

EXECUTIVE OFFICER'S REPORT

To The
Local Agency Formation Commission

TO:

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

Alt Commissioner	LUIS PLANCARTE	[Supervisor]
Alt Commissioner	JIM PREDMORE	[City]
Alt Commissioner	RALPH MENVIELLE	[Public]

REPORT DATE:

May 1, 2017

FROM:

Jurg Heuberger, AICP, CEP, Executive Officer

PROJECT:

Winterhaven Fire District Dissolution

HEARING DATE:

May 25, 2017

TIME: 8:50 AM

AGENDA ITEM NO:

13

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 consider the dissolution of the Winterhaven Fire District per the Executive Officer's recommendation.
- OPTION #2:** Conduct a Public Hearing to consider the dissolution of the Winterhaven Fire District per the Executive Officer's recommendation as modified by the Commission during the hearing.
- OPTION #3:** Continue the item for not to exceed 70 days.

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. EXHIBIT "A"
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 EXHIBIT "B" 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 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 Executive Officer, and after numerous meetings with the District Board and following the notice the District posted relating to cessation of service, the 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: Background and facts:

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

This report is to provide information to the LAFCO in order to conduct a public hearing and make a determination as requested by the Executive Officer to dissolve the District on the basis that it is not and for some time now has not provided fire protection services to the Winterhaven area.

The facts as we know them:

- 1) The District voluntarily ceased to provide services to the community.
- 2) The District Board consists of three members with two vacancies and has not met for some time.
- 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 several outstanding debts, some of which have been brought to the EO's attention and to the best of our knowledge the list and amounts attached as **EXHIBIT "C"**.
- 10) The District entered 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 originally requested, that the County Planning Office continue a public hearing that was scheduled for August 24, 2016 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. Furthermore, this is an issue for the County to resolve, however to date no solution has been made available to LAFCO. Therefore, if the Commission does dissolve the District and makes the County the successor, the County will then own the facility unless it decides to liquidate/sell it and the County can still take appropriate action with the tower.

POTENTIAL DISSOLUTION ISSUES:

IF the Commission conducts the hearing to consider the Dissolution of the WFD, and determines that the District is to be dissolved, the following items will need to be resolved:

1) Disposition of the Fire Station and fixed property

The Fire Station is an asset that has value. LAFCO had an appraisal done which concluded that the station/property had a value of \$280,000.00, see **EXHIBIT "D"**.

The LAFCO also had prepared PHASE I environmental review of the property, copy of which is attached as **EXHIBIT "E"**.

2) Disposition of the Fire Chief's Pickup Truck

There is/was a reasonably new and well maintained "Chief's Truck" within the station. 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 the EO's position that this vehicle although an asset its reconfiguration to a civilian truck would be costly and its best disposition would be and the recommendation is that this vehicle/equipment become the property of 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 remains 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 number of vendors or individuals that have not been paid for services or supplies rendered to the District. The extent of the amounts owed by the District are shown on **EXHIBIT "C"**.

In order for these debts to be discovered LAFCO published two notices in the newspaper in the Yuma area in addition to other research, and consequently has compiled the attached claims.

5) Successor Entity.

Ordinarily during a reorganization/dissolution of a District, one of the options is to create a successor entity to provide the services formerly provided by the District. For example, a Community Service District has the authority if granted by LAFCO to provide fire protection. In some cases, it might be possible to merge a District with another District. In this case the County commenced plans to develop and is in the process of constructing a Fire and Sheriff's substation in the Winterhaven.. 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.

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

WFD:

The Winterhaven Fire District was formed under H & S 13801 with the reorganization in 1967. It has been an independent Special District since formation and has operated at various levels throughout its history. There have been efforts before to dissolve the district but for reasons not clear, the LAFCO never did take a formal action. In recent years, there has been a lot of information/miss-information and allegations about the districts operations and it is fair to say that the District in recent years had its share of controversies.

Governance:

The Winterhaven Fire District operated with a governing Board of 5 members elected locally. Most recently the Board had two vacancies for some time and for all practical purpose has not had a functional Board for almost a year.

Employees:

The Winterhaven Fire District was largely a volunteer fire department with a full time Chief and a part time clerk. Although the Chief and the Clerk were paid salaries, the records kept by the District are best described as dysfunctional.

