

AGENDA

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

**NORTON REGIONAL EVENT CENTER
1601 EAST THIRD STREET, SAN BERNARDINO**

REGULAR MEETING OF SEPTEMBER 21, 2022

9:00 A.M. – CALL TO ORDER – FLAG SALUTE

ANNOUNCEMENT:

Anyone present at the hearing who is involved with any of the changes of organization to be considered and who has made a contribution of more than \$250 in the past twelve (12) months to any member of the Commission will be asked to state for the record the Commission member to whom the contribution has been made and the matter of consideration with which they are involved.

CONSENT ITEMS:

The following consent items are expected to be routine and non-controversial and will be acted upon by the Commission at one time without discussion, unless a request has been received prior to the hearing to discuss the matter.

1. [Approval of Minutes for Regular Meeting of July 20, 2022 and Strategic Planning Workshop of August 17, 2022](#)
2. [Approval of Executive Officer's Expense Report](#)
3. [Ratify Payments as Reconciled and Note Cash Receipts for Months June and July 2022](#)
4. [Review and Consideration of Amendments to LAFCO Conflict of Interest Code](#)
5. Consent Items Deferred

PUBLIC HEARING ITEMS:

6. [Consideration of: \(1\) CEQA Exemption for LAFCO 3252 and \(2\) LAFCO 3252 – Service Review for the Twentynine Palms Community](#)

DISCUSSION ITEMS:

7. [Unaudited Year-End Financial Report for Fiscal Year 2021/22](#)
8. [Report on Strategic Planning Workshop of August 17, 2022](#)

9. [Review and Amend the Commission Meeting Schedule for FY 2022/23](#)

INFORMATION ITEMS:

10. [Legislative Update Report](#)

11. [Executive Officer's Report](#)

12. Commissioner Comments

(This is an opportunity for Commissioners to comment on issues not listed on the agenda, provided that the subject matter is within the jurisdiction of the Commission and that no action may be taken on off-agenda items unless authorized by law.)

13. Comments from the Public

(By Commission policy, the public comment period is limited to five minutes per person for comments related to other items under the jurisdiction of LAFCO not on the agenda.)

The Commission may adjourn for lunch from 12:00 to 1:30 p.m. The Commission may take action on any item listed in this Agenda whether or not it is listed for Action. In its deliberations, the Commission may make appropriate changes incidental to the above-listed proposals.

Materials related to an item on this Agenda submitted to the Commission or prepared after distribution of the agenda packet will be available for public inspection in the LAFCO office at 1170 West Third Street, Unit 150, San Bernardino, during normal business hours, on the LAFCO website at www.sbclafco.org, and at the hearing.

Current law and Commission policy require the publishing of staff reports prior to the public hearing. These reports contain technical findings, comments, and recommendations of staff. The staff recommendation may be accepted or rejected by the Commission after its own analysis and consideration of public testimony.

IF YOU CHALLENGE ANY DECISION REGARDING ANY OF THE ABOVE PROPOSALS IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED DURING THE PUBLIC TESTIMONY PERIOD REGARDING THAT PROPOSAL OR IN WRITTEN CORRESPONDENCE DELIVERED TO THE LOCAL AGENCY FORMATION COMMISSION AT, OR PRIOR TO, THE PUBLIC HEARING.

The Political Reform Act requires the disclosure of expenditures for political purposes related to a change of organization or reorganization proposal which has been submitted to the Commission, and contributions in support of or in opposition to such measures, shall be disclosed and reported to the same extent and subject to the same requirements as provided for local initiative measures presented to the electorate (Government Code Section 56700.1). Questions regarding this should be directed to the Fair Political Practices Commission at www.fppc.ca.gov or at 1-866-ASK-FPPC (1-866-275-3772).

A person with a disability may contact the LAFCO office at (909) 388-0480 at least 72-hours before the scheduled meeting to request receipt of an agenda in an alternative format or to request disability-related accommodations, including auxiliary aids or services, in order to participate in the public meeting. Later requests will be accommodated to the extent feasible.

DRAFT
**ACTION MINUTES OF THE
LOCAL AGENCY FORMATION COMMISSION
FOR SAN BERNARDINO COUNTY**

REGULAR MEETING

9:00 A.M.

JULY 20, 2022

PRESENT:

COMMISSIONERS:

| Regular Member | Alternate Member |
|-------------------|------------------|
| Jim Bagley, Chair | Rick Denison |
| Kimberly Cox | Jim Harvey |
| Phillip Dupper | Kevin Kenley |
| Steven Farrell | Dawn Rowe |
| | |
| | |

STAFF:

Samuel Martinez, Executive Officer
Paula de Sousa, Legal Counsel
Michael Tuerpe, Senior Analyst
Hannah Larsen, Analyst
Angela Schell, Commission Clerk

ABSENT:

COMMISSIONERS:

Joe Baca
Curt Hagman
Acquanetta Warren, Vice Chair

**CONVENE REGULAR MEETING OF THE LOCAL AGENCY FORMATION COMMISSION –
9:01 A.M. – CALL TO ORDER – FLAG SALUTE AND ROLL CALL**

ANNOUNCEMENT OF CONTRIBUTIONS

CONSENT ITEMS

1. Approval of Minutes for Regular Meeting of May 18, 2022

2. Approval of Executive Officer's Expense Report

Recommendation: Approve the Executive Officer's Expense Report for Procurement Card Purchases from April 23 to May 23, 2022 and May 24 to June 22, 2022

3. Ratify Payments as Reconciled and Note Cash Receipts for Months of April and May 2022

Recommendation: Ratify payments as reconciled for the months of April and May 2022 and note revenue receipts for the same period.

4. Approval for Fiscal Year 2013-14 Financial Records Destruction Pursuant to Commission Policy

Recommendation: Staff recommends the Commission direct the Executive Officer, as Records Management Coordinator, to:

1. Destroy the Commission's financial records for Fiscal Year 2013-14 pursuant to the Commission's Records Retention Policy, and
2. Record the items to be destroyed in the Destruction Log along with a copy of the Commission's minute action authorizing destruction.

5. Review and Update the Catalog Enterprise Systems per Government Code Section 6270.5

Recommendations: Staff recommends that the Commission take the following actions:

1. Approve the Enterprise Systems Catalog as of July 1, 2022 as identified in this staff report.
2. Direct the Executive Officer to post the Enterprise Systems Catalog as of July 1, 2022 on the LAFCO website.

6. Note Receipt of Proposal Pursuant to Government Code Section 56857 – LAFCO 3256 – Reorganization to Include Annexations to the City of Rancho Cucamonga, Cucamonga Valley Water District, Rancho Cucamonga Fire Protection District, and West Valley Mosquito and Vector Control District, and Detachments from Fontana Fire Protection District and County Service Area 70 (Speedway Commerce Center)

No action is required of the Commission other than to note receipt of the proposal.

7. Review and Approve Retainer Agreement with Colantuono, Highsmith & Whatley, PC for Conflicts Counsel

Recommendation: Staff recommends that the Commission approve the Agreement for Conflicts Counsel Services as presented with Colantuono, Highsmith & Whatley, PC and authorize the Executive Officer to sign.

8. Review and Approve Amendment No. 3 to the Office Space Lease with the San Bernardino County Transportation Authority

Recommendation: Staff recommends that the Commission approve Amendment No. 3 to Lease Agreement Contract No. 16-1001429 and authorize the Commission Chair and Legal Counsel to sign.

9. Consent Items Deferred for Discussion (none)

Executive Officer Sam Martinez provides a correction on page 2 of Item 1, the minutes, stating that Commissioner Kenley's name should not be highlighted and the subscript after his name should not be there either.

Commissioner Rowe moves the approval of the Consent Items with modified minutes. Second by Commissioner Cox. The motion passes with the following roll call vote:

Ayes: Bagley, Cox, Denison, Dupper, Farrell, and Rowe.
Noes: None.
Abstain: Cox, Denison and Rowe (Abstain from Item 1 and approves Items 2 through 8).
Absent: Baca, Hagman (Rowe voting in their stead), and Warren (Denison voting in her stead).

PUBLIC HEARING ITEMS:

10. Review and Consideration of Amendments to Policy and Procedure Manual Section III – Human Resources

Recommendation: The Commission took the following actions:

1. At the hearing the Commission modified Policy 4B (Eligibility for Step Advancement) of Chapter 2 (Employment) of Section III (Human Resources).
2. Adopt the amendments to the Policy and Procedure Manual, Section III (Human Resources)
3. Adopt Resolution No. 3352 approving the amendment to the Policy and Procedure Manual and direct the Executive Officer to make the document available on the Commission's website.

Commissioner Cox moves the approval of staff recommendation as modified. Second by Commissioner Denison. The motion passes with the following roll call vote:

Ayes: Bagley, Cox, Denison, Dupper, Farrell and Rowe.
Noes: None.
Abstain: None.
Absent: Baca, Hagman (Rowe voting in their stead), and Warren (Denison voting in her stead).

DISCUSSION ITEMS:

11. Receive and File First Draft for LAFCO 3252 – Service Review for the Twentynine Palms Community

Commissioner Cox moves to not approve staff recommendation with direction to the Executive Officer noted below. Second by Commissioner Denison. The motion passes with the following roll call vote:

Ayes: Bagley, Cox, Denison, Dupper, Farrell and Rowe.
Noes: None.
Abstain: None.
Absent: Baca, Hagman (Rowe voting in their stead), and Warren (Denison voting in her stead).

The Commission did not approve staff's recommendation and instead directed the Executive Officer to:

1. Refund the City of Twentynine Palms 100% of the filing fee and the balance of the deposits that the City submitted for LAFCO 3252.

2. Present a Final Draft of the Service Review for the Twentynine Palms Community (LAFCO 3252) for Commission consideration as a public hearing item at its September 21, 2022 meeting.

12. Update on the Barstow Cemetery District Xeriscape Project

Recommendation: Staff recommends that the Commission receive and file this report.

Chair Bagley states this is just to receive and file and requires no action from the Commission, Executive Officer Samuel Martinez responds that we will make that notation.

13. Nominations for CALAFCO Board of Directors

Recommendation: Staff recommends that the Commission:

1. Select Commission Chair Jim Bagley as voting delegate (and Vice Chair Acquanetta Warren as alternate voting delegate) to cast this Commission's vote(s) for CALAFCO Board Member during the Regional Caucus Elections and on the matters during the Annual Business Meeting; and,
2. For CALAFCO Board Member nomination/selection process, do the following:
 - Nominate Commissioner Acquanetta Warren, incumbent Board member for the open Southern Region City Member seat that she currently holds on the CALAFCO Board of Directors; and,
 - Direct the voting delegate to select incumbents Acquanetta Warren for the City Member Seat and Derek McGregor (Orange LAFCO) for the Public Member Seat as the Southern Region representatives to the CALAFCO Board of Directors.

Commissioner Farrell moves to approve staff recommendation. Second by Commissioner Denison. The motion passes with the following roll call vote:

Ayes: Bagley, Cox, Denison, Dupper, Farrell and Rowe.

Noes: None.

Abstain: None.

Absent: Baca, Hagman (Rowe voting in their stead), and Warren (Denison voting in her stead).

INFORMATION ITEMS:

14. Legislative Update Report

Executive Officer Samuel Martinez states that he has no legislative report for this month. He also states that the Omnibus Bills AB 2957 and SB 938 that the Commission supported and acted on back in March, were both signed by the Governor.

15. Executive Officer's Oral Report

Executive Officer Samuel Martinez reminds the Commission of the Strategic Planning Workshop on August 17, held at the SBCTA Board Room from 9am to 2:30pm.

He comments that the Adhoc Admin and Finance Committee for this year has been formed as noted in the staff report. He announces that Hannah will be leaving LAFCO and moving to Colorado to begin her graduate program and we wish her well.

Lastly, he states that the Governance Training Program on Board Member Best Practices 101 will be held on Aug. 2 at the Mojave Water Agency facility and thanks Commissioner Cox for the use of the facility.

16. Commissioner Comments

Commissioner Farrell thanks Clerk to the Commission for extending employment for another year. He also comments the sad news of the passing of Los Angeles LAFCO Commissioner Jerry Gladbach. Chair Bagley thanks Hannah Larsen for her service and informs the Commission of the passing of former San Bernardino LAFCO Commissioner Tony Sedano, and the meeting is adjourned in honor of his memory.

19. Comments from the Public

There is none.

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE MEETING
ADJOURNS AT 10:33 A.M.**

ATTEST:

ANGELA SCHELL, Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

Jim Bagley, Chair

DRAFT
**ACTION MINUTES OF THE
LOCAL AGENCY FORMATION COMMISSION
FOR SAN BERNARDINO COUNTY**

STRATEGIC PLANNING WORKSHOP

9:00 A.M.

AUGUST 17, 2022

PRESENT:

COMMISSIONERS:

| Regular Member | Alternate Member |
|-------------------------------|------------------|
| Joe Baca | Jim Harvey |
| Jim Bagley, Chair | Kevin Kenley |
| Kimberly Cox | |
| Phill Dupper | |
| Steven Farrell | |
| Curt Hagman | |
| Acquanetta Warren, Vice-Chair | |

STAFF:

Samuel Martinez, Executive Officer
Paula de Sousa, Legal Counsel
Michael Tuerpe, Senior Analyst
Angela Schell, Commission Clerk

ABSENT:

COMMISSIONERS:

Rick Denison, Alternate,
Dawn Rowe, Alternate

**CONVENE STRATEGIC PLANNING SESSION MEETING OF THE LOCAL AGENCY
FORMATION COMMISSION – CALL TO ORDER 9:03 A.M. – SBCTA BOARD ROOM –
FLAG SALUTE AND ROLL CALL**

Chair Bagley welcomes Commission and calls the Strategic Planning Workshop to order and Commissioner Warren leads the flag salute.

WELCOME COMMENTS:

Executive Officer Samuel Martinez introduces the Strategic Planning Session and presents the Workshop Facilitator Pamela Miller, former CALAFCO Executive Director.

COMMENTS FROM THE PUBLIC:

There are none.

INTRODUCTION TO THE WORKSHOP:

The workshop convenes with Ms. Miller facilitating the discussion, which includes an introduction to LAFCO including the intent, role, and responsibilities of the Commission, and a review of actions, changes, and accomplishments during the past few years.

The workshop discussion covered the Commission's current and emerging challenges and opportunities, and how to leverage the Commission's strength. The workshop also looked at identifying priorities and what it wants to accomplish—in terms of goals and objectives—for the next two to three years.

At the conclusion of the workshop, the Commission provided direction to include at a future commission meeting a review and consideration of developing a strategic plan.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE COMMISSION, THE MEETING ADJOURNS AT 2:48 P.M.

ATTEST:

ANGELA SCHELL, Clerk to the Commission

LOCAL AGENCY FORMATION COMMISSION

JIM BAGLEY, Chair

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West 3rd Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbcounty.gov
www.sbclafco.org

DATE : SEPTEMBER 14, 2022
FROM: SAMUEL MARTINEZ, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #2 – APPROVAL OF EXECUTIVE OFFICER'S
EXPENSE REPORT

RECOMMENDATION:

Approve the Executive Officer's Expense Report for Procurement Card Purchases from June 23 to July 22, 2022 and July 23 to August 22, 2022.

BACKGROUND INFORMATION:

The Commission participates in the County of San Bernardino's Procurement Card Program to supply the Executive Officer a credit card to provide for payment of routine official costs of Commission activities as authorized by LAFCO Policy and Procedure Manual Section II – Accounting and Financial Policies #3(H). Staff has prepared an itemized report of purchases that covers the billing periods of:

- June 23, 2022 to July 22, 2022; and,
- July 23, 2022 to August 22, 2022.

Staff recommends that the Commission approve the Executive Officer's expense reports as shown on the attachment.


SM/AS

Attachment

| | |
|-----------------------------------|----------|
| Approving Official (Print & Sign) | Date |
| Jim Bagley | 09/21/22 |

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West 3rd Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbcounty.gov
www.sbclafco.org

DATE : SEPTEMBER 14, 2022 
FROM: SAMUEL MARTINEZ, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #3 - RATIFY PAYMENTS AS RECONCILED FOR
THE MONTHS OF JUNE AND JULY 2022 AND NOTE REVENUE
RECEIPTS

RECOMMENDATION:

Ratify payments as reconciled for the months of June and July 2022 and note revenue receipts for the same period.

BACKGROUND INFORMATION:

Staff prepared a reconciliation of warrants issued for payments to various vendors, internal transfers for payments to County Departments, cash receipts and internal transfers for payments of deposits or other charges that cover the period of:


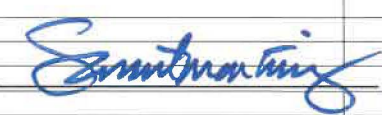
- June 1 through June 30, 2022
- July 1 through July 31, 2022

Staff recommends that the Commission ratify the payments as outlined on the attached listing and note the revenues received.

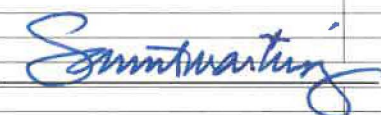
SM/MT

Attachment

| JUNE 2022 PAYMENTS PROCESSED | | | | | | | |
|--------------------------------------|-----------|--------------|---------------------------------------|---------------|---|---------------------|--|
| Document Number | Account | Posting Date | Vendor | Invoice | Reference | Amount | |
| 1901265587 | 5200 2085 | 06/14/22 | Daily Journal | B3588562 | Notice of Hearing Hi-Desert | \$ 305.89 | |
| 1901256725 | 5200 2090 | 06/01/22 | Jan Pro | 82238 | Office Cleaning | \$ 490.00 | |
| 1901265560 | 5200 2090 | 06/14/22 | Jan Pro | 82409 | Office deep clean | \$ 75.00 | |
| 1901267951 | 5200 2180 | 06/16/22 | City Comm | 6433-6/10/22 | Air conditioner service | \$ 364.81 | |
| 1901260834 | 5200 2315 | 06/07/22 | Storetrieve | 0178224 | File storage | \$ 64.37 | |
| 1901265556 | 5200 2400 | 06/14/22 | Best, Best, Krieger | 937063 | Legal counsel | \$ 1,682.16 | |
| 1901265557 | 5200 2400 | 06/14/22 | Best, Best, Krieger | 937064 | Legal counsel | \$ 7,597.37 | |
| 1901265558 | 5200 2400 | 06/14/22 | Best, Best, Krieger | 937065 | Legal counsel | \$ 929.40 | |
| 1901265559 | 5200 2400 | 06/14/22 | Best, Best, Krieger | 937066 | Legal counsel | \$ 94.50 | |
| 1901265566 | 5200 2445 | 06/14/22 | Dupper | DUPPER5-18-22 | Commissioner stipend | \$ 200.00 | |
| 1901265571 | 5200 2445 | 06/14/22 | Harvey | HARVEY5-18-22 | Commissioner stipend | \$ 200.00 | |
| 1901265584 | 5200 2445 | 06/14/22 | Kenley | KENLEY5-18-22 | Commissioner stipend | \$ 200.00 | |
| 1901260838 | 5200 2895 | 06/07/22 | Konica Minolta | 40078561 | Copier | \$ 365.38 | |
| 1901260838 | 5200 2895 | 06/07/22 | Konica Minolta | 40078561 | Copier | \$ 84.25 | |
| 1901241903 | 5200 2895 | 06/10/22 | Konica Minolta | 39889723 | Copier | \$ 365.38 | |
| 1901241903 | 5200 2895 | 06/10/22 | Konica Minolta | 39889723 | Copier | \$ 149.96 | |
| 1901265571 | 5294 2940 | 06/14/22 | Harvey | HARVEY5-18-22 | Commissioner travel | \$ 98.28 | |
| 1901265584 | 5294 2940 | 06/14/22 | Kenley | KENLEY5-18-22 | Commissioner travel | \$ 28.07 | |
| 1901266734 | 4075 9660 | 06/15/22 | Islamic Community Center of Redlands | SC#476 | Refund deposits | \$ 596.56 | |
| 1901269939 | 4075 9660 | 06/20/22 | Chandi Enterprises LLC | SC#484 | Refund deposits | \$ 355.34 | |
| 1901269940 | 4075 9660 | 06/20/22 | Summerland Chino Manager, LLC | SC#478 | Refund deposits | \$ 319.93 | |
| 1901269941 | 4075 9660 | 06/20/22 | Griffin Lord | SC#479 | Refund deposits | \$ 514.63 | |
| 1901269942 | 4075 9660 | 06/20/22 | Erik Peterson Pomona Hershey Prop LLC | SC#480 | Refund deposits | \$ 404.93 | |
| 1901269943 | 4075 9660 | 06/20/22 | Mirian Madrigal | LAFCO 3249 | Refund deposits | \$ 2,116.58 | |
| TOTAL | | | | | | \$ 17,602.79 | |
| JUNE 2022 COUNTY TRANSFERS PROCESSED | | | | | | | |
| 4102394188 | 5200 2031 | 06/01/22 | IT | | MAY 2022 Payroll System Services (EMACS) | \$ 54.40 | |
| 4102409579 | 5200 2031 | 06/24/22 | IT | | JUN 2022 Payroll System Services (EMACS) | \$ 54.40 | |
| 4102394189 | 5200 2032 | 06/01/22 | IT | | MAY 2022 Virtual Private Network (VPN) | \$ 13.20 | |
| 4102409341 | 5200 2032 | 06/24/22 | IT | | JUN 2022 Virtual Private Network (VPN) | \$ 13.20 | |
| 4102394190 | 5200 2037 | 06/01/22 | IT | | MAY 2022 Dial Tone | \$ 226.72 | |
| 4102409580 | 5200 2037 | 06/24/22 | IT | | JUN 2022 Dial Tone | \$ 226.72 | |
| 4102393489 | 5200 2322 | 06/01/22 | IT | | MAY 2022 Enterprise Printing (EMACS) | \$ 7.14 | |
| 4102409344 | 5200 2322 | 06/24/22 | IT | | JUN 2022 Enterprise Printing (EMACS) | \$ 3.57 | |
| 4102394194 | 5200 2420 | 06/01/22 | IT | | MAY 2022 Wireless Device (Exchange Active Sync) | \$ 17.59 | |
| 4102409345 | 5200 2420 | 06/24/22 | IT | | JUN 2022 Wireless Device (Exchange Active Sync) | \$ 17.59 | |
| 4102393493 | 5200 2421 | 06/01/22 | IT | | MAY 2022 Desktop Support Services | \$ 1,069.20 | |
| 4102409582 | 5200 2421 | 06/24/22 | IT | | JUN 2022 Desktop Support Services | \$ 1,069.20 | |
| 4102394193 | 5241 2410 | 06/01/22 | IT | | IT Infrastructure - Period 12 | \$ 555.00 | |
| 4102393491 | 5241 2417 | 06/01/22 | IT | | Enterprise Content Management - Period 12 | \$ 150.00 | |
| 4102393492 | 5241 2418 | 06/01/22 | IT | | Storage Tier 1 - Period 12 | \$ 151.00 | |
| 4102393492 | 5241 2418 | 06/01/22 | IT | | Storage Tier 3 - Period 12 | \$ 193.00 | |
| 4200097858 | 5200 2310 | 06/03/22 | Mail | | Mail Services - DEL | \$ 136.50 | |
| 4200097859 | 5200 2310 | 06/03/22 | Mail | | Mail Services - FLAT | \$ 31.82 | |
| 4200097861 | 5200 2310 | 06/03/22 | Mail | | Mail Services - HAN | \$ 127.78 | |


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|---------------------------------------|----------------|------|----------|---|--------------|----------------------|---|-----------|
| 4200099359 | 5200 | 2310 | 06/21/22 | Mail | | Mail Services - FLAT | \$ | 5.65 |
| 4200099389 | 5200 | 2310 | 06/22/22 | Mail | | Mail Services - DEL | \$ | 136.50 |
| 4200099391 | 5200 | 2310 | 06/22/22 | Mail | | Mail Services - HAN | \$ | 118.04 |
| TOTAL | | | | | | | \$ | 4,378.22 |
| | | | | | | | | |
| JUNE 2022 CASH RECEIPTS | | | | | | | | |
| 4102416031 | 4075 | 9930 | 06/29/22 | CA Dept of Conservation | | | \$ | 32,006.00 |
| 4102395141 | 4070 | 9800 | 06/15/22 | City of Montclair | | SC 485 | \$ | 560.00 |
| 4102395142 | 4070 | 9800 | 06/16/22 | Inland Empire RCD | | SC 486 | \$ | 560.00 |
| 4102395143 | 4070 | 9800 | 06/17/22 | SB Valley Municipal Water District | | SC 487 & 488 | \$ | 1,120.00 |
| TOTAL | | | | | | | \$ | 34,246.00 |
| JUNE 2022 COUNTY TRANSFERRED RECEIVED | | | | | | | | |
| | | | | NONE | | | | |
| TOTAL | | | | | | | \$ | - |
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| COMPLETED BY: | MICHAEL TUERPE | | |  | APPROVED BY: | SAMUEL MARTINEZ |  | |
| | Senior Analyst | | | | | Executive Officer | | |
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| JULY 2022 PAYMENTS PROCESSED | | | | | | | |
|--------------------------------------|-----------|--------------|------------------------|----------------|---|---------------------|--|
| Document Number | Account | Posting Date | Vendor | Invoice | Reference | Amount | |
| 1901280846 | 5200 2075 | 7/6/2022 | CALAFCO | 2022-35 | CALAFCO Membership Dues | \$ 11,287.00 | |
| 1901293474 | 5200 2085 | 7/26/2022 | Daily Journal | B3598192 | Notice of Hearing | \$ 352.66 | |
| 1901280855 | 5200 2090 | 7/6/2022 | Jan Pro | 2345 | Janitorial | \$ 588.00 | |
| 1901294533 | 5200 2090 | 7/27/2022 | City Comm | UNIT: 150 | HVAC | \$ 372.00 | |
| 1901294092 | 5200 2115 | 7/26/2022 | ECS Imaging | 17007 | Archive Software, annual license | \$ 1,313.00 | |
| 1901294090 | 5200 2180 | 7/26/2022 | So Cal Edison | 6433-7/12/22 | Electricity | \$ 539.78 | |
| 1901280851 | 5200 2245 | 7/6/2022 | SDRMA | 71673 | Workers Comp | \$ 1,923.30 | |
| 1901280852 | 5200 2245 | 7/6/2022 | SDRMA | 72121 | Prop/Liability Pkg. | \$ 10,552.68 | |
| 1901281962 | 5200 2315 | 7/7/2022 | Storetrieve | 0180421 | File storage | \$ 64.37 | |
| 1901294539 | 5200 2400 | 7/27/2022 | Best, Best, & Krieger | 939793 | Legal counsel | \$ 261.69 | |
| 1901293470 | 5200 2424 | 7/26/2022 | Tom Dodson | LAFCO 22-6 | Environmental consultant | \$ 170.00 | |
| 1901280883 | 5200 2445 | 7/6/2022 | Robert Aldrich | # 17 | Staff support | \$ 1,950.00 | |
| 1901293436 | 5200 2445 | 7/26/2022 | Bagley | BAGLEY7-20-22 | Commissioner Stipend | \$ 200.00 | |
| 1901293439 | 5200 2445 | 7/26/2022 | Cox | COX7-20-22 | Commissioner Stipend | \$ 200.00 | |
| 1901293443 | 5200 2445 | 7/26/2022 | Denison | DENISON7-20-22 | Commissioner Stipend | \$ 200.00 | |
| 1901293447 | 5200 2445 | 7/26/2022 | Dupper | DUPPER7-20-22 | Commissioner Stipend | \$ 200.00 | |
| 1901293451 | 5200 2445 | 7/26/2022 | Farrell | FARRELL7/20/22 | Commissioner Stipend | \$ 200.00 | |
| 1901293453 | 5200 2445 | 7/26/2022 | Harvey | HARVEY7-20-22 | Commissioner Stipend | \$ 200.00 | |
| 1901293456 | 5200 2445 | 7/26/2022 | Kenley | KENLEY7-20-22 | Commissioner Stipend | \$ 200.00 | |
| 1901293463 | 5200 2445 | 7/26/2022 | Rowe | ROWE7-20-22 | Commissioner Stipend | \$ 200.00 | |
| 1901280879 | 5200 2895 | 7/6/2022 | Konica Minolta | 40273043 | Copier | \$ 90.46 | |
| 1901280879 | 5200 2895 | 7/6/2022 | Konica Minolta | 40273043 | Copier | \$ 365.38 | |
| 1901280886 | 5200 2905 | 7/6/2022 | Inland Valley Dev Auth | 1394 | Rent for meeting | \$ 405.00 | |
| 1901294533 | 5200 2905 | 7/27/2022 | City Comm | UNIT: 150 | Rent for office, quarter | \$ 14,454.31 | |
| 1901293436 | 5294 2940 | 7/26/2022 | Bagley | BAGLEY7-20-22 | Commissioner travel | \$ 108.75 | |
| 1901293439 | 5294 2940 | 7/26/2022 | Cox | COX7-20-22 | Commissioner travel | \$ 73.75 | |
| 1901293443 | 5294 2940 | 7/26/2022 | Denison | DENISON7-20-22 | Commissioner travel | \$ 83.00 | |
| 1901293451 | 5294 2940 | 7/26/2022 | Farrell | FARRELL7/20/22 | Commissioner travel | \$ 22.87 | |
| 1901293453 | 5294 2940 | 7/26/2022 | Harvey | HARVEY7-20-22 | Commissioner travel | \$ 105.00 | |
| 1901293456 | 5294 2940 | 7/26/2022 | Kenley | KENLEY7-20-22 | Commissioner travel | \$ 30.25 | |
| TOTAL | | | | | | \$ 46,713.25 | |
| JULY 2022 COUNTY TRANSFERS PROCESSED | | | | | | | |
| 4102438548 | 5200 2322 | 07/01/22 | IT | | JUN 2022 Enterprise Printing (EMACS) | \$ 3.57 | |
| 4102462960 | 5241 2410 | 07/29/22 | IT | | IT Infrastructure - Period 1 | \$ 570.00 | |
| 4102462961 | 5241 2414 | 07/29/22 | IT | | Application Maintenance & Support - Period 01 | \$ 673.00 | |
| 4200100140 | 5200 2424 | 07/08/22 | Clerk to the Board | | Environmental Filing | \$ 50.00 | |
| 4200100805 | 5200 2445 | 07/29/22 | ROV | | Voter listing | \$ 52.14 | |
| 4200100806 | 5200 2445 | 07/29/22 | ROV | | Voter listing | \$ 52.14 | |
| 4200100807 | 5200 2445 | 07/29/22 | ROV | | Voter listing | \$ 52.14 | |
| 4200100065 | 5200 2310 | 07/05/22 | Mail | | Mail Services - FLAT | \$ 8.18 | |
| 4200100068 | 5200 2310 | 07/05/22 | Mail | | Mail Services - HAN | \$ 9.74 | |
| TOTAL | | | | | | \$ 1,470.91 | |
| | | | | | | | |
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| JULY 2022 CASH RECEIPTS | | | | | | | |
|--|------|-----------------|----------|---|---|---|---------------|
| 1901282150 | 4080 | 9990 | 07/07/22 | SBCERA | | Additional Pension Payment | \$ 50,163.00 |
| TOTAL | | | | | | | \$ 50,163.00 |
| JULY 2022 COUNTY TRANSFERRED RECEIVED | | | | | | | |
| various | 4060 | 8842 | 07/01/22 | Auditor | | Annual Apportionment (cities & districts) | \$ 726,998.00 |
| 100804054 | 4030 | 8500 | 07/27/22 | Treasurer | | Q4 Interest | \$ 1,632.64 |
| TOTAL | | | | | | | \$ 728,630.64 |
| | | | |  | | | |
| COMPLETED BY: MICHAEL TUERPE Senior Analyst | | | | | APPROVED BY: SAMUEL MARTINEZ Executive Officer |  | |
| | | Date: 9/13/2022 | | 9/13/2022 | | | |

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

215 North D Street, Suite 204, San Bernardino, CA 92415-0490
(909) 383-9900 • Fax (909) 383-9901
E-MAIL: lafco@lafco.sbcounty.gov
www.sbclafco.org

DATE : SEPTEMBER 14, 2022 
FROM: SAMUEL MARTINEZ, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #4 – Review and Consideration of Amendments to LAFCO
Conflict of Interest Code

RECOMMENDATION:

Staff recommends that the Commission:

1. Review and approve the amendments to the Conflict of Interest Code for the Local Agency Formation Commission for San Bernardino County; and,
2. Adopt LAFCO Resolution No. 3354 and direct the Executive Officer, to file the amended Conflict of Interest Code with the County Clerk of the Board.

BACKGROUND:

The Political Reform Act requires every local government agency to review its conflict of interest code biennially. The amendment for 2022 will change the title of an existing position (LAFCO Analyst to Analyst – GIS/Database Management), adding back a title of an existing position (Senior Analyst), and include clarifying language as provided by the Fair Political Practices Commission. See Attachment #1 for the proposed changes to the Conflict of Interest Code.

The amended code must be forwarded to the County Board of Supervisors (Board) for approval within 90 days of filing the biennial notice. LAFCO participates in Best, Best, and Krieger's (BBK) Public Law Update Program and BBK has prepared the package for submission to the Clerk of the Board. The amended Code will not be effective until 30 days after it has been approved by the Board as the reviewing body. The Commission and those listed in the Code will receive a copy of the updated Code when approved by the Board.

Staff posted the Notice of Intention to Amend the LAFCO Conflict of Interest Code (Attachment #2) at the LAFCO office and on its website.

Staff recommends that the Commission take the actions listed above for adoption of its Amended Conflict of Interest Code and coordinate with BBK to file said amended Conflict of Interest with the Clerk of the Board. Should the Commission have any questions, staff will be glad to answer them prior to or at the hearing.

Attachments:

1. [Draft Legislative Version of Amended Conflict of Interest Code in Track Changes](#)
2. [Notice of Intention to Amend its Conflict of Interest Code](#)
3. [Draft Resolution No. 3354 with attached Final Amended Conflict of Interest Code](#)

LEGISLATIVE VERSION
(SHOWS CHANGED MADE)

CONFLICT OF INTEREST CODE

OF THE

LOCAL AGENCY

FORMATION COMMISSION

COUNTY OF SAN BERNARDINO

**CONFLICT OF INTEREST CODE
OF THE
LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO**

The Political Reform Act (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. 18730) that contains the terms of a standard conflict-of-interest code, which can be incorporated by reference in an agency's code. After public notice and hearing the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This incorporation page, regulation and the attached Appendix designating positions and establishing disclosure categories, shall constitute the conflict-of-interest code of the **Local Agency Formation Commission – San Bernardino County (“LAFCO”)**.

All Officials and designated positions required to submit a statement of economic interests shall file their statements of economic interests with the **Commission Clerk** as LAFCO's Filing Officer. The **Commission Clerk** shall retain the originals of the statements filed by all officials and designated positions and make all statements available for public inspection and reproduction during regular business hours. (Gov. Code § 81008.)

APPENDIX

CONFLICT OF INTEREST CODE

OF THE

LOCAL AGENCY FORMATION COMMISSION

COUNTY OF SAN BERNARDINO

(Amended ~~October 22, 2014~~ September 21, 2022¹⁾)

PART “A”

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

LAFCO Officials who manage public investments, as defined by 2 Cal. Code of Regs. § 18700.3, are NOT subject to LAFCO's Code, but must file disclosure statements under Government Code Section 87200 et seq. [Regs. § 18730(b)(3)] These positions are listed here for informational purposes only.

