

LOCAL AGENCY FORMATION COMMISSION FOR SAN BERNARDINO COUNTY

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DATE: NOVEMBER 14, 2012

FROM: KATHLEEN ROLLINGS-McDONALD, Executive Officer
MICHAEL TUERPE, Project Manager



TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: **AGENDA ITEM #7:** Reconsideration of LAFCO 3152 – Service Review and Sphere of Influence Update for Twentynine Palms Public Cemetery District

SUBMITTED BY:

Reconsideration Request by LAFCO Executive Officer

RECOMMENDATION:

Staff recommends that the Commission take the following actions:

1. Grant the request for reconsideration submitted by the LAFCO Executive Officer at the June 20, 2012 hearing.
2. Amend the Service Review Determinations 2, 4, and 6 for LAFCO 3152, as provided in the report presented at this hearing and file the amended report.
3. Determine that no change to the adopted Notice of Exemption is required by this action.
4. Reaffirm the Commission's determination of a zero sphere of influence designation for the Twentynine Palms Public Cemetery District (LAFCO 3152) with the following amended conditions:
 - a. The District shall be required to conduct a forensic audit of its Endowment Care Fund to accurately account for the principal impressed with a public trust required to maintain the facilities in perpetuity;
 - b. For the next five years the District is required to provide the Commission annually with a copy of its adopted preliminary and final budget, its mid-year budget review, and copies of the audits presented to the District;

- c. The District is required to provide the County Auditor with copies of all audits and current budgets and the State Controller with copies of all audits as required by law;
 - d. The District is required to adopt and implement an appropriation limit no later than May 1, 2013 and provide the board approved documentation to LAFCO; and
 - e. LAFCO staff is to provide biannual updates to the Commission until the issues are resolved.
5. Adopt LAFCO Resolution 3163 setting forth the Commission's findings and determinations as amended.

Should the Commission determine that a different sphere of influence determination be made based upon the information submitted by LAFCO staff and the Board of Trustees, the Commission would need to modify Recommendations 3, 4 and 5 as follows:

3. For environmental review certify that the sphere of influence modification for the Twentynine Palms Cemetery District (LAFCO 3152) is statutorily exempt from environmental review and direct the Clerk to file a new Notice of Exemption within five (5) days.
4. For LAFCO 3152, approve a modified sphere of influence for the District, to include the communities of Twentynine Palms and Wonder Valley.
5. Continue the adoption of the Resolution setting forth the Commission's findings and determinations to the January 16, 2013 hearing.

BACKGROUND:

At the May 16 hearing, the Commission considered the service review/sphere of influence update for the Twentynine Palms Cemetery District ("District") as a part of the overall Twentynine Palms community review. At the hearing a series of issues, financial and operational, were identified for the agency. At the conclusion of the hearing, the Commission took the following actions:

- Adoption of a zero sphere of influence based upon financial and operational issues identified in the report and at the hearing (map included as Attachment #1);
- Modifications to the service description of the District's authorized Cemetery function;
- Imposition of conditions requiring ongoing reporting to LAFCO;

- Direction to LAFCO staff to submit the Commission's determinations to the Grand Jury and District Attorney Public Integrity Unit for further evaluation; and
- Continuation of the adoption of the Commission's resolution making the determinations to the June 20 hearing.

An additional element identified was that should the District's governance practices or financial position not improve, LAFCO staff would return to the Commission with an immediate service review with the recommendation for dissolution of the agency with the designation of a successor agency to assume the functions and services of the District.

Following the May hearing, the District's Board of Trustees undertook an effort to finally respond to our questions so that LAFCO staff could provide a complete service review. Based upon these efforts, at the June hearing, the staff requested and the Commission approved reconsideration of the District's service review. This position was based upon the anticipated completion of the audits requested by staff and the submission of supplemental information from the District responding to the questions posed by LAFCO staff over the preceding year. Reconsideration was originally scheduled for the August 15 hearing; however, the Commission approved the District's request for continuance on the basis that its audit for Fiscal Year 2010-11 was nearing completion and was relevant to the consideration.

