

HEBER PUBLIC UTILITY DISTRICT

REPORT TO BOARD OF DIRECTORS

MEETING DATE: January 16, 2014

FROM: Laura Fischer, General Manager

SUBJECT: Adopt Resolution 2014-1 to initiate the establishment of a cost recovery Ordinance effecting all new development within the district boundary and sphere of influence, to ensure adequate mitigation of all impacts on (or to) the level of service and/or capacity of community services proposed to be delivered by the Heber Public utility District

ISSUE: Shall the Board Adopt Resolution 2014-1 to initiate the establishment of a cost recovery Ordinance?

General Manager's Recommendation:

Adopt Resolution 2014-1 to initiate the establishment of a cost recovery Ordinance.

FISCAL IMPACT:

No immediate impact, however the implementation of the cost recovery Ordinance will ensure adequate mitigation of all impacts on (or to) the level of service and/or capacity to the District.

BACKGROUND:

Lighting and Landscaping Maintenance District Formation:

On December 16, 2013, HPUD became aware that the County Board of Supervisors (BOS) would be considering approval of the formation of a Lighting and Landscaping Maintenance District (LLMD) to mitigate cost for services at the Imperial Center Development. Our concern was that HPUD would be contracted to provide many of these services, yet we were not afforded the opportunity to review the documents.

After listening to our request made during their meeting on December 17, 2013, the County Board of Supervisors decided to postpone approval and give HPUD an opportunity to review the LLMD. HPUD presented a letter to the BOS at that meeting, a copy of which is attached to this report for your consideration.

Staff reviewed the LLMD and made several comments and expressed our concerns regarding; a) what services were to be included in the LLMD; and b) what agency would be responsible to provide them, and c) how was the cost to provide the services determined. We submitted a letter to the County BOS on December 23, 2013. A copy is attached for you review.

After submitting the letter, staff had some e-mail correspondence with the CEO and discussed the issues with him and County counsel through a couple of phone calls. Staff also met with the interim Planning Director, Mr. Jim Minnick, to discuss the issues, and we received some brief correspondence from Mr. Alan Kapanikus who prepared the Report to Adopt Resolution 2014-1 intent to establish cost recovery for new development

Engineer's Report for the LLMD. Staff was not satisfied with the County's responses, and in fact, County staff proposed adoption at the Public Hearing on January 7, 2014 with very minimal changes to the language of the document and no changes to the financing plan.

At the BOS meeting on January 7, 2014, HPUD once again submitted a letter addressing our concerns about the level of services, and what agency would be responsible to provide them. A copy of that letter is attached for your review. Staff's concern was that HPUD was required to provide the services as per the Settlement Agreement and that the LLMD did not guarantee a method for HPUD to recover all associated costs. Our concerns prompted the BOS to include additional modifications to the LLMD. The modifications included the addition of a line item to operate and maintain fire hydrants. The total annual assessment for the Imperial Center LLMD is as follows:

PROPOSED BUDGET						
<u>Services</u>	<u>Units</u>	<u>Amount</u>	<u>Costs Per Unit</u>	<u>Annual Costs</u>	<u>Costs per Acre</u>	
Landscape Parkways	linear feet	9,985	\$ 1.75	\$ 17,473	\$ 274.73	
Sidewalks	linear feet	9,985	\$ 1.25	\$ 12,481	\$ 196.24	
Storm Drain Systems & Retention						
Basins	acre	13.76	\$ 4,356	\$ 59,939	\$ 942.43	
Street Lighting	pole	4	\$ 425	\$ 1,700	\$ 26.73	
Street Sweeping	curb mile	2	\$ 20	\$ 38	\$ 0.59	
Fire Hydrants	hydrant	14	\$ 500	\$ 7,000	\$ 110.06	
Total Estimated Costs of Services				\$ 98,630	\$1,550.79	
Annual Administration				\$ 10,000	\$ 157.23	
County Administration Fee				\$ 10,000	\$ 157.23	
Special Administration Costs				\$ -0-	\$ -0-	
Estimated Administration				\$ 20,000	\$ 314.47	
Total Balance				\$118,630	\$1,865.25	

The proposed Fiscal Year 2013-2014 annual assessment is \$1,865.25 per acre.

At the BOS meeting, the County Counsel insisted that should the property owners not pay the assessment and therefore not fund the LLMD, then HPUD would be required to provide the "Community Services" outlined in the settlement agreement without compensation.