It has been determined that the positions listed below are officials who manage public investments²:

Members of the Commission and their Alternates

Executive Officer

Financial Consultants

¹ Titles updated and clarifying language added as provided by the Fair Political Practices Commission in July 2012.

² Individuals holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by § 87200.

DESIGNATED POSITIONS

GOVERNED BY THE CONFLICT OF INTEREST CODE

| <u>DESIGNATED POSITIONS'</u> <u>TITLE OR FUNCTION</u> | <u>DISCLOSURE CATEGORIES</u> <u>ASSIGNED</u> |
|--|---|
| Assistant Executive Officer | 1, 2 |
| General Counsel | 1, 2 |
| LAFCO Analyst – <u>GIS/Database Management</u> | 2, 4 |
| Project Manager | 1, 2 |
| <u>Senior Analyst</u> | <u>1, 2</u> |
| Consultant and New Positions ³ | |

³ Individuals providing services as a consultant as defined in Regulation 18700.3 or in a new position created since this Code was last approved that make or participate in making decisions shall disclose pursuant to the broadest disclosure category in this Code subject to the following limitation:

The Executive Officer may determine that, due to the range of duties or contractual obligations, it is more appropriate to assign a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be in a written document. (Gov. Code Sec. 82019; FPPC Regs 18219 and 18734.) The Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Gov. Code Sec. 81008.)

PART “B”

DISCLOSURE CATEGORIES

The disclosure categories listed below identify the types of economic interests that the Designated Position must disclose for each disclosure category to which ~~he or she~~ the Designated is assigned.⁴ “Investment” means financial interest in any business entity (including a consulting business or other independent contracting business) and are reportable if they are either located in or doing business in the jurisdiction, are planning to do business in the jurisdiction, or have done business during the previous two years in the jurisdiction of LAFCO.

Category 1: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are located in, do business in or own real property within the jurisdiction of LAFCO.

Category 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the jurisdiction of LAFCO, including any leasehold, beneficial or ownership interest or option to acquire property.

Category 3: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of LAFCO.

Category 4: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by LAFCO.

Category 5: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the Designated Position’s department, unit or division.

⁴ This Conflict of Interest Code does not require the reporting of gifts from outside this agency’s jurisdiction if the source does not have some connection with or bearing upon the functions or duties of the position. (Reg. 18730.1)

**NOTICE OF INTENTION TO AMEND THE
CONFLICT OF INTEREST CODE OF THE LOCAL AGENCY
FORMATION COMMISSION FOR SAN BERNARDINO COUNTY**

NOTICE IS HEREBY GIVEN that the Local Agency Formation Commission for San Bernardino County ("LAFCO" or "Commission") intend to amend its Conflict of Interest Code (the "Code") pursuant to Government Code Section 87306.

The Conflict of Interest Code provides for the disclosure of assets and income of designated employees, and the disqualification of those designated employees from acting where a conflict of interest exists. The Code specifically designates those employees, members, officers, and consultants who are subject to LAFCO's Code. LAFCO's proposed amendment includes adding back a position that must be designated and revise the title of an existing position.

The proposed amended Code will be considered by the Commission on September 21, 2022, at 9:00 a.m. at North Regional Event Center, 1601 East Third Street, San Bernardino, California. Any interested person may be present and comment at the public meeting or may submit written comments concerning the proposed amendment. Any comments or inquiries should be directed to the attention of Angela Schell, Commission Clerk for LAFCO, 1170 W. Third Street, Unit 150, San Bernardino, California; (909) 388-0480. Written comments must be submitted no later than 9:00 a.m. on September 21, 2022.

The proposed amended Code may be reviewed at, and copies obtained from, the office of the Commission Clerk.

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbcounty.gov
www.sbclafco.org

HEARING DATE: SEPTEMBER 21, 2022

RESOLUTION NO. 3354

A RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY ADOPTING AN AMENDED CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT OF 1974

On motion of Commissioner _____, duly seconded by Commissioner _____, and carried, the Local Agency Formation Commission adopts the following resolution:

WHEREAS, the State of California enacted the Political Reform Act of 1974, Government Code Section 81000 et seq. (the "Act"), which contains provisions relating to conflicts of interest which potentially affect all officers, employees and consultants of the Local Agency Formation Commission for San Bernardino County ("LAFCO") and requires all public agencies to adopt and promulgate a Conflict of Interest Code; and

WHEREAS, the Commission adopted a Conflict of Interest Code (the "Code") which was amended on October 22, 2014, in compliance with the Act; and

WHEREAS, subsequent changed circumstances within LAFCO have made it advisable and necessary pursuant to Sections 87306 and 87307 of the Act to amend and update LAFCO's Code; and

WHEREAS, the potential penalties for violation of the provisions of the Act are substantial and may include criminal and civil liability, as well as equitable relief which could result in LAFCO being restrained or prevented from acting in cases where the provisions of the Act may have been violated; and

WHEREAS, notice of the time and place of a public meeting on, and of consideration by the Commission of, the proposed amended Code was provided each affected designated employee and publicly posted for review at the LAFCO office and its website; and

WHEREAS, a public meeting by this Commission was called for September 21, 2022, at which all present were given an opportunity to be heard on the proposed amended Code.

RESOLUTION NO. 3354

NOW, THEREFORE, BE IT RESOLVED, that the Local Agency Formation Commission for San Bernardino County hereby adopt the proposed amended Conflict of Interest Code, a copy of which is attached hereto and shall be on file with the Commission Clerk and available to the public for inspection and copying during regular business hours;

BE IT FURTHER RESOLVED that the said amended Conflict of Interest Code shall be submitted to the San Bernardino County Board of Supervisors for approval and said Code shall become effective immediately after the County Board of Supervisors approves the proposed amended Code as submitted.

BE IT FURTHER RESOLVED that all previous conflict of interest codes of the Local Agency Formation Commission for San Bernardino County shall be rescinded upon the effective date of said amended Code as approved by the County Board of Supervisors.

THIS ACTION APPROVED AND ADOPTED by the Local Agency Formation Commission for San Bernardino County by the following vote:

AYES: **COMMISSIONERS:**

NOES: **COMMISSIONERS:**

ABSENT: COMMISSIONERS:

* * * * *

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

I SAMUEL MARTINEZ, Executive Officer of the Local Agency Formation Commission for San Bernardino County, California, do hereby certify this record to be a full, true, and correct copy of the action taken by said Commission by vote of the members present as the same appears in the Official Minutes of said Commission at its regular meeting of September 21, 2022.

DATED:

SAMUEL MARTINEZ
Executive Officer

**CONFLICT OF INTEREST CODE
OF THE
LOCAL AGENCY
FORMATION COMMISSION
COUNTY OF SAN BERNARDINO**

**CONFLICT OF INTEREST CODE
OF THE
LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO**

The Political Reform Act (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. 18730) that contains the terms of a standard conflict-of-interest code, which can be incorporated by reference in an agency's code. After public notice and hearing the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This incorporation page, regulation and the attached Appendix designating positions and establishing disclosure categories, shall constitute the conflict-of-interest code of the **Local Agency Formation Commission – San Bernardino County (“LAFCO”)**.

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APPENDIX

CONFLICT OF INTEREST CODE

OF THE

LOCAL AGENCY FORMATION COMMISSION

COUNTY OF SAN BERNARDINO

(Amended September 21, 2022¹)

PART “A”

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

LAFCO Officials who manage public investments, as defined by 2 Cal. Code of Regs. § 18700.3, are NOT subject to LAFCO's Code, but must file disclosure statements under Government Code Section 87200 et seq. [Regs. § 18730(b)(3)] These positions are listed here for informational purposes only.

It has been determined that the positions listed below are officials who manage public investments²:

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Executive Officer

Financial Consultants

¹ Titles updated and clarifying language added as provided by the Fair Political Practices Commission in July 2012.

² Individuals holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by § 87200.

DESIGNATED POSITIONS

GOVERNED BY THE CONFLICT OF INTEREST CODE

| <u>DESIGNATED POSITIONS'</u> <u>TITLE OR FUNCTION</u> | <u>DISCLOSURE CATEGORIES</u> <u>ASSIGNED</u> |
|--|---|
| Analyst – GIS/Database Management | 2, 4 |
| Assistant Executive Officer | 1, 2 |
| General Counsel | 1, 2 |
| Project Manager | 1, 2 |
| Senior Analyst | 1, 2 |
| Consultant and New Positions ³ | |

³ Individuals providing services as a consultant as defined in Regulation 18700.3 or in a new position created since this Code was last approved that make or participate in making decisions shall disclose pursuant to the broadest disclosure category in this Code subject to the following limitation:

The Executive Officer may determine that, due to the range of duties or contractual obligations, it is more appropriate to assign a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be in a written document. (Gov. Code Sec. 82019; FPPC Regs 18219 and 18734.) The Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Gov. Code Sec. 81008.)

PART “B”

DISCLOSURE CATEGORIES

The disclosure categories listed below identify the types of economic interests that the Designated Position must disclose for each disclosure category to which the Designated is assigned.⁴ “Investment” means financial interest in any business entity (including a consulting business or other independent contracting business) and are reportable if they are either located in or doing business in the jurisdiction, are planning to do business in the jurisdiction, or have done business during the previous two years in the jurisdiction of LAFCO.

Category 1: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are located in, do business in or own real property within the jurisdiction of LAFCO.

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Category 3: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of LAFCO.


Category 4: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by LAFCO.

Category 5: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the Designated Position’s department, unit or division.

⁴ This Conflict of Interest Code does not require the reporting of gifts from outside this agency’s jurisdiction if the source does not have some connection with or bearing upon the functions or duties of the position. (Reg. 18730.1)

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbcounty.gov
www.sbclafco.org

DATE: SEPTEMBER 14, 2022 
FROM: SAMUEL MARTINEZ, Executive Officer
MICHAEL TUERPE, Senior Analyst
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #6: LAFCO 3252 - Service Review for the Twentynine Palms Community

RECOMMENDATIONS:

Staff recommends that the Commission take the following actions related to LAFCO 3252:

1. For environmental review, certify that the service review is exempt from environmental review and direct the Executive Officer to file the Notice of Exemption within five (5) days.
2. Accept and file the Service Review for the Twentynine Palms Community which sets forth the written statements for the six determinations outlined in Government Code Section 56430 made by the Commission.
3. Should the LAFCO not receive an application to reorganize cemetery services in the Twentynine Palms Community by July 1, 2023, the Commission shall designate a sphere of influence for the Twentynine Palms Cemetery District.
4. Adopt LAFCO Resolution No. 3353 reflecting the Commission's determinations and directions as required by Government Code Section 56430 and Commission policy.

BACKGROUND:

City Initiation

In September 2021, the City Council for the City of Twentynine Palms adopted Resolution No. 20-17 requesting that LAFCO conduct a review of municipal services for the Twentynine Palms community (City, Twentynine Palms Water District, and Twentynine Palms Public Cemetery District). The stated reasoning is to, "identify potential savings of community resources with the elimination of redundant tasks and services within the Twentynine Palms Community." The resolution further states, "a local stakeholder group will be formed to provide peer review of the service review that may identify operational and financial reasons for potential consolidation."

City Withdrawal Request and Commission Action

In May, LAFCO staff released the First Draft to the service review for review and comment by all and any parties. Following the May release of the First Draft, the City informed LAFCO of its desire for the Commission to cease further movement on the service review. On June 14, the City passed a resolution formally requesting LAFCO to stop the service review and not take any additional actions. At its July meeting, the Commission denied the City's withdrawal request and, in essence, decided to make the service review its own. The Commission placed the review for its September 21 hearing.

SERVICE REVIEW:

Executive Summary

The Executive Summary summarizes the content, identifies key facts found during the review's preparation, and lists recommendations for Commission action.

Agency Outreach

LAFCO staff conducted an extensive outreach effort with the agencies addressed in this report, including, but not limited to:

- *In Person Interviews.* LAFCO staff met individually with staffs from each agency.
- *Working Copy.* Each agency was provided with a working copy of the service review for review and input.
- *First Draft.* Each agency and stakeholder was provided with the first draft of the service review for review and comment. One comment was received from the Twentynine Palms Water District. (Appendix A to this service review).
- *Notice of the LAFCO hearing.* LAFCO provided the required notice of the Commission hearing to all agencies, stakeholders, and interested parties, which is also noticed on the LAFCO website.
- *Staff report with final draft.* The staff report, outlining recommendations for Commission action, along with the final draft, was provided to all agencies, stakeholders, and interested parties, which is also available on the website.

ENVIRONMENTAL CONSIDERATION:

The Commission's Environmental Consultant, Tom Dodson of Tom Dodson and Associates, has indicated his recommendation that LAFCO 3252 is exempt from California Environmental Quality Act (CEQA). This recommendation is based on the finding that the service review is not judged to pose any significant effect to the environment; therefore, the service review is exempt from the requirements of CEQA, as outlined in the State CEQA Guidelines, Section 15061(b)(3). Staff recommends that the Commission adopt the "Common Sense" Exemption for the service review. A copy of Mr. Dodson's analysis is included as Attachment #2 to this report.

ADDITIONAL DETERMINATIONS:

1. As required by State Law, notice of the hearing was provided through publication in newspapers of general circulation within the area, *Hi-Desert Star*. Individual notice was not provided as allowed under Government Code Section 56157 as such mailing would include more than 1,000 individual notices. As outlined in State Law and Commission Policy, in-lieu of individual notice the notice of hearing publication was provided through an eighth page legal ad.
2. As required by State law, individual notification of the hearing was provided to affected and interested agencies, County departments, and those agencies and individuals requesting mailed notice.
3. A first draft of the service review document was released to all affected agencies on May 13, 2022.
4. The final draft of the service review was released on September 14, 2022 to all parties as well as the Commission and posted on the LAFCO website.
5. Comments from the public and any affected agency will be reviewed and considered by the Commission in making its determinations.

TWENTYNINE PALMS CEMETERY DISTRICT:

This agency's first service review from May 2012 raised concerns regarding fiscal health, lack of a master plan, and other issues. Based on the reasons described in the May 2012, LAFCO designated a zero sphere of influence for the District, thereby signaling the Commission's position for a reorganization of cemetery services in Twentynine Palms.

In 2020, LAFCO conducted a service review of public cemetery districts which identified good movement towards good governance and sustainability. Nonetheless, LAFCO's determination in said service review affirmed a zero sphere of influence for the District.

Since 2020, the District continues to improve. Given the trajectory, LAFCO and District staff's position is that the Commission designate a sphere of influence for the District. Should LAFCO not receive an application to reorganize cemetery services by July 1, 2023, LAFCO staff recommends that the Commission designate a sphere of influence for the Twentynine Palms Cemetery District.

CONCLUSION:

Staff recommends that the Commission take the actions outlined on page 1.

SM/MT

Attachments:

1. [Service Review for the Twentynine Palms Community](#)
2. [Environmental Recommendation from Tom Dodson](#)
3. [Draft Resolution No. 3353](#)

***Service Review for the
Twentynine Palms Community***

LAFCO 3252



LAFCO

for San Bernardino County

Accepted and Filed _____

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Executive Summary

City Request to LAFCO to Conduct a Service Review of the Community

In September 2021, the City Council for the City of Twentynine Palms adopted Resolution No. 20-17 requesting that LAFCO conduct a review of municipal services for the Twentynine Palms community (City, Twentynine Palms Water District, and Twentynine Palms Public Cemetery District). The stated reasoning is to, “identify potential savings of community resources with the elimination of redundant tasks and services within the Twentynine Palms Community.” The resolution further states, “a local stakeholder group will be formed to provide peer review of the service review that may identify operational and financial reasons for potential consolidation.”

Importantly, this service review does not contain LAFCO recommendations. Rather, this service review is the first study, a broad overview, meant to encourage further discussion and analysis. If an agency pursues some type of reorganization, a detailed plan for service - to include a five-year fiscal impact analysis - would be required.

Service Review Summary of Mandatory Determinations

City of Twentynine Palms

Currently, the City’s position in governance, management, and operations is solid. The City’s financial position improved in spite of the pandemic, although modestly, and continues to improve.

Twentynine Palms Water District

Currently, the Water District is solid in all aspects: governance, management, finances, and operations. This service review does not identify any infrastructure needs or deficiencies related to water. The financial position of the Water District is solid after years of operating with expenses greater than revenues. A recently approved tiered rate increase projects necessary revenues to meet the reserve policy and fund capital improvements.

Twentynine Palms Public Cemetery District

Following years of financial and operations mismanagement, the Cemetery District has made significant improvement in governance and management. Currently, the Cemetery District is stable in all aspects: governance, management, finances, and operations.

LAFCO Analysis of Methods to Gain Efficiencies

If a service is not federal or state, it is local. Local services are provided by a county, city, or a special district that is either regional or community in nature. While federal and state elections tend to garner the attention, it is local government that is closest to the citizen. Further, most services are provided by local governments. Therefore, in

aggregate, local governments spend a great deal of money. It is reasonable to ask if the public's interest would be better served by consolidation or improved coordination at the local level. In the end, is a reorganization effort clear to regular citizens that they will be better off in the new arrangement – specifically taxes, rates, and service level? Further, would there be local interest from the electorate, water rate payers, and civic leaders to consolidate?

At a basic level, there are two methods to evaluate the City's statement to "identify potential savings of community resources with the elimination of redundant tasks and services within the Twentynine Palms Community": consolidation and collaboration.

Consolidation

Local services in the Twentynine Palms community are vertically fragmented. This means that there are overlapping local agencies providing distinct services. Vertical consolidation is between overlapping units of government, such as a city and a special district, hoping to better coordinate public services, reduce administrative costs, or enhance civic participation.

The literature indicates there are four primary reasons for consolidation¹: (1) efficiencies, (2) increase accountability and civic participation, (3) to achieve local and regional goals, and (4) increase capacity to provide services. The fourth reason identified, increase capacity to provide services, does not apply to Twentynine Palms since the governmental structure is vertically fragmented (meaning they overlap and provide different services). Therefore, there is no single service capacity to increase.

There could be some cost efficiencies in duplication of administration functions such as payroll or accounting. However, if the public employees who previously provided the service are moved to new roles within the local government, rather than terminated, then the consolidation would probably not make financial sense. In the long-run, financial benefits could be realized through attrition.

Additionally, subsequent analysis would need to consider the union status of the general employees of the District (excluding the General Manager and three department heads) since City employees are not unionized, the benefit differences in retirement and social security, and the lack of representation of those residing outside the City limits. Those voters and rate payers residing outside the City would lack a vote in electing the governing body of the water department (the City Council). In the unincorporated portion of the Water District, the Water District identifies 1,477 connections as of May 13, 2022 and the Registrar of Voters identifies 703 registered voters as of May 27, 2022. Further, it would prohibit those registered voters from running for the governing body of their water service provider.

¹ "Consolidation" is the merging of services, merging of tax bases, or reducing overlapping units. The definition of "consolidation" in the Local Government Reorganization Act (LAFCO Law) does not apply to this discussion.

SERVICE REVIEW FOR THE TWENTYNINE PALMS COMMUNITY

This service review does not consider the effectiveness of the service following a reorganization. As stated throughout this review, whereas a reorganization may result in efficiencies, it may not result in more effective service.

Based on the following scale (strong, solid, fair, and weak), the merits of consolidating either district with the City to:

- *Gain efficiencies - fair.*
- *Increase the number of candidates for open seats – strong.*
- *Increase voter turnout – solid.*
- *Provide a single forum to address all community service issues – strong.*
- *Provide a single forum to address a potential sewer system – strong.*
- *Achieve local and regional goals – strong.*

Collaboration

It may be that improved government processes or collaboration, rather than consolidation, may achieve efficiencies or achieve local goals. One such collaboration is sharing facilities or services in order to gain efficiencies.

In Twentynine Palms, the possible desire to develop a municipal sewer system could benefit from Water District and City collaboration. First, both agencies have financial limits as to what they can do themselves. Second, due to the obvious lack of experience in developing a sewer system by both agencies, their respective strengths and experience would benefit the community. Lastly, the project and the community would be better off if the two parties were invested in this endeavor.

Based on the following scale (strong, solid, fair, and weak), the merits of collaborating amongst the agencies to:

- *Gain efficiencies - fair.*
- *Achieve local and regional goals – strong.*

As stated previously, this service review does not contain LAFCO recommendations. Rather, this service review is the first study, a broad overview, meant to encourage further discussion and analysis. This review provides a framework for such discussion and analysis, to include any alternative means. If an agency pursues some type of reorganization, a detailed plan for service - to include a five-year fiscal impact analysis - would be required.

Introduction

1. Purpose of Report

In September 2021, the City Council for the City of Twentynine Palms adopted Resolution No. 20-17 requesting that LAFCO conduct a review of municipal services for the Twentynine Palms community (City, Twentynine Palms Water District, and Twentynine Palms Public Cemetery District). The stated reasoning is to, “identify potential savings of community resources with the elimination of redundant tasks and services within the Twentynine Palms Community.” The resolution further states, “a local stakeholder group will be formed to provide peer review of the service review that may identify operational and financial reasons for potential consolidation.”

In November 2021, LAFCO accepted the City’s application and initiated a service review. This service review fulfills the service review requirements as identified in the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code §56000 et. seq.). In general, service reviews evaluate how agencies currently provide municipal services within their service area and the impacts on those services that may occur over the long-term due to population growth and other issues.

Importantly, this service review does not contain LAFCO recommendations. Rather, this service review is the first study, a broad overview, meant to encourage further discussion and analysis. If an agency pursues some type of reorganization, a detailed plan for service - to include a five-year fiscal impact analysis - would be required.

LAFCO may then use this service review as a basis to initiate agency sphere of influence updates, where warranted, to help address identified service efficiencies or deficiencies. “Sphere of Influence” means a plan for the probable physical boundaries and service area of a local agency, as determined by the Commission (§56076). Spheres are designed to both proactively guide and respond to the need for the extension of infrastructure and delivery of municipal services to areas of emerging growth and development. The requirement for LAFCOs to conduct service reviews was established as an acknowledgement of the importance of spheres of influence, and recognition that periodic updates of agency spheres should be conducted (§56425[g]) with the benefit of current information available through service reviews (§56430[a]). Service reviews require LAFCO to prepare written statements of six determinations:

1. Growth and population projections for the affected area;
2. Location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence;
3. Present and planned capacity of public facilities, adequacy of public services, and infrastructure needs or deficiencies related to sewers, municipal and industrial water, and fire protection in any disadvantaged unincorporated communities within or contiguous to the sphere of influence;
4. Financial ability of agencies to provide service;
5. Status of, and opportunities for, shared services; and,
6. Accountability for community service needs, including government structure and operational efficiencies.

2. Report Objective

The primary objective of this service review is to provide the Commission with recommendations to: (1) update the determinations from previous service reviews; (2) initiate sphere of influence updates, if appropriate; (3) identify possible reorganization options for agencies within the Twentynine Palms community; and (4) monitor specific agencies where appropriate.

3. Methodology

Staff referred to a variety of sources for this report, including:

- Previous service reviews and determinations.
- LAFCO's geographic information system ("GIS") which was used to identify future population growth areas and disadvantaged unincorporated communities.
- Information from local agencies, including, but not limited to, budgets, audits, county local agency management plan, city general plan, and land use maps.
- LAFCO outreach to each agency with agency participation, including:
 - A working copy of the service review for review and comment;
 - Notice of the LAFCO hearing to stakeholders and interested parties which was posted on the LAFCO website;
 - LAFCO staff report, along with the first draft, which were provided to all agencies, stakeholders, and interested parties and posted on the LAFCO website.

4. Report Organization

The Twentynine Palms Community Service Review is organized as follows:

| | |
|--|---|
| Executive Summary | Overview of the key components within the report. |
| Introduction | (This section) introduces the service review and discusses the mandatory components within a service review which are required by law |
| Part I: Overview of Twentynine Palms Community | Community location and history, organization of services, and reorganization history |
| Part II: Possible Reorganization and Governance Options | Section 1: Introduction Section 2: Consolidation Section 3: Coordination |
| Part III: Agency Profiles and Reviews | Section 1: Community-Level items Section 2: City of Twentynine Palms Section 3: Twentynine Palms Water District Section 4: Twentynine Palms Public Cemetery District |
| Appendices | A. Comments to the First Draft and LAFCO Staff Responses B. Acronyms and Definitions C. Primers |

PART I: Overview of Twentynine Palms Community

1. Community Location and History

The Twentynine Palms Community is located at the eastern end of the Morongo Basin, approximately 90 miles east of San Bernardino and 55 miles north of Palm Springs. State Route 62 (Twentynine Palms Highway) traverses the community leading to the U.S. Marine Corps Air Ground Combat Center and one of the gateways to Joshua Tree National Park, which was designated as a national monument in 1936 and a national park in 1994.

The Twentynine Palms community is located in an area historically occupied by Native American groups referred to as the Serrano and the Chemehuevi. The Serrano occupied an area in and around the San Bernardino Mountains. Their territory extended west into the Cajon Pass, east as far as Twentynine Palms, north past Victorville, and south to the Yucaipa Valley. Their habitation sites required year-round water sources and tended to be located on the desert floor, mountain bases, and into the foothills.

The Chemehuevi arrived in the Twentynine Palms area at the Oasis of Mara around 1870. The Chemehuevi are Southern Paiutes whose territory extended off the lower Colorado toward the west. The Morongo Band of Mission Indians of the Morongo Reservation was established through presidential executive orders in 1877 and 1889.

Twentynine Palms was named for the palm trees located at the Oasis of Mara. When Colonel Henry Washington, Surveyor for the United States government land office arrived in 1855, Chemehuevi were the primary occupants of the Oasis. The gold prospectors who followed in the 1870s used the Oasis as a campsite.

Because of the area's clean dry air and elevation, Dr. James B. Luckie established a retreat for people afflicted with respiratory and heart problems in the 1920s. World War I veterans brought their families and began homesteading the 160-acre parcels made available to settlers by the federal government at no cost. It was homesteading that determined the widespread area that is Twentynine Palms today.

During World War II, the area became important to the U.S. Army and the U.S. Navy, who practiced bombing and held aviation training over the area. In 1952, the facility expanded and transitioned to a U.S. Marine Corps base, now called the U.S. Marine Corps Air Ground Combat Center, which is the largest Marine Corps base.

2. Organization of Local Services in Twentynine Palms

If a service is not federal or state, it is local. Local services are provided by a county, city, or a special district that is either regional or community in nature. While federal and state elections tend to lead the headlines, it is local government that is closest to the citizen. In the Twentynine Palms community, local services are vertically fragmented. This means that there are overlapping local agencies providing distinct services.

This service review by design is a community service review, thus the agencies subject to a full review are the City of Twentynine Palms, Twentynine Palms Water District, and the Twentynine Palms Public Cemetery District.

The table below outlines the local service agencies in the community and the function(s) that each performs. The reader may notice that a sewage or wastewater collection agency is not listed in the table below. Except for the Marine Corps Base, currently there is no organized municipal sewage collection system or wastewater treatment facility within the community. On-site septic systems have been historically utilized by residences and businesses throughout the community.

Table I-1: List of Community Agencies (Vertically Fragmented)

| | |
|---|---|
| City of Twentynine Palms | incorporated municipality that is responsible for all municipal services ² , unless another agency provides it |
| Twentynine Palms Water District | retail water |
| Twentynine Palms Public Cemetery District | cemetery |

The following is a brief description of the three agencies subject to a full review.

- City of Twentynine Palms – The City incorporated on November 23, 1987, and encompasses approximately 58 square miles (larger than the city of San Francisco). As a municipality the City is responsible for, or the default agency for, all municipal services unless that service is provided by another agency. For example, the City is not responsible for retail water or fire protection/emergency medical services/ambulance since those services are the responsibility of overlaying agencies. Hence, under its municipal powers, the City is the default agency for park and recreation, streetlighting, and other services including the provision of (potential) sewer service within its boundaries. The City is classified as a “contract city”, defined by the State of California as a city which has a contract with another agency or private organization for the provision of various governmental services.³ For example, the City is responsible for law enforcement, and it chooses to contract with the County Sheriff’s Department for such services.
- Twentynine Palms Water District – The Twentynine Palms Water District formed in 1954. LAFCO authorizes the Water District the functions of Water (retail, agricultural, domestic, replenishment) and Sewer (limited to planning and engineering). The Water District is an independent special district with a five-member board and operates under County Water District Law (Division 12 of the

² Municipal services refer to basic services that residents expect the local government to provide in exchange for the taxes paid or charges. Basic municipal services may include water, sewer, refuse, roads, library, fire protection, emergency medical, law enforcement, and transportation. Some municipal services overlap with the social services category.

For both social and municipal services, the government may provide these services directly or contract to third party. The available services for any individual government will depend on location, history, geography, statutes and tradition. Provided services vary amongst countries, states, counties, communities, and cities.

³ Such cities provide many of the basic services (i.e., law enforcement, fire protection, engineering, libraries, and park) through contracts with outside entities with the contract specifying the levels of service to be provided and the financial compensation for the service. Most cities in California which incorporated after Proposition 13 did so as contract cities as a cost savings measure.

Water Code). Its boundaries encompass approximately 87 square miles, and includes incorporated and unincorporated area. The Water District's boundaries and/or sphere of influence do not include the City portion that is within the Marine Corps Base.

- Twentynine Palms Cemetery District – In 1934, voters approved the formation of the Twentynine Palms Cemetery District to provide cemetery services to Twentynine Palms, Wonder Valley, and outlying areas. For ease of an identifiable boundary at that time, the Cemetery District formed as the same boundary as the Twentynine Palms Judicial Township. The Cemetery District is an independent special district with a five-member appointed board of trustees and operates under Public Cemetery District Law (Division 8, Part 4 of the Health and Safety Code).

There are other local agencies that provide services countywide or regionally, which the Twentynine Palms community is a part. The table below identifies these agencies, which are not reviewed in this report.

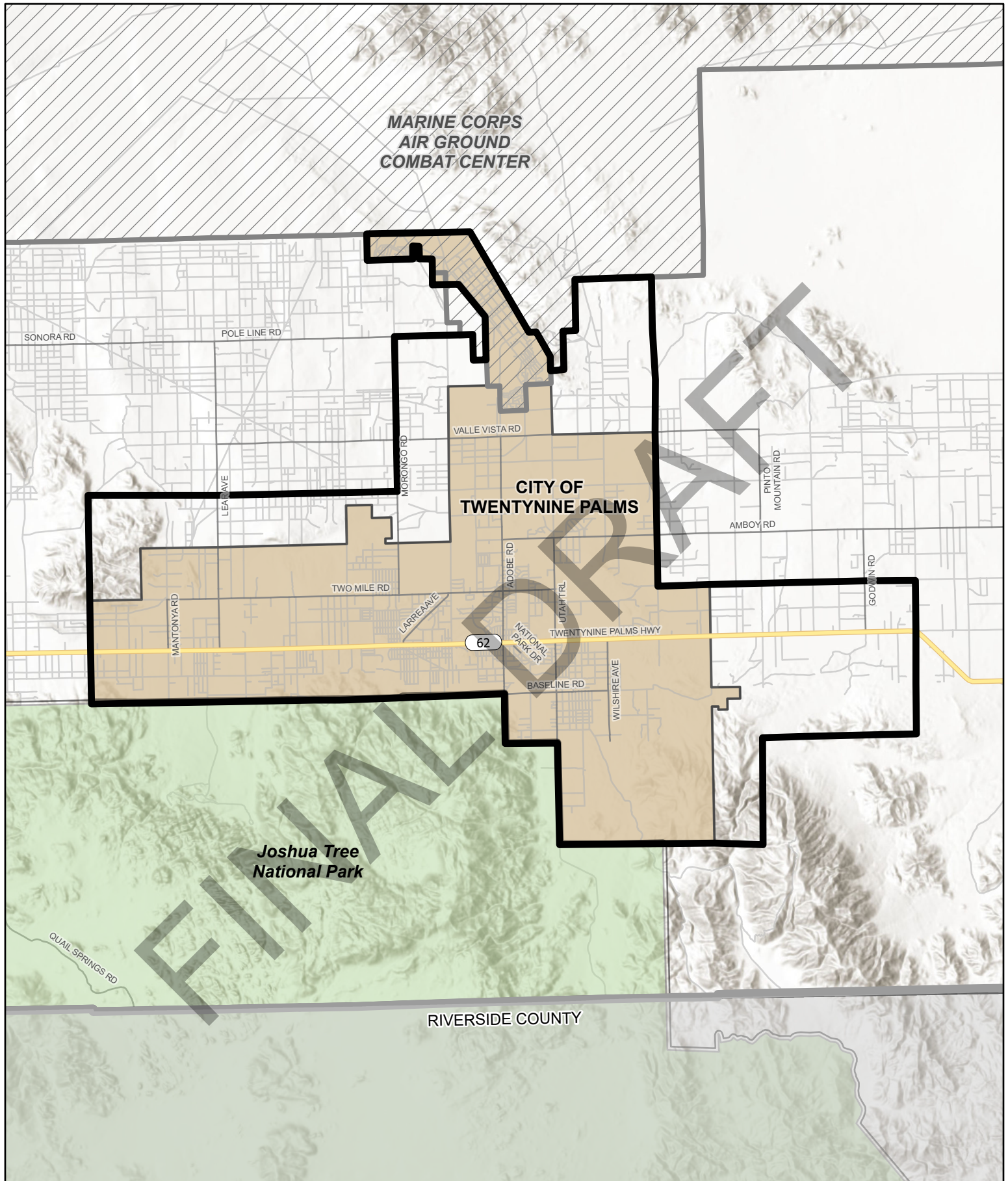
Table I-2: List of Regional Agencies

| | |
|--|--|
| County Service Area 70 Zone TV-5 | television translator (eastern portion of the Morongo Basin) |
| Mojave Desert Resource Conservation District | resource conservation |
| Morongo Basin Healthcare District | hospital and clinics |
| San Bernardino County | most social services ⁴ , law enforcement |
| San Bernardino County Fire Protection District (County Fire) and its South Desert Service Zone | fire protection, emergency medical services ⁵ |
| San Bernardino County Flood Control District | flood control |

The following maps include the three agencies subject to a full service review: City of Twentynine Palms, Twentynine Palms Water District, and the Twentynine Palms Public Cemetery District.

⁴ Social Services may include healthcare, welfare, job placement, and transition assistance. Some social services overlap with the municipal services category.

⁵ Ambulance is provided by Morongo Basin Ambulance, a non-profit.