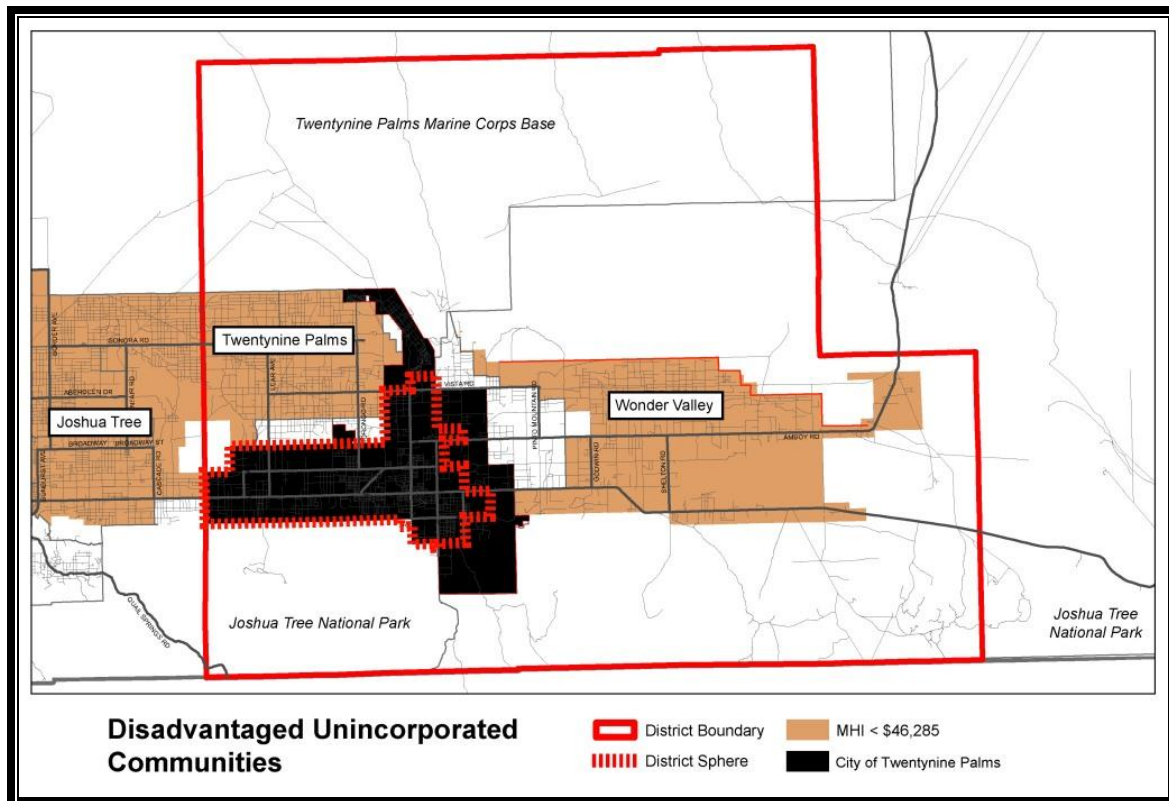
LAFCO staff now has the information necessary to conduct a complete service review and can proceed with answering the questions raised during the service review process. To reiterate, the Commission has already considered and approved the service review and sphere update for the District. The staff's request to reconsider its determination reopens the public hearing for further discussion of the service review determinations and sphere of influence update. This reconsideration is not being processed pursuant to Government Code Section 56895 since the resolution related to processing of LAFCO 3152 was not issued. However, the Commission's reconsideration policy identifies that reconsideration will be granted only when new information is provided or when significant factors have changed or were overlooked. Clearly, significant factors have changed with the submission of the information from the District so reconsideration is appropriate. The information which follows provides the new information received and the staff's analysis of this data for an amended service review and sphere of influence update.