HPUD requested additional language be included in the LLMD, which states that the County would be responsible to pay for services should the LLMD fail to be funded. The County refused to include this language. However, HPUD should not provide services without compensation or a secured mechanism in place to recover our costs. Should the LLMD fail to be funded for any reason, HPUD will cease to provide the services. The consequences of this action may be that the County issues a code enforcement action against HPUD, but given that they County does not enforce existing nuisance codes within the Heber area or any other area of the County the risk is very minimal.

Additional research into the LLMD Act of 1972 revealed that if the developer does not pay, then the County is required to put a lien on the property. This process usually

takes about 5 years to clear then property can be sold to clear liens, but under the LLMD law you must process the lien quickly with the “Rights to Accelerated Foreclosure” and it takes about 180 days. This significantly reduces our risk.

The LLMD law also states that if the LLMD assessment is underfunded one year, the deficit is carried over until the next year by the agency who formed the LLMD, which is the County. In fact HPUD will not have access to the LLMD financial until the annual audit so we will only know if our billing exceeds what is allowed under the LLMD for that year, not what is actually collected. We can bill and demand payment even if they are short and it would be up to the County to adjust the LLMD to collect more the next year to cover the deficit. This also significantly reduces our risk.

HPUD Services Provided to Imperial Center

The District is providing water and sewer services to the earlier phase of development which includes Club LooHoo, AM-PM and the vacant building just west of the AM-PM and south of Club LooHoo. We are also providing water to lot 6, which is just a parking lot for the two new buildings. We agreed to provide the water to this parking lot in order to keep the landscaping alive.

We are not providing water and sewer services to the two new buildings yet. You may recall that HPUD Board adopted a Resolution and modified our Utility Service Policy to make sure that all new development meets the County Fire Department fire flow requirements. HPUD made several conditions of approval for that must be met before we will provide water and sewer to the two new buildings at Imperial Center. One of the Conditions was that they provide a letter from the County stating they HPUD has met the fire flow requirements or that the developer has mitigated the fire flows to the Fire Department’s satisfaction. We have received a letter from the County Fire Department stating that HPUD has met the fire flow requirements at this development.

There are a couple of additional conditions that are still pending, but staff feels that they will have these conditions cleared within a few weeks and HPUD will provide them with water and sewer services. One of the conditions is that the development pay HPUD for cost to inspect the installation of the new fire line and for any and all engineering costs associated with the project approval. Staff is currently preparing the invoice.

Other than water and sewer, HPUD is not providing any services to the development at this time. We have put in place a method to track our man hours and equipment used and we will continue to work with the County to determine what records will be needed in order for HPUD to receive the full amount that it costs us to provide the services.

DISCUSSION:

Adopting Resolution 2014-1 will formalize HPUD’s intent to establish a cost recovery Ordinance that will ensure adequate mitigation of all impacts on or to the level of service and or capacity of the District. The Resolution will be submitted to the County along with a letter which will notify the County that HPUD has agreed to provide specific Community Services for a percentage of property taxes, and that we are providing the required community services at this time. Any new request for any services within our District boundary or sphere of influence will be subject to the new regulations that we are going to establish via Ordinance. The Ordinance will establish a method to

determine the impact and to establish the best method to recover the cost of the impacts to the District. The Resolution also states that until the Ordinance has been adopted and in force, no new service connections will be authorized or approved.

Staff will also recommend some modifications to the Utility Service Policy to include all services that the District provides not just water, sewer and trash. The amended policy will incorporate language to prohibit all new connections into the District's water or sewer systems unless the impacts to any services provided by the District are mitigated and a cost recovery method is in place. The amendment to the policy will also require specific language to be included in any "will serve" letters that may be provided by HPUD in the future.

CONCLUSION:

Adopting Resolution 2014-1 to initiate the establishment of a cost recovery Ordinance effecting all new development within the district boundary and sphere of influence to ensure adequate mitigation of all impacts on or to the level of service and/or capacity of the Heber Public utility District is a necessary step to ensure that all services provided by the District are fully funded.

Staff recommends adopting Resolution 2014-1 as presented.

Respectfully Submitted,

Laura Fischer, General Manager

Attachments: Resolution 2014-1
 Letters to County BOS dated: December 16, 2013, December 23,
 2013 and January 6, 2013.