City of Twentynine Palms Overview

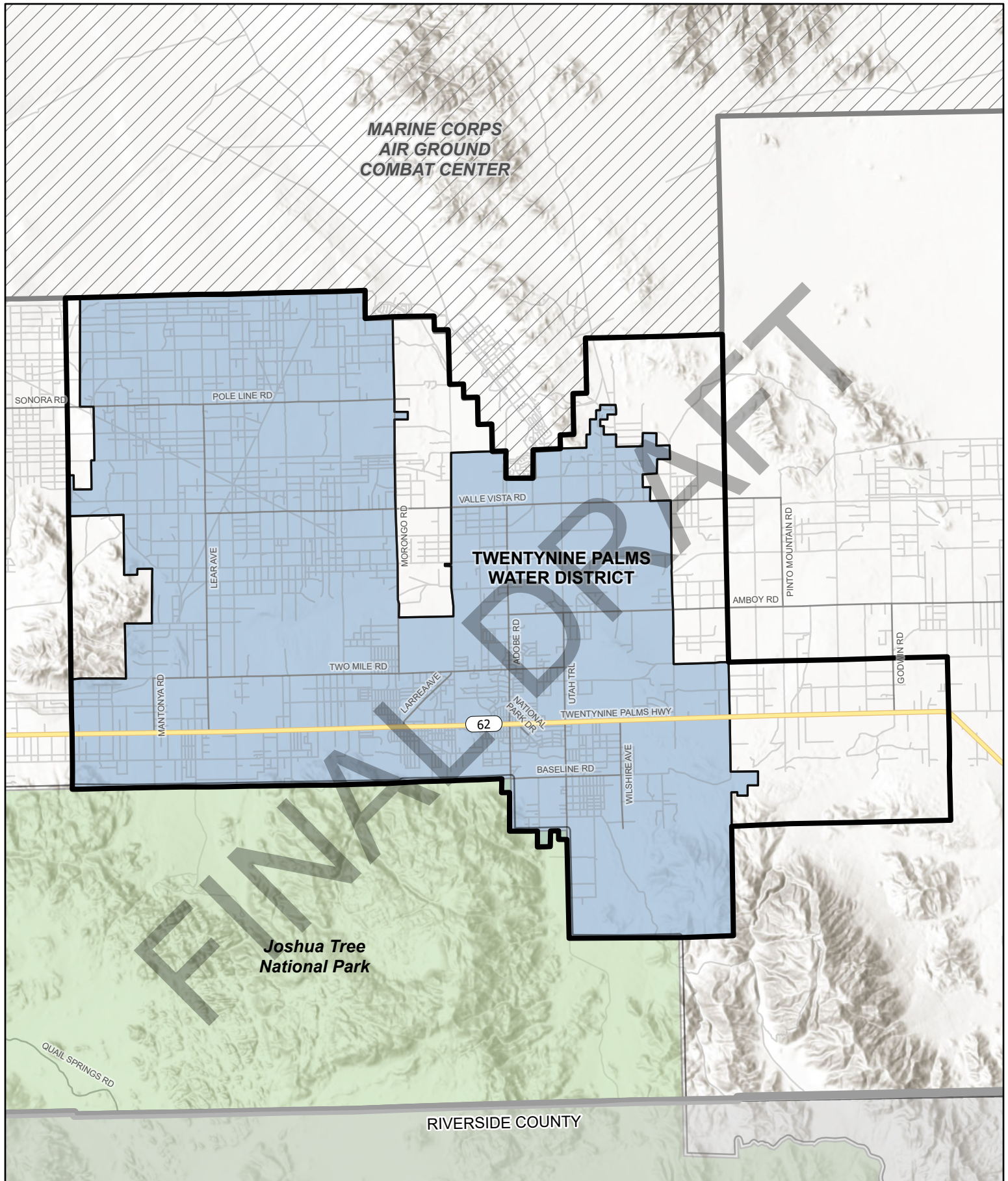


Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.

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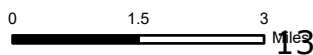
- City of Twentynine Palms
- City of Twentynine Palms Sphere of Influence
- Joshua Tree National Park
- Marine Corps Air Ground Combat Center
- County Line



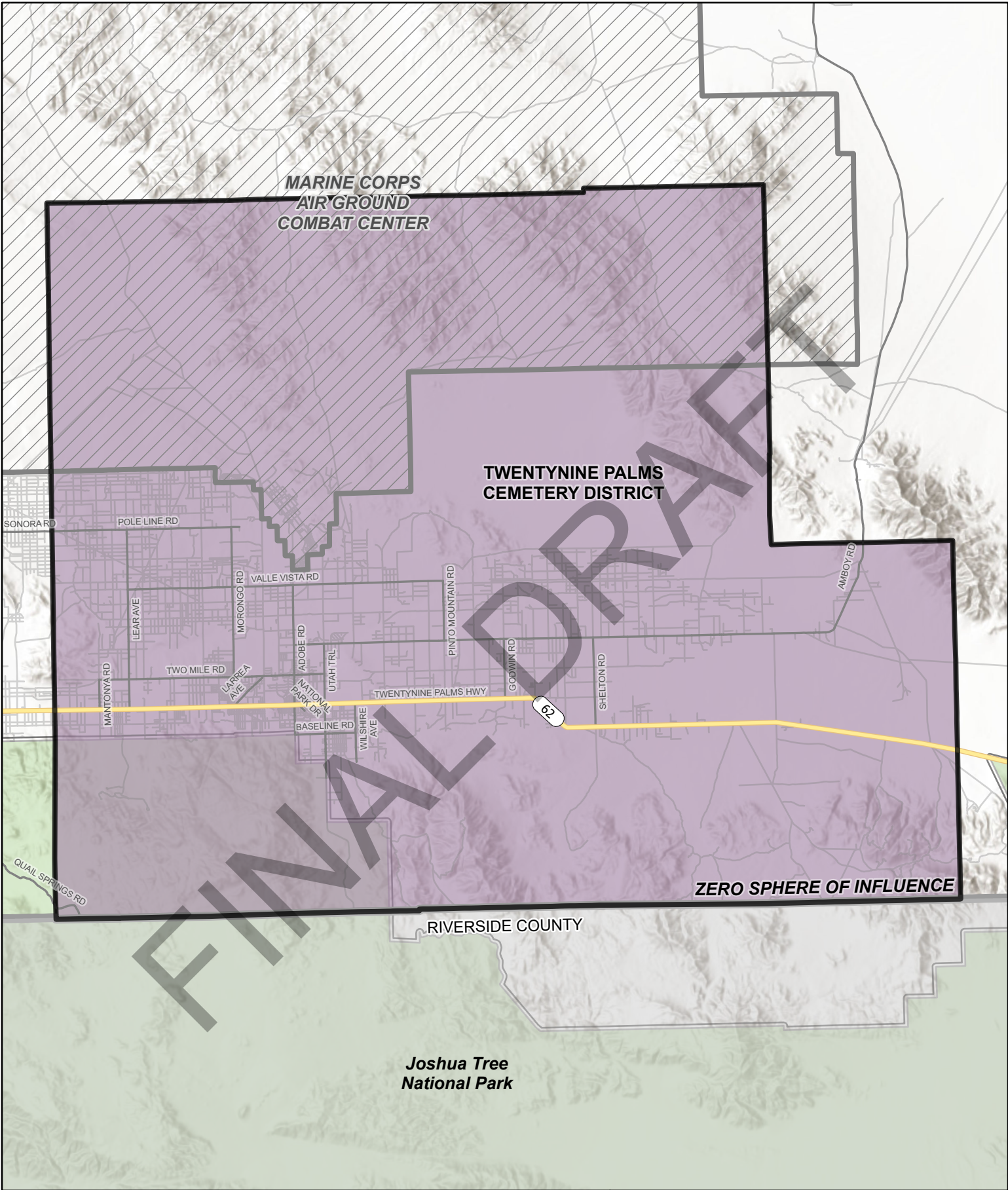
Twentynine Palms Water District Overview



Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.



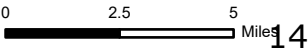
- Twentynine Palms Water District
- Twentynine Palms Water District Sphere of Influence
- Joshua Tree National Park
- Marine Corps Air Ground Combat Center
- County Line



Twentynine Palms Cemetery District Overview



Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.



- Twentynine Palms Cemetery District
- Joshua Tree National Park
- Marine Corps Air Ground Combat Center
- San Bernardino County

3. Reorganization History

The items below are the major events (in terms of government reorganization) for the community.

- 1934 The County Board of Supervisors and the electorate approved the formation of the Twentynine Palms Public Cemetery District as an independent special district to provide cemetery service in the Twentynine Palms, Wonder Valley, and outlying areas, utilizing the boundaries of the Twentynine Palms Judicial Township.

- 1938 The County Board of Supervisors and the electorate approved the formation of the Twentynine Palms Park and Recreation District as a board-governed special district⁶ to provide park and recreation service in the Twentynine Palms and Wonder Valley areas.

- 1954 Prior to 1954, the Twentynine Palms area was served water by three privately owned water companies: (1) Abell Water Company, (2) Condor Mutual Water Company, and (3) Pacific Water Company. In 1954 the Twentynine Palms County Water District was formed and subsequently purchased the three water companies. Their wells, storage facilities, and piping served as the initial water system for the Water District.

- 1958 The Twentynine Palms County Water District began to provide fire protection services, under the name Twentynine Palms Fire Department, after the California Department of Forestry ceased providing local fire protection.

- 1985-87 In 1985, the Twentynine Palms Water District denied the hauling of water for uses outside of its boundaries, effective in 1989, in response to changes in the Water Code. In response to the board's action, residents and voters in the area petitioned the district for annexation in order to continue to receive hauled water. In 1986, the Water District initiated an application to expand its sphere by 75 square miles (LAFCO 2406) and annex 25 square miles within five separate areas which was commonly known as the "Lear Avenue Annexation" (LAFCO 2400). The purpose of the annexations was to plan to provide water (which an assessment district would be formed to eventually pipe water to the area) and fire protection services to the area.

According to the staff report for this item, the vast majority of the residents of the area favored the proposal, and the majority of absentee landowners or holders of large vacant parcels opposed the proposal. In response to the opposition from absentee and vacant landowners, the district's proposed assessment district would only include the basic lands whose owners desire water improvements. The Commission approved the proposals as modified.

- 1987 Registered voters, through citizens group advocating incorporation, gathered adequate signatures and submitted a reorganization application to incorporate the City of Twentynine Palms, dissolve County Service Area 8, and detach from County Service Area 70 (LAFCO 2427). LAFCO held a community workshop on the incorporation which was attended by numerous

⁶ A board-governed special district is a special district that is governed by the County Board of Supervisors.

residents. The Commission approved the proposal on the basis that: 1) the area is a recognizable community; 2) the area is so far away from the seat of county government, that self-governance is warranted; 3) the boundaries adequately reflect the community; and 4) the area has the ability to provide service at a lower cost than other urban areas. Following Commission approval, the County Board of Supervisors ordered that the question for the reorganization be placed on the November election. The measure passed with 52% of the vote (980 for, 894 against). Effective November 23, 1987, Twentynine Palms became a city.

- 1992 The County Board of Supervisors, as the governing body of the Twentynine Palms Recreation and Park District, transferred jurisdictional responsibility for the District to the City Council of the City. Since virtually all of the program and budget decisions primarily affected the citizens of the city, it was recognized that those decisions could be better rendered at the local level.
- 1993 As the governing body of the Twentynine Palms Recreation and Park District, the City submitted an application to dissolve the district (LAFCO 2752). The main reason for the proposal was for the possibility for the City to receive the special district augmentation revenue that went to the district⁷. In addition, the City cited that economies of scope could be realized. The proposal included the transfer of property taxes from the Park District to the City for the City to provide the service. The Commission approved the proposal with the condition that the City was required to continue to provide park and recreation services for residents of the former district that did not reside within the City.
- 1999 The City initiated an application to annex the residential portion of the Marine Corps Base, along with concurrent sphere of influence expansion, comprising 3.9 miles (LAFCO 2855 and 2856). The purpose of the annexation was to increase the City's population through inclusion of military personnel residing in on-base housing, which would increase the revenues distributed to the City through various State subventions, particularly Motor Vehicle in Lieu revenues, while not incurring service or land use obligations on the military base.
- 2012 Over time, the Fire Department of the Twentynine Palms Water District evolved into a two station, fully staffed Basic Life Support ("BLS") operation providing fire, rescue and EMS functions to the citizens of the City of Twentynine Palms and surrounding communities. However, as detailed in LAFCO's 2012 Service Review conducted for the Twentynine Palms community, due to funding shortfalls and subsequent staff attrition, the foundation for Twentynine Palms fire and emergency services eroded over time.

⁷ Soon after passage of Proposition 13 in 1978, the state provided revenue to special districts to bail-out non-enterprise functions. In FY 1979-80 the state adopted a permanent bail-out measure which established the Special Districts Augmentation Fund. Under the law at that time, the full amount of property tax revenue of the District would transfer to the City without reference to the augmentation fund. However, in 1993 the state was considering reducing or even eliminating the augmentation fund which prompted the City need to act on the application to LAFCO.

Options were reviewed during the 2012-13 timeframe which included a discussion with the San Bernardino County Fire Protection District (County Fire) to assume fire responsibility. However, the determination was made to retain local control of the operation. On June 1, 2013, the provision of fire protection and emergency medical services was reduced from two staffed fire stations to one staffed fire station due to the lack of a sustainable revenue source for continued service provision.

2012 The Twentynine Palms Cemetery District's first service review from 2012 raised concerns regarding its fiscal health, lack of a master plan, and other financial and operational issues. Based on the reasons described in the 2012 service review, LAFCO designated a zero sphere of influence for the Cemetery District.

2015 In 2015 the Water District initiated an application to LAFCO to annex into County Fire and to divest itself of the responsibility to provide fire protection and emergency medical services. In essence, fire and emergency services would transfer from the Water District to County Fire. In February 2016, LAFCO considered and approved the proposed reorganization, and County Fire assumed fire and emergency services on July 1, 2016.

As a condition of the reorganization, the City agreed to assume the Water District's remaining fire pension obligation – at that time the assumed obligation was over \$3 million. The justification for this arrangement was that should the Water District's fire operations cease without a reorganization to County Fire, the City would be required to provide fire and emergency services to its territory by law. In short, the use of City funds to resolve this liability dilemma protected the City from being the default agency to assume fire and emergency medical services.

PART II: Possible Reorganization and Governance Options

SECTION 1: Introduction

In September 2021, the City of Twentynine Palms adopted a resolution requesting that LAFCO conduct a review of municipal services for the Twentynine Palms community (City of Twentynine Palms, Twentynine Palms Water District, and Twentynine Palms Public Cemetery District). The stated reasoning is to, “identify potential savings of community resources with the elimination of redundant tasks and services within the Twentynine Palms Community.” The resolution further states, “a local stakeholder group will be formed to provide peer review of the service review that may identify operational and financial reasons for potential consolidation.” That being stated, it seems fair that if local government resources are constrained, then exploring efficiencies is a reasonable inquiry.

Taking into consideration the City’s statement in its resolution, whereas the discussion of some government structure options may be theoretical, a service review should address possible options. Such options should consider:

- Improving public participation, local accountability, and governance;
- Producing efficiencies in order to reduce service costs;
- Enhancing capital improvement plans and increasing capacity; and
- Improving the quality and/or levels of service.

Evaluation of these options should weigh:

- Long-term savings of the change versus related transition costs;
- Cost-benefit of restructuring to any proposed alternative;
- Impact on operating costs (short and long-term); and
- An agency’s financial stability.

At a basic level, there are two methods to evaluate the City’s statement to “identify potential savings of community resources with the elimination of redundant tasks and services within the Twentynine Palms Community”: consolidation and collaboration. The following two sections explore these two methods.

In the end, is a reorganization effort clear to regular citizens that they will be better off in the new arrangement – specifically taxes, rates, and service level? Further, would there be local interest from the electorate, water rate payers, and civic leaders to consolidate?

According to a 2020 publication from the Governance Finance Officers Association, concessions that limit personnel and department cuts hinder the expected cost savings and efficiency gains. Thus, as with any large endeavor, the difference between success or failure is in the details. This means that even if consolidation improves the efficiency of government in the short run, efficiencies are not guaranteed in the long run.⁸

⁸ Kavanagh, Shayne and Chris Fabian. Governing Magazine. Improving Local Government Coordination and Reducing Waste from Local Government Fragmentation – Part 3: Government as a Platform: Plugging in the Best Service Providers”. Governance Finance Officers Association. 2020.

PART II: Possible Reorganization and Governance Options

SECTION 2: Consolidation

Local services in the Twentynine Palms community are vertically fragmented. This means that there are overlapping local agencies providing distinct services. Vertical consolidation is between overlapping units of government, such as a city and a special district, hoping to better coordinate public services, reduce administrative costs, or enhance civic participation. Conversely, horizontal consolidation is between adjacent units of government (two cities for example) hoping to merge services or combine resources or tax base; this does not apply to this community.

The literature indicates there are four primary reasons for consolidation⁹: (1) efficiencies, (2) increase accountability and civic participation, (3) to achieve local and regional goals, and (4) increase capacity to provide services. The fourth reason identified, increase capacity to provide services, does not apply to Twentynine Palms since the governmental structure is vertically fragmented (meaning they overlap and provide different services). Therefore, there is no single service capacity to increase.

Some base-level considerations should be factored into the feasibility of consolidation, such as bonded indebtedness, retirement differences, employee benefit differences, infrastructure conditions, legal issues, and more.¹⁰

1. Consolidation: Efficiencies

A. Why Consolidate: Efficiencies

Consolidation can reduce redundant tasks and positions, thereby resulting in efficiencies. Since the City does not provide water or cemetery services, there would not be significant efficiencies in water or cemetery operations. Rather, such efficiencies could be in purchasing, management, finance, technology, infrastructure, and others.

Two types of consolidation are available to the community. The first is dissolving the water and cemetery districts and making their functions a City Department. The second is retaining the Water District but establish it as a subsidiary district of the City (the Cemetery District is not eligible for subsidiary district status as it is vastly larger than the City). Both types are discussed below.

B. Dissolution of the Water District and Make the Function a City Department

The City could apply to LAFCO to dissolve the Water District and make the function a city department, for example the City of Twentynine Palms Water Department.

⁹ "Consolidation" is the merging of services, merging of tax bases, or reducing overlapping units. The definition of "consolidation" in the Local Government Reorganization Act (LAFCO Law) does not apply to this discussion.

¹⁰ Kavanagh, Shayne. Governing Magazine. Improving Local Government Coordination and Reducing Waste from Local Government Fragmentation – Part 1: Does Consolidating Local Governments Work?". Governance Finance Officers Association. 2020.

Efficiencies would come from the reduction of the district board of directors, legal counsel, auditor, at least one upper level management position, and human resources. Whereas the elimination of some positions would occur, the proportionate tasks would be reduced but not be eliminated. These items are addressed individually below.

- Little to No Reduction
 - Legal Counsel – Most of the District's legal costs relate to water operations with a lesser amount for general operations.
 - Audit and Budget – Auditing standards require separate accounting by fund. The water department's activities would need separate accounting across-the-board. Therefore, there would be little to no reduction in these costs.
- Reduction but not elimination
 - Finance, Human Resources, and Board Clerk – These positions could technically be eliminated but the related tasks in full most likely could not be assumed by the City's respective staff. As a starting basis for discussion, a savings factor of 50% could be applied to the current cost for these services.
 - Board of Directors – A board of directors would be eliminated upon dissolution. However, due to the historical and technical nature of water service, an advisory council or water committee seems likely. As such, the services of these people would incur costs, but likely less than that of a full functioning district board of directors. As a starting basis for discussion, a savings factor of 50% could be applied to the current cost for these services.
 - General Manager – The General Manager of the Twentynine Palms Water District performs two functions – the head of administration and the head of operations. For administrative purposes, the City could choose not to function with a Water General Manager. Administrative functions could be assumed by the City Manager. However, the City Manager could not assume the duties as head of water operations since such duties require certifications. After reviewing the District's documents as well as content from interviews between LAFCO staff and District management, the bulk of the General Manager's work relates to operations and not administration. The District has confirmed that the Director of Operations position is typically vacant, supporting the staffing model where the General Manager is the lead operator. Earlier this year, even with a Director of Operations, the two supervisors (Maintenance and Production) reported to the General Manager and not the Director of Operations. Additionally, the District has not had an engineer on staff. Further, the past few general managers have all been promoted from within, thereby

promoting continuity and expertise of local operations. In essence, the General Manager of this district is the lead operator. Therefore, as a starting basis for discussion, a savings factor of 25% could be applied to the current cost for this service.

Items to Consider:

First, LAFCO's preliminary calculations for this option would result in an annual savings of roughly \$200,000. Should the City desire to pursue this option, the required application to LAFCO would include a Plan for Service and Fiscal Impact Analysis detailing the reductions. Additional analysis would include addressing the union status of the general employees of the District (excluding the General Manager and three department heads) since City employees are not unionized.

Second, the District participates in Social Security as well as CalPERS. In 1986 Social Security changed to allow agencies that contract with retirement plans such as CalPERS to also participate in Social Security. The District is an agency that elected to participate, so it has both benefits. The employees pay their full share of the employee CalPERS costs and the employee Social Security costs. Elimination of Social Security and providing the other government retirement plan, CalPERS, would save an additional roughly \$100,000. Analysis of this matter is beyond the scope of this service review, and proper consideration requires detailed analysis.

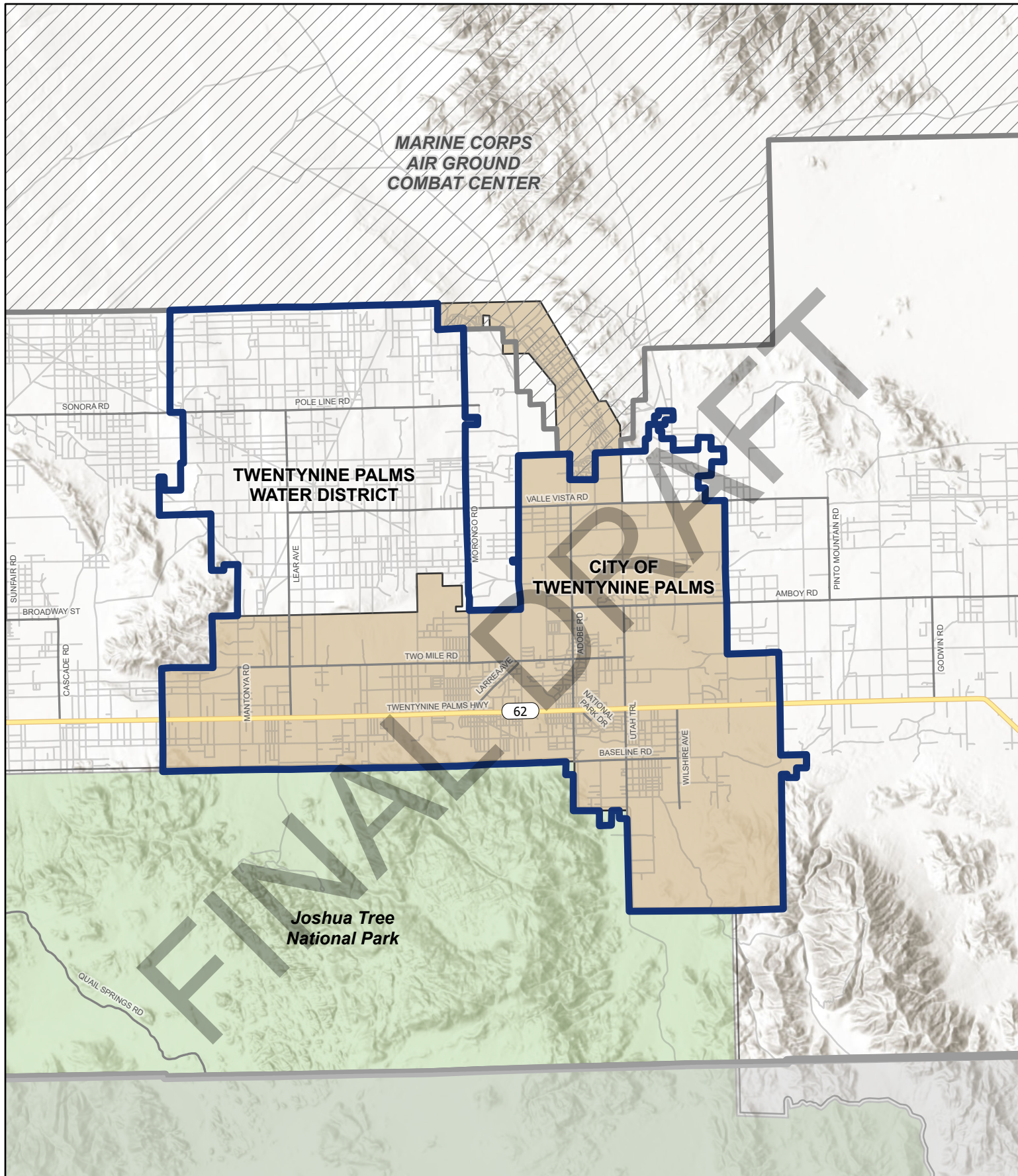
Third, one downside to dissolving the District and making its function a City Department, is that the District's territory is larger than the City's. In this case, the City would be obligated to continue service beyond its boundary - throughout the District's territory. The consequence of this option is that those voters and rate payers residing outside the City would lack a vote in electing the governing body of the water department (the City Council). In the unincorporated portion of the Water District, the Water District identifies 1,477 connections as of May 13, 2022 and the Registrar of Voters identifies 703 registered voters as of May 27, 2022. Further, it would prohibit those registered voters from running for the governing body of their water service provider.

Lastly, this service review does not consider the effectiveness of the service following a reorganization. As stated throughout this review, whereas a reorganization may result in efficiencies, it may not result in more effective service.

C. Retain the Water District but make it a Subsidiary District of the City

A similar option would be to retain the Water District but make it a subsidiary district of the City. This means that the district transitions from an independent district to a dependent district governed by the City Council. In fact, a subsidiary district can be larger than a city. State law allows for subsidiary district status if at least 70% of the district territory and 70% of the district's registered voters are within the city limits. In the corporate world, a subsidiary company is a company owned or controlled by another company, which is called the parent company or holding company.

The following figure shows the Water District overlaid by the City.



Twentynine Palms Water District Overlaid with the City of Twentynine Palms



Disclaimer: The information shown is intended to be used for general display only and is not to be used as an official map.

0 1.5 3 Miles



22

- City of Twentynine Palms
- Twentynine Palms Water District
- Joshua Tree National Park
- Marine Corps Air Ground Combat Center
- County Line

The benefits for a city to govern a subsidiary district is to control the governance and operations of the district. On the other hand, some communities form subsidiary districts or re-establish independent districts as subsidiary districts in order to gain efficiencies, while isolating the district's finances from the parent (the city). In the case of Twentynine Palms, a subsidiary Twentynine Palms Water District would be governed by the City Council (acting as the Water District board) and the lead water administrator would likely report to the City Manager. The Water District's finances would be separate from the City's and pursuant to accounting standards would require separate budgets and audits.

At this time, the Water District is not eligible for subsidiary district status. It only meets the voter requirement, but does not meet the territory requirement because 62% of the district's territory is within the city limits. In order to be eligible, the City would first have to annex an additional eight percent to reach the 70% minimum. The most likely area for annexation would be Desert Heights.

Similar cost efficiencies would occur as with the previous option (dissolution and establishing a water department). In addition, should the City annex the additional two percent, it would gain a portion of the property tax of the area in order to provide general municipal services.

D. Dissolution of the Cemetery District and Make the Function a City Department

The City could apply to LAFCO to dissolve the Cemetery District and succeed to its service responsibility, assets, and liabilities. Current law (Health and Safety Code §8125) authorizes cities to survey, lay out, and dedicate for burial purposes no more than five acres of public lands. The Cemetery District operates more than five acres. If the City were to succeed to the District's cemetery services, special legislation would need to occur, and there is statutory precedent for authorization. In 2008, AB 1932 authorized the City of Simi Valley to operate a cemetery on public lands containing five acres or more. Should the City desire to succeed to the District's services and facilities, special legislation would be required.

In addition, the Cemetery District's territory is much larger than the City. Should this option come to fruition, LAFCO staff would recommend that the Commission include a condition that the City continue to provide cemetery services for residents of the former district that do not reside within the City. Efficiencies would come from the reduction of the district board of directors, legal counsel, and auditor. Whereas the elimination of some positions would occur, the proportionate tasks would be reduced.

E. Conclusion: Efficiencies

There could be some cost efficiencies in duplication of administration functions such as payroll or accounting. However, if the public employees who previously provided the service are moved to new roles within the local government, rather than terminated, then the consolidation would probably not make financial sense.

This service review does not consider the effectiveness of the service following a reorganization. As stated throughout this review, whereas a reorganization may result in efficiencies, it may not result in more effective service.

2. Consolidation: Increase Accountability and Civic Participation

The occurrence of three overlapping governmental units¹¹ in a small community could result in insufficient civic participation, both for candidates running for office and electorate voting.

A. Candidates Running for Office

In order to run for office, one must be a registered voter. The community has pool of roughly 7,800 registered voters that are eligible for candidacy for the City, Water District, Cemetery District, Unified School District, and Community College District. Therefore, the small pool does not lend to competitive elections in this community.

Elections for representation on the City Council of the past 10 years shows competitive races in six of eight elections since 2012. Therefore, competition is not a challenge for City elections during this time span. Note that the City transitioned from at-large membership to membership by district starting with the 2018 election.

Table II-1: City Elections since 2012, Number of Candidates

| | DISTRICT 1 | DISTRICT 2 | DISTRICT 3 | DISTRICT 4 | DISTRICT 5 |
|---------------------------|---------------------|------------|------------|------------|------------|
| 2020 Presidential General | 1 | 2 | | | |
| 2018 Statewide General | | | 1 | 2 | 2 |
| | | | | | |
| | CITY WIDE, AT LARGE | | | | |
| 2016 Presidential General | 4 | pick 2 | | | |
| 2014 Statewide General | 6 | pick 3 | | | |
| 2012 Presidential General | 3 | pick 2 | | | |

Source: San Bernardino County Registrar of Voters

Elections for representation on the Water District Board of the past 10 years shows competitive races in two of four elections since 2012. Therefore, competition is a challenge for Water District elections during this time span.

Table II-2: Water District Elections since 2012, Number of Candidates

| Election | Candidates | Election/Appointment |
|------------------------|------------|---|
| 2019 District Mail | 3 | Election, pick 2 |
| 2017 Consolidated Mail | 3 | appointments in lieu of election, 3 seats |
| 2015 Consolidated Mail | 1 | appointments in lieu of election, 1 seat |
| 2013 Consolidated Mail | 5 | Election, pick 3 |

Source: San Bernardino County Registrar of Voters

¹¹ The Morongo Basin Unified School District is excluded from this analysis since its jurisdiction is larger than the Twentynine Palms Community, generally encompassing the entire Morongo Basin.

By law, Cemetery District board members are appointed by the County Board of Supervisors.

B. Interest in Appointments to the Cemetery Board

Records show that community interest in board membership historically has been low. An option afforded in Public Cemetery District law is for the board to request through resolution that the County Board of Supervisors reduce board membership from five members to three members (Health and Safety Code §9020, §9025). In the LAFCO staff's view, limiting membership to three members for such a large area would not promote oversight efficiencies; a full membership of five members should be sought by the District and the County Board of Supervisors to promote adequate oversight of District affairs and community participation in an important service.

Additionally, the County Board of Supervisors may appoint itself to be the board of trustees (§9026). Such an action would not require LAFCO approval as it would not be a change of organization, rather the District remains but the governing body would be different.

C. Voter Participation

As shown in the table below, voter turnout to City elections has been strong. Turnout was 44% and 53% during the past two Statewide General elections and over 70% in each of past three Presidential General Elections. However, turnout has been weak during mail elections for the Water District. Note that in 2015 and 2017, the Water District appointed in lieu of election due to lack of candidates.

Table II-3: Voter Turnout since 2012

| CITY | | WATER DISTRICT | |
|---------------------------|-----|------------------------|-----|
| 2020 Presidential General | 76% | 2019 District Mail | 18% |
| 2018 Statewide General | 53% | 2017 Consolidated Mail | -- |
| 2016 Presidential General | 76% | 2015 Consolidated Mail | -- |
| 2014 Statewide General | 44% | 2013 Consolidated Mail | 25% |
| 2012 Presidential General | 71% | | |

Source: San Bernardino County Registrar of Voters

Water District Election Change

Elections Code Sections 14050 through 14057, known as the California Voter Participation Rights Act (Act), prohibits cities, school districts, and special districts from holding an election other than on a statewide election date in even-numbered years, if holding an election on a non-concurrent date has historically significantly decreased voter turnout. Significant decrease in voter turnout is defined as at least 25 percent less than the average voter turnout within the jurisdiction for the previous four statewide general elections. Local agencies must consolidate their elections with a statewide election no later than the November 8, 2022 Statewide General Election.

The Water District has held its governing body elections as mail ballot elections in August of odd-numbered years since 2009 when its voters approved the move. The Water District's most recent election was held on August 27, 2019 and voter turnout was 18.33%. The average voter turnout in statewide general elections of 2012, 2014, 2016 and 2018 was 59.40%. The Water District's voter turnout in 2019 was significantly decreased as defined in the Act. On January 5, 2021, the County Board of Supervisors approved a District request to move its election dates from mail ballot elections held in August of odd-numbered years to statewide general elections held in November of even-numbered years, commencing with the November 8, 2022 Statewide General Election. (Board Item 38).

Future discussion on efficiencies can take into consideration the voter participation from the November 8, 2022 election for the Water District.

D. Conclusion: Accountability and Civic Participation

In the Twentynine Palms community, three overlapping governmental units contributes to insufficient civic participation. Elections for representation on the City Council for the past ten years show competitive races in six of eight elections since 2012. However, competition has been a challenge for Water District elections. As for voter turnout, turnout has been strong for City elections and weak for Water District elections. With a move to Statewide General Elections for the Water District, the hope is for increased turnout as well a decrease to election costs. Number of candidates and voter participation are solely not reasons for consolation, but should be considered as a part of the overall discussion.

3. Consolidation: Achieve Local and Regional Goals

A. Consolidation to Provide a Single Forum

As currently organized, community members must participate in two government forums to obtain a complete picture of water and wastewater matters. This may lend to inefficiency in messaging and planning.¹² For example, the public may be better able to voice concerns and receive more attention from one lead elected official (mayor) and one lead administrator (city manager).

Second, there is a lack of competition in vertical agencies, specifically when one agency is single purpose. As a result, there is lack of competition in the budget process when there is a single purpose agency. As constructed, community members must participate in two budget processes to provide their input on policy priorities and fund allocation.¹³ Should the Water District be a part of the City as a

¹² Goodman, Christopher B. "Local Government Fragmentation: What Do We Know?" State and Local Government Review. 51 (2): 134–144. (2019).

¹³ Christopher R. Berry. Imperfect Union: Representation and Taxation in Multilevel Governments. New York: Cambridge University Press. 2009.

department, then the amount of funds divided amongst all priorities and services could be debated in one forum.

B. Sewer System

As stated, this community is vertically fragmented, meaning that there is little overlap in responsibility. The community is exploring the opportunity to develop a sewer collection and treatment system. Should this become an explicit goal of the community, then the city absorbing the Water District and making into a city department could provide a single voice for all water and wastewater matters. Water and wastewater are services whose planning and operations are influenced by the other. For example, groundwater is affected by waste discharge, and wastewater can be treated and put back into the ground or used for non-potable uses such as irrigation.

In 2018, LAFCO conducted a *Countywide Service Review for Wastewater*, which included the Twentynine Palms community. That service review determined that the City and the Water District are aware that the Colorado River Basin Regional Water Quality Control Board is concerned about potential contamination, and the parties are concerned that the Regional Board could issue an order for the community to immediately develop a wastewater system. Meanwhile, the neighboring Marine Base has an aging wastewater treatment facility.

The Twentynine Palms community is identified as an area that has a need and opportunity for an organized wastewater collection system, and an opportunity exists for the community to develop a joint wastewater system with the nearby Marine Corps base.