RECONSIDERATION OF SERVICE REVIEW DETERMINATIONS:

The reconsideration provides for amendment of three of the seven factors for consideration mandated by Government Code Section 56430. Attachment #2 contains a revised and complete service review and sphere of influence update including the new information provided by the District and the County. For this reconsideration the items to be reviewed include Service Review Determinations 2 (disadvantaged unincorporated communities), 4 (financial ability), and 6 (government structure).

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

The following is new information provided by the LAFCO staff based upon the policies adopted by the Commission at the August 2012 hearing related to definition of disadvantaged unincorporated communities. The map shown below identifies the Disadvantaged Unincorporated Communities (DUCs) within and adjacent to the District's existing boundaries. For a cemetery district, this determination has little bearing upon the review of the services it provides, but is a required element for consideration.



4. Financial ability of agencies to provide services.

The May 2012 staff report identified that staff requested additional material from the District in order to provide for a proper review. These items and the follow-up response since May are as follows:

- *Please provide copies of the FY 2009-10 and FY 2010-11 financial statements.*

District Response: The District has completed and provided copies of these audits.

- *Please provide copies of the three most recent adopted budgets.*

District Response: The District has adopted a balanced budget for FY 2012-13 and has provided LAFCO with copies of the three most recent adopted budgets.

- *It was identified that the District utilizes a local bank for deposits and then transfers funds from the local bank to the County Treasury. It was also identified that payments are made from the County Treasury and not the local bank. However, LAFCO staff has been apprised of the District's bounced checks to Whitewater Rock and Supply. If processed by the County Treasury, the County Treasury would have issued the warrants only if adequate funds were present. Please explain any payment activity from the local bank account. LAFCO staff is also aware that the payment to Whitewater Rock and Supply came from the District's brokerage account. Please provide an outline of the brokerage account and its use for payment and/or receipt of revenues.*

District Response: The District holds most of its Endowment Care funds in an investment account with Wells Fargo with the remainder held in the County Treasury. The Wells Fargo account splits into two categories: Principal and Interest. Therefore, the District is tracking its Endowment Care principal and interest. Since 2006, Endowment Care funds received are deposited into the County Treasury account. In 2011, the District chose to use funds from the Wells Fargo Endowment Interest Cash account to pay for major cemetery ground maintenance expenses.

Additionally, the District has two accounts with Pacific Western Bank. The first account is the petty cash account. As expenditures are made, receipts are accumulated and then forwarded to the County Treasurer for reimbursement. Upon receipt, the reimbursement checks are deposited back into the petty cash account. The District does this because it has experienced problems with the County issuing warrants in a timely manner.

The second account with Pacific Western Bank is a holding account. This account receives monies from payment of goods and services. Monthly, the District prepares checks and the appropriate documentation to forward the fund to the County Treasury for deposit into the appropriate fund. The District's policy is not to make any other disbursements from this account.

The District has recently revised its monthly Endowment Fund report and created a new report which shows the two Pacific Western accounts.

This remainder of this Determination is organized as follows:

- Section A outlines the general operations of the District.
- Section B includes independently audited financial summaries up to the most recently audited year, FY 2010-11.
- Section C discusses the District's budget and budgetary practices.
- Section D provides additional financial information.

- Section E is a summary and conclusion to the District's financial situation.

This additional material is included in Attachment #3 and reviewed below. The following is new information provided by the District with staff's analysis related to Service Review Determination 4.

A. Audits

The following four figures show the District's trends for each of its three funds since FY 2005-06. The General Fund had practically no fund balance as of June 30, 2011. The Endowment Care Fund increased 14% since 2005-06 but the tracking of its principal balance remains in question. The Pre-Need Burial Fund is healthy and experiences an annual increase. As for auditing practice, the District has not included the required Management Discussion and Analysis to supplement the basic financial statements.