RESOLUTION NO. 2014-1_

A RESOLUTION OF THE HEBER PUBLIC UTILITY DISTRICT TO INITIATE THE ESTABLISHMENT OF A COST RECOVERY ORDINANCE, EFFECTING ALL NEW DEVELOPMENT WITHIN THE DISTRICT BOUNDARY AND SPHERE OF INFLUENCE, TO ENSURE ADEQUATE MITIGATION OF ALL IMPACTS ON (OR TO) THE LEVEL OF SERVICE AND/OR CAPACITY OF COMMUNITY SERVICES PROPOSED TO BE DELIVERED BY THE HEBER PUBLIC UTILITY DISTRICT

WHEREAS, the Heber Public Utility District Service Area Plan was approved by LAFCo on November 15, 2012 and subsequently adopted by the Heber Public Utility District (District) on December 20, 2012; and

WHEREAS, the Service Area Plan clearly identifies the District boundary for the provision of community services and the Sphere of Influence for the future extension of services; and

WHEREAS, the Service Area Plan included population projections, determined the adequacy of District infrastructure, and established for the first time the facilities and services authorized to be provided for and planned for by the District as follows: Administrative, Parks and Recreation, Solid Waste, Wastewater Treatment and Collection, and Water Treatment and Distribution; and

WHEREAS, the Service Area Plan also identified shared services for specific development projects, under independent agreements, as follows: drainage improvements and lighting; and

WHEREAS, the Service Area Plan further noted financing constraints and opportunities, inclusive of cost recovery opportunities for the adequate maintenance and delivery of the aforementioned facilities and service; and

WHEREAS, a Settlement Agreement was approved between Heber Public Utility District and the County of Imperial on August 29, 2012 which outlines specific “Community Services” that the District agrees to reasonably provide within portions of Tax Rate Area’s (TRA’s) 066-001, 066-002, 066-003, and 066-004, as follows:

- 1) To operate and maintain the street lighting system;
- 2) Maintain and replace as necessary all fire hydrants;
- 3) Maintain all parks;
- 4) Maintain the retention/detention basins and supporting systems. The term supporting systems means and includes any pump station servicing a designated retention/detention basin, along with all drainage appurtenances (i.e. pipelines, inlet and outlet structures, and storm drains) handling storm water runoff from any of the designated Tax Rate Areas within the District service area; and
- 5) Perform any mosquito abatement determined by the County’s Environmental Health Department to be required as a result of standing water accumulating in any retention/detention basin.

WHEREAS, the Settlement Agreement identifies the portion and source of real property taxes to be allocated to the District from TRAs 066-002, 066-003, and 066-004 to mitigate the impacts of providing the specific Community Services, but purposely excludes TRA 001 revenue given that the aforementioned Settlement Agreement Services 1-5 were not extended into TRA-001 outside of any independent agreement; and

WHEREAS, the Community Services, which are outlined in the Settlement Agreement, cannot be “Reasonably Required” to be provided within any portion of TRA-00,1 or any other TRA, absent an independent agreement or without just compensation for services delivered; and

WHEREAS, all new development within the District’s service area that may be approved after the date of the Settlement Agreement will impact the level of Community Service demand to be provided by the District; and

WHEREAS, any new impacts to any of the Community Services provided by the District after the date of the Settlement Agreement shall be adequately mitigated to the District’s satisfaction prior to the extension of any new services; and

WHEREAS, the District does not have land use authority and is furthermore not the permitting agency for new development, thus relies on the expertise of Imperial County’s Planning Department to prepare adequate Conditions of Approval and to review all development projects to identify impacts to Community Services and ensure that a Cost Recovery Agreement is referenced in the Conditions of Approval; and

WHEREAS, the District intends to make a Cost Recovery Agreement a condition of all “Will Serve” letters to be issued to any potential new development; and

WHEREAS, all costs associated with providing the new Community Services be the responsibility of the developer, unless Imperial County assumes said responsibility; and

WHEREAS, this Cost Recovery Agreement is applicable for all new development wishing to receive any service or utility connection from the District and shall exclude reconnections of services previously receiving service through the District; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Heber Public Utility District Board of Directors hereby directs management to establish said Ordinance for Board review and adoption and hereby orders that no new connections shall be approved until said policy is in place and strictly adhered to as determined on this 16th day of January 2014.

APPROVE AS TO FORM:

Steven M. Walker, General Counsel

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL)
HEBER PUBLIC UTILITY DISTRICT)

AYES: _____

NOES: _____

ABSENT: _____

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Heber Public Utility District held on the 16th day of January 2014.

Margie Lizarraga, Board President

ATTEST:

I, Rafaela Sanchez, Secretary to the Clerk of the Board of the Heber Public Utility District, County of Imperial, State of California, DO HEREBY CERTIFY that the foregoing resolution was dully passed, approved and adopted by the Board of Directors of the Heber Public Utility District at its regularly scheduled meeting held on the 16th day of January 2014.

