

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: FEBRUARY 11, 2014
FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION



SUBJECT: AGENDA ITEM #7- CONSIDERATION OF RECOMMENDATION TO REQUIRE PREPARATION OF ENVIRONMENTAL IMPACT REPORT FOR LAFCO 3172 - REORGANIZATION TO INCLUDE FORMATION OF THE BALDWIN LAKE FIRE PROTECTION DISTRICT AND DETACHMENTS FROM SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT AND ITS MOUNTAIN SERVICE ZONE

RECOMMENDATION:

If the determination of the Commission is to support the staff's position that formation of another fire protection provider in the Big Bear Valley is not sustainable and does not comply with the determinations of State law and Commission policy as outlined in the service review conducted for the Bear Valley community, staff recommends that the Commission take the following actions:

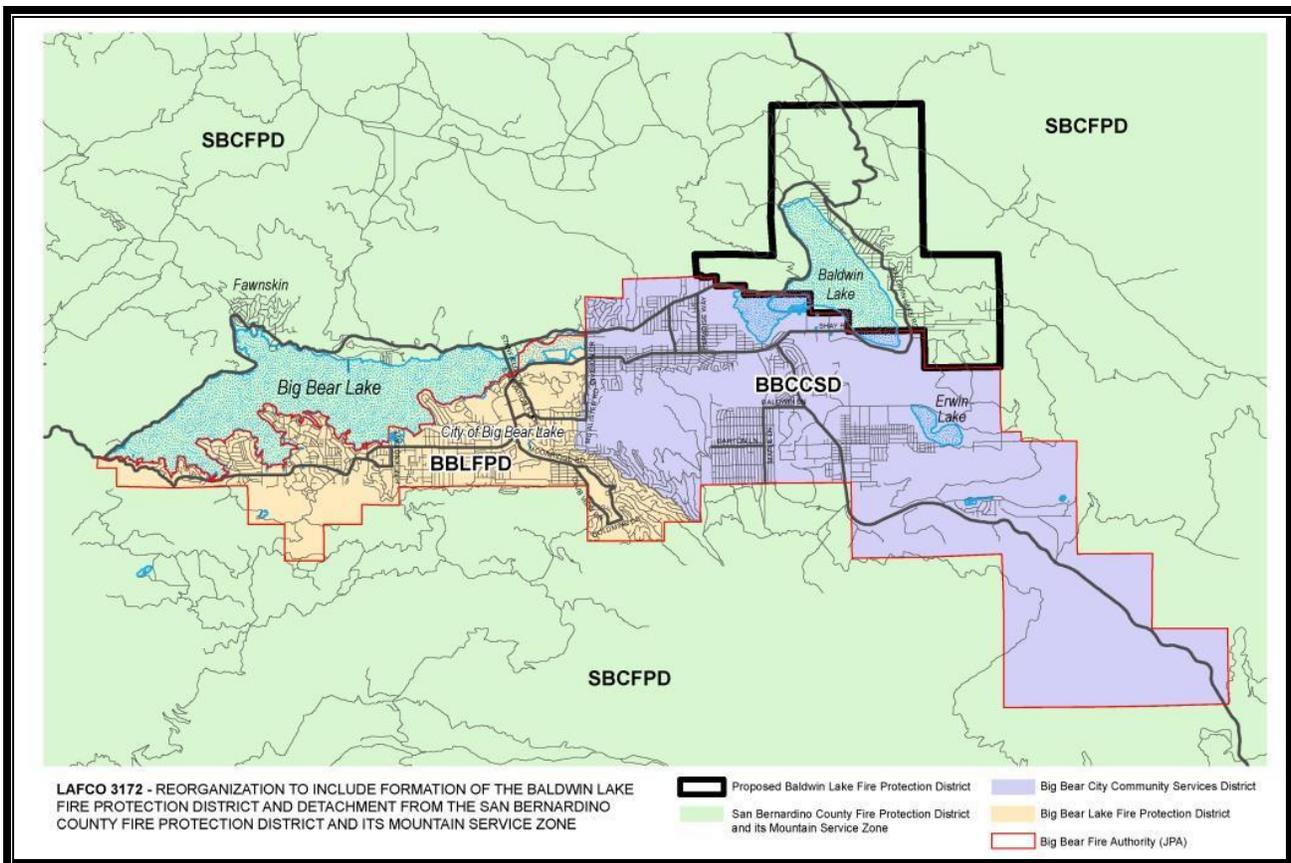
1. Modify LAFCO 3172 to remove the formation of an independent fire protection district and include annexation to the Big Bear City Community Services District for fire protection and emergency medical response purposes with the concurrence of the Chief Petitioner;
2. Direct LAFCO staff to conduct a community meeting with the residents of Baldwin Lake to review the proposed modification to the proposal; and,
3. Direct LAFCO staff to return within 90-days to the Commission with the Plan for Service related to the modified proposal for consideration and the consensus position of the Community on the modification of the proposal.