Two local agencies have the authority to plan for a future wastewater system: (1) the City of Twentynine Palms as a municipality can provide collection and/or treatment, and (2) the Twentynine Palms Water District is authorized by LAFCO the Sewer function but with services limited to Planning and Engineering.

Meanwhile, the neighboring Marine Base has an aging wastewater treatment facility located just north of Mesquite Dry Lake aboard the installation. The Base has requested military construction funding to construct a new facility near the current site. This is the highest priority construction project for the Base, however it is not currently scheduled, and it is unclear when this construction may be funded. With concurrent wastewater treatment needs for the Marine Corps base and the Twentynine Palms community, the City has presented an opportunity to develop a joint wastewater system with the Marine Corps base.

LAFCO staff understands that the Twentynine Palms Water District has participated in meetings with the City and Marine Base, but that the City is taking the lead in the feasibility study with the Marine Base. The Water District is authorized by LAFCO the Sewer function but with services limited to Planning and Engineering. Having such authorization allows the Water District to play an integral role in a potential sewer collection and treatment system and shaping the future of the overall Twentynine Palms Community.

Benefits for a Combined Water/Sewer Agency

There are significant benefits when one agency is responsible for water and sewer services – be it a city or district. First, if one agency is responsible for sewer treatment and another is responsible for water distribution, there may be differing policies on the distribution of the treated wastewater (also known as recycled water or grey water). In many instances, the agencies have agreements on where, when, and how to distribute the treated wastewater. However, in other instances, the different governing bodies may have different philosophies and policies regarding recycled water and cannot come to an agreement. For example, who becomes the responsible agency to distribute the treated wastewater to the parks for irrigation – the water agency or the wastewater agency? Alternatively, when one agency is responsible for both sewer treatment and water distribution, the result is clear policy on recycled water. Further, a combined agency would have direct access to recycled water, thereby partially offsetting its water demands for irrigation.

Second, there is crossover in equipment and maintenance of the systems. When there are separate agencies, both agencies have separate fleets for water and sewer. When combined, certain equipment such as backhoes, trucks, and jetters can be shared for the water system and sewer system. Further, a combined crew can work on both the water system and sewer system since the core task is similar. Note that the separate certifications are required for water treatment and sewer treatment.

Third, a combined agency would benefit by providing a bundled service and billing to customers for water and sewer. A combined agency could simply charge for sewer based upon water consumption.

C. Conclusion: Achieve Local and Regional Goals

Consolidation can provide for a single forum for community engagement. In some cases, this may promote more efficient messaging and planning. Should the community desire to develop a sewer collection and treatment system, the City absorbing the Water District and making into a city department could provide a single voice for all water and wastewater matters.

This service review does not consider the effectiveness of the service following a reorganization. As stated throughout this review, whereas a reorganization may result in efficiencies, it may not result in more effective service.

PART II: Possible Reorganization and Governance Options

SECTION 3: Collaboration

This section explores the concept of collaboration as a means to enjoy the benefits of consolidation without surrendering identity and independence. It may be that improved government processes or collaboration, rather than consolidation, may achieve efficiencies or achieve local goals. In the previous section, three reasons were discussed for consolidation: (1) efficiencies, (2) increase accountability and civic participation, and (3) achieve local and regional goals. This discussion excludes item (2) increase accountability and civic participation, as is not a significant factor for collaboration.

1. Collaboration: Efficiencies

One such collaboration is sharing facilities or services in order to gain efficiencies. Across the country, there are substantial gains available from collaboration. Since the agencies do not duplicate or overlap in services, efficiencies would be in general administration such as payroll and accounting. Further there is no unique community character associated with these services.

In this option, the agencies could share resources. For example, equipment used by both agencies, but not full time, could be shared. Of course, this is dependent upon the legal and risk management (insurance) review.

2. Collaboration: Achieve Local and Regional Goals

In working towards a goal, collaboration holds promise for addressing big social challenges that are multi-faceted like poverty, homelessness, and addiction. However, a review of the literature shows that local governments in general are starting to use collaboration to address community challenges.

Collaboration connects separate entities to pursue a shared vision and harnesses their collective resources and capital to achieve the objective. Further, this engagement makes the entities mutually accountable. For example, the County of San Bernardino created a shared vision for the entire county and enlisted organizations from many sectors in this vision, including local governments within the county.

In Twentynine Palms, the possible desire to develop a municipal sewer system could benefit from Water District and City collaboration. First, both agencies have financial limits as to what they can do themselves. Second, due to the obvious lack of experience in developing a sewer system by both agencies, their respective strengths and experience would benefit the community. Lastly, the project and the community would be better off if the two parties were invested in this endeavor.

According to the Water District, the City and Water District have a history of joint committees and collaboration. These include:

- Having a joint ad hoc committee to evaluate technical inquiries over the potential impact of septic systems on groundwater sources.
- Water District staff have participated in three previous engineering evaluations of centralized wastewater management sponsored by the City.
- Pursuing state grants related to wastewater study and water services.

FINAL DRAFT

PART III: Agency Profiles and Reviews

SECTION 1: Community-Level Review Items

Due to the overlay of the City, Water District, and Cemetery District, three of the mandatory determinations for a service review can be reviewed at the community level, and not duplicated for each agency. These determinations are:

1. Growth and population projections for the affected area
2. Location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence
3. Infrastructure needs or deficiencies related to sewers, municipal and industrial water, and fire protection in any disadvantaged unincorporated communities within or contiguous to the sphere of influence

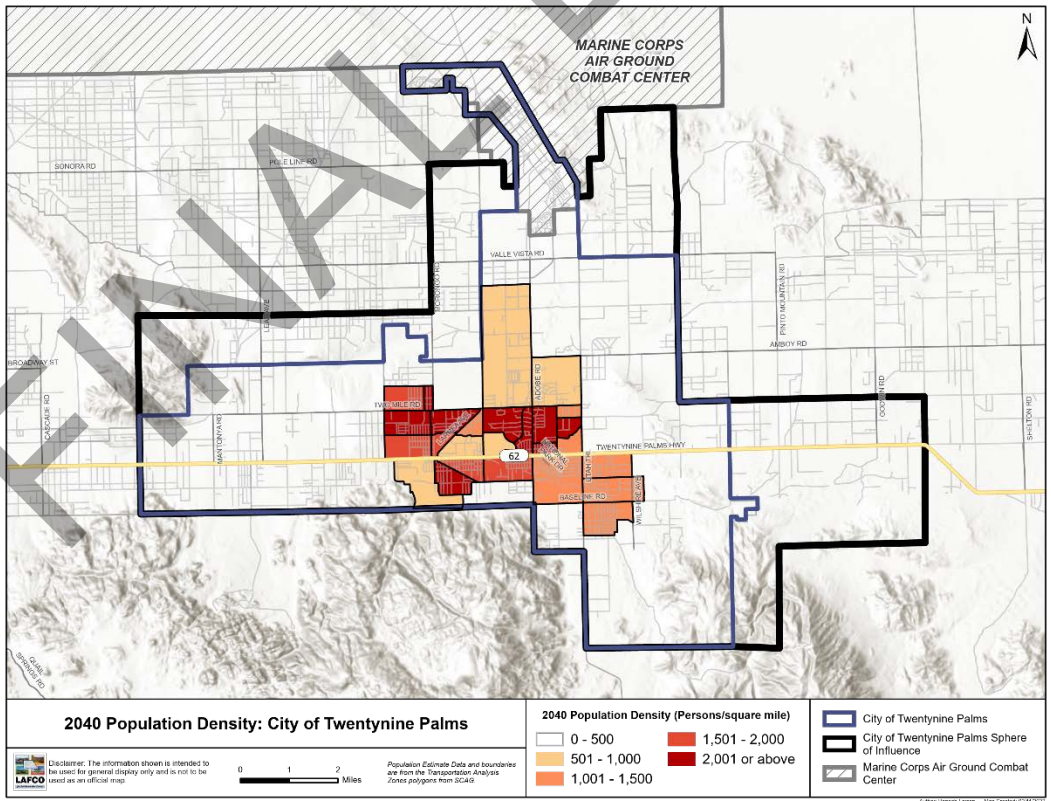
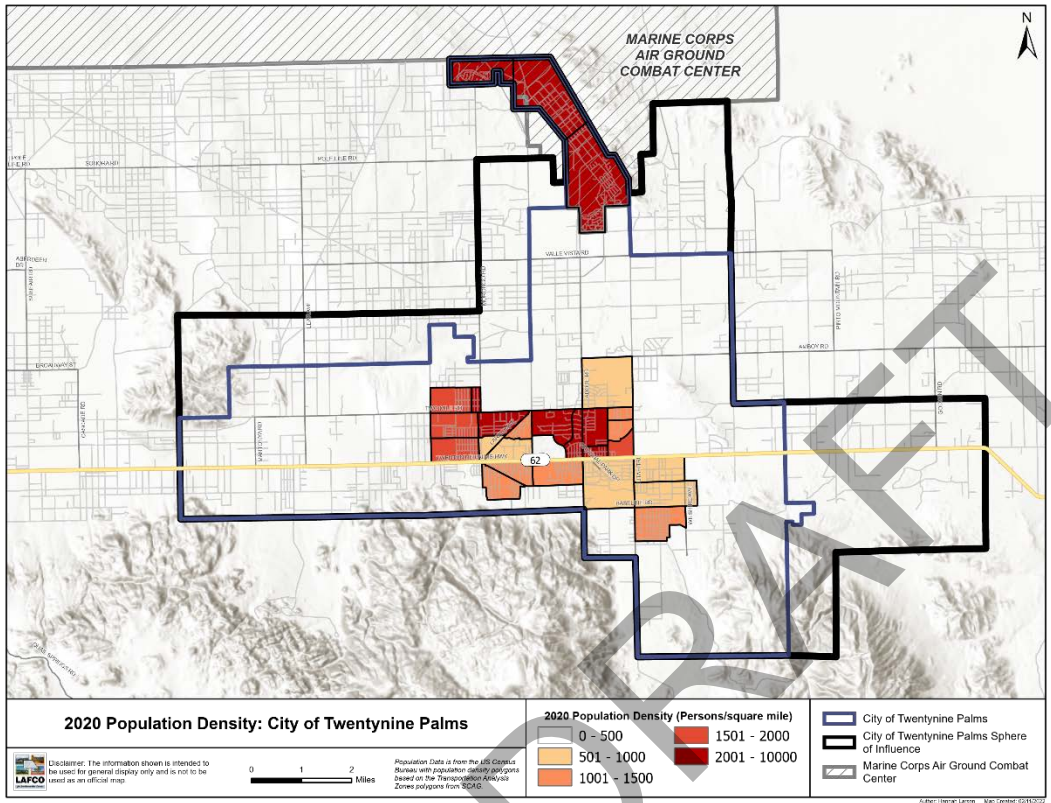
1. Growth and population projections for the affected area

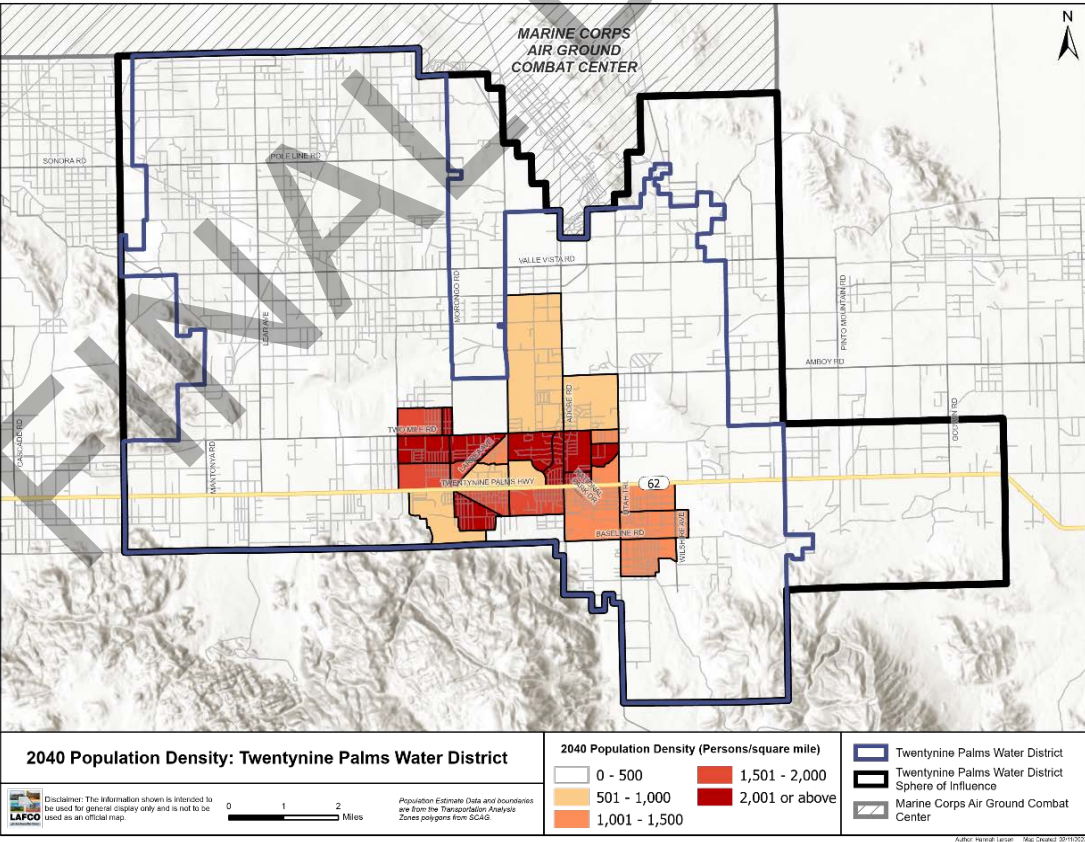
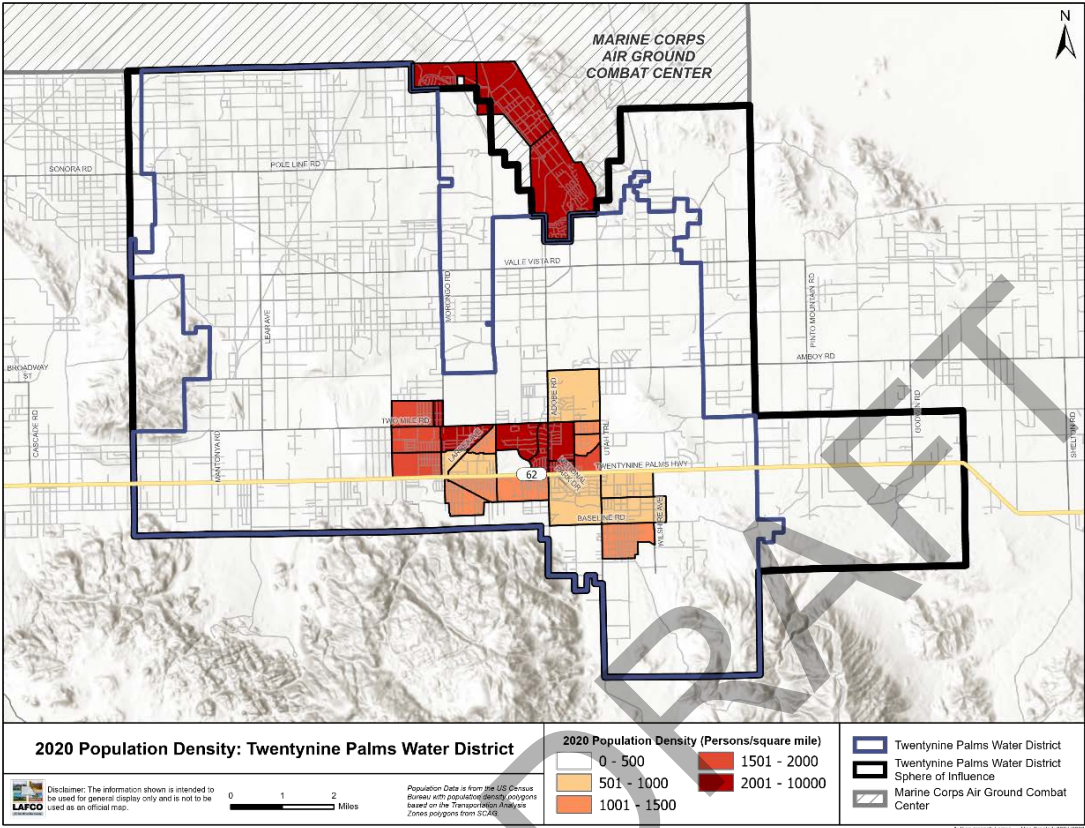
Twentynine Palms can be characterized as a rural desert community that has a high population density where its boundary overlaps with the Marine Corps Air Ground Combat Center. The community is concentrated around commercial areas which run along State Highway 62, also known as Twentynine Palms Highway, and Adobe Road, which runs north to the Military Base. These areas contain the majority of multifamily and relatively dense single-family land uses. Less dense single family and rural living are located in the majority of the remainder of the community.

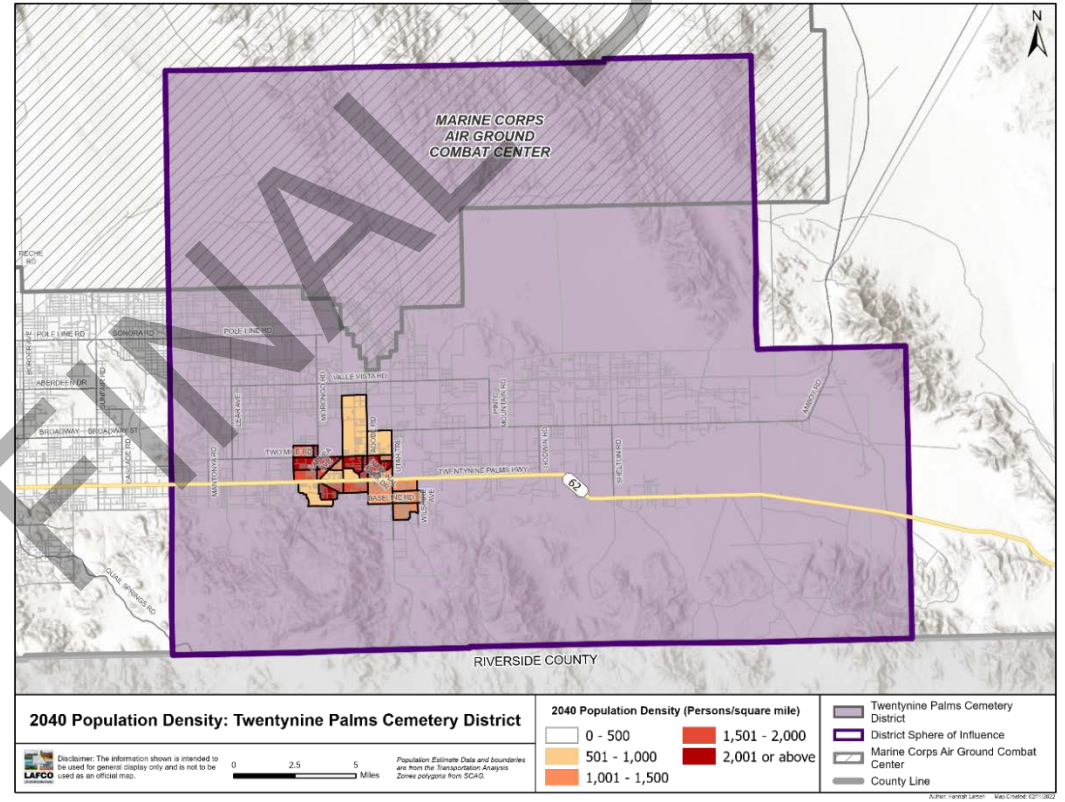
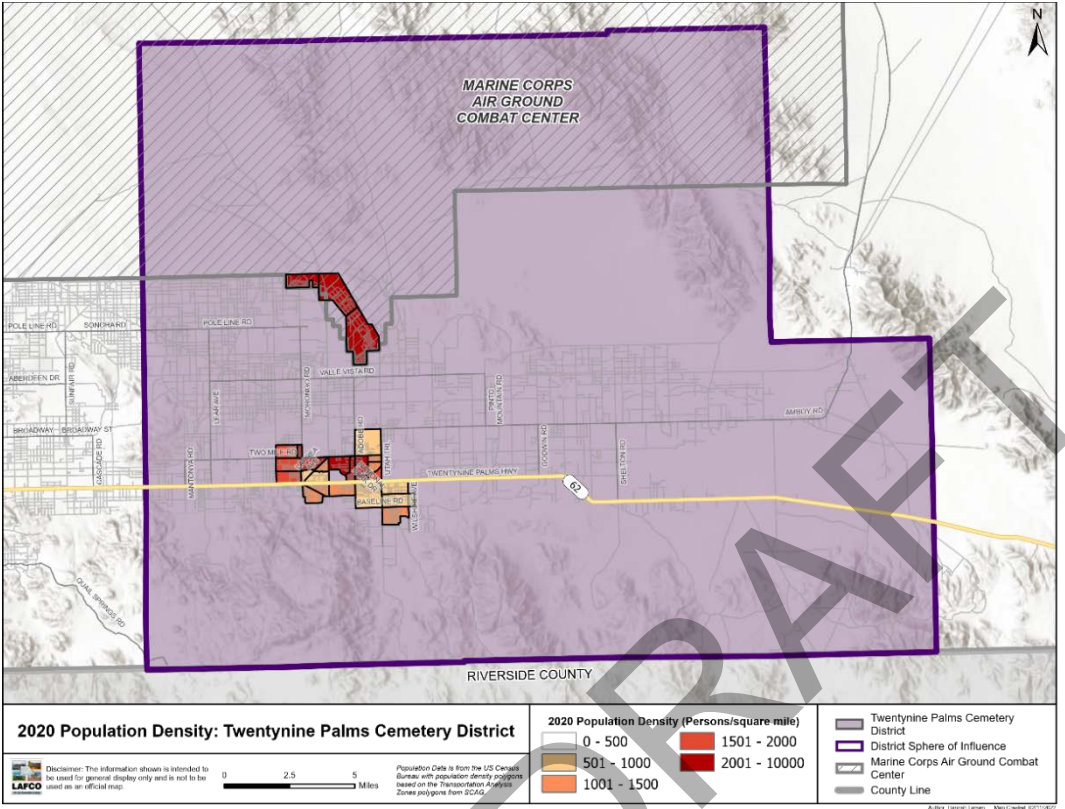
The City had a total population of 25,048 in 2010 and 28,065 in 2020 according to the United States Census Bureau. Overall, the City has grown by 1% annually for the past 10 years.

The following three pages show two population density figures for each agency: 2020 estimate and 2040 forecast. As shown, the population density in the community is not projected to increase significantly by year 2040 given the availability of developable land, remote nature of the desert communities removed from pass-through traffic, and the local economic structure.

However, San Bernardino County, in general, is anticipated to see more population growth in the near term than the coastal regions of Southern California. The high cost of housing in the coastal counties of Los Angeles, Orange and San Diego has made the Inland Empire a destination of choice for many residents willing to commute to those areas. Shortly, the South Desert Region, including Twentynine Palms, has experienced an increase in full-time and part-time residents and visitors seeking rural and open space.







2. Location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence

A. Definition

The State of California adopted a definition of disadvantaged community (or “DAC”) through passage of Proposition 50, the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002. This measure added §79505.5(a) to the California Water Code and defines a disadvantaged community as a “community with an annual median household income that is less than 80 percent of the statewide annual median household income.” For 2021, 80% of the statewide median household income is \$60,188. State law requires various entities (i.e. LAFCO, cities and counties, and water agencies) to, in some manner, identify disadvantaged communities, which can be located in both incorporated and unincorporated areas.

B. Disadvantaged Unincorporated Communities (DUCs)

Particular to annexations, the state mandate is to identify the location and characteristics of disadvantaged unincorporated communities (or “DUCs”). Gov. Code §56375 specifically prohibits an annexation to a city of any territory greater than 10 acres where there exists a disadvantaged unincorporated community that is contiguous to the area of proposed annexation unless an application to annex the entire disadvantaged unincorporated community has also been filed. Gov. Code §56033.5 defines DUCs as “...inhabited territory [12 or more registered voters]...or as determined by Commission policy, that constitutes all or a portion of a “disadvantaged community”... with less than 80% of the median household income.

For LAFCO service reviews, the state requires that service reviews identify and describe the characteristics of disadvantaged communities of unincorporated areas only (commonly referred to as “DUCs”). For the purposes of defining a DUC, San Bernardino LAFCO policy defines a community as an inhabited area comprising no less than 10 dwellings adjacent or in close proximity to one another. Uninhabited areas include vacant or government lands. The table below identifies the major DUC within the Twentynine Palms Community.

Table III-1: Disadvantaged Unincorporated Area

| Characteristics | Twentynine Palms (Northwest Unincorporated Area) |
|-------------------------|---|
| Area, sq. miles | 40 |
| Population (2021) | 1,406 |
| Households (2021) | 634 |
| Median Household Income | \$29,300 |
| Characteristics | Natural desert setting, rural lifestyle, wide open spaces and natural features. Predominant land use is rural residential with large lots. There is very little commercial or industrial development. |

Source: ESRI Community Analyst

C. Disadvantaged Communities (DACs)

Although the state requires that LAFCOs focus their service review analyses on disadvantaged communities within unincorporated areas, the reality is that disadvantaged communities do not necessarily follow jurisdictional boundaries and occur in incorporated areas (cities) as well. It is LAFCO's responsibility to also recognize and describe the characteristics of the disadvantaged communities countywide regardless of jurisdiction.

The table below identifies the characteristics of the Disadvantaged Community ("DAC") within the City of Twentynine Palms.

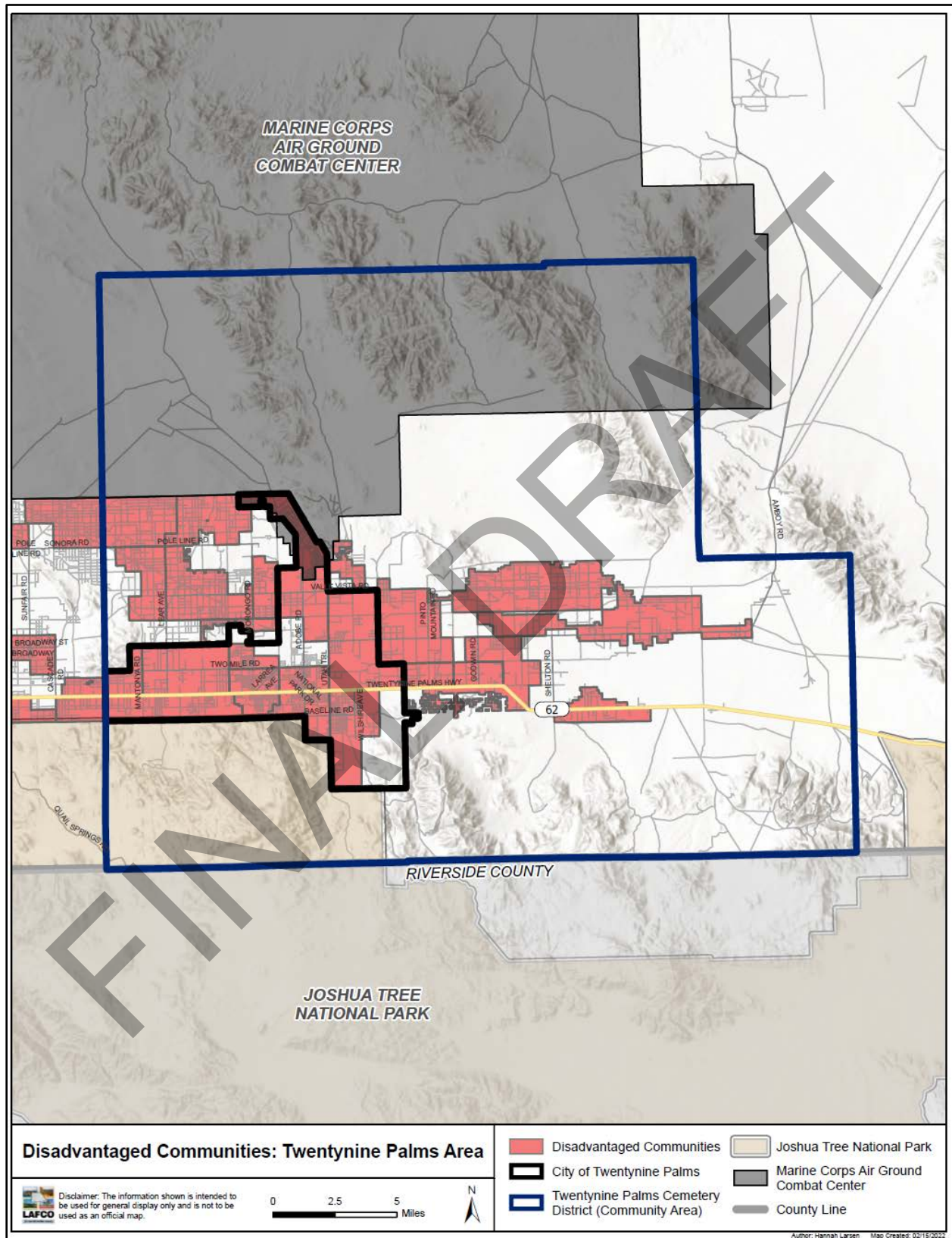
Table III-2: Disadvantaged Incorporated Area

| Characteristics | Central Twentynine Palms Incorporated |
|-------------------------|---|
| Area, sq. miles | 9.17 |
| Population (2021) | 12,874 |
| Households (2021) | 5,054 |
| Median Household Income | \$45,841 |
| Characteristics | Low, medium, and medium-high density residential, rural residential, general commercial, public facilities, and low density industry. |

Source: ESRI Community Analyst

The figure on the following page identifies the location of the DACs. Shown are the Cemetery District outline, as it is the largest boundary, and the City outline as a reference for the disadvantaged communities within the incorporated area.

Figure III-7: Disadvantaged Communities



3. Infrastructure needs or deficiencies related to sewers, municipal and industrial water, and fire protection in any disadvantaged unincorporated communities within or contiguous to the sphere of influence

A. Sewer

(1) Historical

There currently is no organized municipal sewage collection system or wastewater treatment facility within the City. Most wastewater in the community is disposed of via individual septic tanks at residences and businesses. The exceptions to this are the mainside area of Marine Corps Base and some of the new subdivisions and businesses contain on-site wastewater collection and treatment systems ("OWTS"). OWTS are wastewater treatment systems that use subsurface disposal, including: individual; community collection and disposal; and alternative collection and disposal systems. The most common OWTS are septic systems. OWTS do not include "graywater" systems pursuant to Chapter 15 of the California Plumbing Code.¹⁴

In 2018, LAFCO conducted a *Countywide Service Review for Wastewater*, which included the Twentynine Palms community. That service review determined that the City and the Water District are aware that the Colorado River Basin Regional Water Quality Control Board is concerned about potential contamination, and the parties are concerned that the Regional Board could issue an order for the community to immediately develop a wastewater system. Meanwhile, the neighboring Marine Base has an aging wastewater treatment facility.

Given the direction of Gov. Code §56430 and the Commission's policies related to spheres of influence and service reviews, the Twentynine Palms community is identified as an area that has a great need and opportunity for an organized wastewater collection system. In turn, the Commission identified the Twentynine Palms community as a "hot spot" and recognized that an opportunity exists for the community to develop a joint wastewater system with the nearby Marine Corps base.

(2) Infrastructure Need

Two local agencies have the authority to plan for a future wastewater system: (1) the City as a municipality can provide collection and/or treatment within its boundaries, and (2) the Water District is authorized by LAFCO the Sewer function but with services limited to Planning and Engineering, although the District can apply to LAFCO to expand its authorized services to include the full range of wastewater services throughout its jurisdiction.

Meanwhile, the neighboring Marine Base has an aging wastewater treatment facility located just north of Mesquite Dry Lake aboard the installation. The Base has requested military construction funding to construct a new facility near the current site. This is the highest priority construction project for the Base, however it is neither currently scheduled nor funded.

¹⁴ See Appendix C: Primers (Onsite Wastewater Treatment Systems)

With concurrent wastewater treatment needs for the Marine Corps base and the Twentynine Palms community, the City has presented an opportunity to develop a joint wastewater system with the Marine Corps base. The City recently completed a feasibility study to develop a wastewater system to promote economic growth, protect groundwater resources from contamination, and provide a means for using recycled water to recharge groundwater, thereby enhancing the long-term sustainability of the community's resources. The City is interested in pursuing a joint solution with the Marine Corps Base in order to capitalize upon economies of scale, avenues for more favorable financing for the City's share of a joint project, and promoting basin-wide groundwater sustainability. The study is anticipated to evaluate a joint wastewater treatment plant as well as the City constructing its own treatment plant.

LAFCO staff understands that the Water District has participated in meetings with the City and Marine Base, but that the City is taking the lead in the feasibility study with the Marine Base. The Water District is authorized by LAFCO the Sewer function but with services limited to Planning and Engineering. Having such authorization allows the Water District to play a contributing role in a potential treatment system and shape the future of the overall community.

Any joint project between the Twentynine Palms community and the Marine Base would allow for economies of scale, phased approach to connecting the non-base community to a new treatment plant, promote economic growth, and protect groundwater quality. Additionally, it would promote retention of workers, since local citizens are not subject to deployment or reassignment, and shared risk - even more so if the Water District becomes a partner.

As of this writing, the Regional Board has not issued a prohibition, and the City recently completed a feasibility study to evaluate the available wastewater treatment options for the community, to include the Marine Corps Base.

In February 2022, the City Council approved direction to pursue state funding for a wastewater collection and treatment system and to spend no more than \$500,000, in part to create a shovel-ready plan to submit to the State. At this time, the system could cost between \$150 million and \$200 million. The application is due March 2023, and construction would need to start by June 2024 and completed by June 2016.

B. Water

LAFCO authorizes the Water District to provide retail water service within its boundary, which includes the incorporated city. This service review does not identify any infrastructure needs or deficiencies related to municipal and industrial water. Please refer to Part I, Section 3 (Twentynine Palms Water District) of this report.