By _____
Rafala Sanchez, Clerk of the Board



Heber Public Utility District

1078 Dogwood Rd. Suite, 103 · P.O. Box H
Heber, CA 92249
TEL. (760) 482-2440 · FAX (760) 353-9951
www.heber.ca.gov

December 16, 2013

Board of Supervisors
c/o Blanca Acosta,
IC Clerk of the Board
940 Main Street
El Centro, CA 92243

RE: Maintenance of Retention Basins, Lighting, & Mosquito Abatement at the Imperial Center

Dear Board of Supervisors:

The purpose of this letter is to object to the acceptance of the engineering report dated December 2, 2013 as a basis for lighting and landscaping financing needs under the proposed new special district. The Heber Public Utility District (HPUD) is responsible for the operation and maintenance of street lighting system, all fire hydrants, parks, maintenance of retention basins and supporting systems, and mosquito abatement within the sphere of influence area that falls within tax rate areas #066-001, #066-002, #066-003, #066-004 per the Settlement Agreement with Imperial County dated August 29, 2012. HPUD receives a share of property tax base from these tax areas and/or has a financing agreement in place, except from tax rate area #066-001 which encompasses the Imperial Center. According to the Imperial Center Conditions of Approval (#48), adopted by the Board of Supervisors on April 10, 2007, it is reiterated that HPUD shall be responsible for the maintenance of the retention basin, yet HPUD has not been afforded the opportunity to review the financial calculations in the Engineering Report being considered for approval.

At this time, HPUD is being held accountable to fulfill these services within an amount that has been solely reviewed by Imperial County. HPUD received the engineering report on December 9th, 2012, exactly one day prior to the Board meeting proposing to accept it. HPUD respectfully requests an opportunity to review the proposed engineer's assessment and asks that the Board further consider extending HPUD a voting position in this new district proposed. HPUD has the responsibility to ensure that the new district to be formed will collect sufficient funds to cover the expense of the maintenance of the facilities for which it is responsible.

As the implementing agency, HPUD must have the opportunity to accept the calculations as reasonable. If HPUD is not afforded an opportunity to review and ensure sufficient funds have been allocated to cover the expense of maintenance, Imperial County shall stipulate in the district formation documents that Imperial County shall be responsible for the cost of maintaining those facilities in incidents where the costs exceed the amount that has been allocated.

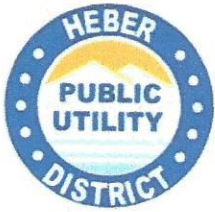
We further ask that the Board of Supervisors provide ample opportunity to review and comment on all matters pertaining to development with the HPUD Service Area to prevent issues such as those ongoing with the Correll and Heber Meadows Subdivisions. If you have any questions regarding this communication, please don't hesitate to contact me at (760) 482-2440 or at lfischer@heber.ca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Laura Fischer".

Laura Fischer,
General Manager

cc: HPUD Board
Graciela Lopez, Finance Manager
Justina G. Arce, Planning Consultant
James G. "Jack" Holt, PE, District Engineer



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December 23, 2013

Board of Supervisors
c/o Blanca Acosta,
IC Clerk of the Board
940 Main Street
El Centro, CA 92243

**RE: Review of Engineer's Report Prepared for Landscaping and Lighting Maintenance District,
As Prepared by GGMS, Inc, and Dated December 2, 2013**

Dear Board of Supervisors:

Thank you for providing Heber Public Utility District (HPUD) the opportunity to review the Imperial Center's, Landscaping and Lighting Maintenance District (LLMD) Engineering Report. The Engineering Report was reviewed for consistency with agreements previously approved by the Board of Supervisors such as the Settlement Agreement between HPUD and Imperial County and the Final Conditions of Approval for Imperial Center Tract Map #954. During the review, it was found that the LLMD does not substantially conform to the aforementioned documents and requires substantial clarification or modification, if HPUD is to assume maintenance responsibilities over the Imperial Center area, as stipulated under the Settlement Agreement. The document enclosed herewith outlines HPUD's review findings and concerns with the Engineering Report prepared by GGMS.

As previously communicated, HPUD does not oppose to relinquishing the operation and maintenance responsibilities of this service area specific to the Imperial Center LLMD, if Imperial County is to carry out the responsibility and absolve HPUD from the requirements stipulated in the Settlement Agreement. If HPUD will be held accountable for operation and maintenance, we are requesting additional expenses be incorporated into the financial calculated data and an opportunity to review the base data, before it is adopted by the Board of Supervisors. This would allow HPUD to ensure sufficient funding is apportioned to carry out the operation and maintenance of facilities. In short, we believe the Engineering Report needs to be revised considerably if it is to conform to the Settlement Agreement in which case it should include the specific roles and responsibilities HPUD, Imperial County to carry out the services stipulated in the LLMD.