If the Commission determines, following receipt of testimony at the hearing, that the evaluation of the formation of a new fire protection district to serve the Baldwin Lake area of the Bear Valley community should move forward, staff recommends the Commission take the following actions:

1. Adopt the recommendation of the Commission's Environmental Consultant that the preparation of an Environmental Impact Report be commenced; and,
2. Require the proponents to provide the \$20,000 deposit to begin the process of hiring a consultant to prepare the document and gather the necessary information.

INTRODUCTION:

On April 15, 2013 LAFCO staff certified the petition initiating LAFCO 3172, a proposal to form the Baldwin Lake Fire Protection District and detach the area from the San Bernardino County Fire Protection District and its Mountain Service Zone (copy of map included as Attachment #1 and certification copy included as Attachment #2). The submission of the application was the culmination of almost a year of review by a committee of residents from Baldwin Lake known as "Baldwin Lake Fire Protection Preservation Committee" to address a continuing fire protection presence within the community. The Baldwin Lake community is located within the northeastern portion of the Bear Valley community as defined by the Commission in its service review conducted in August of 2011. A copy of the application and supplemental information received from the Chief Proponents is included as Attachment #3 to this report. A vicinity map of the area of consideration is shown below:



The application materials submitted by the proponents outline their efforts to secure a means for providing continuing fire protection service within the Baldwin Lake Community. This includes a description of the creation of the Baldwin Lake Volunteer Fire Department spearheaded, managed and financially subsidized by Larry Winslow, Chief proponent and Fire Chief of the volunteer Fire Department. The Baldwin Lake Volunteer Fire Department was created in about 2007 as a way to address what the residents have perceived as the lack of concern for their area. The fire station was built, outfitted, and staffed by volunteers, primarily managed by Chief Winslow but the community remained a part of the San Bernardino County Fire Protection District (hereafter identified as County Fire) and its Mountain Service Zone where the property tax revenues for the service were delivered. In mid-2012 County Fire announced its intention to convert the current fire operations by removing the volunteer firefighters and replacing them with paid-call firefighters. This change in direction was not supported by the Baldwin Lake Volunteer Fire Department prompting the effort to evaluate other alternatives.

The Baldwin Lake Fire Protection Preservation Committee was formed to explore the options available and met with LAFCO staff on numerous occasions. The first effort explored was to create a Community Services District to provide fire protection service at the outset but have the ability to address other service needs when desired by the community. LAFCO staff indicated it could not support such an option as the sphere of influence of the Big Bear City Community Services District (BBCCSD) was expanded to include the community only a few months prior. LAFCO staff identified that a consolidation of services, rather than further fragmentation, was the direction of LAFCO law and Commission policy and determinations for the community. LAFCO staff proposed that the Committee work with the BBCCSD to evaluate the option of annexation.

The materials submitted identify that this option was pursued with the BBCCSD Fire Chief and discussed with County Fire but roadblocks to the processing of the proposal were identified. Specifically, the transfer of property tax dollars required in a change of organization proposal would not be supported by the County (Revenue and Taxation Code Section 99 requires the County to adopt the resolution of property tax transfer for all special districts transactions). Such a roadblock eliminates the ability of LAFCO staff to place the matter before the Commission for consideration of the merits of the application.