1. General Fund

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

A trend of operating deficits is a key indicator of the financial health of an agency. The figure below shows the General Fund balance for the time period. The fund balance has decreased by 95% within five years with Total Revenues increasing by 30% and Total Expenditures increasing by 107%. Expenditures have exceeded revenues annually since 2005-06, resulting in an annual decline in fund balance. However, the Pre-Need Burial Fund receives revenues for burial expenditures and transfers funds to the General Fund for this purpose when the service is provided. Even with this Transfers In, for the past six audited years the gap between Fund Balance Beginning and Fund Balance Ending widens in a decreasing manner. Most pressing is the severe decrease from \$125,796 to \$8,211 in Fiscal Year 10-11; the decrease is attributed to a capital outlay of \$100,938, which has not been identified specifically in the materials. What this reveals is a lack of reserves to cushion necessary capital purchases. Moreover, any unexpected incidents could further challenge the General Fund, prompt cost reductions, fee increases, or cause the General Fund to enter into negative territory and result in a running deficit.

| Figure 1. Statement of Rev, Exp, & Changes in Fund Balance - General Fund | | | | | | | |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|-----------------|-----------------|
| | 2005-06 | 2006-07 | 2007-08 | 2008-09 | 2009-10 | 2010-11 | 5 yr Var |
| REVENUES | | | | | | | |
| Charges for services | 30,496 | 24,892 | 14,052 | 17,325 | 19,533 | 19,868 | -35% |
| Property taxes | 94,481 | 128,195 | 142,703 | 152,238 | 136,931 | 145,332 | 54% |
| Other | 20,635 | 15,830 | 39,834 | 30,904 | 40,554 | 24,808 | 20% |
| Total Revenue | \$ 145,612 | \$ 168,917 | \$ 196,589 | \$ 200,467 | \$ 197,018 | \$ 190,008 | 30% |
| EXPENDITURES | | | | | | | |
| Salaries & Benefits | 112,390 | 129,663 | 146,844 | 156,003 | 159,959 | 170,364 | 52% |
| Services & Supplies | 31,530 | 37,691 | 45,854 | 33,727 | 35,078 | 50,256 | 59% |
| Other | 22,092 | 21,847 | 35,214 | 38,996 | 28,388 | 122,267 | 453% |
| Total Expenditures | \$ 166,012 | \$ 189,201 | \$ 227,912 | \$ 228,726 | \$ 223,425 | \$ 342,887 | 107% |
| Revenues less Expend. | (20,400) | (20,284) | (31,323) | (28,259) | (26,407) | (152,879) | 649% |
| OTHER FINANCING | | | | | | | |
| Transfers In | 23,221 | 18,666 | 15,366 | 9,996 | 17,142 | 35,294 | 52% |
| Fund Balance Begin | 168,078 | 170,899 | 169,281 | 153,324 | 135,061 | 125,796 | -25% |
| Fund Balance End | \$ 170,899 | \$ 169,281 | \$ 153,324 | \$ 135,061 | \$ 125,796 | \$ 8,211 | -95% |

General Fund Liquidity

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. At the end of FY 2010-11, unassigned fund balance of the general fund was \$8,211, which is the same as total fund balance. Unassigned fund balance represents a paltry two percent of total general fund expenditures. Therefore, the liquidity of the general fund is practically non-existent.

| Figure 2: GENERAL FUND LIQUIDITY | | | | | | |
|---|----------------|----------------|----------------|----------------|----------------|----------------|
| General Fund (GF) | 2005-06 | 2006-07 | 2007-08 | 2008-09 | 2009-10 | 2010-11 |
| Total GF expenditures | \$ 166,012 | \$ 189,201 | \$ 227,912 | \$ 228,726 | \$ 223,425 | \$ 342,887 |
| Unassigned GF fund balance | \$ 170,899 | \$ 169,281 | \$ 153,324 | \$ 135,061 | \$ 125,796 | \$ 8,211 |
| (as a % of total expenditures) | 103% | 89% | 67% | 59% | 56% | 2% |
| Total fund GF balance | \$ 170,899 | \$ 169,281 | \$ 153,324 | \$ 135,061 | \$ 125,796 | \$ 8,211 |
| (as a % of total expenditures) | 103% | 89% | 67% | 59% | 56% | 2% |
| sources: Balance Sheet and Statement of Revenues, Expenditures, and Changes in Fund Balance | | | | | | |