We believe this is a prime opportunity to engage in fruitful dialogue with Imperial County and are hopeful to resolve the maintenance needs of Imperial Center without significant delays. If you have any questions regarding this communication, please don't hesitate to contact me at (760) 482-2440 or at lfischer@heber.ca.gov

Sincerely,

A handwritten signature in cursive script that reads "Laura Fischer".

Laura Fischer,
District Manager

cc: HPUD Board
Graciela Lopez, Finance Manager
Justina G. Arce, Planning Consultant
James G. "Jack" Holt, PE, District Engineer
Alan Kapanicas, Financial Consultant



**Heber Public Utility District Review Comments Prepared for
Engineer's Report for Imperial Center Landscaping and Lighting Maintenance District,
Dated December 2, 2013**

HPUD Comments Dated December 23, 2013

Page No.	Engineer's Report	Comments
3 of 11	I. INTRODUCTION	The introduction does not outline the roles and responsibilities of the Heber Public Utility District herein after referred to as, "HPUD" which is under an Agreement with Imperial County to provide services to subject areas under the Imperial Center Lighting and Landscaping Maintenance District (LLMD) boundary. Please refer to Settlement Agreement dated August 29, 2012. HPUD would not be opposed to relinquishing the responsibility of operation and maintenance services within the Lighting and Landscaping District to the County since a property tax share agreement is not in place for TRA 066-001, in which the Imperial Center is located.
3 of 11	I. INTRODUCTION (general comment)	The words "general benefits" and "special benefits" should be defined for the purposes of this Report.
3 of 11	I. INTRODUCTION <i>"Changes in land use or parcel subdivisions resulting in an increase to a particular parcel or group of parcels are not considered an increased assessment."</i>	Please explicate the statement further and provide an example so this statement is easily understood. It is unclear what is meant when referring to "an increase to a particular parcel," an increase of ...land use intensity? What about an increase in acreage due to a lot merger with parcels outside the District boundary?
4 of 11	II. DESCRIPTION OF DISTRICT A. Boundaries of District <i>"Imperial Center is located west of Highway 111 . . ."</i>	Please correct to read "Imperial Center is located <u>east</u> of Highway 111 . . ."
4 of 11	II. DESCRIPTION OF DISTRICT A. Boundaries of the District <i>"A map showing the boundaries of the District will be filed with the Clerk of the Board..."</i>	Prior to recording the boundary map, please provide a copy of the map to HPUD.

Page No.	Engineer's Report	Comments
4 of 11	<p>II. DESCRIPTION OF DISTRICT</p> <p>B. Description of District Improvements and Services</p> <p>Landscaped and Drainage Improvements:</p> <p><i>"The County utilizes the services of landscape maintenance contractors and County crews for all regularly scheduled landscape maintenance."</i></p>	<p>This statement contradicts the aforementioned Settlement Agreement and Final Conditions of Approval for Imperial Center Tract Map #954, Condition #48, approved by the Board of Supervisors on April 10, 2007 which indicates HPUD is to assume responsibility of the "landscape"</p> <p>The Settlement Agreement Section 2. TERMS, a. iii states <i>"As to community services to be provided within other portions of those areas designated as TRA 066-001, TRA 066-002, TRA 066-003, and TRA 066-004, HPUD covenants and agrees to operate and maintain the street lighting system, maintain and replace as necessary all fire hydrants, maintain all parks, maintain the retention/detention basins and supporting systems, and perform any mosquito abatement determined by the County Environmental Health Department to be required as a result of standing water accumulating in any retention/detention basin. . . . For the purposes of the foregoing provisions, the term "supporting systems" shall mean and include any pump station servicing a designated retention/detention basin, along with all drainage appurtenances (i.e. pipelines, inlet and outlet structures, and storm drains) handling storm water runoff from any of the designated parcels."</i></p> <p>Condition #48 of the Imperial Center Tract Map #954 reads as follows: <i>"the basin shall be fully landscaped (to the approved landscape plan) at 50% of construction of basin and at completion of the basin. The landscape shall be maintained by developer until responsibility is assumed by Heber Public Utilities District."</i></p> <p>HPUD does not oppose to relinquishing these responsibilities for the Imperial Center territory. If the County, through the Landscaping and Lighting District is to assume these responsibilities the Engineer's Report shall be revised to stipulate that HPUD will not be responsible for landscape maintenance services or drainage improvements within the Imperial Center LLM District.</p>
4 of 11	<p>II. DESCRIPTION OF DISTRICT</p> <p>A. Description of District Improvements and Services</p> <p>Landscaped and Drainage Improvements:</p>	<p>It is important that the Engineering Report document that each of the developed lots has a small basin in them. The district formation documents should clarify that those private basins are not proposed to be maintained by the LLMD, but are to be maintained by the individual owner.</p> <p>The document shall also state that Imperial County code enforcement shall be responsible of abatement if the private basins become a nuisance.</p>