Finance:

The Winterhaven Fire District operated with revenues from taxes provided through the County, with revenues from contracts from the Quechan Tribe; and in prior years with augmentation from the County. The finances, their accounting, their obligations, at least in recent years are both questionable, and in disarray. Accountability to their Board by their staff can best be described as severely lacking.

Plan for providing services:

The LAFCO initiated dissolution proceedings following extensive efforts by staff to obtain information and have the district update its MSR/SAP. These efforts were nonproductive in part due to the decline of the district both financially and technically. The County in the meantime began service to the area via a temporary facility but with plans that are currently in the works to have a full-time fire station. Therefore, the area is being provided with fire protection service.

Successor Obligations:

Under CKH section 57451 the logical successor is the County of Imperial as this section reads as follows:

"For the purpose of winding up the affairs of a dissolved district, the successor of the dissolved district shall be determined as follows:

(b) If the territory of a dissolved district is located entirely within the unincorporated territory of a single county, the county is the successor."

57452 reads as follows:

"Upon the effective date of dissolution, control over all the moneys, or fund, including cash on hand and moneys due but uncollected, and all property, real or personal, of the dissolved district is vested in the successor for the purpose of winding up the affairs of the district.

57453 reads in part as follows:

"For the sole and exclusive purpose of winding up the affairs of the dissolved district, the successor and the officers and legislative body of the successor have the same powers and duties as the dissolved district and the officers and legislative body of the dissolved district and all of the following addental powers and duties;

- (a) To exchange, sell or otherwise dispose of all property, real and personal, of the dissolved district.*
- (b) To compromise and settle claims of every kind and nature.*
- (c) To sue or be sued in the same manner and to the same extent as the dissolved district and the officers and legislative body of the dissolved district.*

The powers and duties shall commence upon the effective date of dissolution and shall continue thereafter until the time when the affairs of the dissolved district have been completely wound up.

VII: 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 to 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, May 1, 2017) 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 order the dissolution of the District subject to the following determinations:

- A) The Commission having held one or more public hearings, having reviewed the Executive Officers Report and having taken input from the public, including extensive notifications to the public, makes the finding and determination that the Winterhaven Fire District has effectively ceased providing its required services on its own volition; has ceased to maintain a viable and effective fire protection service; is financially incapable of providing the service; is technically unable to provide services and the community having an alternative service available is best served by the dissolution of the District. This finding is made pursuant to and in conformance with Gov. Code section 57102(a)1 and 4
- B) The effective date of the dissolution is set to be the date upon which the dissolution is recorded with the County Recorder at which time the successor entity shall have all rights and obligations as set forth under Gov. Code 56000 et Seq. The recording date will be transmitted to the District and the County upon receipt from the County Recorder.
- C) Pursuant to Gov. Code section 57450, upon the effective date of dissolution the district shall be dissolved, dis-incorporated, and extinguished, its existence shall be terminated and all of its corporate powers shall cease.
- D) Pursuant to Gov. Code section 57077.1 et Seq., the Commission determines that the dissolution be approved without confirmation of the voters, subject to the limitations set forth in Gov. Code section 57113.
- E) The Commission finds and determines that a number of individuals or businesses have claims for debts owed by the District, which the successor pursuant to Gov. Code 57453 has the authority to settle such claims, and given that there are sufficient assets to cover such claims without burdening the successor, directs that the successor to their best ability pay any such valid claim as determined by the successor.
- F) The Commission determines that the property known as the Winterhaven Fire station located at 495 Third Ave., Winterhaven further described APN 056-291-010-000 has been appraised at \$280,000.00 shall become the property of the successor as shall all contents unless an individual or entity can demonstrate that they possess legal title to any specific content therein.
- G) The Commission determines that the "Chief's Pickup Truck" and its contents shall be the property of the successor.
- H) The Commission does not have the ability to dictate land use and therefore places no conditions or restriction upon the use of the property as that rests with the successor and/or the land use agency.
- I) The Commission finds and determines that the residents of the area previously served by the District will, given the County's implementation of a fully operational fire station, have the equivalent level of service.
- J) The Commission finds and determines that LAFCO shall be reimbursed by the successor for its reasonable expenses which at a minimum shall be the hard costs incurred during the dissolution process, estimated to be \$ 29,869.83.

CC: Winterhaven Fire District Board
County of Imperial

ATTACHMENTS:

EXHIBIT A- SOI Map
EXHIBIT B- SAP 2006
EXHIBIT C- Vendor Claims
EXHIBIT D- Appraisal
EXHIBIT E- Phase I Environmental Review