.*

G.C. § 56425 (f) is a critical new section that changed the parameters of the prior review insofar that this section now requires that; *“ Upon determination of a sphere of influence, the commission shall adopt that sphere, and shall review and update, **as necessary**, the adopted sphere **not less than once every five years”**.*

There appears to be a misconception that the agencies will have to prepare a full new plan every five years, however the intent here is to “review” the prior plan and to amend it if necessary. If there have been significant changes, or if there has been explosive growth, then certainly the amendment will be much more comprehensive.

G.C. § 56428 (a) provides the mechanism for anyone to file a request with the executive officer for an amendment to the sphere of influence. It states in part; *“Any person or local agency may file a written request with the Executive Officer requesting amendments to a sphere of influence or urban service area adopted by the commission...”*

Again there may be some confusion in this area as there have been numerous questions about the “limitations” of the sphere and the process to amend.

It appears clear that the mandate is to review the plan at least every five years but there is no apparent restriction on the number of times that it may be amended nor is there a restriction on who can request such an amendment, there is only a process that needs to be followed. It goes without saying however that for an amendment to work it need the consensus of the City/District, the County and the Commission.

Just as there are provisions for the addition of areas to a sphere of influence there are provisions for a process to remove an area from an approved sphere boundary. This is found in G.C. 56429.

In addition to the SOI process G.C. § 56430 (a - d) now addresses the requirement for the review of municipal services which in our case has been referred to for nearly a decade as the Service Area Plan (SAP).

G.C. § 56430 (a) states; *“In order to prepare and to update spheres of influence in accordance with Section 56425, the Commission shall conduct a service review of the municipal services provide in the county or other appropriate area designated by the commission. The commission shall include in the area designated for service review the county, the region, the sub region, or any other geographic area as its appropriate for an analysis of the service or service to be reviewed and shall prepare a written statement of its determination with respect to each of the following:*

- 1) *Infrastructure needs or deficiencies.*
- 2) *Growth and population projections for the affected area.*
- 3) *Financing constraints and opportunities.*
- 4) *Cost avoidance opportunities.*
- 5) *Opportunities for rate restructuring.*
- 6) *Opportunities for shared facilities*
- 7) *Governmental structure options, including advantages and disadvantages of consolidation or reorganization of service providers.*
- 8) *Evaluation of management efficiencies*
- 9) *Local accountability and governance.”*

G.C. § 56430 (d) also required that the Office of Planning and Research of the State, in consultation with the commissions, and the California Association of LAFCO's and other governmental agencies, SHALL prepare a comprehensive set of guidelines for service reviews by July 1, 2001. Since these guidelines are voluminous a full text copy is not attached to the report however there is a PDF copy on the CD rom that has been provided to each commissioner and every interested party. Furthermore, the Executive Officer has urged the various entities to utilize the “draft final” version as a guide to preparing the SOI and SAP.

II: The PLAN:

The Winterhaven Fire District was asked to prepare an updated MSR/SAP approximately two years ago and some progress commenced with now former Chief Taylor. Subsequently following a lengthy silent period and persistent requests for follow up, and some second hand information being received by the Executive Officer on the status of the District, LAFCO initiated a review with emphasis on completing its own SAP or if appropriate commencing the dissolution of the District.

III: District Approvals:

The District failed to provide necessary information and after several requests by the EO, LAFCO commenced the process for the Dissolution of the District.

IV: CEQA:

It is argued and it is the Executive Officers opinion that the Service Area Plan fit within one or more “exemptions” under the provisions of CEQA, not the least of which is the possible determination that this process is “not a project”.

V: Analysis by the Executive Officer / Determinations by the COMMISSION:

As of now the Executive Officer has attended several District Board meetings and offered information, suggestions and some direction.

This report is preliminary and by no means complete and is only intended to;

- A: Allow the Commission to be more fully informed on the complexity of the issues pertaining to the District.
- B: Allow for the public to provide comments, submit information, submit invoices and in generally to ask questions about the potential dissolution of the District.