After the evaluation of various options the Committee submitted the petitions and proposal to LAFCO staff for the formation of the fourth fire protection entity for the Big Bear Valley. Upon certification of the sufficiency of the petition (29% of the voters within the area), the proposal began its review process. This included the review at a Departmental Review Committee (DRC) meeting where questions on the financial feasibility study were identified, identification of the need for an initial study as the required environmental assessment for processing of the application, and the question of whether the contracts for the provision of automatic and/or mutual aid from the existing fire providers would be signed was addressed.

The questions raised at the DRC meeting have prompted a recommendation by the Commission's environmental consultant that the appropriate assessment is the preparation of an environmental impact report. Mr. Dodson's letter, Attachment #6 to this report,

identifies that the determination by both County Fire and the Big Bear Fire Authority (JPA between BBCCSD and Big Bear Lake Fire Protection District) that an automatic aid agreement would not be supported on the basis of the lack of “reciprocity” in the service to be delivered by the new district and the questions on ongoing financial sustainability given the volunteer model proposed by the Committee prompted his recommendation.

As the Commission is aware, the environmental assessment process is a fact finding and presentation process. As Mr. Dodson’s letter states, the proposal of a new fire entity in the Big Bear Valley presents “institutional and financial reasons” that are problematic from a CEQA standpoint. This determination is based upon the evaluation of potential impacts on the environment based upon the change from the current provision (County Fire overlaying Baldwin Lake as a backstop for service from Baldwin Lake Volunteer Fire Department) to the new service delivery model (the removal of County Fire with Baldwin Lake Fire Protection District to stand on its own).

Adding to this determination are the requirements for processing that points LAFCO staff to review Commission policy and the direction of State law to the Commission as outlined in the Cortese-Knox-Hertzberg Local Government Reorganization Act. The first policy within the Commission’s Application Processing Subsection of the Manual states:

PRIORITIES FOR ANNEXATION AND FORMATION (*Adopted April 12, 1972; Amended August 27, 1986.*)

The Commission will consider the following priorities or guidelines for annexation and formation with the provision that overriding circumstances must be stated in exceptions:

- a. Annexation to an existing city or district instead of formation of a new agency.
- b. Annexation to a city rather than a district if both can provide comparable services.
- c. Annexation to a multi-purpose district in preference to annexation to a single purpose district.
- d. Formation of a new political entity as the last and least desirable alternative.

This clearly states that other alternatives, such as annexation to an existing district, should be evaluated before moving forward to consider the formation of a new entity for the provision of fire protection and emergency medical response service.

The direction to the Commission from State law is contained in Government Code Section 56301 which states in part:

“Among the purposes of a commission are discouraging urban sprawl, preserving open-space and prime agricultural lands, efficiently providing government services, and encouraging the orderly formation and development of local agencies based upon local conditions and circumstances.” ...“When the formation of a new government entity is proposed, a commission shall make a determination as to whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner. If a new single-purpose agency is deemed necessary, the commission shall consider reorganization with other single-purpose agencies that provide related services.”

Again requiring that the Commission make a determination whether existing agencies can provide the service in a more efficient and accountable manner rather than create a new government.

So, in the staff view, the Commission is at the juncture where a substantial sum must be deposited to move forward and it should consider the options for providing the level of service for the community of Baldwin Lake. Staff believes that the more appropriate method, given Commission Policy, State law, and the determinations of its service review conducted for the Bear Valley community, would be to annex the territory contained within LAFCO 3172 to the Big Bear City Community Services District. This is the option, in the staff view, that should be evaluated for further consideration by the residents of the community and with the concurrence of the proponents; staff believes this is the appropriate direction to move forward.

If, however, the Commission believes that the proposal as submitted by the petition of 29% of the registered voters in the area should be processed, the determination of the Commission's environmental consultant should be adopted. This would require the deposit of additional funds to begin that review.

BACKGROUND

To better understand the current proposal, in the staff view, a brief history of the area and its fire protection issues is necessary.