C. Fire and Emergency Services

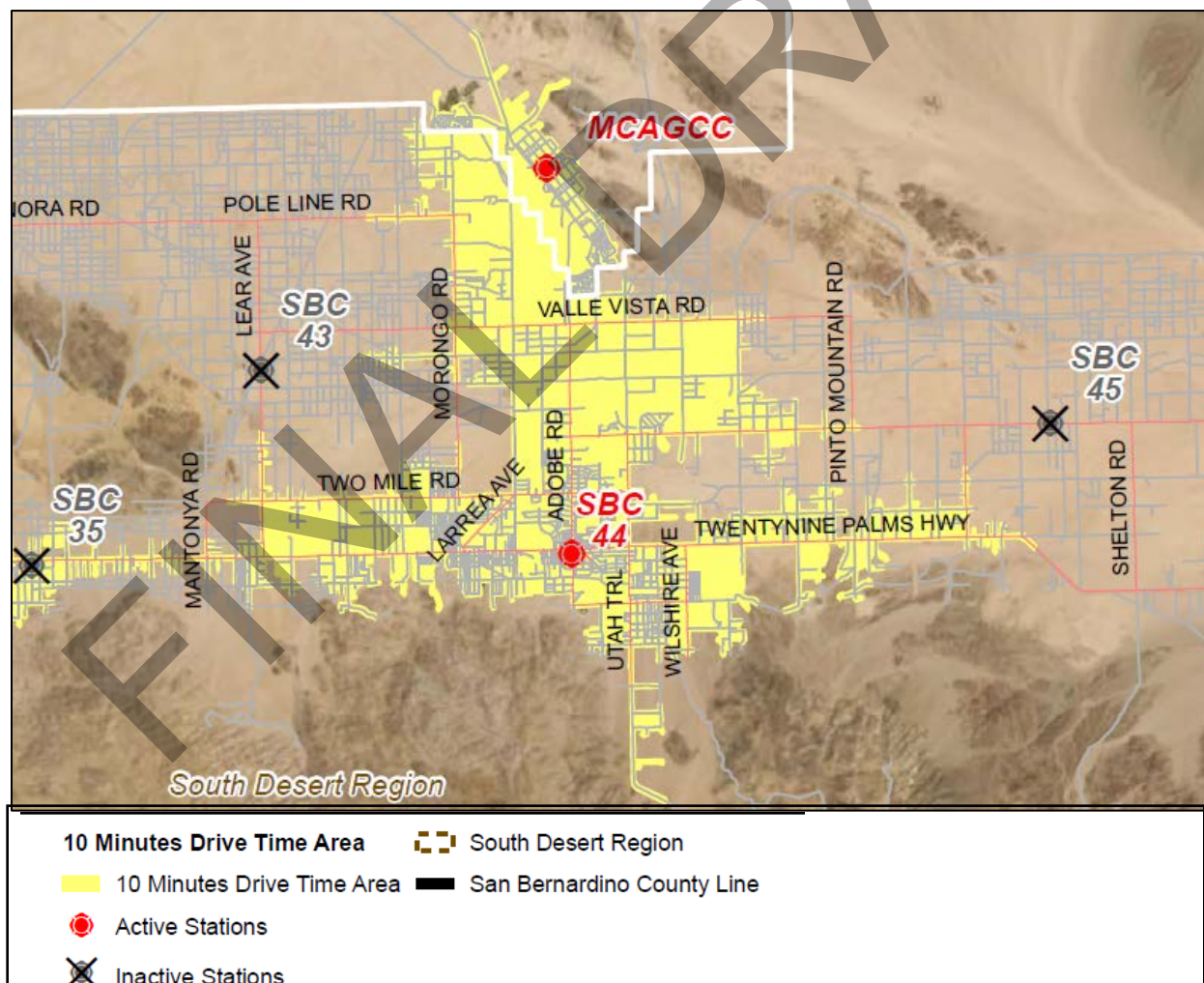
The community is within the boundaries of the San Bernardino County Fire Protection District ("County Fire"), which is responsible for fire protection and

emergency services. The following identifies the fire stations in the community and adjacent areas:

| Twentynine Palms Community | Adjacent |
|---|--|
| <ul style="list-style-type: none"> ○ Station 44 – active ○ Station 43 – inactive ○ Marine Corps – active, mutual aid | <ul style="list-style-type: none"> ○ Station 35 (Joshua Tree) – inactive ○ Station 45 (Wonder Valley) – inactive |

At this time, County Fire has the only active station in the community, Station 44, and the two adjacent stations are inactive. The distance between a fire station and the location of an emergency has a significant impact on response time. LAFCO staff conducted a drive time analysis to evaluate the emergency service coverage to the community. The figure below shows that the majority of the community can be reached from Station 44 or the Marine Corps station within 10 minutes, the standard for rural communities. Staff performed the analysis using typical traffic conditions during mid-week (Wednesday at 12 P.M.) driving a standard fire rescue truck.

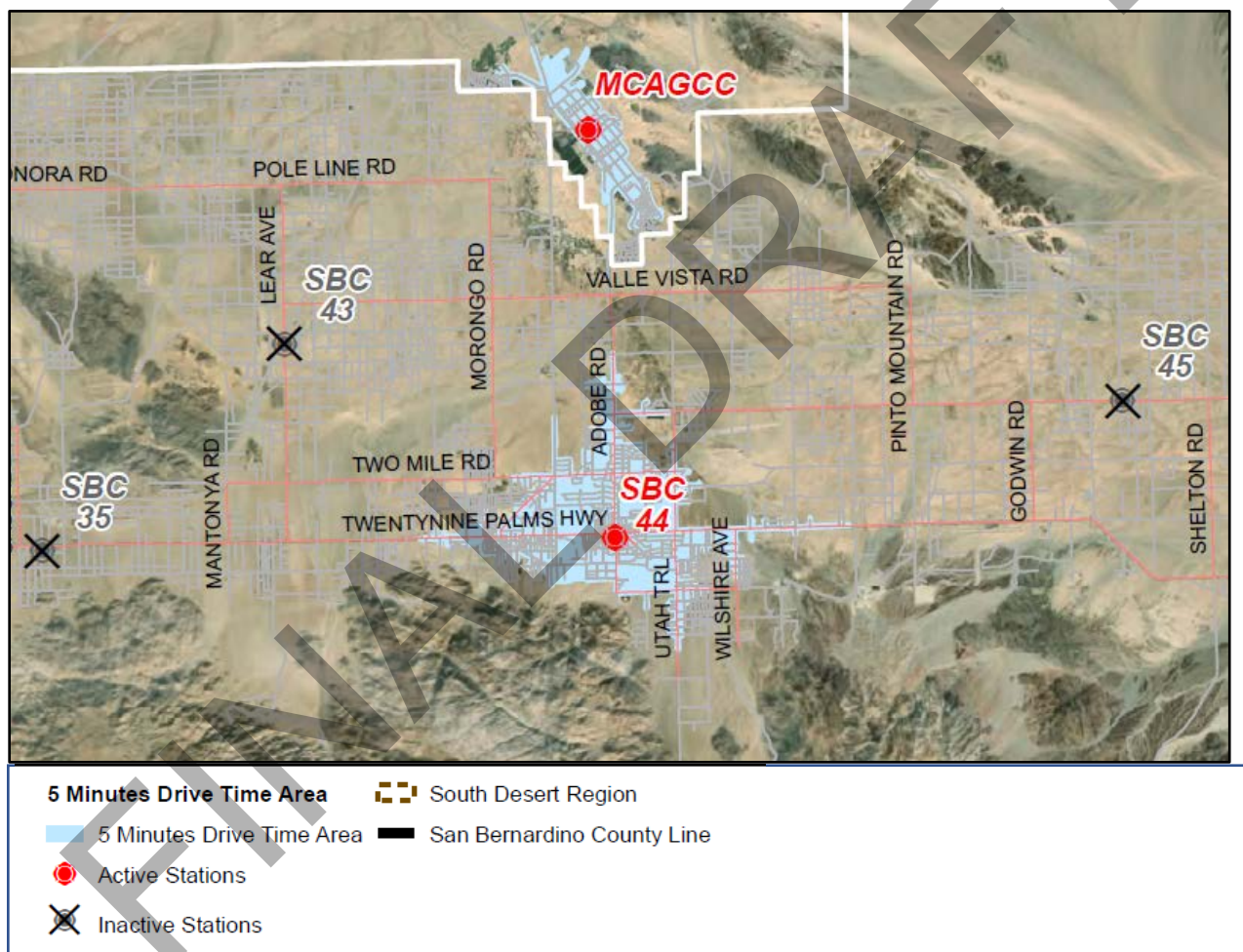
Figure III-8: Fire Station Drive Time Analysis – 10 minutes (Rural standard)



As identified in LAFCO's 2020 *Countywide Service Review for Fire Protection/Emergency Medical Services/Ambulance*, no infrastructure needs or deficiencies were identified. That determination is reiterated in this service review as well, evidenced by adequate coverage on a 10-minute response time.

However, when the response time goal is lessened to the five-minute standard for urban communities, the community lacks adequate coverage. Under this metric, there is a deficiency in adequate coverage and an infrastructure need for an additional active station.

Figure III-9: Fire Station Drive Time Analysis – 5 minutes (Urban Standard)



PART III: Agency Profiles and Reviews

SECTION 2: City of Twentynine Palms

The City incorporated in 1987 following both LAFCO and local voter approval. The city operates under the council-manager form of government. Five council members are elected at large for four-year overlapping terms with the mayor chosen on an annual basis by the members of the city council.

1. Growth and population projections for the affected area

See Part II, Section 1, Item 1 for this determination.

2. Location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence

See Part II, Section 1, Item 2 for this determination.

3. A. Present and planned capacity of public facilities and adequacy of public services, and B. Infrastructure needs or deficiencies related to sewers, municipal and industrial water, and fire protection in any disadvantaged unincorporated communities within or contiguous to the sphere of influence

A. Present and planned capacity of public facilities and adequacy of public services

The City of Twentynine Palms is the municipal agency in the Twentynine Palms community and is responsible for (1) roads, (2) park and recreation, and (3) law enforcement within its boundary, as well as other services.

(1) Roads

Upon incorporation, the City assumed responsibility from the County for a road system in which some streets were maintained and others were not. Streets that were built to the County's standards were transferred to the City. In addition, dedicated but unpaved, substandard streets were also transferred to the City upon its incorporation.

Twentynine Palms Highway (Highway 62) represents a constraint on the City's circulation system as it divides the City in two. Maintenance and highway improvements must be coordinated through Caltrans as Twentynine Palms Highway is part of the State Highway System. Even though Twentynine Palms Highway represents a constraint on the City's circulation system, it also serves as the City's primary access route as there are very limited access alternatives to the highway. Due to the highway's role as the main thoroughfare in and out of the City and region, it receives a high volume of traffic.

Typical street improvements include two-lanes of pavement, one-lane of pavement on each direction. Aside from Twentynine Palms Highway and Adobe

Road, even the City's primary corridors are generally only improved to the two-lane pavement standard. The primary reason that most streets are not improved is because street construction is extremely costly.

The lack of street improvements is also attributed to the fact that the City is fairly large, which requires more streets to provide an adequate level of service to City residents. According to the City, future improvements will be scheduled based on available budget and possible Federal and State grant awards to the City. Further, the lack of resources limits the ability to perform street maintenance throughout the City. Typically, maintenance is only provided to streets improved to City's standards; however, during emergencies, street maintenance can be provided to all City streets.

During FY 20-21, the City Public Works Department continued to pave streets rather than contracting out the work to private contractors. In FY 20-21, the City overlaid one mile of residential streets while doing street/road improvements to Sullivan Road. In FY 21-22, the City's schedule has it applying chip seal paving along various streets within the City limits, including Valle Vista, Utah, Amboy, and Baghdad Road, which will consist of approximately three miles.

(2) Parks and Recreation

The City of Twentynine Palms has 175 acres of recreational opportunities made up of parks, special use areas and passive use areas provided by different sources, including the City of Twentynine Palms, the Morongo School District and the National Recreation Areas. The City gained ownership of the local parks and administration of recreation services in 1993. The Community Services Department of the City coordinates parks and recreation services, which is charged with administering recreation programs and working with the Public Works Department to ensure that parks are developed and maintained.

The City has five parks in various sizes which provide for a range of recreational activities. Luckie Park (27-acre) is the biggest and most used park. This park offers the most recreational variety which includes a swimming pool and lighted recreational facilities. Knotts Sky Park (19-acre) and Pioneer Park (18-acre), which is under development, are the next largest. Veteran's Park (6.4-acre) and Bucklin Park (0.4-acre) are the smallest parks in the City. The City reports that most of park and recreation facilities are irrigated with non-potable water.

The Morongo Unified School District has several recreational facilities associated with schools in Twentynine Palms. Within the City, the District has two high schools, one junior high school, and four elementary schools, all providing various recreational activities and facilities. The City's Community Services Department uses several of the District's facilities for youth and adult recreational activities. The City and District both allow mutual use of their facilities to each other, although there is no actual joint use agreement.

The City's existing General Plan park standard is four acres of parkland per 1,000 persons. The City currently has 175 acres of parkland, which includes parks, special use areas, and undeveloped parkland sites. Of the 175 acres, approximately 80 acres are currently developed. According to the City's General

Plan Recreation Element (2012), the City will start experiencing a reduction in parkland per resident in the near future, and will need to find an alternate source of parkland funding to keep up with the growing population and its need for additional parks. Currently, the City does not have a park fee collection program that is used to acquire additional parkland.

The Recreation Needs Assessment analyzed how successful the existing parks were in serving the residents of Twentynine Palms, using the criteria of providing parks within two miles of every resident. It was identified that Highway 62 and Adobe Road are significant barriers for park access, and that Luckie Park and Knott's Sky Park served most of the developed portions of the City.

According to the City, areas that are not being well served include the southeast and northeast areas. In addition, parks will be needed on the west side of the City in anticipation of serving new planned developments in that area. The Master Plan of Parks and Recreation identifies a number of needed upgrades to the City's existing parks and six potential future park areas designed to provide access to park facilities for the entire community.

(3) Law Enforcement

Police protection is provided through contract with the San Bernardino County Sheriff's Department. Service is provided from the Morongo Basin station at 6527 White Feather Road in Joshua Tree and Sheriff's Department personnel are provided a satellite office at Twentynine Palms City Hall on Adobe Road.

According to the Sheriff's Department, the Morongo Basin Station is one of the largest Sheriff's station in both area and total number of calls for law enforcement services in San Bernardino County. Within the station's area of responsibility are the incorporated communities of Twentynine Palms and the Town of Yucca Valley, as well as the unincorporated communities of Morongo Valley, Landers, Johnson Valley, Joshua Tree, Wonder Valley, Pioneertown, Amboy, Cadiz and Flamingo Heights. The station is part of the County's Law and Justice Complex located in Joshua Tree. The facility there also houses three courtrooms and a "Type I" jail capable of housing 79 inmates.

To meet the needs of such a diverse area, the Morongo Basin station relies heavily on volunteers who are willing to partner with the Department in its public safety mission. As a result, the station has some 200 members in its various Volunteer Forces organizations, including Uniformed Patrol Reserves, Search and Rescue, Mounted Equestrian Search and Rescue, Explorer Scouts, and seven separate Citizen Patrol Units, who work in support of uniformed patrol deputies to provide a community-based law enforcement service. Clerical staff, dispatch and specialized law enforcement services (SWAT, aviation, intelligence, narcotics, homicide and specialized investigations, evidence processing and handling, training, etc.) are provided to the City by the Sheriff's Department pursuant to the law enforcement services contract.

More than 2 million tourists visit the Morongo Basin annually, with the majority traveling to visit Joshua Tree National Park. There, a team of park rangers offers basic police protection while major crimes are jointly investigated.

A portion of the Marine Corps Base is located within the City boundaries. Providing police protection to the military personnel is a Military Police Department that serves under the command of the Office of the Provost Marshall General (“OPMG”). The San Bernardino Sheriff’s Department has joint law enforcement jurisdiction and authority on the base and works together with the OPMG and investigators from the Naval Criminal Investigative Service (“NCIS”).

B. Infrastructure needs or deficiencies related to sewers, municipal and industrial water, and fire protection in any disadvantaged unincorporated communities within or contiguous to the sphere of influence

See Part II, Section 1, Item 3 for this determination.

4. Financial ability of agencies to provide service

To make the required service review determination of an agency’s financial ability to provide services, LAFCO referenced the agency’s own financial documents (audits, budgets, capital improvement program). Additionally, LAFCO developed Fiscal Indicators to show fiscal trends for the agency.

A. Financial Position

The City’s financial position improved in spite of the pandemic, although modestly, and continues to improve. For example, Property Tax, Sales Tax, Transient Occupancy Tax, and Franchise Fees (as a group) increased 21.49% from 2015 through 2021 or \$1.6M. This amount has been keeping up with inflation during this growth period.

B. Fiscal Indicators

Select fiscal indicators are shown graphically below. These indicators provide a measurement of the agency’s financial condition over time.

SERVICE REVIEW FOR THE TWENTYNINE PALMS COMMUNITY

Figure III-10: City Fiscal Indicators



Post-Employment Liabilities

The two charts below identify the funding status and asset coverage of the pension and OPEB plans.

Pension

Funded ratio (plan assets as a % of plan liabilities)

Net liability, pension (plan liabilities - plan assets)

| 2018 | 2019 | 2020 | 2021 | Trend |
|--------------|-----------|------------|------------|-------|
| 80% | 100% | 97% | 96% | |
| \$ 3,474,126 | \$ 70,807 | \$ 506,204 | \$ 793,186 | |

Other Post Employment Benefits (OPEB)

Funded ratio (plan assets as a % of plan liabilities)

Net liability, OPEB (plan liabilities - plan assets)

| 2018 | 2019 | 2020 | 2021 | Trend |
|--------------|--------------|-----------|------------|-------|
| 33% | 45% | 97% | 95% | |
| \$ 3,040,777 | \$ 2,089,910 | \$ 76,616 | \$ 102,817 | |

C. General Fund

The General Fund is the chief operating fund of the City of Twentynine Palms. At the end of FY 20/21, the unassigned fund balance of the General Fund was \$6.8M while total fund balance was \$10.0M. As a measure of the General Fund's liquidity, it may be useful to compare both unassigned fund balance and total fund balance to total fund expenditures. Unassigned fund balance represents 74% of total General Fund expenditures, while total fund balance represents 108% of that same amount. The 74% of unassigned General Fund balance complies with the City's Fund Balance policy.

The fund balance of the City's General Fund increased by \$1,857,680 during FY 20/21, primarily due to increased tax revenue and revenues from building permits as well as decreased expenditures for community service activities.

Sales tax collections increased from \$1,226,377 in FY 19-20 to \$1,445,428 in FY 20-21. Taxable sales are expected to increase in the coming fiscal year as the economy is slowly recovering from the COVID-19 pandemic.

D. Increasing Expenditures

The City's contract with the County Sheriff has increased significantly since FY 17/18, increasing 34% into the FY 22/23 budget year.

Table III-3: City Law Enforcement Contract with County Sheriff

| | |
|-------------------|--------------|
| FY 17/18 ACTUAL | \$ 3,497,000 |
| FY 18/19 ACTUAL | 3,729,388 |
| FY 19/20 ACTUAL | 4,018,094 |
| FY 20/21 FORECAST | 4,288,588 |
| FY 21/22 BUDGET | 4,449,119 |
| FY 22/23 BUDGET | 4,684,775 |

E. Pension and Other Post Employment Liabilities

The City's pension liability was fully funded with zero liability however, a CalPERS reassessment increased the liability as \$469,000. The OPEB liability is nearly fully funded.

In addition, the City assumed the Water District's responsibility for fire pensions. The fire department's pension is funded at \$3.3M plus the cash on hand of \$1.8M; the funding ratio is at 86.6%. The City is waiting for the US Treasury 20-year bond rates to get in the mid 3% to high 3% range to terminate the plan and reduce the City's liability.

F. Liabilities

At the end of the current fiscal year, the City had no bonded debt due to dissolution of the Redevelopment Agency and the transfer of its debt to the Successor Agency.

5. Status of, and opportunities for, shared services

As a contract city, the City has entered into contracts with County Fire and San Bernardino County Sheriff for fire and emergency services and law enforcement. The Morongo Unified School District has several recreational facilities associated with schools in Twentynine Palms. Within the City, the District has two high schools, one junior high school, and four elementary schools, all providing various recreational activities and facilities. The City's Community Services Department uses several of the District's facilities for youth and adult recreational activities. The City and District both allow mutual use of their facilities to each other, although there is no actual joint use agreement.

See Part III, Section 3 of this report for a review of the opportunities for coordination of services and facilities.

6. Accountability for community service needs, including government structure and operational efficiencies

A. Governmental Structure

The City operates under the council-manager form of government. Five council members are elected at large for four-year overlapping terms with the mayor chosen on an annual basis by the members of the city council (see table below). The City Council is responsible for the adoption of all laws and public policies, and sets goals, designs strategies, adopts budgets and gives direction. The Council presides over governance and appoints a professional administrator (city manager) who is charged with the duty of executing the policy decisions of the council under the direct and close supervision of the Council.

The Twentynine Palms City Council meets on the second and fourth Tuesday of each month at 6:00 p.m. in Council Chambers at City Hall, 6136 Adobe Road, Twentynine Palms, CA 92277. Council meetings are open to the public. Council meetings are also live streamed.

Table III-4: City of Twentynine Palms City Council

| City Council | Title | District | Term |
|----------------------|---------------|----------|-------------|
| Karmolette O'Gilvie | Mayor | 4 | 2018 - 2022 |
| McArthur Wright | Mayor Pro Tem | 5 | 2018 - 2022 |
| Steve Bilderein | Councilperson | 1 | 2020 - 2024 |
| Joel A. Klink | Councilperson | 2 | 2020 - 2024 |
| Daniel L. Mintz, Sr. | Councilperson | 3 | 2018 - 2022 |

B. Website Transparency

Senate Bill 929 added Government Code Sections 6279.6 and 53087.8 to provide the public easily accessible and accurate information through agency websites. By January 1, 2020, every California independent district is required to maintain a website. The table, below, is not an exhaustive inventory of website criteria required under current law. Rather, it identifies key components (required by the Government Code and/or recommended by the California Special Districts Association and other organizations) for websites to enhance transparency and accountability.

Government Code Sections 54954.2 and 54957.5 require agencies to post all agendas 72 hours in advance on their websites. Government Code Section 6253 requires that agencies post content most requested by constituents (and most often requested via Public Record Act requests). Because of the difficulty for LAFCO staff to verify this information, these criteria are not included in the website checklist. However, agencies should address these criteria to comply with current website requirements.

Table III-5: City Website Transparency

| City of Twentynine Palms Website Checklist | | | |
|---|---|-----|----|
| website accessed 6/9/2021 https://www.ci.twentynine-palms.ca.us/ | | | |
| Required | | | |
| | | Yes | No |
| Government Code §53087.8 | Agency maintains a website with current contact information? <i>(required for independent special districts by 1/1/2020)</i> | X | |
| Government Code §6270.5 | Agency has created an Enterprise System Catalog and posted it to website? | X | |
| Government Code §54954.2 | Agency has current agenda posted to website homepage and is accessible through a prominent, direct link? | X | |
| Government Code §53908 | Agency's website provides information on compensation of elected officials, officers and employees or has link to State Controller's Government Compensation website? | | X |
| The following criteria are recommended for agency websites by a number of governance associations and organizations. | | | |
| | | Yes | No |
| Description of services? | | X | |
| Service area map? | | X | |
| City Council schedule? | | X | |
| Budgets (past 3 years)? | | X | |
| Audits (past 3 years)? | | | X |
| List of elected officials and terms of office? | | | X |
| List of key agency staff with contact information? | | X | |
| Meeting agendas/minutes (last six months)? | | | X |
| Notes: | | | |

PART III: Agency Profiles and Reviews

SECTION 3: Twentynine Palms Water District

The Twentynine Palms Water District formed in 1954. LAFCO authorizes the Water District the functions of Water (retail, agricultural, domestic, replenishment) and Sewer (limited to planning and engineering). Its boundaries encompass approximately 87 square miles, and includes incorporated and unincorporated area. The District's boundaries and/or sphere of influence do not include the portion of the City that is within the Marine Corps Base.

1. Growth and population projections for the affected area

See Part II, Section 1, Item 1 for this determination.

2. Location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence

See Part II, Section 1, Item 2 for this determination.

3. A. Present and planned capacity of public facilities and adequacy of public services, and B. Infrastructure needs or deficiencies related to sewers, municipal and industrial water, and fire protection in any disadvantaged unincorporated communities within or contiguous to the sphere of influence

A. Present and planned capacity of public facilities and adequacy of public services

Prior to 1954, the Twentynine Palms area was served by three privately owned water companies: Abell Water Company, Condor Mutual Water Company, and Pacific Water Company. The District formed in 1954 and subsequently purchased the three water companies. Their wells, storage facilities, and piping served as the initial water system for the District. Historical pumping and water deliveries by the District have steadily increased since its formation in the mid-1950s.

According to the District's 2020 Urban Water Management Plan ("UWMP"), the District provides groundwater to a population of approximately 18,700 residents within an 87-square mile area, consisting of 7,438 meter services, 200 miles of pipeline and 17 million gallons of water storage capacity. Annual water usage is approximately 2,100 – 2,900 acre feet ("AF") which is mostly used by single-family residential (approximately 83%). The other approximately 17% is a combination of multi-family residential, commercial, or landscape/irrigation. All of the District's water supply is provided by groundwater pumped from seven water production wells, primarily along the southern edge of the service area. The District has one groundwater treatment facility which removes fluoride from one water production well. The pipelines distribute the water via the District's eight booster pump stations and ten water storage reservoirs.

The District's 2020 UWMP concludes that the District has adequate supplies to meet demands during normal, single-dry, and multiple-dry years throughout the 20-year planning period. In addition, there is sufficient production capacity to meet projected future demands with the actions the District is taking to maintain supply availability.

B. Infrastructure needs or deficiencies related to sewers or municipal and industrial water in any disadvantaged unincorporated communities within or contiguous to the sphere of influence

LAFCO authorizes the Water District the functions of Water (retail, agricultural, domestic, replenishment) and Sewer (limited to planning and engineering) throughout its jurisdiction, which includes the incorporated city.

1) Water

This service review does not identify any infrastructure needs or deficiencies related to municipal and industrial water.

The District has become a test district for the EPA's research into an economical method for small, low-income water agencies to remove arsenic. This new method brings the district's drinking water into compliance with recent maximum contaminant levels for arsenic and saves the district over \$20,000 annually. The program involves onsite regeneration of iron-based adsorptive media to remove arsenic from drinking water. Not only does this clean the local water, the results from this test case support the removal of arsenic in other areas of the country with a lower cost method.¹⁵ Additionally, the District operates a Fluoride Removal Plant that removes high levels of naturally occurring fluoride from the Mesquite Lake sub-basin.

2) Sewer

See Part II, Section 1, Item 3B for a review of potential sewer service.

4. Financial ability of agencies to provide service

To make the required service review determination of an agency's financial ability to provide services, LAFCO referenced the agency's own financial documents (audits, budgets, capital improvement program). Additionally, LAFCO developed Fiscal Indicators to show fiscal trends for the agency.

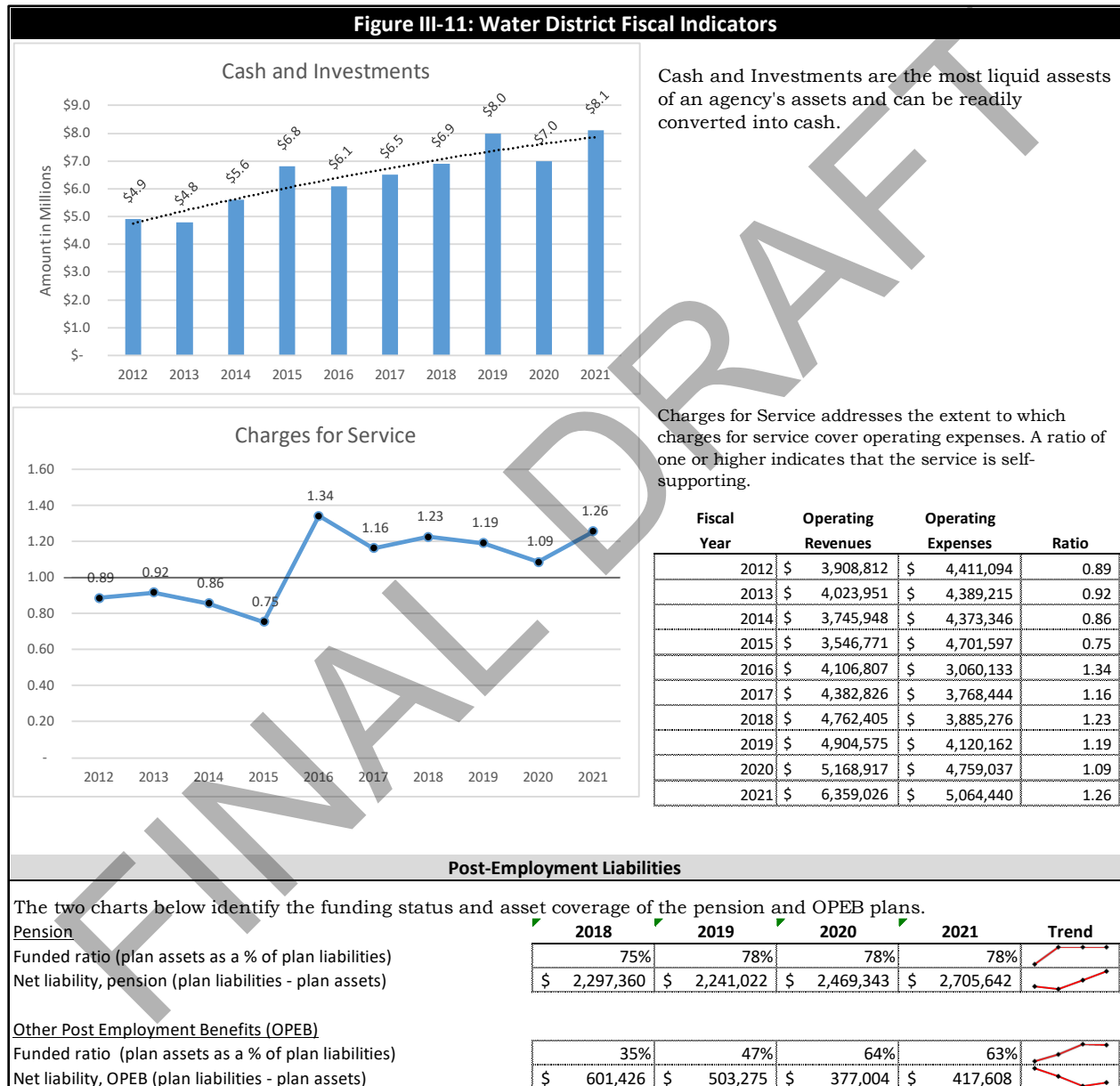
A. Financial Position

The financial position of the District is solid after years of operating with expenses greater than revenues. A recently approved tiered rate increase projects necessary revenues to meet the reserve policy and fund capital improvements.

¹⁵ Sorg, Thomas and Abraham S.C. Chen, Lili Wang, and Raymond Kolisz. "Regenerating an Arsenic Removal Iron-Based Adsorptive Media System, Part 1: The Regeneration Process", Journal of the American Water Works Association. 109:5. May 2017.

B. Fiscal Indicators

Select fiscal indicators are shown graphically below. These indicators provide a measurement of the agency's financial condition over time. Following at least four years of steady decline, the District has operated with revenues over expenses since 2016. During that time, cash and investments have steadily increased from \$6.1 million to \$8.1 million.


Post-Employment Liabilities

The two charts below identify the funding status and asset coverage of the pension and OPEB plans.

Pension

Funded ratio (plan assets as a % of plan liabilities)

Net liability, pension (plan liabilities - plan assets)

Other Post Employment Benefits (OPEB)

Funded ratio (plan assets as a % of plan liabilities)

Net liability, OPEB (plan liabilities - plan assets)

| | 2018 | 2019 | 2020 | 2021 | Trend |
|------------------------|--------------|--------------|--------------|--------------|-------|
| Funded ratio (Pension) | 75% | 78% | 78% | 78% | ↗ |
| Net liability, pension | \$ 2,297,360 | \$ 2,241,022 | \$ 2,469,343 | \$ 2,705,642 | ↗ |
| Funded ratio (OPEB) | 35% | 47% | 64% | 63% | ↗ |
| Net liability, OPEB | \$ 601,426 | \$ 503,275 | \$ 377,004 | \$ 417,608 | ↘ |

C. Rate Increase

Effective February 2021, the District's approved rate increases (on average 10% annually through 2025) will provide additional revenue to keep pace with inflation, drinking water regulations, and other costs that are passed onto the water system.

Further, as stated in the District's notice regarding the proposed rate increase, the increases will meet reserve requirements¹⁶, fully fund its capital improvement program, and avoid an annual deficit in future years.

D. Pension and Other Post Employment Liabilities

The position of the pension fund (Miscellaneous pension fund) has slightly improved over the past few years. Further, the position of the Other Post Employment Benefits ("OPEB") fund has significantly improved over the past few years. With cash available, the District has been able pay down its OPEB liability.

E. Liabilities

The largest liability for the District is for the pension plan. This is shown in the Fiscal Indicators figure above as \$2,705,642. Following that liability is a loan agreement balance of \$1,622,204. In 2019, the District entered into an agreement to finance the purchase of water meters in the form of \$2 million note. The final payment is due October 2028.

5. Status of, and opportunities for, shared services

The TPWD has no shared services with other agencies at this time.

See Part III, Section 3 of this report for a review of the opportunities for coordination of services and facilities.

6. Accountability for community service needs, including government structure and operational efficiencies

A. Governmental Structure

The Water District is governed by a locally elected five-member Board of Directors. Each director serves four-year terms (see table below). The Directors meet on the fourth Wednesday of every month at 4 PM in the District Office located at 72401 Hatch Road, Twentynine Palms. Board meetings are open to the public.

Table III-6: Water District Board of Directors

| Trustee | Title | Term |
|---------------------------|----------------|-------------|
| Carol Giannini | President | 2020 - 2024 |
| Anita "Suzi" Horn | Vice President | 2018 - 2022 |
| Michael Arthur | Director | 2020 - 2024 |
| Robert "Bob" Coghill, Jr. | Director | 2018 - 2022 |
| Randy Leazer | Director | 2018 - 2022 |

¹⁶ District Resolution No. 19-09, approved 26 June 2019, sets the following reserve levels: Operating Reserves (minimum of 180 days of budgeted operating and maintenance expenses) and Capital Reserves (minimum amount of 6% of total capital assets).

B. Website Transparency

Senate Bill 929 added Government Code Sections 6279.6 and 53087.8 to provide the public easily accessible and accurate information through agency websites. By January 1, 2020, every California independent district is required to maintain a website.

The table, below, is not an exhaustive inventory of website criteria required under current law. Rather, it identifies key components (required by the Government Code and/or recommended by the California Special Districts Association and other organizations) for websites to enhance transparency and accountability.

Government Code Sections 54954.2 and 54957.5 require agencies to post all agendas 72 hours in advance on their websites. Government Code Section 6253 requires that agencies post content most requested by constituents (and most often requested via Public Record Act requests). Because of the difficulty for LAFCO staff to verify this information, these criteria are not included in the website checklist. However, agencies should address these criteria to comply with current website requirements.

Table III-7: Water District Website Transparency

| Twentynine Palms Water District Website Checklist website accessed 2/2/2022 https://www.29palmswater.com | | | |
|---|---|------------|-----------|
| Required | | | |
| | | Yes | No |
| Government Code §53087.8 | Agency maintains a website with current contact information? <i>(required for independent special districts by 1/1/2020)</i> | X | |
| Government Code §6270.5 | Agency has created an Enterprise System Catalog and posted it to website? | X | |
| Government Code §54954.2 | Agency has current agenda posted to website homepage and is accessible through a prominent, direct link? | X | |
| Government Code §53908 | Agency's website provides information on compensation of elected officials, officers and employees or has link to State Controller's Government Compensation website? | X | |
| The following criteria are recommended for agency websites by a number of governance associations and organizations. | | | |
| | | Yes | No |
| | Description of services? | X | |
| | Service area map? | X | |
| | City Council schedule? | X | |
| | Budgets (past 3 years)? | X | |
| | Audits (past 3 years)? | X | |
| | List of elected officials and terms of office? | X | |
| | List of key agency staff with contact information? | X | |
| | Meeting agendas/minutes (last six months)? | X | |
| Notes: | | | |

PART III: Agency Profiles and Reviews

SECTION 4: Twentynine Palms Public Cemetery District

In 1934, the Twentynine Palms Cemetery District was formed to provide cemetery services to Twentynine Palms, Wonder Valley, and outlying areas. The District is an independent special district with a five-member appointed board of trustees and operates under Public Cemetery District Law (Division 8, Part 4 of the Health and Safety Code). The District's boundaries cover approximately 650 square miles and includes portions of the Twentynine Palms Marine Corps Base and Joshua Tree National Park. Currently, the District operates one cemetery located at 5350 Encelia Avenue in Twentynine Palms. The District owns 30 acres, 20 which are developed.