Unassigned Fund Balance

The Government Finance Officers Association (“GFOA”) currently recommends that governments establish a formal policy on the level of unrestricted¹ fund balance that should be maintained in the general fund. The current GFOA policy is vague in stating that the “adequacy of unrestricted fund balance in the general fund should be assessed based upon a government’s own specific circumstances.” Though the existing GFOA policy is not specific, it recommends that regardless of size, general-purpose governments should maintain unrestricted fund balance in their general fund of “no less than two months of regular general fund operating revenues or expenditures.” A general fund balance of a lesser level exposes the general fund to the risk of not being able to meet cash flow requirements, economic uncertainties, or other financial hardships.

As shown on the chart above, the District’s unrestricted fund balance until 2009-10 was more than two months of regular general fund operating expenditures. Therefore, the District was above the threshold and met the requirements of the GFOA policy. However, the 2011-12 unrestricted balance of only \$8,211 provides for only one week of expenditure activity. Further, the District has not established a formal policy on the level of unrestricted fund balance that should be maintained in the general fund.

2. Endowment Care Fund

The permanent fund labeled "Endowment Care" provides resources that are legally restricted to the extent that only earnings, but no principal, may be used for purposes that support the reporting government's programs.

Throughout the service review process the District did not provide information demonstrating adequate tracking of the Endowment Care Fund. The figure below shows the fund balance of the Endowment Care fund for the same time period identified for the general government fund. In general, the same questions from the May staff report remain: Why did the principal amount decrease for two of the years shown? How did principal decrease in 2006-07 while overall fund balance increased? For FY 2010-11, how did principal decrease by \$47,000 while fund balance overall decreased by \$11,500? In addition, at a minimum, taking the information from the audits recently provided for revenues received during the period for deposit into the restricted Endowment Care Fund, the balance should be \$165, 213, \$4,517 more than shown. Since the Endowment Care Fund is impressed with the public trust, the reconciliation of this fund is of paramount concern to LAFCO staff. It is the staff’s recommendation that the District be required to conduct a forensic audit of this fund to assure the public’s trust is maintained so that the perpetual operation of the facility can be assured.

¹ GASB Statement No. 54 removed Unrestricted fund balance and added Unassigned fund balance.

Figure 3. Statement of Rev, Exp, & Changes in Fund Balance - Endowment Care Fund

| | 2005-06 | 2006-07 | 2007-08 | 2008-09 | 2009-10 | 2010-11 | 5 yr Var |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------|
| REVENUES | | | | | | | |
| Charges for services | 5,630 | 4,060 | 4,090 | 2,720 | 1,530 | 2,450 | -56% |
| Interest & investment | 159 | 15,927 | 26,141 | 2,740 | 10,103 | 6,966 | 4281% |
| Total Revenue | \$ 5,789 | \$ 19,987 | \$ 30,231 | \$ 5,460 | \$ 11,633 | \$ 9,416 | 63% |
| EXPENDITURES | | | | | | | |
| Total Expenditures | \$ - | \$ - | \$ - | \$ - | \$ 10,981 | \$ - | |
| Revenues less Expend. | 5,789 | 19,987 | 30,231 | 5,460 | 652 | 9,416 | 63% |
| OTHER FINANCING | | | | | | | |
| Transfers Out | \$ - | \$ - | \$ - | \$ - | \$ - | \$ 21,000 | |
| Fund Balance Begin | 304,923 | 310,712 | 330,699 | 360,930 | 366,390 | 367,042 | 20% |
| Fund Balance End | \$ 310,712 | \$ 330,699 | \$ 360,930 | \$ 366,390 | \$ 367,042 | \$ 355,458 | 14% |
| Endowment Principal | \$310,712 | \$154,423 | \$158,513 | \$161,223 | \$207,876 | \$160,696 | -48% |
| * Information how the Endowment Principal decreased in 2006-07 and 2010-11 is unavailable | | | | | | | |

3. 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 which transfers funds from its earnings to the General fund to finance burial expenditures.