In 1996, the BBCCSD initiated an application to expand its sphere of influence and annex areas to the District primarily for fire protection purposes. That reorganization (LAFCO 2800) included the annexation of the Baldwin Lake community and sparked significant controversy in the area. The report prepared identified that the rationale for the proposal was that the BBCCSD was generally the first responder to the area and through the fire service network of automatic and mutual aid contracts received no financial support for that service. The proposal identified that it was the District's position that since they provided the service the revenues generated should flow to the CSD to support its fire operations. This position is eerily similar to that currently espoused by the supporters of LAFCO 3172.

Despite the assurances from the BBCCSD that the residents would be exempted from all non-fire related current assessments and fees attributable to inclusion within its boundaries, residents of Baldwin Lake circulated petitions to oppose the annexation. Their rationale was cited as being the understanding of those developing within the community that Baldwin Lake was a rural community with fire protection at a commensurate level requiring the development of onsite water storage for fire protection, they wished to receive assurance that they would "never" be subject to the non-fire assessments of the BBCCSD, and that the service from the BBCCSD would have been growth inducing changing the nature of their community from rural to suburban.

In order to properly address the three separate areas within LAFCO 2800, the Commission, at its April 1996 hearing, modified the proposal and divided it into two separate parts – LAFCO 2800A was the area of the Baldwin Lake community and LAFCO 2800B was the

Erwin Lake and Lake Williams areas. Ultimately LAFCO 2800A was defeated by registered voter protest and LAFCO 2800B was approved.

As a follow-up to the defeat of LAFCO 2800A, the residents of the Baldwin Lake community petitioned for a sphere of influence change (LAFCO 2841) which removed the area from the BBCCSD sphere of influence. This change was approved in 1997.

Move forward ten years and the residents and landowners within Baldwin Lake are now concerned with their lack of 24/7 fire protection and emergency response within their community and along Highway 18 as it exits the Big Bear Valley toward Lucerne Valley and the need for emergency medical response. In 2005 Larry Winslow, a property owner and resident of the community concerned about the lengthy response times for emergency response received approval through the State of California Fire Marshall's office to build and staff a volunteer fire department. In 2007 the County Board of Supervisors approved the service area to be attributed to the Baldwin Lake Volunteer Fire Department. Having acquired the necessary approvals to move forward, Mr. Winslow built the fire station and crew housing, and along with donations from the community purchased fire equipment including fire engines and medical equipment. Mr. Winslow then utilized his background as a volunteer firefighter to recruit volunteers to come to the Baldwin Lake community and provide the required service. Therefore, since 2007 Fire Chief Winslow has operated the non-profit Baldwin Lake Fire Department serving the needs of the community

From 2009 through August 2011, the LAFCO staff and Commission conducted the service review required for the Bear Valley community. This study concluded at the August 17, 2011 hearing where the service review determinations were received and filed by the Commission. Included in that report, available on the Commission's website at www.sbclafco.org, was the reiteration of the Commission's position of the ongoing need for unification of services for the Big Bear Valley. However, the Commission acknowledged the functional consolidation taking place through the development of the Big Bear Fire Authority, a joint powers authority created between the Big Bear Lake Fire Protection District and the BBCCSD, and indicated its position that it would await the second round of service reviews to address whether the needed efficiencies had been achieved and if not, whether further reorganizations should be defined through the sphere of influence program.

According to the application materials submitted for LAFCO 3172, in 2012 County Fire proposed to take over the operations of the Baldwin Lake Fire Department and make it a "paid-call" station under direct supervision of the County Fire Mountain Service Zone. The response from the Baldwin Lake community was to form a committee, identified as the "Baldwin Lake Fire Services Preservation Committee" (hereafter shown as Committee), to review their options as they opposed the changes outlined by County Fire.

Those options were reviewed with County Fire, LAFCO staff and those who represent the Baldwin Lake community. LAFCO staff identified its position that it could not support the creation of a new public agency, community services district or fire protection district, since the services contemplated could be provided by the BBCCSD. The sphere of influence for the CSD had been expanded in September 2011 as a part of the service review/sphere of influence update for the BBCCSD to include the entirety of the Baldwin Lake community without opposition from the residents. The materials submitted for LAFCO 3172 identify that the Committee reviewed the option for receipt of funds from County Fire to operate their

station as well as the withdrawal of the area through annexation to the BBCCSD. The materials identify that these options were opposed by County Fire.