This agency's first service review from 2012 raised concerns regarding the District's fiscal health, lack of a master plan, and other financial and operational issues.¹⁷ Based on the reasons described in the May 2012 service review, LAFCO designated a zero sphere of influence for the District. In 2020, LAFCO conducted a service review of public cemetery districts. LAFCO's determination in said service review affirmed a zero sphere of influence for the District.

1. Growth and population projections for the affected area

See Part II, Section 1, Item 1 for this determination.

2. Location and characteristics of any disadvantaged unincorporated communities within or contiguous to the sphere of influence

See Part II, Section 1, Item 2 for this determination.

3. Present and planned capacity of public facilities and adequacy of public services

The District operates one cemetery located at 5350 Encelia Drive in Twentynine Palms. The grounds cover 30 acres, 20 of which are developed. As of March 25, 2022, the cemetery had:

- 2,589 available sites
- 4,234 occupied sites
- 664 reserved sites

According to the District, based on the average number of internments over the past few years, it would take 112 years for the cemetery to reach capacity, not counting the additional 10 acres of empty land. Given the remote nature of the District, as well as the need for internment services, the public service is adequate.

¹⁷ http://www.sbcounty.gov/lafco/items/201211/Item_7.pdf

4. Financial ability of agencies to provide service

To make the required service review determination of an agency's financial ability to provide services, LAFCO referenced the agency's own financial documents (audits, budgets, capital improvement program). Unlike the financial reviews for the City and Water District, the following financial review for the Cemetery District does not include Fiscal Indicators. Due to the District having three operating funds, each fund warrants a separate review and cannot be combined into fiscal indicator figures.

A. Overview

Revenues are composed of service fees, the District's share of the general property tax levy, and interest. The vast majority of the revenues are derived from service fees. The District does not offer a defined payment retirement plan to its employees; therefore, it does not have any pension liability. The District is currently discussing with CalPERS the possibility of joining the plan, which would not take effect until FY 2023/24.

The most recent audit, FY 2020/21, identifies that assets exceeded liabilities at the close of the year by \$587,730.

B. Funds

The District maintains three operating funds with the County Treasury, which are listed below. A local checking account is maintained for depositing cash and monies received until they are transferred to the County Treasury.

- General Fund: for regular income and expenses
- Pre-Need Fund: for the sale of reserve space for future burial
- Endowment Fund: remains in perpetuity, only the interest and gains can be used

General Fund

The fund labeled "General" is the government's primary operating fund. It accounts for all financial resources of the general government, except those required to be accounted for in another fund.

A trend of operating gains or deficits is a key indicator of the financial health of an agency. The figure below shows the General Fund balance for the period of FY 2015/16 through FY 2020/21. The fund balance has decreased by 108% within five years. This is primarily due to roughly \$122,000 in capital outlay during 2020/21.

Note that in also 2015/16, a large capital expense accounts for the deficit for that year. What this reveals is a lack of reserves to cushion necessary capital purchases. Moreover, any unexpected expenses could further challenge the General Fund, prompt service reduction, fee increases, or cause the General Fund to enter into negative territory and result in a running deficit.

Also noteworthy is the ending fund balance of negative \$7,768 for FY 2020/21. This circumstance is not due to a lack of cash or operating in the negative. In FY 2015/16, the District made a transfer from the Endowment Fund to the General Fund of \$138,521. The purpose of the transfer was related to capital improvements. It has recently been determined that \$80,000 of this transaction was actually principal (only interest can be used) and incorrectly transferred from the Endowment Fund to the General Fund. Accounting standards are counting this circumstance as an interfund loan, which means that the General Fund incurs \$80,000 as Accounts Payable. In other words, accounting standards have lessened the fund balance by \$80,000 even though cash was not lessened.

District management has indicated that it has formulated a repayment plan to repay the Endowment Fund of said amount.

Table III-8: Cemetery District General Fund Balance

| | 2015/16 | 2016/17 | 2017/18 | 2018/19 | 2019/20 | 2020/21 | 5 yr Var |
|-------------------------|-------------------|------------------|------------------|------------------|------------------|-------------------|--------------|
| REVENUES | | | | | | | |
| Charges for services | 19,571 | 23,464 | 26,508 | 53,777 | 33,263 | 30,596 | 56% |
| Property taxes | 183,587 | 186,353 | 192,777 | 197,292 | 205,801 | 233,456 | 27% |
| Other | 11,718 | 4,858 | 16,876 | 3,426 | 1,231 | 2,273 | -81% |
| Total Revenue | \$ 214,876 | \$ 214,675 | \$ 236,161 | \$ 254,495 | \$ 240,295 | \$ 266,325 | 24% |
| EXPENDITURES | | | | | | | |
| Salaries & Benefits | 186,404 | 188,507 | 185,153 | 154,418 | 137,990 | 183,829 | -1% |
| Services & Supplies | 49,891 | 51,733 | 53,474 | 37,415 | 57,938 | 98,140 | 97% |
| Capital Outlay/Other | 177,540 | 18,796 | 34,266 | 25,996 | 91,998 | 179,940 | 1% |
| Total Expenditures | \$ 413,835 | \$ 259,036 | \$ 272,893 | \$ 217,829 | \$ 287,926 | \$ 461,909 | 12% |
| Revenues less Expend. | (198,959) | (44,361) | (36,732) | 36,666 | (47,631) | (195,584) | |
| OTHER FINANCING | | | | | | | |
| Transfers In | 143,144 | 11,924 | 19,971 | 9,572 | 24,809 | 111,091 | |
| Fund Balance Begin | 158,322 | 102,507 | 70,070 | 53,309 | 99,547 | 76,725 | -52% |
| Fund Balance End | \$ 102,507 | \$ 70,070 | \$ 53,309 | \$ 99,547 | \$ 76,725 | \$ (7,768) | -108% |

Endowment Fund

The District maintains an Endowment Fund which includes monies paid for every interned person to be held as a perpetual endowment. Pursuant to State law, the board of trustees may not spend the principal of the Endowment Fund. However,

the principal can be invested in securities and obligations, and the interest and gains may be spent from the investments (§9065(e)).

Note that in FY 2015/16, the District made a transfer from the Endowment Fund to the General Fund of \$138,521. The purpose of the transfer was related to capital improvements. It has recently been determined that \$80,000 of this transaction was incorrectly transferred (see discussion above). Additionally, in 2020/21 a transfer of interest to the General Fund occurred for pay for capital improvements.

The figure below shows the fund balance of the Endowment Care fund for the same time period.

Table III-9: Cemetery District Endowment Fund

| | 2015/16 | 2016/17 | 2017/18 | 2018/19 | 2019/20 | 2020/21 | 5 yr Var |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|------------|
| REVENUES | | | | | | | |
| Charges for services | 2,289 | 5,094 | 3,775 | 5,369 | 6,966 | 5,337 | 133% |
| Interest & investment | 3,809 | 1,827 | 557 | 6,665 | 5,458 | 1,984 | -48% |
| Total Revenue | \$ 6,098 | \$ 6,921 | \$ 4,332 | \$ 12,034 | \$ 12,424 | \$ 7,321 | 20% |
| EXPENDITURES | | | | | | | |
| Total Expenditures | \$ - | \$ - | \$ - | \$ - | \$ 140 | \$ - | |
| Revenues less Expend. | 6,098 | 6,921 | 4,332 | 12,034 | 12,284 | 7,321 | 20% |
| OTHER FINANCING | | | | | | | |
| Other | | | | | | | |
| Transfers In (Out) | (138,521) | - | - | - | | (61,591) | |
| Fund Balance Begin | 357,973 | 225,550 | 232,471 | 236,803 | 248,837 | 261,121 | -27% |
| Fund Balance End | \$ 225,550 | \$ 232,471 | \$ 236,803 | \$ 248,837 | \$ 261,121 | \$ 206,851 | -8% |
| *Endowment Principal | \$224,935 | \$212,812 | \$232,524 | \$214,563 | \$255,415 | \$206,571 | -8% |
| sources: Statement of Revenues, Expenditures, and Fund Balances and Balance Sheets | | | | | | | |

Pre-Need Burial Fund (fiduciary fund)

Fiduciary funds are used to account for assets held by the District as an agent or trustee for individuals, private organizations, other governments and/or other funds. The Pre-Need Burial Fund is a private-purpose trust fund that transfers funds from its earnings to the General Fund to finance burial expenditures.

The District provided information demonstrating adequate tracking of the Pre-Need Burial Fund. This fund experiences an annual increase and appears to be healthy.

Table III-10: Cemetery District Pre-Need Fund

| | 2015/16 | 2016/17 | 2017/18 | 2018/19 | 2019/20 | 2020/21 | 5 yr Var |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-----------|
| NET ASSETS | | | | | | | |
| Unrestricted | | | | | | | |
| Restricted | 217,239 | 228,905 | 226,239 | 232,738 | 238,732 | 206,806 | 8% |
| Total net assets | \$ 217,239 | \$ 228,905 | \$ 226,239 | \$ 232,738 | \$ 238,732 | \$ 206,806 | 7% |
| source: Statement of Fiduciary Net Position | | | | | | | |

Long-term Debt

The District's long-term debt obligations consist of compensated absences payable (\$3,628) and a Trust Corpus Note (\$80,000) owed from the General Fund to the Endowment Fund.

5. Status of, and opportunities for, shared services

The District does not have any shared services with other agencies at this time. An opportunity may exist for the District to lease its non-used land to other public agencies. Government Code Section 9054 permits a district to use or lease land acquired for future cemetery use to a public agency for recreational use. The District identifies that approximately ten acres are unused at this time.

See Part III, Section 3 of this report for a review of the opportunities for coordination of services and facilities.

6. Accountability for community service needs, including government structure and operational efficiencies**A. Governmental Structure**

The District is an independent special district with a five-member appointed board of trustees (see table below) and operates under Public Cemetery District Law (Division 8, Part 4 of the Health and Safety Code). Currently, the District is authorized by LAFCO to provide the function of cemetery pursuant to the Rules and Regulations of the Local Agency Formation Commission of San Bernardino County Affecting Functions and Services of Special Districts.

The Board meets monthly, on the third Tuesday of every month, at 5:30 p.m. in the District offices located at 5350 Encelia Drive in Twentynine Palms. Meetings are open to the public.

The District uses a cloud-based archive (CemSites) to account and mark its sites. Via the District's website, the public may access the program to find a site or interned name.

Table III-11: Cemetery District Board of Trustees

| Trustee | Title | Term |
|------------------|------------------|-------------|
| Kevin Cole | Chairperson | 2020 - 2024 |
| JoAnn Larsen | Vice-Chairperson | 2020 - 2024 |
| Francisco Romo | Trustee | 2022 - 2026 |
| Rebecca Rinkes | Trustee | 2020 - 2024 |
| Meredith Plumber | Trustee | 2022 - 2026 |

B. Website Transparency

Senate Bill 929 added Government Code Sections 6279.6 and 53087.8 to provide the public easily accessible and accurate information through agency websites. By January 1, 2020, every California independent district is required to maintain a website.

The table, below, is not an exhaustive inventory of website criteria required under current law. Rather, it identifies key components (required by the Government Code and/or recommended by the California Special Districts Association and other organizations) for websites to enhance transparency and accountability.

Government Code Sections 54954.2 and 54957.5 require agencies to post all agendas 72 hours in advance on their websites. Government Code Section 6253 requires that agencies post content most requested by constituents (and most often requested via Public Record Act requests). Because of the difficulty for LAFCO staff to verify this information, these criteria are not included in the website checklist. However, agencies should address these criteria to comply with current website requirements.

Table III-12: Cemetery District Website Transparency

| Twentynine Palms Cemetery District Website Checklist website accessed 1/1/2022 https://www.29Palmscemetery.org | | | |
|--|---|-----|----|
| Required | | | |
| | | Yes | No |
| Government Code §53087.8 | Agency maintains a website with current contact information? <i>(required for independent special districts by 1/1/2020)</i> | X | |
| Government Code §6270.5 | Agency has created an Enterprise System Catalog and posted it to website? | X | |
| Government Code §54954.2 | Agency has current agenda posted to website homepage and is accessible through a prominent, direct link? | X | |
| Government Code §53908 | Agency's website provides information on compensation of elected officials, officers and employees or has link to State Controller's Government Compensation website? | X | |

| <i>The following criteria are recommended for agency websites by a number of governance associations and organizations.</i> | | |
|--|------------|-----------|
| | Yes | No |
| Description of services? | X | |
| Service area map? | X | |
| City Council schedule? | X | |
| Budgets (past 3 years)? | X | |
| Audits (past 3 years)? | X | |
| List of elected officials and terms of office? | X | |
| List of key agency staff with contact information? | X | |
| Meeting agendas/minutes (last six months)? | X | |
| <i>Notes:</i> | | |

APPENDIX A:
Comments to the First Draft and LAFCO Staff Responses

FINAL DRAFT



LAFCO

**Local Agency
Formation Commission**
for San Bernardino County

1170 West 3rd Street, Unit 150
San Bernardino, CA 92415-0490
909.388.0480 | Fax 909.388.0481
lafco@lafco.sbcounty.gov
www.sbcilafco.org

COMMISSIONERS

JOE BACA, Jr.
Board of Supervisors

JIM BAGLEY, Chair
Public Member

DR. KIMBERLY COX
Special District

PHILL DUPPER
City Member

STEVEN FARRELL
Special District

CURT HAGMAN
Board of Supervisors

ACQUANETTA WARREN, Vice Chair
City Member

ALTERNATES

RICK DENISON
City Member

JIM HARVEY
Public Member

KEVIN KENLEY
Special District

DAWN ROWE
Board of Supervisors

EXECUTIVE OFFICER

SAMUEL MARTINEZ

LEGAL COUNSEL

PAULA DE SOUSA

September 6, 2022

Matt Shragge, General Manager
Twentynine Palms Water District
72401 Hatch Road
Twentynine Palms, CA 92277

RE: Response to District Comments regarding LAFCO
First Draft to Service Review

Dear Mr. Shragge:

Thank you for taking the time to review the Service Review for the Twentynine Palms Community. LAFCO has received your comments on the First Draft. This letter responds to your comments in the order outlined in your letter.

1. You request that the report identify additional alternatives for addressing wastewater. I address each potential alternative in order.

A. A City Department to address wastewater to the incorporated portion.

The vast majority of the overall Twentynine Palms Community is within the City. Not addressing the unincorporated portions would disenfranchise those areas, especially those who desire a connection to a municipal system.

B. Creation of a regional special district.

Since 1972, San Bernardino LAFCO has had a policy regarding Priorities for Annexation and Formation, shown below:

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.

The Twentynine Palms community currently has two agencies whose parent acts allow for multiple purposes: the City of Twentynine Palms and the Twentynine Palms Water District. Therefore, the creation of a new regional special district is not the preferred alternative.

However, the policy has a provision for overriding circumstances. These overriding circumstances are addressed in the introduction to the Local Government Reorganization Act (Government Code Section 56001). The Section identifies that the State's interest is to have multi-purpose agencies rather than single-purpose agencies. Nevertheless, it does recognize the role of single-purpose agencies in rural areas. Below is an excerpt from §56001.

The Legislature finds and declares that a single multipurpose governmental agency is accountable for community service needs and financial resources and, therefore, may be the best mechanism for establishing community service priorities especially in urban areas. Nonetheless, the Legislature recognizes the critical role of many limited purpose agencies, especially in rural communities. The Legislature also finds that, whether governmental services are proposed to be provided by a single-purpose agency, several agencies, or a multipurpose agency, responsibility should be given to the agency or agencies that can best provide government services.

C. *Expanding the authorized services of the District to include construction and operation.*

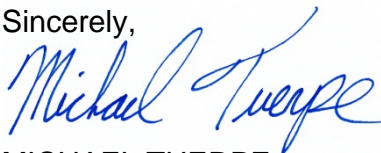
The following paragraph is changed on page 38 (red notes the changes).

Two local agencies have the authority to plan for a future wastewater system: (1) the City as a municipality can provide collection and/or treatment **within its boundaries**, and (2) the Water District is authorized by LAFCO the Sewer function but with services limited to Planning and Engineering, **although the District can apply to LAFCO to expand its authorized services to include the full range of wastewater services throughout its jurisdiction.**

2. The report identifies that the City is the default wastewater agency. You request that the report clarify that the City is the default wastewater agency *within its boundaries*. This is now clarified on page 10 under the City's description and page 38 as identified above.

Should you have any questions on this letter, or the service review in general, please feel free to contact the LAFCO office.

Sincerely,



MICHAEL TUERPE
Senior Analyst



TWENTYNINE PALMS WATER DISTRICT

Local Agency Formation Commission
San Bernardino County
1170 W 3rd St
Suite #150
San Bernardino, CA 92415

Subject: Comments About Track Changes of Service Review Requested by City of
Twentynine Palms on September 11, 2021

Thank you for sharing the Local Agency Formation Commission of San Bernardino County's (LAFCO) track changes of the service review requested by the City of Twentynine Palms (the City) on September 11, 2021. For the most part, we are pleased that you addressed the topics we presented in our comments about the working draft you previously allowed us to review. We have remaining comments that we hope that you will consider about two of the track changes.

Consolidation/Collaboration Not LAFCO Recommendations

We appreciate LAFCO staff's acknowledgement on page 6 that consolidation/collaborations are not recommendations by LAFCO currently. We take LAFCO's word that the question of consolidation was a means to measure the potential efficiencies requested by the City was intended to aid in the analysis. To better inform the public, we would like to request that a list of potential alternatives for addressing the issue of wastewater be included. Such alternatives include a City department to address wastewater within the City's boundaries; creation of a regional special district only to address wastewater; and potentially expanding the Water District's charter adding construction and operation of a regional wastewater system to its current acknowledged role in planning and engineering.

City as Default Wastewater Agency – Within Its Boundaries

On page 10 there are track changes re-affirming the role of the City of Twentynine Palms as the default wastewater agency. We would like to request that LAFCO add a clarification that such is the case *within the city's boundaries*. We were pleased to see the track changes on page 21 acknowledging the potential disenfranchisement of Desert Heights residents in a scenario where the water district would be dissolved in favor of establishing a water department within the city. Since these issues are logically connected in the narrative of the report, we believe that the clarification affirming the City's primacy in managing wastewater within its boundaries is justified.

We look forward to our upcoming discussions with LAFCO Commissioners about the service review requested by the City of Twentynine Palms. Once again, thank you for acknowledging our comments about the working draft, as well as for your consideration of comments about the track changes.

Sincerely yours,



Matthew Shragge
General Manager

FINAL DRAFT

APPENDIX B: Acronyms and Definitions

Acronyms

| | |
|---------|--|
| AF | Acre Feet |
| CALPERS | California Public Employees' Retirement System |
| CIP | Capital Improvement Plan |
| DAC | Disadvantaged Community |
| DUC | Disadvantaged Unincorporated Community |
| EMS | Emergency Medical Services |
| FY | Fiscal Year |
| GIS | Geographic Information System |
| LAFCO | Local Agency Formation Commission |
| MSR | Municipal Service Review |
| NPL | Net Pension Liability |
| OPEB | Other Post-Employment Benefits |
| SBCFPD | San Bernardino County Fire Protection District |
| SOI | Sphere of Influence |
| TPFD | Twentynine Palms Fire Department |
| TPWD | Twentynine Palms Water District |
| UWMP | Urban Water Management Plan |

Definitions

Acre Feet - An acre foot of water is a common way to measure water volume and use. An acre foot of water equals about 326,000 gallons, or enough water to cover an acre of land 1-foot deep.

Capital Improvement Plan/Program – A capital improvement plan or program is a short-range plan, usually five to ten years, which identifies capital projects and equipment purchases, provides a planning schedule and identifies options for financing the plan.

Contract City – A contract city is a term used for a city that contracts for the provision multiple municipal services with another unit of government or with a private or commercial organization. The City of Twentynine Palms, which contracts for police and fire services, among other services, is considered a contract city.

Dependent Special District – A special district whose board of directors is another legislative body, such as a city council or board of supervisors.

General Plan – A city's general plan serves as a blueprint for the future, prescribing policy goals and objectives to shape and guide the physical development of the City.

Geographic Information System - A Geographic Information System (GIS) is a computer system that analyzes and displays geographically referenced information. It uses data that is attached to a unique location.

Government Fund – A fund used to account for activities that are governmental in nature. Governmental activities are typically tax-supported and include the operations and maintenance of the cemetery.

Horizontal Consolidation - Between adjacent units of government may be pursued to merge services or combine resources or tax base.

Independent Special District – A special district that has a directly elected board of directors.

LAFCO - Local Agency Formation Commissions are State-mandated, independent agencies with countywide jurisdiction over changes in organization and boundaries of cities and special districts including annexations, detachments, incorporations, and formations. There are 58 LAFCOs in California – one in each of the State's 58 counties.

Municipal Services - Basic services that residents expect the local government to provide in exchange for the taxes paid. Basic municipal services may include water, sewer, refuse, roads, library, fire protection, emergency medical, law enforcement, parks and recreation and transportation. Some municipal services overlap with the social services category. The government may provide these services directly or contract to third party. The available services for any individual government will depend on location, history, geography, statutes and tradition. Provided services vary amongst countries, states, counties, cities, and communities.

Other Post-Employment Benefits – Benefits, other than pensions, that are provided to retired employees. These benefits principally involve health care benefits, but may also include life insurance, disability, legal and other services.

Reorganization - Two or more changes of organization initiated in a single proposal.

Special District – A local government agency formed pursuant to general law of the state or special act.

Sphere of Influence – A plan for the probably physical boundaries and service area of a local agency, as determined by the Commission (Gov Code §56076). Spheres both

proactively guide and respond to the need for the extension of infrastructure and delivery of municipal services to areas of emerging growth and development. The requirement for LAFCOs to conduct service reviews was established to acknowledge the importance of spheres of influence, and recognize that periodic updates of agency spheres should be conducted with the benefit of current information available through service reviews.

Social Services – Services that may include healthcare, welfare, job placement, and transition assistance. Some social services overlap with the municipal services category. The government may provide these services directly or contract to third party. The available services for any individual government will depend on location, history, geography, statutes and tradition. Provided services vary amongst countries, states, counties, cities, and communities.

Subsidiary District – A district of limited powers for which a city council is designated as the ex-officio board of directors of the district. At least 70 percent of the district territory and 70 percent of the district's registered voters must be within the city limits for a district to become a subsidiary district.

Urban Water Management Plan - Urban Water Management Plans are prepared by urban water suppliers every five years. These plans support the suppliers' long-term resource planning to ensure that adequate water supplies are available to meet existing and future water needs.

Vertical Consolidation - Between overlapping units of government, such as a municipality and a special district, may better coordinate public services, reduce administrative costs, or enhance civic participation.

APPENDIX C: Primers

1. Disadvantaged Communities
2. Onsite Wastewater Treatment Systems
3. Spheres of Influence

FINAL DRAFT

Disadvantaged Communities

The State of California adopted a definition of disadvantaged community (or “DAC”) through passage of Proposition 50, the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002. This measure added §79505.5(a) to the California Water Code and defines a disadvantaged community as a *“community with an annual median household income that is less than 80 percent of the statewide annual median household income.”* For 2021, 80% of the statewide median household income is \$60,188.¹⁸ State law requires various entities (i.e. LAFCO, cities and counties, and water agencies) to, in some manner, identify disadvantaged communities, which can be located in both incorporated and unincorporated areas.

Disadvantaged Unincorporated Communities

Gov. Code §56033.5 defines DUCs as *“...inhabited territory [12 or more registered voters]...or as determined by Commission policy, that constitutes all or a portion of a “disadvantaged community”... with less than 80% of the median household income.*

Particular to LAFCOs, the state mandate is to identify the location and characteristics of disadvantaged unincorporated communities (or “DUCs”). Gov. Code §56375 specifically prohibits an annexation to a city of any territory greater than ten acres where there exists a disadvantaged unincorporated community that is contiguous to the area of proposed annexation unless an application to annex the entire disadvantaged unincorporated community has also been filed.

Need for Consistency

The DAC definition, as defined in Water Code §79505.5(a), differs from the definition of a DUC in two important ways: (1) a DUC must be inhabited, and (2) DUCs comprise unincorporated territory only, not territory within cities. For purposes of further defining a DUC, San Bernardino LAFCO policy defines a community as an *inhabited area comprising no less than 10 dwelling units adjacent or in close proximity to one another.*

Alternatively, Gov. Code §65302.10 (General Plans) identifies a DUC as being 80% or less than the median household income. This is in contrast to Water Code §79505.5 and Gov. Code §56033.5 which reads less than 80%.

Other State agencies, such as the California EPA, use alternative criteria to identify disadvantaged communities for grant funding purposes. The different criteria used to identify disadvantaged communities at the local and state government levels is confusing and complicates implementation of a consistent approach to addressing our disadvantaged residents. While staff recognizes the difficulty in developing a one-size-fits-all definition, LAFCO staff’s position is that additional work should occur Statewide to develop a method for identifying disadvantaged communities that is more consistent yet recognizes the diversity of communities and geographies in California.

¹⁸ Environmental Systems Research Institute (ESRI)

Onsite Wastewater Treatment Systems

According to the State Regional Water Quality Control Board¹⁹, onsite wastewater treatment systems (“OWTS”) are defined as “...individual systems, community collection and disposal systems, and alternative collection and disposal systems that use subsurface disposal.”

When properly sited, designed, operated and maintained, OWTS treat domestic wastewater to reduce its polluting impact on the environment and protect public health. In June 2012, it was estimated by the Regional Board that there are more than 1.2 million onsite systems, the majority which are septic tanks, operating in California.

As waste flows into the tank, heavier solids sink to the bottom, forming the “sludge” layer. Solids are decomposed by the anaerobic bacterial action of the sludge. In theory, a relatively harmless effluent will be produced, and under proper soil conditions, further decontamination can occur. Even under ideal conditions, eventually the amount of sludge will interfere with the bacterial digestive action, and it must be pumped for off-site disposal.

The majority of OWTS operate in a satisfactory manner, and in some cases, remain the only viable option for sewage treatment for locations removed from centralized wastewater treatment systems. However, there are instances in California where OWTS fail to protect water quality and public health. Some common reasons for OWTS failure include:

- Poor design and improper site conditions
- Improper and/or deferred system maintenance
- High geographic concentration of OWTS resulting in a combined effluent flow that cannot be assimilated into the environment

When a community sewer is not available, and a property improvement will generate wastewater, the property owner must demonstrate the following to San Bernardino County Department of Environmental Health to verify the lot will support onsite wastewater disposal:

- Soils are conducive to onsite wastewater disposal.
- Sewer is not available within 200 feet (plus 100 feet per dwelling unit thereafter).
- Enough area is available to install a septic system that meets proper setbacks (for new construction, 100% expansion area must be available).
- OWTS will not impact ground or surface water.
- OWTS is sized appropriately to serve the intended land use.

As California’s population continues to grow, the development of higher density housing in rural areas and in more varied terrain increases the risk of OWTS creating public environmental and health issues. Improperly maintained or failing OWTS can result in the discharge of pathogens, nitrates, salts, household chemicals, oils and grease into the environment. As conditions and circumstances change around particular locations, increased scrutiny is necessary to properly site, operate and professionally maintain OWTS.

¹⁹ Water Quality Control Policy for Siting, Design, Operation and Maintenance of Onsite Wastewater Treatment Systems (CA Water Boards 2012)

Spheres of Influence

Government Code Section 56076 defines a "sphere of influence" as a plan for the probable physical boundaries and service area of a local agency, as determined by LAFCO.

The purpose of a sphere of influence is to encourage the logical and orderly development and coordination of local government agencies to provide for the present and future needs of the county and its communities. The statement of purpose adopted by San Bernardino LAFCO for spheres of influence include seven points. Those pertinent to this study are:

- To promote orderly growth of communities, whether or not services are provided by a city or district (board governed or independently governed);
- To encourage economical use and extension of facilities by assisting governmental agencies in planning the logical and economical extension of governmental facilities and services, thereby avoiding duplication of services;
- To provide assistance to property owners in relating to the proper agency to comprehensively plan for the use of their property;
- To encourage the establishment of urban-type services only within an adopted sphere of influence.

San Bernardino LAFCO has adopted ten policies related to a sphere of influence. Those pertinent to this analysis are:

- **RESPONSIBILITY/OBLIGATION FOR A SPHERE OF INFLUENCE AREA**

When a sphere of influence is assigned, a city or district is required to commence long range land use and service planning activities, thereby enabling it to respond to any annexation requests it might receive from landowners or residents within the sphere. By accepting a sphere of influence, a city or district agrees to plan for the provision of services.

- **URBAN DEVELOPMENT WITHIN A CITY SPHERE**

LAFCO takes the position that any new urban development which occurs within a city sphere of influence should take place as close to the city's urban area as possible. This position is emphasized for two reasons: first, so that contiguous areas may easily be annexed to the city; and secondly, so that the new urban area can be served by reasonable extension of the city's already developed municipal services.

TOM DODSON & ASSOCIATES

Mailing Address: PO Box 2307, San Bernardino, CA 92406-2307

Physical Address: 2150 N. Arrowhead Avenue, San Bernardino, CA 92405

Tel: (909) 882-3612 ♦ **Fax:** (909) 882-7015 ♦ **Email:** tda@tdaenv.com



July 7, 2022

Mr. Samuel Martinez
Local Agency Formation Commission
1170 W. Third Street, Unit 150
San Bernardino, CA 92415-0490

Dear Sam:

The Local Agency Formation Commission (LAFCO) is considering a service review for the City of Twentynine Palms, LAFCO 3252. Typically, a service review does not require a review under the California Environmental Quality Act (CEQA), but out of an abundance of caution LAFCO has requested a review for LAFCO 3252 prior to submittal to the Commission. A service review, as outlined in Government Code Section 56430, is a comprehensive review to inform LAFCO, local agencies, and the public about the provision of municipal services. LAFCO 3252 is the service review for the Twentynine Palms Community. The agencies under review are the City of Twentynine Palms, Twentynine Palms Cemetery District, and the Twentynine Palms Water District. LAFCO 3252 does not include any specific recommendations.

The LAFCO Staff has requested that the LAFCO 3252 undergo review under the California Environmental Quality Act (CEQA) even though these reviews are only received and filed by the Commissioners. Service reviews consist of a document that has no potential to modify the physical environment. Only when specific actions are considered by the Commission in the future are actual decisions considered that could have potential effects on the physical environment.

Therefore, after careful review of LAFCO 3252, I am recommending that the Commission consider the adoption of a "Common Sense" Exemption. I recommend that the Commission find that an Exemption (as defined in CEQA) applies to LAFCO 3252 under Section 15061 (b) (3) of the State CEQA Guidelines, which states: *"A project is exempt from CEQA if: the activity is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."* It is my opinion, and recommendation to the Commission, that this circumstance applies to all LAFCO 3252, Service Review for the Twentynine Palms Community.

Based on this review of the pertinent sections of CEQA and the State CEQA Guidelines, I conclude that the upcoming Service Review for the Twentynine Palms Community does not constitute a project under CEQA and adoption of the common-sense exemption and filing of a Notice of Exemption is the most appropriate environmental determination to comply with CEQA for this action. The Commission can approve the review and findings for this action and I recommend that you notice LAFCO 3252 as statutorily exempt from CEQA for the reasons outlined in the State CEQA Guideline (2022) sections cited above. The Commission needs to file a Notice of Exemption with the County Clerk to the Board for this action once the hearing is completed.

A copy of this exemption recommendation should be retained in LAFCO's project file to serve as verification of this evaluation and as the CEQA environmental determination record. If you have any questions, please feel free to give me a call.

Sincerely,

A handwritten signature in black ink that reads "Tom Dodson". The signature is written in a cursive, flowing style.

Tom Dodson

TD/cmc

LAFCO-1026 (LA-3252 City of 29Palms)

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbcounty.gov
www.sbclafco.org

PROPOSAL NO.: LAFCO 3252

HEARING DATE: SEPTEMBER 21, 2022

RESOLUTION NO. 3353

A RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY MAKING DETERMINATIONS ON LAFCO 3252 – SERVICE REVIEW FOR THE TWENTYNINE PALMS COMMUNITY.

On motion of Commissioner ____, duly seconded by Commissioner ____, and carried, the Local Agency Formation Commission adopts the following resolution:

WHEREAS, a service review mandated by Government Code 56430 has been conducted by the Local Agency Formation Commission for San Bernardino County (hereinafter referred to as “the Commission”) in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Sections 56000 et seq.); and,

WHEREAS, at the times and in the form and manner provided by law, the Executive Officer has given notice of the public hearing by the Commission on this matter; and,

WHEREAS, the Executive Officer has reviewed available information and prepared a report including his recommendations thereon, the filings and report and related information having been presented to and considered by this Commission; and,

WHEREAS, a public hearing by this Commission was called for September 21, 2022 at the time and place specified in the notice of public hearing; and,

WHEREAS, at the hearing, this Commission heard and received all oral and written support and opposition; the Commission considered all objections and evidence which were made, presented, or filed; and all persons present were given an opportunity to hear and be heard in respect to any matter relating to the service review, in evidence presented at the hearing; and,

WHEREAS, at this hearing, this Commission certified that the service review is exempt from environmental review pursuant to the provisions of the California Environmental Quality Act (CEQA) and such exemption was adopted by this Commission on September 21, 2022. The Commission directed its Executive Officer to file a Notice of Exemption within five working days of its adoption; and,

RESOLUTION NO. 3353

WHEREAS, the determinations required by Government Code Section 56430 and local Commission policy are included in the service review prepared and submitted to the Commission dated September 14, 2022 and was recommended for acceptance and filing by the Commission on September 21, 2022, a complete copy the service review is on file in the LAFCO office.

WHEREAS, the following additional determinations are made in conformance with the Government Code and local Commission policy:

- As required by State Law, notice of the hearing was provided through publication in newspapers of general circulation within the area, *Hi-Desert Star*. Individual notice was not provided as allowed under Government Code Section 56157 as such mailing would include more than 1,000 individual notices. As outlined in State Law and Commission Policy, in-lieu of individual notice the notice of hearing publication was provided through an eighth page legal ad.
- As required by State law, individual notification of the hearing was provided to affected and interested agencies, County departments, and those agencies and individuals requesting mailed notice.
- A first draft of the service review document was released to all affected agencies on May 13, 2022.
- The final draft of the service review was released on September 14, 2022 to all parties as well as the Commission and posted on the LAFCO website.
- Comments from the public and any affected agency were reviewed and considered by the Commission in making its determinations.