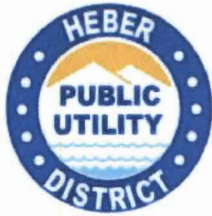
Page No.	Engineer's Report	Comments
4 of 11	<p>II. DESCRIPTION OF DISTRICT B. Description of District Improvements and Services Landscaped and Drainage Improvements:</p>	<p>This section has omitted a service correlated with drainage improvements, which is mosquito abatement, and that may result from deficient drainage facilities. Mosquito abatement should be addressed in the Report and properly budgeted for as it may be necessary due to standing water accumulating in the retention/detention basin.</p> <p>The County may already collect a mosquito abatement assessment, however, HPUD has not been transferred any associated proceeds for this subject TRA. It should be made clear that HPUD is not responsible for mosquito abatement.</p>
4 of 11	<p>II. DESCRIPTION OF DISTRICT C. Description of District Improvements and Services Lighting Improvements:</p> <p><i>"The local street lighting improvements to be maintained, operated, and service by the District include utility company and County-owned streetlights within the right of way of the local public street located within the boundaries of the District."</i></p>	<p>Please identify the "local public streets" by name.</p> <p>Please provide a map that identifies the various entities that have ownership over the various street lights with the respective location of the street lights.</p> <p>Clarify whether the entity with ownership over the lights is responsible for the operation and maintenance and power services through the IID or whether the lighting district is responsible.</p> <p>For the record, this statement also conflicts with the aforementioned Settlement Agreement which stipulates the following: <i>"As to community services to be provided with other portions of those areas designated as TRA 066-001 [Imperial Center is located in this TRA 066-001], TRA 066-002, TRA 066-003, and TRA 066-004, HPUD covenants and agrees to operate and maintain the street lighting system, . . . "</i></p> <p>HPUD does not oppose to relinquishing these responsibilities to the County, through the Landscaping and Lighting District. The Engineer's Report shall be revised to stipulate that HPUD will not be responsible for the operation and lighting services within the Imperial Center LLM District.</p>
5 of 11	<p>II. DESCRIPTION OF DISTRICT B. Description of District Improvements and Services Lighting Improvements:</p> <p><i>"The plans and specifications for the improvements are voluminous and are not bound in this Engineer's Report but by this reference are incorporated herein and made a part of this Engineer's Report."</i></p>	<p>Please provide a copy of the detailed plans and specifications for the improvements to the Heber Public Utility District for our records. It is also recommended to include all of the items referenced in the Report in a CD to be included in the back of the report.</p>

Page No.	Engineer's Report	Comments
5 of 11	<p>II. DESCRIPTION OF DISTRICT C. DISTRICT BOUNDARY MAP</p> <p><i>“Assessment District boundary maps have been prepared for the District as a part of the format required by the 1972 Act, and will be on file with the Clerk of the Board...”</i></p>	<p>Please provide a copy of the Assessment District Boundary Map to the Heber Public Utility District prior to recordation.</p> <p>General Note: Please follow consistent formatting and modify C. heading from all caps to lower case for consistency.</p>
7 of 11	<p>III. METHOD OF APPORTIONMENT B. Benefit Analysis 2. Lighting Special Benefits:</p> <p><i>“All the lots are established at the same time once the conditions regarding the improvements and the continued maintenance are guaranteed. As a result, each lot within the District receives a special and distinct benefit from the improvements and to the same degree.”</i></p>	<p>This section needs to be further explained because it is difficult to comprehend as written. Without knowing where the lighting is situated it is difficult to conclude that all lots benefit from the lighting “to the same degree.”</p>
7 of 11	<p>III. METHOD OF APPORTIONMENT C. Assessment Methodology Exempt Parcels:</p>	<p>This section exempts parcels that cannot be developed.</p> <p>Parcel with APN 054-680-001 is where the retention basin is to be situated, and thus restricted from development. Please identify the exempt parcel in the report.</p> <p>Parcel with APN 054-680-006 is proposed and approved as a parking lot. This parcel is restricted from development and should also be exempt from the proportional share of assessment fees. A deed restriction should be considered.</p>
8 of 11	<p>III. METHOD OF APPORTIONMENT C. Assessment Methodology Exempt Parcels:</p> <p><i>“The acreage method of apportioning benefit is the most appropriate and equitable assessment methodology for calculating benefit in Districts formed under the 1972 Act, as the benefit to</i></p>	<p>We disagree with this statement as the statement assumes all developed lots have equivalent landscaping, lighting and stormwater demand benefits.</p> <p>For example, the retention basin on APN 054-680-001 will collect water from parcels with a greater impermeable surface. In order to identify the most equitable apportionment of the benefit, it would be necessary to identify which of the parcels has the greatest impervious surface rather than the size of the parcel boundary. There</p>