Tentative/partial facts:

- 1) The District voluntarily ceased to provide services to the community.
- 2) The District Board consists of three members with two vacancies
- 3) The District appears to have little funding if any, with an estimated cash on hand under \$1,000.00
- 4) The District has little or no significant revenue stream other than a portion of the property taxes, currently estimated to be about \$ 17,600.
- 5) The District has very little equipment remaining at the Fire Station, other than the Building.
- 6) The District has one Fire Chief Pickup truck still in the station.
- 7) The District has disposed of a "Fire engine" and an "Ambulance", although the manner in which these items were disposed are highly questionable and under current investigation.
- 8) The District has had no adopted budget or any audits in the past three years, and their financial information is highly difficult to review.
- 9) The District has a number of outstanding debts, some of which have been brought to the EO's attention and are being reviewed.
- 10) The District entered into a "lease buy out" with SBA Communications for the Communication Tower located on their property. The full information on this including the amounts paid, the use of the funds received and the legal ramifications of the terms are not clear at this time. The EO recently requested, that the County Planning Office continue a public hearing that was scheduled for August 24th, and which would have extended the CUP for the tower. The EO attempted to work with SBA to obtain records, but at this writing has not received much cooperation.

POTENTIAL DISSOLUTION ISSUES:

IF and when the Commission conducts the hearing to consider the Dissolution of the WFD, the following items will need to be resolved:

- 1) Disposition of the Fire Station and fixed property

Given that the Fire Station is a possible asset that could generate some funds there are three options for its disposal. Option #1 would be to sell it and use the funds to settle fully or partially outstanding liabilities. Option #2 would be to transfer it to the County for an agreed upon amount, again with funds generated to offset liabilities. Option #3 would be to give it to the County (not recommended at this time).

Given these scenarios, the EO has caused the preparation of (A) a Phase I environmental review; (B) a title report and (C) an appraisal. These reports would all provide backup information in the event the Commission decides to liquidate the property through sale or transfer.

- 2) Disposition of the Fire Chief's Pickup Truck

The County Fire Department may have some use for this truck. Although the truck has some value, it may contain devices or equipment that may have been purchased with grant funds or other donations, which could make it difficult to sell without a thorough research of and removal of such equipment. It is currently the EO's recommendation that this equipment be donated to the County Fire Department.

3) Disposition of the Ambulance

This Ambulance is not currently at the station and the reason for its transfer to a location in San Diego remain under investigation. The Ambulance is being stored at a location in San Diego per the direction of the EO until such time that the Commission makes its decision. Suffice it to say, the method by which this asset was removed from the station and transferred to the SD business are highly questionable and yet to be sorted out.

At the time this Ambulance was transferred to the SD business, a check was given to the current Fire Chief at an amount of approximately \$5,000.00. This included the vehicle and "Equipment" in the vehicle. What the true value of this equipment and vehicle would be are unknown at this time. Allegedly the check provided to the Chief has not been deposited or cashed, although the check has not been provided to LAFCO as requested.

4) Settlement of any outstanding debts to the extent there are funds available

It came to the attention of the EO that there were a significant amount of vendors or individuals that have not been paid. The extent of this is unknown however estimates have ranged in excess of \$30,000.

In order for these debts to be discovered LAFCO published a notice in the newspaper in the Yuma area and as a consequence has received a number of claims.

5) Successor entity of necessary

Ordinarily during a dissolution of a District, one of the options is to create a successor entity to provide the services formerly provided by the District. In this case the County commenced plans to develop a Fire and Sheriff's substation in the Winterhaven area more than a year ago. The County currently operates a Fire Substation out of modular facilities while plans and development of a full station are being completed. The County already has a Sheriff's substation in the area, which may or may not then be combined with the Fire Station.

Given this plan by the County it does not appear that a successor entity will be necessary.

VI: Public Notice:

Public notice for the proposed project hearing before the Imperial County Local Agency Formation Commission has been given, according to Section § 56427. Notice was issued in the form of a publication in the IV Press at least twenty-one (21) days prior or said hearing, and posted on our webpage.

VII: Report:

In accordance with Section § 56665, the Executive Officer has prepared a report, and presented said report to your Commission and to any public member requesting such report. In addition, a copy of said report has been issued to the Winterhaven Fire District and any party requesting a copy.

VIII: Conflict of Interest Statement:

To date (at the writing of this report, August 25, 2016) no Commissioner has indicated that there is any conflict of interest with regard to this project, nor has any Commissioner reported any communications with the Applicant, Proponent or Opponent. The Commissioners will be asked to declare that during and prior to the public hearing.

The Executive Officer does not have any type of known conflict of interest or financial gain as a result of this project and owns no property in the vicinity.

EXECUTIVE OFFICERS RECOMMENDATION

RECOMMENDATION:

It is the recommendation of the Executive Officer that LAFCO conduct a public hearing and consider all information presented in both written and oral form. The Executive Officer then recommends, that the Commission provide any direction to the EO as it deems appropriate.

CC: Winterhaven Fire District Board

ATTACHMENTS:

EXHIBIT A - Current Sphere of Influence Boundary Map