NOW, THEREFORE, BE IT RESOLVED by the Local Agency Formation Commission for San Bernardino County, State of California, that this Commission shall:

1. For environmental review, certify that the service review is exempt from environmental review and direct the Executive Officer to file the Notice of Exemption within five (5) days.
2. Accept and file the Service Review for the Twentynine Palms Community which sets forth the written statements for the six determinations outlined in Government Code Section 56430 made by the Commission.
3. Should the LAFCO not receive an application to reorganize cemetery services in the Twentynine Palms Community by July 1, 2023, the Commission shall designate a sphere of influence for the Twentynine Palms Cemetery District.

THIS ACTION APPROVED AND ADOPTED by the Local Agency Formation Commission for San Bernardino County by the following vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

RESOLUTION NO. 3353

ABSENT: COMMISSIONERS:

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)


I, SAMUEL MARTINEZ, Executive Officer of the Local Agency Formation Commission for San Bernardino County, California, do hereby certify this record to be a full, true, and correct copy of the action taken by said Commission, by vote of the members present, as the same appears in the Official Minutes of said Commission at its meeting of September 21, 2022.

DATED:

SAMUEL MARTINEZ
Executive Officer

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbcounty.gov
www.sbclafco.org

DATE: SEPTEMBER 14, 2022 
FROM: SAMUEL MARTINEZ, Executive Officer
MICHAEL TUERPE, Project Manager
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #7: Unaudited Year-End Financial Report for FY 2021/22

RECOMMENDATION:

Staff recommends that the Commission Note receipt of this report and file.

SUMMARY:

1. Budget Markers

Fiscal Year 2021/22 has concluded, and staff presents the Commission with its final financial report. This report includes a review of the financial activities and the presentation of a spreadsheet (see Attachment) showing the line item expenditures and receipts during the year. The summary table below shows that Total Expenditures did not exceed appropriations. For Revenues, the Fees and Deposits category earned 98% of expected revenue, with Total Revenues of 101% exceeding expectation. The table below is a snapshot through the year-end.

| Expenditures | | Revenues | |
|---|------------|--|-------------|
| Salaries and Benefits (below appropriations) | 96% | Apportionment (met goal) | 100% |
| Services and Supplies (below appropriations) | 90% | Fees and Deposits (slightly below goal) | 98% |
| TOTAL | 94% | TOTAL | 101% |

2. Applications

The table below identifies the number of proposals and service contracts budgeted and received. Proposals received were one less than budgeted. However, service contracts vastly exceeded the budget.

| Activity | Budget | Through June | |
|-----------------------------------|--------|--------------|-------------|
| | | No. | % of Budget |
| Commission: Proposals | 7 | 6 | 86% |
| Commission: Service Contracts | 2 | 10 | 500% |
| Administrative: Service Contracts | 2 | 12 | 600% |

3. Cash in Treasury

As of June 30, the Commission's cash in the County Treasury was \$497,102. A breakdown of this amount is shown below. None of the reserves were used this year, which carry over into FY 2022/23. At year's end, activities were outstanding related to the SALC grant and additional pension payment to SBCERA totaling roughly \$84,000. These are multi-year matters whose activities cross years. Additionally, the FY 2022/23 budget anticipated a carryover of \$50,644. Fortunately, an additional carryover of roughly \$7,000 occurred.

| | | |
|--|--|------------------|
| June 30, 2022 Balance | | \$497,102 |
| Cash Balance is composed of the following: | | |
| <i>Committed (constrained to specific purposes)</i> | | |
| | Compensated Absences (Account 6030) | 152,095 |
| | Salary for Extra Pay Period: Year 1 of 10 (Account 6035) | 3,000 |
| <i>Assigned (intended for specific purposes)</i> | | |
| | Contingency (Account 6000) | 25,000 |
| | General Reserve (Account 6025) | 175,000 |
| <i>Accounts Payable: Grant, SBCERA</i> | | 40,950 |
| <i>Accounts Payable: Open Applications</i> | | 43,469 |
| <i>Budgeted Carryover into FY 2022/23</i> | | 50,644 |
| Additional Carryover | | \$6,944 |

DETAIL:

The following provides a discussion of (1) expenditures, (2) reserves, (3) projects and programs, and (4) revenues.

1. Expenditures

Expenditures are composed of two categories of accounts: 1) Salaries and Benefits, and 2) Services and Supplies. At year's end, expenditures were at 87% of Approved Budget authority. A more detailed analysis of the categories is as follows:

A. Salaries and Benefits (1000 series)

The Salaries and Benefits series of accounts (1000 series) had expenditures of \$707,898, representing 96% of Approved Budget authority.

B. Services and Supplies (2000 and 5000 series)

Through year's end, the Services and Supplies series of accounts (2000 and 5000 series) had expenditures of \$429,335, or 90% of appropriations.

Unrecoverable legal costs are extraordinarily high, over 200% of the original budget. Currently, the Commission is engaged in three legal matters where costs are not recoverable. Due to revenues received in April and June, there are adequate funds to cover these legal costs. However, the high costs have exceeded appropriation. In May, the Commission approved an increase to the Legal Counsel account to provide additional appropriation to cover these payments.

2. Reserves

None of the reserves were used this year, which carry over into FY 2022/23.

3. Projects and Programs

The following provides an update on expenditures and progress on projects approved by the Commission.

A. Sustainable Agricultural Lands Conservation (SALC) Program

At the July 2020 meeting, the Commission authorized the Executive Officer to submit the SALC Program Planning Grant to the CA Department of Conservation (DOC). LAFCO finalized contracts with the DOC (grant contract with a start date of May 6) and Inland Empire Resource Conservation District (cooperative agreement setting terms for roles and reimbursement).

This past quarter, LAFCO and IERCD staffs completed the following tasks:

- Task 1: Mapping, Regional Priority Plan, Urban Stakeholder Group
 - Reviewed existing agriculture policies in Highland
 - Continue to map story map and Williamson Act contracts
 - Created web app
 - Mapping & georeferencing maps of priority areas/city land use
- Task 2: Policy and Municipality Outreach
 - San Bernardino SALC Project presentation at the SCAG Sustainable & Resilient Communities / Natural & Farm Lands Conservation Working Group on May 18
 - Meeting with the County of San Bernardino Healthy Communities Program to discuss synergies and leveraging partnership to increase participation in our Urban Ag Stakeholder Group on June 21

- Task 3: Development of Agricultural Easement Program
 - Research mitigation and banking policies
 - Reviewed model policies from government agencies that adopted mitigation policies in partnership with their respective LAFCOs

B. Service Reviews and Special Studies

In January 2022, LAFCO completed one service review: *Special Study for the Morongo Valley Community Services District*. Scheduled for this September hearing is the *Service Review for the Twentynine Palms Community* (at the request of the City of Twentynine Palms). Staff began work on the Healthcare District review and the focused review for the Big River Community Services District, which provides park and recreation services.

C. Governance Training Program

Due to the pandemic, the Governance Training Program was on hiatus. In August, CSDA and LAFCO conducted a seminar on Board Member Best Practices Part I. The feedback for this session was positive. Part II of the seminar is schedule for November at the same location – Mojave Water Agency in Apple Valley.

D. Fiscal Indicators Program

Portions of the former website are incompatible with the new website platform, including the Fiscal indicators. Since the website is live, staff is assessing the program's revival.

4. Revenues

Year-end revenues received were 101% of anticipated budget. The items below outline the revenue activity:

- Interest (Account 8500) – Lower interest rates have yielded minimal investment returns. \$6,288 in interest revenue was earned from the Commission's cash in the County Treasury.
- Apportionment (Account 8842) - 100% of the mandatory apportionment payments from the County, cities, and independent special districts billed by the County Auditor have been received.
- Fees and Deposits (Accounts 9545 – 9800) – Fees and Deposits series of accounts have received 98% of its budgeted revenue (\$108,341). This amount is made up of a combination of proposal and service contract filing fees as well as legal cost recovery.

- Miscellaneous (Account 9930) – In June, the State reimbursed LAFCO roughly \$32,000 related to the SALC grant.

CONCLUSION:

On a cash basis, the year ended with expenditures within appropriations and revenues slightly above budget. The year ended with a surplus due to the receipt of two large proposals in April and reimbursement from the State related to the SALC grant.

Staff will be happy to answer any questions from the Commission prior to or at the hearing regarding the items presented in this report.

SM/MT

Attachment: Spreadsheet of Expenditures, Reserves, and Revenues

Attachment #1

Budget Spreadsheets

| ACCT. # | ACCOUNT NAME | ADOPTED FY 21-22 (May 2021) | AMENDED FY 21-22 (Dec 2021) | AMENDED FY 21-22 (May 2022) | TOTAL YEAR-END | PERCENT YEAR-END |
|------------|---|-----------------------------------|-----------------------------------|-----------------------------------|-------------------|---------------------|
| | SALARIES AND BENEFITS | | | | | |
| 1010 | Earnable Compensation | 437,906 | 437,906 | 437,906 | 426,130 | 97% |
| 1030 | Auto and Cell Phone Allowances | 9,275 | 9,275 | 9,275 | 9,100 | 98% |
| 1035 | Overtime | | | | - | |
| 1045 | Termination Payment | | | | - | |
| 1110 | General Member Retirement | 175,386 | 175,386 | 175,386 | 170,502 | 97% |
| 1130 | Survivors Benefits | 143 | 143 | 143 | 95 | 66% |
| 1135 | Retirement Subsidy (no longer active) | | | | - | |
| 1200 | Medical Premium Subsidy | 48,373 | 48,373 | 48,373 | 43,461 | 90% |
| 1205 | Long-Term Disability | 988 | 988 | 988 | 980 | 99% |
| 1207 | Vision Care Insurance | 613 | 613 | 613 | 621 | 101% |
| 1215 | Dental Insurance Subsidy | 1,003 | 1,003 | 1,003 | 738 | 74% |
| 1222 | Short-Term Disability | 4,873 | 4,873 | 4,873 | 4,906 | 101% |
| 1225 | Medicare | 5,074 | 5,074 | 5,074 | 5,152 | 102% |
| 1235 | Workers' Compensation | - | - | - | - | |
| 1240 | Life Insurance & Medical Trust Fund | 14,182 | 14,182 | 14,182 | 12,969 | 91% |
| 1305 | Medical Reimbursement Plan | 5,212 | 5,212 | 5,212 | 2,474 | 47% |
| 1310 | Annuitant Employee Medical (no longer active) | | | | - | |
| 1314 | 457/401a Contribution | 3,009 | 3,009 | 3,009 | 2,935 | 98% |
| 1315 | 401k Contribution | 31,082 | 31,082 | 31,082 | 27,835 | 90% |
| | TOTAL SALARIES & BENEFITS | \$ 737,120 | \$ 737,120 | \$ 737,120 | \$ 707,898 | 96% |
| | SERVICES AND SUPPLIES | | | | | |
| 2031 | Payroll System Services (County IT) | 707 | 707 | 707 | 707 | 100% |
| 2032 | Virtual Private Network (County IT) | 158 | 158 | 158 | 158 | 100% |
| 2033 | Network Labor Services (County IT) | - | - | - | - | |
| 2037 | Dial Tone (County IT) | 2,381 | 2,381 | 2,381 | 2,975 | 125% |
| 2041 | Data Line | 8,400 | 8,400 | 8,400 | 8,226 | 98% |
| 2043 | Electronic Equipment Maintenance (County IT) | - | - | - | - | |
| 2075 | Membership Dues | 12,242 | 12,242 | 12,242 | 12,316 | 101% |

Attachment #1

Budget Spreadsheets

| ACCT. # | ACCOUNT NAME | ADOPTED FY 21-22 (May 2021) | AMENDED FY 21-22 (Dec 2021) | AMENDED FY 21-22 (May 2022) | TOTAL YEAR-END | PERCENT YEAR-END |
|------------|--|-----------------------------------|-----------------------------------|-----------------------------------|-------------------|---------------------|
| 2076 | Tuition Reimbursement | 2,000 | 2,000 | 2,000 | 999 | 50% |
| 2080 | Publications | 3,180 | 3,180 | 3,180 | 2,942 | 93% |
| 2085 | Legal Notices | 18,000 | 18,000 | 18,000 | 6,018 | 33% |
| 2090 | Building Expense | 7,260 | 7,260 | 7,260 | 7,362 | 101% |
| 2115 | Software | 17,283 | 17,283 | 17,283 | 1,948 | 11% |
| 2135 | Utilities | - | - | - | - | |
| 2180 | Electricity | 6,000 | 6,000 | 6,000 | 4,878 | 81% |
| 2245 | Other Insurance | 18,340 | 18,340 | 18,340 | 12,637 | 69% |
| 2305 | General Office Expense | 2,564 | 2,564 | 2,564 | 1,787 | 70% |
| 2308 | Credit Card Clearing Account | - | - | - | (323) | |
| 2310 | Postage - Direct Charge | 5,316 | 5,316 | 5,316 | 6,166 | 116% |
| 2315 | Records Storage | 772 | 772 | 772 | 772 | 100% |
| 2322 | Enterprise Printing (County IT) | 86 | 86 | 86 | 95 | 111% |
| 2323 | Reproduction Services | 500 | 500 | 500 | 174 | 35% |
| 2335 | Temporary Services | 5,400 | 5,400 | 5,400 | 240 | 4% |
| 2400 | Legal Counsel | 34,200 | 76,272 | 95,272 | 137,746 | 145% |
| 2405 | Auditing | 11,500 | 11,500 | 11,500 | 10,620 | 92% |
| 2410 | IT Infrastructure (County IT) | 586 | 586 | 586 | 6,671 | 1138% |
| 2415 | Countywide Cost Allocation Program (COWCAP) | 14,049 | 14,049 | 14,049 | 3,454 | 25% |
| 2416 | Enterprise Printing (County IT) | 31 | 31 | 31 | 3 | 10% |
| 2417 | Enterprise Content Management (County IT) | 1,884 | 1,884 | 1,884 | 1,844 | 98% |
| 2418 | Data Storage Services (County IT) | 4,836 | 4,836 | 4,836 | 4,117 | 85% |
| 2420 | Wireless Device Access (County IT) | 211 | 211 | 211 | 211 | 100% |
| 2421 | Desktop Support Services (County IT) | 9,623 | 9,623 | 9,623 | 12,830 | 133% |
| 2424 | Environmental Consultant | 10,600 | 10,600 | 10,600 | 15,906 | 150% |
| 2444 | Security Services | 492 | 492 | 492 | 492 | 100% |
| 2445 | Other Professional Services | 78,068 | 78,068 | 78,068 | 45,253 | 58% |
| 2449 | Outside Legal (Litigation & Special Counsel) | - | | | 35 | |
| 2450 | Application Development and Enhancements | | | | 5,823 | |
| 2460 | Aerial Imagery (County IT) | 14,500 | 14,500 | 14,500 | 3,000 | |

Attachment #1

Budget Spreadsheets

| ACCT. # | ACCOUNT NAME | ADOPTED FY 21-22 (May 2021) | AMENDED FY 21-22 (Dec 2021) | AMENDED FY 21-22 (May 2022) | TOTAL YEAR-END | PERCENT YEAR-END |
|--------------------------------------|--|-----------------------------------|-----------------------------------|-----------------------------------|---------------------|---------------------|
| 2895 | Rent/Lease Equipment (copier) | 5,100 | 5,100 | 5,100 | 5,257 | 103% |
| 2905 | Office/Hearing Chamber Rental | 98,258 | 98,258 | 98,258 | 101,369 | 103% |
| 2940 | Private Mileage | 2,192 | 2,192 | 2,192 | 953 | 43% |
| 2941 | Conference/Training | 4,710 | 4,710 | 4,710 | - | 0% |
| 2942 | Hotel | 6,710 | 6,710 | 6,710 | - | 0% |
| 2943 | Meals | 1,000 | 1,000 | 1,000 | - | 0% |
| 2945 | Air Travel | 400 | 400 | 400 | - | 0% |
| 2946 | Other Travel | 150 | 150 | 150 | - | 0% |
| 5012 | Trust Transfer to County (Staples & Microsoft) | 6,689 | 6,689 | 6,689 | 3,671 | 55% |
| TOTAL SERVICES & SUPPLIES | | \$ 416,379 | \$ 458,451 | \$ 477,451 | \$ 429,335 | 90% |
| TOTAL EXPENDITURES | | \$ 1,153,499 | \$ 1,195,571 | \$ 1,214,571 | \$ 1,137,233 | 94% |
| TRUST TRANSFERS | | | | | | |
| 9990 | SBCERA Additional Payment | 50,163 | 50,163 | 50,163 | | |
| TOTAL TRUST TRANSFERS | | \$ 50,163 | \$ 50,163 | \$ 50,163 | \$ - | 0% |
| TOTAL APPROPRIATION | | \$ 1,203,662 | \$ 1,245,734 | \$ 1,264,734 | \$ 1,137,233 | 90% |

Attachment #1

Budget Spreadsheets

| ACCT. # | ACCOUNT NAME | INCREASES (DECREASES) FY 19-20 | INCREASES (DECREASES) FY 20-21 | ADOPTED Increases FY 21-22 | TOTAL |
|-----------------------------------|---|--------------------------------------|--------------------------------------|----------------------------------|-------------------|
| | RESERVES (Increases) | | | | |
| 6000 | Contingency (Assigned) | | | 6,400 | 25,000 |
| 6025 | General (Assigned) | | | 25,000 | 175,000 |
| 6030 | Compensated Absences (Committed) | 12,769 | 32,477 | 9,452 | 152,095 |
| 6035 | Salary for Extra Pay Period (Committed) | | | 3,000 | 3,000 |
| TOTAL RESERVES (Increases) | | \$ 12,769 | \$ 32,477 | \$ 43,852 | \$ 355,095 |


Attachment #1

Budget Spreadsheets

| ACCT # | ACCOUNT NAME | ADOPTED FY 21-22 (May 2021) | AMENDED FY 21-22 (Dec 2021) | AMENDED FY 21-22 (May 2022) | TOTAL YEAR-END | PERCENT YEAR-END |
|--------|--|-----------------------------------|-----------------------------------|-----------------------------------|---------------------|---------------------|
| | Use of Money: | | | | | |
| 8500 | Interest | 11,000 | 11,000 | 11,000 | 6,288 | 57% |
| | Mandatory Contribution from Governments: | | | | | |
| 8842 | Apportionment | 1,090,497 | 1,090,497 | 1,090,497 | 1,090,497 | 100% |
| | Fees and Deposits (Current Services): | | | | | |
| 9545 | Individual Notice Deposit | 9,000 | 9,000 | 9,000 | 12,060 | 134% |
| 9555 | Legal Services Deposit | 15,000 | 15,000 | 15,000 | 14,300 | 95% |
| 9595 | Protest Hearing Deposit | 4,500 | 4,500 | 4,500 | 1,500 | 33% |
| 9655 | Digital Mapping Fee | 595 | 595 | 595 | 740 | 124% |
| 9660 | Environmental Deposit | 8,400 | 8,400 | 8,400 | 4,282 | 51% |
| 9800 | LAFCO Fee | 54,019 | 54,019 | 73,019 | 75,459 | 103% |
| | Total Fees and Deposits | 91,514 | 91,514 | 110,514 | 108,341 | 98% |
| | OTHER REVENUES | | | | | |
| 9560 | Indemnification Recovery | | | | | |
| 9910 | Prior Year Activity (refunds, collections) | | | | (15,421) | |
| 9930 | Miscellaneous | | | | 33,968 | |
| 9970 | Carryover of Fund Balance | 54,503 | 96,575 | 96,575 | 96,575 | 100% |
| 9973 | Stale-dated Checks | | | | - | |
| | TOTAL OTHER REVENUES | 54,503 | 96,575 | 96,575 | 115,122 | 119% |
| | TOTAL REVENUES | \$ 1,247,514 | \$ 1,289,586 | \$ 1,308,586 | \$ 1,320,247 | 101% |

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: SEPTEMBER 14, 2022 
FROM: SAMUEL MARTINEZ, Executive Officer
MICHAEL TUERPE, Senior Analyst
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #8: Report on Strategic Planning Workshop of
August 17, 2022

RECOMMENDATION:

Staff recommends that the Commission take the following actions:

1. Review and provide any additional input to the Action Items from the August 17, 2022 Strategic Planning Workshop.
2. Direct staff to return at the November 16, 2022 meeting for approval of the Commission's Strategic Plan.
3. Receive and File this report.

BACKGROUND:

The Commission held a strategic planning workshop on August 17. The purpose of this staff report is to provide the Commission a summary of the workshop and to provide an outline of the actions items.

Former CALAFCO Executive Director Pamela Miller was the facilitator for the workshop, who presented the following discussion topics:

- Morning Session
 - LAFCO Overview
 - San Bernardino LAFCO - Who we are, what we've done, and what we do today
 - Looking to the future
- Afternoon Session
 - Future priorities and accomplishments
 - Strategies to support and guide the future
 - Critical next steps and reflections on the Workshop

The Commission reviewed some of its role and responsibilities, including a reflection on some of its previous accomplishments. It then examined some of its desired outcomes for the future, including strategies for the coming years.

ACTION ITEMS

The Workshop concluded with direction to the Executive Officer to develop a Strategic Plan to identify LAFCO's goals and objectives for the next two years. A concern was raised that the Strategic Plan would require additional funding to formulate, implement, and to maintain. However, the Strategic Plan would only be for a period of two years and would be reviewed in conjunction with the Work Plan as part of the annual budget review process. Therefore, the costs for the Strategic Plan's formulation and maintenance would be nominal.

The Workshop process produced the following priorities and strategies the Commission wants to accomplish in the next two years. Note that the action items are listed in order of priority. Staff is to return at a subsequent Commission meeting to formalize these items.

1. Successfully Conclude Litigation and Properly Assessing Litigation Costs

The discussion revolved around the issues related to the Commission's ongoing and future litigation. Currently, the Commission expends funds to pay for ongoing litigation matters whose costs are not recoverable. In addition, the issue related to future indemnification, as a result of the San Luis Obispo decision, was also discussed.

The workshop participants discussed that staff could review with a LAFCO ad-hoc committee some strategies as well as best practices to address ongoing and future litigation.

2. Open Space and Agriculture Policies

The previous Strategic Planning Workshop identified open space and agricultural policies as a priority for the Commission. The direction back then was to consider agricultural policies as well as policies related to open space preservation including the protection of the county's significant mineral resources as well as aggregate production.

However, the consideration of potential policies has been on hold because LAFCO was awarded a SALC¹ planning grant from the California Department of Conservation that supports the development of local and regional policies and economic development strategies to protect critical agricultural land.

LAFCO Policies stemming from the SALC grant are due to the DOC by summer 2023. Soon after, staff will review the agricultural policies from the SALC grant as well as potential open space preservation policies with a LAFCO ad-hoc committee, then present the overall draft policies for Commission review by fall 2023.

¹ Sustainable Agricultural Lands Conservation (SALC) Program

3. LAFCO Funding

The discussion on LAFCO funding was two-fold – the LAFCO apportionment funding as well as securing additional funding from the State Legislature for its unfunded mandates.

LAFCO's funding are primarily: 1/3 by the county, 1/3 by the cities, and 1/3 by the independent special districts. The law allows the special districts members to adopt an alternative formula, which it has. This alternative formula apportions a flat amount to the large and medium districts, with a variable apportionment to the small districts. This alternative formula typically sets the small districts to be apportioned a nominal amount but there have been situations where the small districts are apportioned a large amount. This has led to the unintended consequence of LAFCO, during the budget formulation process, to be wary of increasing the apportionment due to a possible un-proportional increase to the small districts. A review of other alternative funding formulas, not only special districts alternative formula, but the entire funding as a whole is warranted.

Likewise, it was noted that CALAFCO has been trying for years—without any luck—to get the State Legislature to pay for some of LAFCO's unfunded mandates. Staff has been directed to continue working with other LAFCOs and CALAFCO to try to get the State to provide for additional funding.

Staff will review options for Commission consideration.

4. Education and Outreach to Stakeholders

The Commission expressed its desire that this LAFCO further its outreach and messaging to the public and other agencies. Specifically, the Commission identified its desire to:

- Communicate with agencies within the county regularly
- Focus on the resource that LAFCO is
- Involve the public earlier in the process
- Create messaging and telling our story

Staff will return at a subsequent meeting with details on this action item.

5. Pension Liabilities

The Commission expressed concern with the lack of attention, in government at-large, regarding pension liabilities.

The Commission directed staff to:

- Further illuminate pension liabilities in its service reviews and reorganization proposals, and
- Bring attention to pension liabilities whenever and wherever possible.

It should be noted that at the CALAFCO conference next month, San Bernardino LAFCO is spearheading a session on this topic titled, *The Definitive Session on Pensions – LAFCo's two-fold Responsibility to Take Care of its Own and Review Agencies*.


CONCLUSION

The action items identified above will be the basis for the formulation of a Strategic Plan to identify LAFCO's goals and objectives for the next two years. Staff will present a draft Strategic Plan at the Commission's November 16 meeting for its consideration. Staff is recommending that the Commission take the action items on Page 1.

SM/MT

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbcounty.gov
www.sbclafco.org

DATE: SEPTEMBER 14, 2022 
FROM: SAMUEL MARTINEZ, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #9: Review and Amend the Commission Meeting
Schedule for FY 2022/23

RECOMMENDATION:

Staff recommends that the Commission cancel its regular meeting for October 19, 2022 and note the remaining Commission meetings for Fiscal Year 2022-23 (with options to meet on any of the assigned dark months) as follows:

- November 16, 2022
- December 21, 2022 (dark)
- January 18, 2023
- February 15, 2023 (dark)
- March 15, 2023
- April 19, 2023
- May 17, 2023
- June 21, 2023 (dark)

BACKGROUND:


The Commission's regular meetings are generally held every Third Wednesday of every month. This year, the CALAFCO Annual Conference begins on Wednesday, October 19, 2022, which is the same day as the Commission's regular meeting day.

Because a number of Commissioners and staff members are scheduled to attend this year's conference, staff recommends that the Commission cancel its October meeting.

The next Commission meeting will be on November 16, 2022. Please be aware that the November 16 agenda is going to be a packed agenda with possibly five (5) reorganization proposals and at least two (2) out-of-agency service contracts for Commission consideration.

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DATE: SEPTEMBER 14, 2022 
FROM: SAMUEL MARTINEZ, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #10 – Legislative Report

RECOMMENDATION:

Staff recommends that the Commission note receipt of the report and file.

BACKGROUND:

Legislative Session:

The 2021-2022 California Legislative Session concluded August 31, leaving the Governor until the end of the month to sign or veto the hundreds of bills that reached his desk in the final weeks of the session.

AB 2449:

At the July Commission meeting, Commissioner Cox requested staff to evaluate AB 2449 and provide the Commission with an update.

The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency be open and public and that all persons be permitted to attend and participate. During the pandemic, there were a number of Executive Orders and then several bills that allowed for a meeting to be fully conducted via teleconference when a declared state of emergency is in effect. The most recent one, AB 361, allows for such teleconferenced meetings until January 1, 2024.

AB 2449, which is a hybrid approach, provides local agencies an option to continue utilizing teleconferencing under specified circumstances, even when a state of emergency does not exist. It contains several guardrails which limit the scope of the bill:

- A quorum of the board must be present in-person;
- The in-person location must be open to the public;
- The public must be provided the option to participate via teleconference;

- A board member choosing to teleconference must make a request and receive approval from the governing body to do so;
- Teleconferencing board members must participate through both audio and video technology; and,
- Board members may not teleconference for a period of more than three consecutive months or 20% of regular meetings, for reasons pertaining to emergency circumstances, illness, or travel.

AB 2449 was signed by the Governor this week and goes into effect on January 1, 2023, and currently has a three-year sunset period. The bill is included as Attachment #1.

San Luis Obispo LAFCO vs City of Pismo Beach:

As many of you are aware, the San Luis Obispo LAFCO vs. City of Pismo Beach case determined, in part, that LAFCO's do not have the authority under CKH to require indemnification. Following that decision were a series of appeals on a variety of legal technicalities, attorney fees, etc. This year, the San Luis Obispo LAFCO petitioned the Supreme Court for review. Last week, the Supreme Court denied a petition for review of said appeals, and let the lower Court of Appeals decision stand.

Attachment #2 includes the California Supreme Court decision and a copy of the Court of Appeals decision.

Attachments:

1. [AB 2449](#)
2. [San Luis Obispo LAFCO vs. City of Pismo Beach](#)

Assembly Bill No. 2449

CHAPTER 285

An act to amend, repeal, and add Sections 54953 and 54954.2 of the Government Code, relating to local government.

[Approved by Governor September 13, 2022. Filed with
Secretary of State September 13, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2449, Blanca Rubio. Open meetings: local agencies: teleconferences.

Existing law, the Ralph M. Brown Act, requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. The act generally requires posting an agenda at least 72 hours before a regular meeting that contains a brief general description of each item of business to be transacted or discussed at the meeting, and prohibits any action or discussion from being undertaken on any item not appearing on the posted agenda. The act authorizes a legislative body to take action on items of business not appearing on the posted agenda under specified conditions. The act contains specified provisions regarding providing for the ability of the public to observe and provide comment. The act allows for meetings to occur via teleconferencing subject to certain requirements, particularly that the legislative body notice each teleconference location of each member that will be participating in the public meeting, that each teleconference location be accessible to the public, that members of the public be allowed to address the legislative body at each teleconference location, that the legislative body post an agenda at each teleconference location, and that at least a quorum of the legislative body participate from locations within the boundaries of the local agency's jurisdiction. The act provides an exemption to the jurisdictional requirement for health authorities, as defined.

Existing law, until January 1, 2024, authorizes a local agency to use teleconferencing without complying with those specified teleconferencing requirements in specified circumstances when a declared state of emergency is in effect, or in other situations related to public health.

This bill would revise and recast those teleconferencing provisions and, until January 1, 2026, would authorize a local agency to use teleconferencing without complying with the teleconferencing requirements that each teleconference location be identified in the notice and agenda and that each teleconference location be accessible to the public if at least a quorum of the members of the legislative body participates in person from a singular physical location clearly identified on the agenda that is open to the public and situated within the local agency's jurisdiction. Under this exception,

the bill would authorize a member to participate remotely under specified circumstances, including participating remotely for just cause or due to emergency circumstances. The emergency circumstances basis for remote participation would be contingent on a request to, and action by, the legislative body, as prescribed. The bill, until January 1, 2026, would authorize a legislative body to consider and take action on a request from a member to participate in a meeting remotely due to emergency circumstances if the request does not allow sufficient time to place the proposed action on the posted agenda for the meeting for which the request is made. The bill would define terms for purposes of these teleconferencing provisions.

This bill would impose prescribed requirements for this exception relating to notice, agendas, the means and manner of access, and procedures for disruptions. The bill would require the legislative body to implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with federal law.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

The people of the State of California do enact as follows:

SECTION 1. Section 54953 of the Government Code, as amended by Section 3 of Chapter 165 of the Statutes of 2021, is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. If the legislative body of a local agency elects to use teleconferencing, the legislative body of a local agency shall comply with all of the following:

(A) All votes taken during a teleconferenced meeting shall be by rollcall.

(B) The teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency.

(C) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(D) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e).

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) The legislative body of a local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option.

(B) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items

during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(C) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.

(D) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(E) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) This subdivision shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(f) (1) The legislative body of a local agency may use teleconferencing without complying with paragraph (3) of subdivision (b) if, during the teleconference meeting, at least a quorum of the members of the legislative body participates in person from a singular physical location clearly identified on the agenda, which location shall be open to the public and situated within the boundaries of the territory over which the local agency

exercises jurisdiction and the legislative body complies with all of the following:

(A) The legislative body shall provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the legislative body:

(i) A two-way audiovisual platform.

(ii) A two-way telephonic service and a live webcasting of the meeting.

(B) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment.

(C) The agenda shall identify and include an opportunity for all persons to attend and address the legislative body directly pursuant to Section 54954.3 via a call-in option, via an internet-based service option, and at the in-person location of the meeting.

(D) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(2) A member of the legislative body shall only participate in the meeting remotely pursuant to this subdivision, if all of the following requirements are met:

(A) One of the following circumstances applies:

(i) The member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstances relating to their need to appear remotely at the given meeting. The provisions of this clause shall not be used by any member of the legislative body for more than two meetings per calendar year.

(ii) The member requests the legislative body to allow them to participate in the meeting remotely due to emergency circumstances and the legislative body takes action to approve the request. The legislative body shall request a general description of the circumstances relating to their need to appear

remotely at the given meeting. A general description of an item generally need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law, such as the Confidentiality of Medical Information Act (Chapter 1 (commencing with Section 56) of Part 2.6 of Division 1 of the Civil Code). For the purposes of this clause, the following requirements apply:

(I) A member shall make a request to participate remotely at a meeting pursuant to this clause as soon as possible. The member shall make a separate request for each meeting in which they seek to participate remotely.

(II) The legislative body may take action on a request to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body may take action at the beginning of the meeting in accordance with paragraph (4) of subdivision (b) of Section 54954.2.

(B) The member shall publicly disclose at the meeting before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.

(C) The member shall participate through both audio and visual technology.

(3) The provisions of this subdivision shall not serve as a means for any member of a legislative body to participate in meetings of the legislative body solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

(g) The legislative body shall have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and resolving any doubt in favor of accessibility. In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the procedure for receiving and resolving requests for accommodation.

(h) The legislative body shall conduct meetings subject to this chapter consistent with applicable civil rights and nondiscrimination laws.

(i) (1) Nothing in this section shall prohibit a legislative body from providing the public with additional teleconference locations.

(2) Nothing in this section shall prohibit a legislative body from providing members of the public with additional physical locations in which the public may observe and address the legislative body by electronic means.

(j) For the purposes of this section, the following definitions shall apply:

(1) "Emergency circumstances" means a physical or family medical emergency that prevents a member from attending in person.

(2) "Just cause" means any of the following:

(A) A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely. “Child,” “parent,” “grandparent,” “grandchild,” and “sibling” have the same meaning as those terms do in Section 12945.2.

(B) A contagious illness that prevents a member from attending in person.

(C) A need related to a physical or mental disability as defined in Sections 12926 and 12926.1 not otherwise accommodated by subdivision (g).

(D) Travel while on official business of the legislative body or another state or local agency.

(3) “Remote location” means a location from which a member of a legislative body participates in a meeting pursuant to subdivision (f), other than any physical meeting location designated in the notice of the meeting. Remote locations need not be accessible to the public.

(4) “Remote participation” means participation in a meeting by teleconference at a location other than any physical meeting location designated in the notice of the meeting. Watching or listening to a meeting via webcasting or another similar electronic medium that does not permit members to interactively hear, discuss, or deliberate on matters, does not constitute remote participation.

(5) “State of emergency” means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(6) “Teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.

(7) “Two-way audiovisual platform” means an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function.

(8) “Two-way telephonic service” means a telephone service that does not require internet access, is not provided as part of a two-way audiovisual platform, and allows participants to dial a telephone number to listen and verbally participate.

(9) “Webcasting” means a streaming video broadcast online or on television, using streaming media technology to distribute a single content source to many simultaneous listeners and viewers.

(k) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 2. Section 54953 of the Government Code, as added by Section 4 of Chapter 165 of the Statutes of 2021, is amended to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding

shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. If the legislative body of a local agency elects to use teleconferencing, the legislative body of a local agency shall comply with all of the following:

(A) All votes taken during a teleconferenced meeting shall be by rollcall.

(B) The teleconferenced meetings shall be conducted in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency.