So the Committee, shepherded by Chief Winslow, felt its only option was to submit a proposal for creation of a new fire protection district for the community.

As the evaluation of this proposal has been conducted, the staff's concerns have been identified to the proponents as relating to financial sustainability along with the use of an all-volunteer firefighter model for delivering the service. In general these concerns are outlined as follows:

FINANCIAL SUSTAINABILITY:

The Proponents have submitted a financial feasibility study for LAFCO 3172 which outlines the five year projection required by Commission policy. The financial study is predicated upon the proposed District having a single staff person, a fire chief, and an all-volunteer response force for fire protection and emergency medical response. It includes a discussion of the property tax revenue to be received as a function of the implementation of Government Code Section 56810 (transfer process for a formation) and the imposition of a special tax (\$50 per developed parcel and \$25 for vacant parcel). These are the only guaranteed revenue sources for the proposed district.

LAFCO staff commenced the property tax transfer process required under Govt. Code Section 56810 and received a response from the County Auditor and the County Administrative office (copy included as Attachment #4). In addition, at the outset of the review, the Property Tax Division of the Auditor-Controller's office provided a description of the existing tax distribution within the area. The Fiscal Year 2011-12 property tax generated within the Tax Rate Areas within LAFCO 3172 is \$25,541 for County Fire Administration and \$115,872 for the Mountain Zone for a total secured allocation of \$141,413.

The Government Code Section 56810 allocations is shown below and identifies the "cost of service" related to the transfer process. Of importance to note, the inclusion of a distribution from the County General Fund is required as supplemental funding is annually provided to County Fire currently to provide its services. This makes it a "cost of service" determination under 56810.

| NAME OF AFFECTED ENTITY | EXPENDITURES | NET COST | PERCENTAGE FROM PROPERTY TAX | AMOUNT TO BE TRANSFERRED |
|------------------------------------------------|------------------|------------------|------------------------------|--------------------------|
| Mountain Service Zone | \$130,921 | \$130,921 | 96.12% | \$125,842 |
| San Bernardino County Fire Protection District | \$14,395 | \$14,395 | 34.01% | \$4,896 |
| County General Fund (subsidy share) | \$9,492 | \$9,492 | 66.23% | \$6,287 |
| TOTAL | \$154,808 | \$154,808 | | \$137,025 |

So the proposed Baldwin Lake Fire Protection District would receive less revenue in total than the defined area currently generates and those residual fire revenues would be reallocated to the County General Fund if completed. This would not be true in an annexation where, by County policy, the detaching special district revenues would be transferred to the annexing entity for continuing service.

The financial structure anticipates an all-volunteer force to provide the service. This is the model currently in place and working well. In the staff view, it is working because of the hard work and expertise of Chief Winslow in getting the individuals to come to Baldwin Lake for coverage and to provide the financial assistance to keep the Department in operation. However, the Commission cannot legislate that Chief Winslow's expertise and dedication continue. The formation process anticipates the installation of a five-member board of directors who will be charged with managing and funding the operations. Therefore, the question the staff and Commission must answer is if Chief Winslow were not managing this operation how would it be operated and manned. Would the projected revenues support the use of limited-term firefighters to assure the operation since automatic aid would not be contractually available pursuant to the responses to this proposal by County Fire and Big Bear JPA? The staff's position is that it is uncertain how an ongoing Baldwin Lake Fire Protection District would continue. The Commission is well aware of the trials and tribulations of providing for fire protection in other parts of the County which rely on volunteers and the pool of available volunteers is limited to non-existent.

As outlined above, LAFCO staff's concerns with the proposal relates to its long-term financial sustainability and the use of a volunteer model for provision of fire protection and emergency medical response. These concerns have not been ameliorated by the submission of updated information during the review process by the proponents and have been intensified by the submission of the recommendation of the Commission's environmental consultant. Therefore, in response to these ongoing concerns, staff is recommending that the Commission modify the current application to remove the formation question and replace it with the annexation of the same territory to the Big Bear City CSD. This was staff's position in early 2012 when the committee meet to review its options and it remains staff's position that this is the best alternative for continuing service based upon the information gathered in processing this application.