Page No.	Engineer's Report	Comments
	<i>each parcel from the improvements are apportioned as a function of land and size."</i>	<p>may be parcels that are smaller, yet have a larger impervious surface than a parcel that is larger, but has a smaller impervious surface.</p> <p>If the private basins are to be maintained by the LLMD then the cost should be adjusted by the size of the respective basins as well.</p> <p>Without knowing where the lighting is situated throughout the District, it is difficult to conclude that all lots benefit from the lighting "to the same degree" and "apportioned as a function of land size."</p>
10 of 11	IV. DISTRICT BUDGET A. Direct Costs	<p>If HPUD will be responsible for the operation and maintenance services in the LLMD this section shall specify how the direct costs must be tracked such as labor, equipment use, supplies etc. and what documents the County will require. This section shall specify which department in the County shall be responsible for the collection of these warrants. This section shall further specify the anticipated reimbursement timeframe.</p> <p>Similar to other County contracts, if HPUD will maintain, we proposed costs per person, fully burdened, vehicle costs, etc. Once this information is provided, we can provide further comments on adequacy of budgeted amount for labor, equipment and other direct costs.</p>
10 of 11	IV. DISTRICT BUDGET A. Direct Costs 1. Maintenance Costs/Labor	<p>If HPUD will be responsible for the operation and maintenance of any of the aforementioned services and facilities then the base data for wages, salaries, benefits and contract services needs to be attached as Appendix A so that HPUD may review and ascertain that the costs are reasonable.</p>
10 of 11	IV. DISTRICT BUDGET A. Direct Costs 2. Utilities	<p>If HPUD will be responsible for the operation and maintenance of any of the aforementioned services and facilities, then the base data for utility costs as well as the projected increases shall be included as Appendix B so that HPUD may review and ascertain that the costs are reasonable.</p>
10 of 11	IV. DISTRICT BUDGET A. Direct Costs 3. Equipment and Supplies	<p>If HPUD will be responsible for the operation and maintenance of any of the aforementioned services and facilities then the base data for materials, equipment, and supplies shall be included as Appendix C so that HPUD may review and ascertain that the costs are reasonable.</p>

Page No.	Engineer's Report	Comments
10 of 11	IV. DISTRICT BUDGET A. Direct Costs 4. Repair and Miscellaneous Expenses	<p>Sidewalks are a function of Street Right-of-Way and not technically applicable within a landscaping and lighting district as a "special benefit." Please include in report which sidewalks these costs are being collected for. It would seem that sidewalks are a general benefit to the general public and not eligible for assessment. If determined to be a special benefit, please include under Section II B. Description of the District Improvements and Services and under Section III Special Benefits.</p> <p>If sidewalks and street sweeping are to remain in the assessment, please discuss them in the special benefits section of this report.</p> <p>If HPUD will be responsible for the operation and maintenance of any of the aforementioned services and facilities then it shall clarified that under no circumstances will sidewalk replacement, maintenance or repairs be the responsibility of HPUD.</p> <p>Correct Spelling: replace "faculties" with "facilities"</p>
10 of 11	IV. DISTRICT BUDGET B. Administrative Costs 1. County Administrative Fee	<p>This section does not include a cost for Imperial County management staff (and respective department) to carry a budget and coordinate the delivery of services. It only covers administration associated with the collection of assessments.</p> <p>If HPUD will be responsible for the operation and maintenance of any of the aforementioned services and facilities then the report shall include an administrative cost of 15% of the cost of service delivery. This percent may be adjusted once we review the reimbursement procedure that the County would impose.</p>
General Comments about Engineering Report		
1. Parking Lot (APN 054-680-006)		<p>As previously stated, parcel with APN 054-680-006 has the sole use of a parking lot with landscaping. The Engineering Report should specify who will assume ownership of the parking lot and who will be responsible for paying the property taxes and LLMD fees, if the assessment of the parcel is continued to be proposed.</p> <p>Additionally, a Deed Restriction is recommended for the parking lot parcel.</p>