(C) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(D) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d).

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows

any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) The legislative body of a local agency may use teleconferencing without complying with paragraph (3) of subdivision (b) if, during the teleconference meeting, at least a quorum of the members of the legislative body participates in person from a singular physical location clearly identified on the agenda, which location shall be open to the public and situated within the boundaries of the territory over which the local agency exercises jurisdiction and the legislative body complies with all of the following:

(A) The legislative body shall provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the legislative body:

(i) A two-way audiovisual platform.

(ii) A two-way telephonic service and a live webcasting of the meeting.

(B) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment.

(C) The agenda shall identify and include an opportunity for all persons to attend and address the legislative body directly pursuant to Section 54954.3 via a call-in option, via an internet-based service option, and at the in-person location of the meeting.

(D) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items

during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(2) A member of the legislative body shall only participate in the meeting remotely pursuant to this subdivision, if all of the following requirements are met:

(A) One of the following circumstances applies:

(i) The member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstances relating to their need to appear remotely at the given meeting. The provisions of this clause shall not be used by any member of the legislative body for more than two meetings per calendar year.

(ii) The member requests the legislative body to allow them to participate in the meeting remotely due to emergency circumstances and the legislative body takes action to approve the request. The legislative body shall request a general description of the circumstances relating to their need to appear remotely at the given meeting. A general description of an item generally need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law, such as the Confidentiality of Medical Information Act (Chapter 1 (commencing with Section 56) of Part 2.6 of Division 1 of the Civil Code). For the purposes of this clause, the following requirements apply:

(I) A member shall make a request to participate remotely at a meeting pursuant to this clause as soon as possible. The member shall make a separate request for each meeting in which they seek to participate remotely.

(II) The legislative body may take action on a request to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body may take action at the beginning of the meeting in accordance with paragraph (4) of subdivision (b) of Section 54954.2.

(B) The member shall publicly disclose at the meeting before any action is taken whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.

(C) The member shall participate through both audio and visual technology.

(3) The provisions of this subdivision shall not serve as a means for any member of a legislative body to participate in meetings of the legislative body solely by teleconference from a remote location for a period of more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year.

(f) The legislative body shall have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and resolving any doubt in favor of accessibility. In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the procedure for receiving and resolving requests for accommodation.

(g) The legislative body shall conduct meetings subject to this chapter consistent with applicable civil rights and nondiscrimination laws.

(h) (1) Nothing in this section shall prohibit a legislative body from providing the public with additional teleconference locations.

(2) Nothing in this section shall prohibit a legislative body from providing members of the public with additional physical locations in which the public may observe and address the legislative body by electronic means.

(i) For the purposes of this section, the following definitions shall apply:

(1) “Emergency circumstances” means a physical or family medical emergency that prevents a member from attending in person.

(2) “Just cause” means any of the following:

(A) A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely. “Child,” “parent,” “grandparent,” “grandchild,” and “sibling” have the same meaning as those terms do in Section 12945.2.

(B) A contagious illness that prevents a member from attending in person.

(C) A need related to a physical or mental disability as defined in Sections 12926 and 12926.1 not otherwise accommodated by subdivision (f).

(D) Travel while on official business of the legislative body or another state or local agency.

(3) “Remote location” means a location from which a member of a legislative body participates in a meeting pursuant to subdivision (e), other than any physical meeting location designated in the notice of the meeting. Remote locations need not be accessible to the public.

(4) “Remote participation” means participation in a meeting by teleconference at a location other than any physical meeting location designated in the notice of the meeting. Watching or listening to a meeting via webcasting or another similar electronic medium that does not permit members to interactively hear, discuss, or deliberate on matters, does not constitute remote participation.

(5) “Teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.

(6) “Two-way audiovisual platform” means an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function.

(7) “Two-way telephonic service” means a telephone service that does not require internet access, is not provided as part of a two-way audiovisual platform, and allows participants to dial a telephone number to listen and verbally participate.

(8) “Webcasting” means a streaming video broadcast online or on television, using streaming media technology to distribute a single content source to many simultaneous listeners and viewers.

(j) This section shall become operative January 1, 2024, shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 3. Section 54953 is added to the Government Code, to read:

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) This section shall become operative January 1, 2026.

SEC. 4. Section 54954.2 of the Government Code is amended to read:

54954.2. (a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the

regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) For a meeting occurring on and after January 1, 2019, of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site, the following provisions shall apply:

(A) An online posting of an agenda shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state that is accessible through a prominent, direct link to the current agenda. The direct link to the agenda shall not be in a contextual menu; however, a link in addition to the direct link to the agenda may be accessible through a contextual menu.

(B) An online posting of an agenda including, but not limited to, an agenda posted in an integrated agenda management platform, shall be posted in an open format that meets all of the following requirements:

(i) Retrievable, downloadable, indexable, and electronically searchable by commonly used Internet search applications.

(ii) Platform independent and machine readable.

(iii) Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the agenda.

(C) A legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site and an integrated agenda management platform shall not be required to comply with subparagraph (A) if all of the following are met:

(i) A direct link to the integrated agenda management platform shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state. The direct link to the integrated agenda management platform shall not be in a contextual menu. When a person clicks on the direct link to the integrated agenda management platform, the direct link shall take the person directly to an Internet Web site with the agendas of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state.

(ii) The integrated agenda management platform may contain the prior agendas of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state for all meetings occurring on or after January 1, 2019.

(iii) The current agenda of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state shall be the first agenda available at the top of the integrated agenda management platform.

(iv) All agendas posted in the integrated agenda management platform shall comply with the requirements in clauses (i), (ii), and (iii) of subparagraph (B).

(D) For the purposes of this paragraph, both of the following definitions shall apply:

(i) “Integrated agenda management platform” means an Internet Web site of a city, county, city and county, special district, school district, or political subdivision established by the state dedicated to providing the entirety of the agenda information for the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state to the public.

(ii) “Legislative body” has the same meaning as that term is used in subdivision (a) of Section 54952.

(E) The provisions of this paragraph shall not apply to a political subdivision of a local agency that was established by the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state.

(3) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to

the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(4) To consider action on a request from a member to participate in a meeting remotely due to emergency circumstances, pursuant to Section 54953, if the request does not allow sufficient time to place the proposed action on the posted agenda for the meeting for which the request is made. The legislative body may approve such a request by a majority vote of the legislative body.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

(d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

(e) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 5. Section 54954.2 is added to the Government Code, to read:

54954.2. (a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) For a meeting occurring on and after January 1, 2019, of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site, the following provisions shall apply:

(A) An online posting of an agenda shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state that is accessible through a prominent, direct link to the current agenda. The direct link to the agenda shall not be in a contextual menu; however, a link in addition to the direct link to the agenda may be accessible through a contextual menu.

(B) An online posting of an agenda including, but not limited to, an agenda posted in an integrated agenda management platform, shall be posted in an open format that meets all of the following requirements:

(i) Retrievable, downloadable, indexable, and electronically searchable by commonly used Internet search applications.

(ii) Platform independent and machine readable.

(iii) Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the agenda.

(C) A legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site and an integrated agenda management platform shall not be required to comply with subparagraph (A) if all of the following are met:

(i) A direct link to the integrated agenda management platform shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state. The direct link to the integrated agenda management platform shall not be in a contextual menu. When a person clicks on the direct link to the integrated agenda management platform, the direct link shall take the person directly to an Internet Web site with the agendas of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state.

(ii) The integrated agenda management platform may contain the prior agendas of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state for all meetings occurring on or after January 1, 2019.

(iii) The current agenda of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state shall be the first agenda available at the top of the integrated agenda management platform.

(iv) All agendas posted in the integrated agenda management platform shall comply with the requirements in clauses (i), (ii), and (iii) of subparagraph (B).

(D) For the purposes of this paragraph, both of the following definitions shall apply:

(i) “Integrated agenda management platform” means an Internet Web site of a city, county, city and county, special district, school district, or political subdivision established by the state dedicated to providing the entirety of the agenda information for the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state to the public.

(ii) “Legislative body” has the same meaning as that term is used in subdivision (a) of Section 54952.

(E) The provisions of this paragraph shall not apply to a political subdivision of a local agency that was established by the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state.

(3) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

(d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency’s Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are

also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

(e) This section shall become operative January 1, 2026.

SEC. 6. The Legislature finds and declares that Sections 1 and 2 of this act, which amend Section 54953 of the Government Code, impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

By removing the requirement for agendas to be placed at the location of each public official participating in a public meeting remotely, including from the member's private home or hospital room, this act protects the personal, private information of public officials and their families while preserving the public's right to access information concerning the conduct of the people's business.

SEC. 7. The Legislature finds and declares that Sections 1 and 2 of this act, which amend Section 54953 of the Government Code, further, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

This act is necessary to ensure minimum standards for public participation and notice requirements allowing for greater public participation in teleconference meetings.

AUG 17 2022

Court of Appeal, Second Appellate District, ~~Division Six~~ - No. B304144

Jorge Navarrete Clerk

S275028

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

SAN LUIS OBISPO LOCAL AGENCY FORMATION COMMISSION et al.,
Cross-complainants and Appellants,

v.

CENTRAL COAST DEVELOPMENT COMPANY, Cross-defendant and Respondent.

The requests for judicial notice are granted.
The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice

61 Cal.App.5th 595
Court of Appeal, Second District, Division 6,
California.

SAN LUIS OBISPO LOCAL AGENCY
FORMATION COMMISSION et al.,
Cross-complainants and Appellants,

v.

CITY OF PISMO BEACH et al.,
Cross-defendants and Respondents.

2d Civ. No. B296968

|
Filed 3/3/2021

Synopsis

Background: County's local agency formation commission and non-profit organization that reimbursed commission brought action against city and developer, seeking \$400,000 for attorney fees and costs incurred in defending an appeal brought by city and developer after the commission denied their application for annexation of real property, which contained an indemnity agreement. The Superior Court, San Luis Obispo County, No. CV130383, granted city and developer judgment on the pleadings, and denied commission's request for leave to amend. Commission and non-profit organization appealed.

Holdings: The Court of Appeal, [Gilbert](#), Presiding Justice, held that:

agreement was not supported by consideration, as required for a contract;

section of Cortese-Knox-Hertzberg Act authorizing local agency formation commission to charge fees does not apply to post-administrative matters; and

commission had no authority under Act to require agreement.

Affirmed.

****838** Superior Court County of San Luis Obispo, [Ginger E. Garrett](#), [Barry T. LaBarbera](#),* Judges (Super. Ct. No.

CV130383) (San Luis Obispo County)

Attorneys and Law Firms

McCormick, Barstow, Sheppard, Wayte & Carruth, [James P. Wagoner](#), [Timothy J. Buchanan](#), [Brandon M. Fish](#), and [Leif E. Knutson](#), Fresno, for Cross-complainants and Appellants San Luis Obispo Local Agency Formation Commission and Special District Risk Management Authority

Best Best & Krieger, [Clark H. Alsop](#), Ontario, and [Gregg W. Kettles](#), Los Angeles, for California Association of Local Agency Formation Commissions as Amicus Curiae on behalf of Cross-complainant and Appellant San Luis Obispo Local Agency Formation Commission.

Office of the County Counsel County of Santa Clara, James R. Williams, County Counsel, [Steve Mitra](#), Assistant County Counsel, [Christopher R. Cheleden](#), Lead Deputy County Counsel, and [John A. Castro](#), Deputy County Counsel, for California State Association of Counties as Amicus Curiae on behalf of Cross-complainants and Appellants San Luis Obispo Local Agency Formation Commission and Special District Risk Management Authority.

Richards, Watson & Gershon, [T. Peter Pierce](#), San Francisco, [Saskia T. Asamura](#), and [Kyle H. Brochard](#), Los Angeles, for Cross-defendant and Respondent City of Pismo Beach.

Jackson Tidus, [Michael L. Tidus](#), Irvine, [Gregory P. Regier](#), Westlake Village, and [Nedda Mahrou](#), for Cross-defendant and Respondent Central Coast Development Company.

Opinion

GILBERT, P. J.

****839 *598** Even broadly construed statutes have boundaries. It is the Legislature's responsibility to amend statutes. Courts may not do so under the guise of implied powers.

A city and a developer applied to the San Luis Obispo Local Agency Formation Commission (LAFCO) to annex a parcel of real property to the city. LAFCO denied the application and the city and developer brought an action to challenge that decision. LAFCO prevailed and brought this action to recover attorney fees under an indemnity

agreement contained in the annexation application. The trial court granted the city and developer judgment on the pleadings because LAFCO has no authority to require such fees. We affirm.

FACTS

Background

Local agency formation commissions are established in each of California's 58 counties by the Cortese-Knox-Hertzberg Act (CKH Act). (*Gov. Code*,¹ § 56000 *et seq.*) Their purpose is to ensure planned, well-ordered, efficient urban development patterns. (§ 56300, subd. (a).) Included in their powers is the power to approve or disapprove applications for an annexation to a city. (§ 56375, subd. (a).) Their operating costs are divided one-third each among the county, the cities, and independent special districts. (§ 56381, subd. (b)(1)(A).)

Local agency formation commissions may also establish a schedule of fees and service charges. (§ 56383, subd. (a).) The fees and charges shall not exceed the costs of the services provided. (*Id.*, subd. (b).)

**599 Dispute*

Central Coast Development Company (Central Coast) owns a 154-acre parcel of property within the sphere of influence of the City of Pismo Beach (City). Central Coast wants to construct 252 single family residences and 60 senior housing units on the parcel. The City approved Central Coast's application for a development permit for the property. The City and Central Coast applied to LAFCO to annex the property.

The LAFCO application signed by the City and Central Coast contained the following indemnity agreement:

"As part of this application, Applicant agrees to defend, indemnify, hold harmless and release the San Luis Obispo Local Agency Formation Commission (LAFCO), its officers, employees, attorneys, or agents from any claim, action or proceeding brought against any of them, the purpose of which is to attack, set aside, void, or annul, in whole or in part, LAFCO's action on the proposal or on the environmental documents submitted to or prepared by LAFCO in connection with the proposal. *This*

*indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorneys' fees, and expert witness fees that may be asserted by any person or entity, including the Applicant, arising out of or in connection **840 with the application. In the event of such indemnification, LAFCO expressly reserves the right to provide its own defense at the reasonable expense of the Applicant."* (Italics added.)

LAFCO denied the annexation application. The City and Central Coast sued LAFCO. LAFCO prevailed and presented a bill to the City and Central Coast for more than \$400,000 in attorney fees and costs. The City and Central Coast refused to pay.

The Special District Risk Management Authority (SDRMA), a public entity self-insurance pool, paid for LAFCO's fees and costs. LAFCO and the SDRMA sued the City and Central Coast to recover its fees and costs. The suit was based on the indemnity provision of the annexation application.

The trial court granted the City and Central Coast (hereafter collectively "the City") judgment on the pleadings against LAFCO and the SDRMA (hereafter collectively "LAFCO"). The court denied LAFCO's request for leave to amend its pleadings.

DISCUSSION

I

Contract

LAFCO contends the indemnity agreement is a valid contract provision.

***600** A contract requires consideration. (*US Ecology, Inc. v. State of California* (2001) 92 Cal.App.4th 113, 128, 111 Cal.Rptr.2d 689.) Consideration consists of either a benefit to the promisor or a detriment to the promisee. (*Speirs v. BlueFire Ethanol Fuels, Inc.* (2015) 243 Cal.App.4th 969, 987, 197 Cal.Rptr.3d 25.) A promise to do something the promisor is legally bound to do is not consideration. (*General Motors Acceptance Corp. v. Brown* (1934) 2 Cal.App.2d 646, 650, 38 P.2d 482.)

LAFCO has a statutory duty to accept all completed applications (§ 56658, subd. (e)) and to review and

approve or disapprove the application (§ 56375, subd. (a)(1)).

LAFCO argues it has the power under section 56383, subdivision (a) to charge fees to cover its costs. These fees include fees for filing and processing applications. (§ 56383, subd. (a)(1).) LAFCO claims it is entitled to charge anticipated attorney fees as part of the application fee. It contends the indemnification agreement is given in consideration for not requiring anticipated attorney fees to be paid as part of the application fee at the beginning of the process.

As we explain, section 56383 does not apply to post-administrative matters, such as the action that generated the fees at issue here. LAFCO has given no consideration in exchange for the indemnity agreement.

II

Authority Under Section 56383

LAFCO contends it has the authority under section 56383 to require the indemnity agreement.

Section 56383, subdivision (a)(1)-(4) provides: “The commission may establish a schedule of fees and a schedule of service charges pursuant to this division, including, but not limited to, all of the following: [¶] (1) Filing and processing applications filed with the commission. [¶] (2) Proceedings undertaken by the commission and any reorganization committee. [¶] (3) Amending or updating a sphere of influence. [¶] (4) Reconsidering a resolution making determinations.”

***841** LAFCO ignores subdivision (b) of section 56383. That section provides that the fees and charges “shall be imposed pursuant to Section 66016.” (§ 56383, subd. (b).)

Section 66016, subdivision (a) provides, in part: “Prior to levying a new fee or service charge, or prior to approving an increase in an existing fee or ***601** service charge, a local agency shall hold at least one open and public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the data required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request

with the local agency for mailed notice of the meeting on new or increased fees or service charges.”

LAFCO did not comply with section 66016, subdivision (a). When a statute mandates a particular procedure, it does not imply that the procedure may be avoided by inserting a provision in an application form.

Moreover, section 56383 contemplates that the fees charged thereunder will be limited to those necessary to the administrative process, not to post-decision court proceedings. Section 57200, subdivision (a)(1) requires LAFCO’s executive officer to execute and file a certificate of completion upon the “completion of all commission actions,” including the time period allowed to file and act upon requests for reconsideration. Section 56383, subdivision (c) provides, in part: “The executive officer shall provide the applicant with an accounting of all costs charged against the deposited amount. If the costs are less than the deposited amount, the executive officer shall refund the balance to the applicant after the executive officer verifies the completion of all proceedings. If the costs exceed the deposited amount, the applicant shall pay the difference prior to the completion of all proceedings.”

The clear mandate of section 56383, subdivision (c) is that the executive officer must settle the costs charged under the section at the end of the administrative proceedings. The section does not provide for costs that may accrue thereafter.

LAFCO cites section 56107, subdivision (a) for the proposition that the CKH Act must be liberally construed to effectuate its purposes. Yes, liberal construction requires broad rather than narrow construction. (*McKeag v Bd. of Pension Commrs.* (1942) 21 Cal.2d 386, 390, 132 P.2d 198.) But the construction may not be so broad as to ignore the express mandates of the statute. Nothing in section 56383, no matter how broadly construed, authorizes the indemnity agreement.

III

Power Implied from LAFCO’S Purpose

LAFCO contends that it has the power implied from its purpose to require the indemnity agreement.

***602** LAFCO relies on *Zack v. Marin Emergency Radio*

Authority (2004) 118 Cal.App.4th 617, 13 Cal.Rptr.3d 323. In *Zack*, the question was whether a joint powers agency had the implied power to construct and operate an emergency communications system. The court recognized that such agencies have implied powers necessarily arising or reasonably inferred from those expressly granted, or indispensable to fulfill the purposes for which it was organized. (*Id.* at p. 633, 13 Cal.Rptr.3d 323.) But *Zack* did not involve attorney fees. We are constrained by Code of Civil Procedure section 1021. That section provides: “Except as attorney’s fees are specifically provided for by statute, the measure and **842 mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to their costs, as hereinafter provided.”

Here attorney fees in post-administrative actions are not “specifically provided for by statute.” Nor is there a valid agreement for such fees. LAFCO’s remedy is with the

Footnotes

* Barry T. LaBarbera, retired judge of the San Luis Obispo Sup. Ct. assigned by the Chief Justice pursuant to [art. VI, § 6 of the Cal. Const.](#)

1 All statutory references are to the Government Code unless stated otherwise.

Legislature.

The judgment is affirmed. Costs are awarded to respondents.

We concur:

YEGAN, J.


PERREN, J.

All Citations

61 Cal.App.5th 595, 275 Cal.Rptr.3d 837, 21 Cal. Daily Op. Serv. 2067, 2021 Daily Journal D.A.R. 2094

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

1170 West Third Street, Unit 150, San Bernardino, CA 92415-0490
(909) 388-0480 • Fax (909) 388-0481
lafco@lafco.sbcounty.gov
www.sbclafco.org

DATE: SEPTEMBER 14, 2022 
FROM: SAMUEL MARTINEZ, Executive Officer
TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: AGENDA ITEM #11: EXECUTIVE OFFICER'S REPORT

Staff Recruitment:

As noted previously, staff went ahead and switched its recruitment efforts to hire a new Analyst (GIS/Database Management) instead of a Clerk since Angie has opted to stay on for another year as Commission Clerk. Staff is happy to announce that a new Analyst has been hired who starts at the end of the month.

Southern Region LAFCOs:

The Southern Region LAFCOs have decided to skip getting together this quarter and instead meet at its usual Annual Summit that is typically scheduled at the beginning of the year.

CALAFCO NEWS:

- **CALAFCO Annual Conference**

As a reminder, the 2022 CALAFCO Annual Conference will be held at the Hyatt Regency (John Wayne Airport) in Newport Beach from October 19 to October 21, 2022. This is the first in-person CALAFCO conference since the pandemic.

- **CALAFCO Quarterly Report**

Enclosed is the 3rd Quarterly CALAFCO Newsletter, which highlights some legislative updates, the passing of a longtime LA Commissioner and former CALAFCO Board member Jerry Gladbach (who was a strong advocate of the southern region LAFCOs), and other CALAFCO related news.

Enclosure



CALAFCO

NEWSLETTER

August, 2022 Edition

BOARDROOM Brief

AT ITS VIRTUAL meeting on July 22, the Board received the year-end financial reports from our accountant, considered a revised FY 22-23 budget, and resumed their discussion of the Government Code Section 56133 legislative amendment proposal.

The Fourth Quarter financial report found that the association is sound financially. It also disclosed an FY 21-22 net balance that was slightly larger than had been expected in April. Consequently, a revised FY 22-23 budget was also presented to the Board to capture the higher carryover, as well as to remove an erroneously duplicated stipend calculation from the Executive Director's salary line for the upcoming year. Those adjustments, along with another that the Board made to the payroll tax line, resulted in a revised FY 22-23 budget. The differences from the original version approved in April were increased carryover and contingency lines, and reductions to the ED salary and payroll tax lines. The revised budget can be found on the Board meeting portion of the website.

The last action item considered was the reconsideration of the legislative proposal from San Diego LAFCo regarding Government Code §56133. As many will recall, the topic has been a continuing one having been discussed and tabled at the January and April Board meetings. In April, the Board sent the proposal back to the Legislative Committee to complete additional research. Ultimately, the Board approved adding the endeavor to the list of CALAFCO projects, as well as approving a White Paper to guide the effort.

Reports were also received regarding CALAFCO U and the fall conference - including Elections. It was noted that Achievement Awards have an upcoming **deadline of AUGUST 12TH** - so get those nomination packets in ASAP!

The next Board meeting is scheduled for October 21st during the conference.

All agendas, staff reports, and minutes can be found on the CALAFCO website at www.calafco.org. Any questions should be directed to the Executive Director at rlaroch@calafco.org.

SBA 938 Chaptered



Screen shot of Senator Hertzberg presenting SB 938 on the Senate Floor on June 23, 2022

AS MOST of you already know, SB 938 (the Protest Provisions bill) has been successfully concluded. It passed the Senate Floor on June 23rd with a 38-0 vote, and was signed by the Governor on July 1st.

Thank you to the many LAFCOs who rushed to get letters submitted to the Governor after that June 23rd passage.

Given that this is the culmination of an effort that began in 2017, special thanks must again go to the Protest Provisions Working Group members for the YEARS of work on this bill.

The Board of Directors - and all of CALAFCO - extends its sincerest thanks and gratitude to **Jo MacKenzie, José Henriquez, Kai Luoma, Steve Lucas, Paul Novak, Holly Whatley** and, of course, **Pamela Miller** (who stayed on to work the bill in a volunteer capacity.)

Other Legislative Updates

AB 2957, the CALAFCO sponsored Omnibus bill has also been successfully completed. It was passed by the Senate on June 9th, and signed by the Governor on June 21, 2022. Thank you to all of the Legislative Committee members and EOs who submitted proposed changes for the bill. Special thanks to Joe Serrano who had the unenviable task of logging all of those changes!

See **OTHER UPDATES** on Page 3



A Message from the

Executive Director

It's been a busy few months in the office.

We've held two successful and well-received CALAFCO U webinars. Like much of what we do, these could not exist without the volunteerism of our panelists. Thanks to Carolyn Emery (OC), Alison Alpert (BB&K), and Gary Phillips (Bob Murray and Associates) for participating in our June webinar on recruitments and hiring in a post pandemic world. Also, kudos to David Ruderman (Colantuono, Highsmith & Whatley) for organizing our July offering regarding R&T 99, with thanks to panelists José Henriquez (Sacramento), Israel Guevara (OC Auditor-Controller) and Holly Whatley (CHW). I hear time and again how much our members appreciate these offerings!

Our next CALAFCO U is scheduled in September, then they will go on hiatus through the conference and holidays. The target month for our first session in 2023 is February. Thanks to Dawn Mittleman Longoria (Napa) who has been my wing person on these. I could NOT have made it without her!!

Jeni and I are now in full conference mode. Registration opened on July 5th and they have been coming in steadily. If you missed the July 31st Early Bird deadline, the next date to watch is **August 31st** which will be the last day to get the Standard Registration Fee. After that it will be Late Fee only.

Sponsorship packets were sent out and we're seeing some new and returning sponsors already! However, I would ask and encourage you all to send a packet to those in your networks as well.

Our conference planning committee is working hard and the program is taking shape. Many thanks to José Henriquez who is spearheading that effort. Look for more specifics to be announced soon.

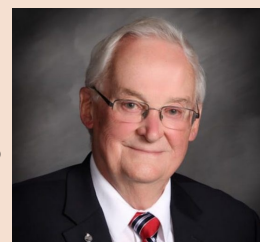
Also, a reminder that **ACHIEVEMENT AWARD NOMINATIONS** are due no later than **August 12th at 5:00 PM** so

See **ED**, column right

IN MEMORIAM

JERRY GLADBACH, Los Angeles LAFCo Commissioner

Sad news from Los Angeles LAFCo who lost long-time commissioner, Jerry Gladbach, on July 14th. Commissioner Gladbach was a representative of the Santa Clarita Valley Water Agency and had held a seat on the L.A. LAFCo where he had served as its Chair for 16 years. Commissioner Gladbach also served as a CALAFCO Director from 2005 to 2013, held the position of CALAFCO Board Chair in 2012, received the Most Outstanding Commissioner Award in 2013, as well as the prestigious and well-deserved Lifetime Achievement Award in 2021.



A resident of the Santa Clarita Valley since 1968, Commissioner Gladbach was a do-er who had also served on boards of the National Water Resources Association and the California Water Agencies Joint Powers Insurance Authority. He was renowned for his knowledge, dedication, kindness, and friendliness and will be missed by all.

CALAFCO sends its deepest condolences to Commissioner Gladbach's family, friends, and co-workers.



Contra Costa LAFCo bid farewell to **Commissioner Igor**

Skaredoff (Contra Costa Resource Conservation District) who served as a Special District member since 2014. During Commissioner Skaredoff's tenure, Contra Costa LAFCo competed numerous Municipal Service Reviews covering fire/emergency medical, reclamation, healthcare, parks & recreation, cemetery, and city services; and acted on over 75 proposals including dozens of boundary changes and reorganizations, and four district dissolutions. Also, during Commissioner Skaredoff's tenure, Contra Costa LAFCo Commissioners were named "Most Effective Commission" at the 2019 annual CALAFCO conference.

See **CONNECTIONS** on Page 4

ED, Continued from left column

get those nominations in to Steve Lucas today!

Another date to note is **September 19th** at 5:00 PM - which is when Director Nominations, Requests for Absentee/Electronic Ballots, and names of voting delegates must be **received**.

And if that wasn't enough, Absentee Ballots are due **October 14th**.

Lastly, a special shout out to Gary Thompson (Riverside) who will be presenting at the CSDA conference in balmy Palm Desert on August 24th. Many thanks, Gary!

Okay, folks, I know that's a lot of dates but you'll also find them all on the Calendar of Events on Page 3.

As usual, please feel free to reach out to me any time that you have any questions or concerns. Enjoy the summer, be safe, and see you at the Conference!!

Upcoming EVENTS



CALAFCO 2022 ANNUAL CONFERENCE

October 19 - 21, 2022

Join us at the **Hyatt Regency Newport Beach John Wayne Airport** on



October 19-21, 2022 for our long-awaited, long-overdue Annual Conference! The program planning committee is finalizing what is sure to be a great program. Go

to calafco.org for more details. See you in Newport Beach!

2023 STAFF WORKSHOP

April 26 - 28, 2023

Learn technical topics in a beautiful setting! Don't miss next year's Staff Workshop on the beautiful grounds of Ironstone Vineyards in Murphys, California.



CALAFCO U explores topics of interest to LAFcos and are offered at no cost to our members.

Sep. 19, 2022: Two Agencies in Dispute: *LAFco's Role in Assisting in Resolving the Conflict*
1:00 PM

TBD, 2023: The Dirty Dozen: *Things I Wish I Knew About The Act*

BOARD MEETINGS:

Oct. 21, 2022 LOCATION: Newport Beach (Conference)

Dec. 2, 2022 LOCATION: Virtual

LEGISLATIVE COMMITTEE MEETINGS:

Sept. 16, 2022 CANCELLED

Oct. 7, 2022 LOCATION: Virtual

Nov. 4, 2022 LOCATION: TBD

OTHER IMPORTANT DATES:

Aug. 12, 2022 ACHIEVEMENT AWARD NOMINATIONS DUE

Sept. 19, 2022 BOARD OF DIRECTOR NOMINATIONS DUE

Sept. 19, 2022 ABSENTEE/ELECTRONIC BALLOT REQUESTS DUE

Sept. 19, 2022 NAME OF VOTING DELEGATE DUE

Oct. 14, 2022 ABSENTEE BALLOTS ARE DUE

Oct. 20, 2022 ELECTIONS

OTHER UPDATES

Continued from Page 1

CALAFCO is currently tracking a total of 29 bills. Included among those are:

AB 897 (Mullin), establishment of a regional climate network. This bill has stalled and is in its second year.

AB 1640 (Ward), would authorize the creation of regional climate networks, as well as set up guidelines. Referred to the Senate Appropriations suspense file.

AB 1773 (Patterson), return of Williamson Act subvention funding. Held under submission in Assembly Appropriations on May 19th.

SB 739 (Cortese), was a gut and amend seeking to create ministerial processes for the annexations of unused golf courses to be used for the development of high rise buildings with 600-700 residences. The author's office notes that it will not be pursuing this bill this year.

SB 852 (Dodd), is similar to AB 1640 in that it addresses the formation of climate resilience districts, however, this bill focuses on enhanced infrastructure financing to fund public capital facilities including projects that address climate change impacts. Scheduled for third reading in the Assembly on August 8th.

SB 1100 (Cortese), which would amend the Brown Act to include provisions and procedures regarding meeting disruptions has passed both houses and is now in Engrossing and Enrolling.

SB 1490, 1491, and 1492, the annual Validation Acts, have now been chaptered.

The legislative season is now nearing a close with August 12th being the last day for fiscal committees to meet and report bills. After that, the remainder of the month will be Floor sessions only, with August 25th being the last day to amend bills on the floor. August 31st is the deadline for each house to pass bills, and the Final Recess will begin upon adjournment on that date.

It is fitting to note at this time that this important work does not happen in a vacuum. The Legislative Committee is composed of 32 members who have committed to give generously of their time and expertise. CALAFCO could not do what it does without them, so our sincerest thanks to the following:

Board Appointees - Bill Connelly, Gay Jones, Mike Kelley, Chris Lopez, Jo MacKenzie, Daron McDaniel, Mike McGill, Margie Mohler, Anita Pague, and Josh Susman.

Staff Voting Members - Clark Alsop, Gary Bell, Mark Bramfitt, Scott Browne, Carolyn Emery, René LaRoche, Steve Lucas, Kai Luoma, Jennifer Stephenson, and Gary Thompson.

Staff Alternates - Rob Fitzroy, Paula Graf, Joe Serrano, and Paula de Sousa.

Advisory - Tara Bravo, Crystal Craig, Brandon Fender, Sara Lytle-Pinhey, Priscilla Mumpower, Erica Sanchez, Jim Simon, and Luis Tapia.



CONNECTIONS

Continued from Page 2

Contra Costa also welcomed Commissioner Patricia Bristow in June as its new Special District member. Commissioner Bristow currently serves as Board Member on both the Byron-Brentwood-Knightsen Union Cemetery District and the Byron Sanitary District and serves on the Contra Costa County Transportation Authority Citizen Advisory. Commissioner Bristow has lived in Brentwood and Byron her entire life and was a teacher and counselor in the Brentwood Unified School District for 34 years. Her family has farmed in the community for over 100 years.

NEW Roles

LUIS TAPIA promotes to OC AEO

Orange County LAFCo announced the promotion of Luis Tapia to the Assistant Executive Officer position. Luis brings a great deal of experience to the role having been with Orange LAFCo since 2016 and is an Advisory member to the CALAFCO Legislative Committee.

NATASHA CARBAJAL hired as Santa Barbara's new Analyst-Clerk

Santa Barbara LAFCo is pleased to welcome Natasha Carbajal as its new Analyst/Clerk. Natasha had been providing clerking services for

about 10 months while she was with the Santa Barbara Clerk of the Board's Office. She comes to LAFCo with a broad range of skills and abilities, including great local government experience and all around good public service skills. Natasha has a Master of Public Administration from California State University Northridge and a Bachelor of Arts, Sociology from University Channel Islands.

MORGAN BING welcomed as SLO Clerk Analyst

Morgan Bing has joined San Luis Obispo LAFCo as their new Clerk Analyst. She comes to SLO LAFCo with a Bachelors and Masters degree from Cal Poly San Luis Obispo and four years of experience. SLO LAFCo is very excited to have her on their team!

SAFARINA MALUKI becomes Clerk in Monterey

Monterey LAFCo has welcomed Safarina Maluki as their new Clerk to the Commission/Office Administrator. Safarina has a wide range of responsibilities in support of the Commission and staff, and she looks forward to getting to know her colleagues around the State!

Congratulations one and all!

Associate Member SPOTLIGHT

The information below is provided by the Associate member upon joining the Association. All Associate Member information can be found in the CALAFCO Member Directory

E MULBERG & ASSOCIATES

Services include Municipal Service Reviews, Sphere of Influence updates, changes in organization, staff support, CEQA analysis, and assistance with applications to LAFCo.

To learn more about E Mulberg & Associates, visit their website at www.emulberg.com, or contact Elliot Mulberg at Elliot@emulberg.com.



LOS ANGELES COUNTY SANITATION DISTRICTS

Provides sewer service to 78 cities and unincorporated areas of LA County. Before a district can provide sewage service to a territory, it must be within its jurisdictional boundaries. Donna Curry administers the annexation program, including processing applications for annexation.

To learn more about LACSD visit their website at www.lacsd.org, or contact Donna Curry at dcurry@lacsd.org

CALAFCO wishes to thank all of our Associate Members for your ongoing support and partnership. We look forward to highlighting you all in future Newsletters.