This recommendation has been reviewed with Legal Counsel who has indicated that pursuant to the provisions of Government Code Section 56375(a)(1) the Commission has the authority to modify the proposal absent opposition by the proponents since it is a petition initiated application. The relevant Government Code Section states:

The commission shall have all of the following powers and duties subject to any limitations upon its jurisdiction set forth in this part:

(a) (1) To review and approve with or without amendment, wholly, partially, or conditionally, or disapprove proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission.

The recommendation has been reviewed with the proponents who have indicated they are not opposed as this was one of their first preferences in achieving ongoing fire operations. However, their position comes with the caveat that they request assurance that should issues arise during the processing that prevent the annexation from moving forward that the Commission will return the proposal to the original formation question. Attachment #5 to this report is a letter dated January 8, 2014 sent by the Chief Proponent, Fire Chief Larry Winslow, acknowledging the recommendation of staff and at least tacitly supporting the change.

ENVIRONMENTAL CONSIDERATIONS:

At the heart of the discussion at this hearing is the recommendation to prepare an Environmental Impact Report (EIR) for LAFCO 3172 along with its commensurate costs for processing. On January 21, 2014 the Commission's Environmental Consultant, Tom Dodson of Tom Dodson and Associates, submitted his recommendation that the necessary environmental assessment for LAFCO 3172 would be the preparation of an EIR, a copy of the letter is included as Attachment #6. Approval of this recommendation would require the proponents of this application to submit a \$20,000 deposit to begin the EIR preparation process pursuant to the Commission's adopted Schedule of Fees, Charges, and Deposits, would require the preparation of a Request for Proposal to be circulated, and an environmental consultant hired to perform the work.

Mr. Dodson's rationale, as outlined in his letter, reflects the concerns about the inability of the proposed Baldwin Lake Fire Protection District to participate in automatic aid arrangements with surrounding fire authorities based upon the question of reciprocity of service. Without these arrangements, the approval of this proposal will be a reduction in service which may have a significant effect on the environment. However, should the proposal be modified to be an annexation to the Big Bear City CSD, as was proposed in 1996, LAFCO staff would be anticipate that a statutory exemption would be the appropriate environmental determination.

CONCLUSION:

LAFCO staff has a difficult time requiring the submission of \$20,000 deposit from a community group to prepare an environmental document for a proposal which it cannot support on the basis of financial sustainability and the direction of State Law and Commission policy that the existing adjacent service provider in the area should assume the responsibility. On the basis of the ongoing discussions with the proponent group, LAFCO staff is recommending that the Commission modify LAFCO 3172 to eliminate the formation of a new fire protection district and replace it with the annexation of the same territory to the Big Bear City Community Services District for fire and emergency medical response service only.

In keeping with that recommendation staff is requesting:

- a. The authorization to work with the staff of the BBCCSD, through its participation in the Big Bear Fire Authority JPA, to develop a Plan for Service that addresses

the extension of fire protection and emergency medical response to the Baldwin Lake community, including the imposition of the existing supplemental tax structure of the CSD for fire protection purposes;

- b. Direction to staff to conduct a community meeting in the Baldwin Lake community to review its modified proposal and rationale; and,
- c. Direction to return to the Commission within 90-days for consideration of these modifications.

KRM:

ATTACHMENTS:

1. [Vicinity Map and Proposal Map for LAFCO 3172](#)
2. [Notice of Petition Sufficiency](#)
3. [Updates to Plan for Service and Application for LAFCO 3172](#)
4. [County Administrative Office Response on Property Tax Transfer for LAFCO 3172 Dated September 18, 2013 and Response from the Property Tax Division of the Auditor-Controller Office Dated June 10, 2013](#)
5. [Letter Dated January 12, 2014 from Chief Lawrence Winslow, Baldwin Lake Volunteer Fire Department](#)
6. [Letter from Tom Dodson and Associates Dated January 21, 2014, Recommending the Preparation of an Environmental Impact Report for LAFCO 3174](#)