Page No.	Engineer's Report	Comments
	<p>2. Retention Basin (APN 054-680-001)</p>	<p>Mr. Alan Kapanicas communicated at the meeting that the basin is not constructed so the cost to maintain it is not included in the assessment at this time. The basin may not be completed, nonetheless, it is in need of maintenance there are approximately three dozen salt cedar trees growing in the basin and along the sidewalk that need to be removed. If HPUD is going to be held responsible for the basin, costs for the current basin needs shall be included in the first assessment.</p> <p>Please reference and incorporate full build out plans of the retention basin and the need to reassess in the future, subject to Prop 218. If Prop 218 fails please identify the resources which will be sought (i.e. bond, Imperial County funds, etc)</p> <p>Please identify the proposed ownership of the retention basin and if private, please ensure a deed restriction is imposed.</p>



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January 6, 2014

Board of Supervisors
c/o Blanca Acosta, IC Clerk of the Board
940 Main Street
El Centro, CA 92243

RE: Review of Landscaping and Lighting Maintenance District Service Impacts

Dear Board of Supervisors:

This is the third letter submitted by HPUD associated with the Landscaping Lighting and Maintenance District (LLMD) proposed by Imperial County for the Imperial Center. The first letter dated December 16, 2013 was an objection to the acceptance of the December 2nd Engineer's Report and request for an opportunity to comment. The second letter dated December 23, 2013, thanked you for the opportunity extended and provided detailed LLMD review comments, questions and concerns as an attachment. It was our intent to have all issues addressed before the January 7, 2014, Board of Supervisor's meeting. As of January 6, 2014, HPUD has not been extended a response to all the issues raised, and we regret to continue our opposition to the adoption of the Engineering Report, as presented.

After further review of the Imperial Center Conditions of Approval for Imperial Center Specific Plan #02-001, Zone Change #07-0003 and Tract Map #00954 as approved by the Board of Supervisors on March 14, 2007, it is our position that the LLMD as presented does not fulfill all of the required mitigation stipulated in Condition #24, which states:

Prior to the first phase of Tract Map No. 954 a Public Utility District shall be formed to mitigate all impacts the project will have on the current level of services (capacity) for the community and the project's projected impacts to these services (fire, sheriff, roads, water & sewer) and to maintain the associated infrastructure (water, sewer, roads, lighting, landscaping, waste, etc...) developed for the project. The District shall be formed to the satisfaction of the Planning Director.

Specifically, the LLMD needs "to mitigate all impacts the project will have on the current level of services . . ." Not only has HPUD not been afforded an opportunity to evaluate the assessment of those impacts, but HPUD continues to note that several impacts to community services are not being mitigated at all, including administrative costs to HPUD, and fire hydrant maintenance. The LLMD must continue to maintain an adequate cost recovery of operation and maintenance costs for the basin.

HPUD respectfully requests that the following language be included in the LLMD to ensure that all impacts for services required to be provided by HPUD, per Settlement Agreement dated August 29, 2012, are mitigated and funded through the LLMD.

All community services listed in the Settlement Agreement between the County and HPUD dated August 29, 2012 on page 3, paragraph iii will be maintained with funds from the subject assessment district which include:

All cost to operate and maintain the street lighting system, maintain and replace as necessary all fire hydrants, maintain all parks, maintain the retention/detention basins and supporting systems, and perform any mosquito abatement determined by the County's Environmental Health Department to be required as a result of standing water accumulated in any retention/detention basin, all as reasonably required. The supporting systems mean and include any pump station servicing a designated retention/detention basin, along with all drainage appurtenances (i.e. pipelines, inlet and outlet structures, and storm drains) handling storm water runoff from any of the parcels. Additionally it should

be noted that HPUD will include a reasonable administrative fee with all invoices submitted to the LLMD for payment.

Cost overruns due to inadequate projections or omissions in the Engineering Report will be paid to pervayor by the County of Imperial and collected from the district on the following assessment year.

Please be advised that if the LLMD does not satisfactorily address the impacts for services required to be provided by HPUD, per Settlement Agreement dated August 29, 2012, HPUD will not extend any new service to development at the Imperial Center. This includes the two buildings currently under construction waiting approval from HPUD. Partial mitigation is not acceptable and we urge the Board of Supervisor to give this request the attention it deserves.

Our availability is extremely flexible and we continue to believe these issues can be resolved in a timely manner without significant delay. If you have any questions regarding this communication, please don't hesitate to contact me at (760) 482-2440 or at lfischer@heber.ca.gov.

Sincerely,



Laura Fischer, General Manager

cc: HPUD Board
Ralph Cordova, Executive Officer
Graciela Lopez, Finance Manager
Justina G. Arce, Planning Consultant
James G. "Jack" Holt, PE, District Engineer