The District provided information tracking the Pre-Need Burial Fund. This fund experiences an annual increase and appears to be healthy. However, no explanation has been provided to explain changes over the period reviewed, such as how the 2008-09 net assets was divided between restricted and unrestricted. In addition, the transfers shown for this account match the amounts deposited in the general government account, no portion of these funds have been deposited into the endowment care.

| Figure 4. Net Assets - Pre-Need Burial (Fiduciary Fund) | | | | | | | |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-----------------|
| | 2005-06 | 2006-07 | 2007-08 | 2008-09 | 2009-10 | 2010-11 | 5 yr Var |
| NET ASSETS | | | | | | | |
| Unrestricted | 239,640 | 255,806 | 269,777 | 90,499 | 93,733 | 118,042 | -51% |
| Restricted | | | | 190,522 | 192,276 | 198,812 | |
| Total net assets | \$ 239,640 | \$ 255,806 | \$ 269,777 | \$ 281,021 | \$ 286,009 | \$ 316,854 | 32% |
| ADDITIONS | | | | | | | |
| Contributions | 14,031 | 23,691 | 16,545 | 13,357 | 15,885 | 28,893 | 106% |
| Interest | 7,989 | 11,141 | 12,792 | 7,883 | 4,047 | 2,205 | -72% |
| Total additions | \$ 22,020 | \$ 34,832 | \$ 29,337 | \$ 21,240 | \$ 19,932 | \$ 31,098 | 41% |
| DEDUCTIONS | | | | | | | |
| Transfers out | \$ 23,221 | \$ 18,666 | \$ 15,366 | \$ 9,996 | \$ 14,944 | \$ 253 | -99% |
| NET ASSETS | \$ 239,640 | \$ 255,806 | \$ 269,777 | \$ 281,021 | \$ 286,009 | \$ 316,854 | 32% |

4. Management Discussion in Audit

Accounting principles generally accepted in the United States require that the management's discussion and analysis and budgetary comparison information be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board. The District has elected to omit the Management Discussion and Analysis information for at least the past six audited years. LAFCO staff has indicated that without an understanding of the context for the agency's operations, as the management discussion provides, it is difficult to assess the financial operations of an agency. The questions identified in the preceding three sections could have been addressed if the District had completed this mandatory portion of the audit. Staff recommends, as a condition of the service review/sphere of influence update, that the District be required to include this information in all future audits.

B. FY 2012-13 Budget

The May staff report identified the following items as serious concerns regarding the District's FY 2012-13 budget:

- The lack of an adopted budget by the District board of trustees.
- The lack of budgeted revenues for the year, representing 42% of expenditures.
- The small amount of reserves, representing 7% of expenditures. The budgeting literature recommends a minimum of 10% reserves for non-enterprise districts.
- The budget did not balance and is lopsided heavily towards expenditures with no identification of the source of funds to balance.

- The lack of a business-like adopted budget adhering to generally accepted budgeting standards.

Since the May report, the District board has adopted a revised and balanced budget which is shown below and included as a part of Attachment #3.

| | 2010-11 | 2011-12 | 2012-13 | 2 yr Var |
|-------------------------|-----------------|------------------|------------------|-------------|
| | Audit | Actual | Budget | |
| REVENUES | | | | |
| Charges for services | 19,868 | 30,420 | 25,000 | 26% |
| Property taxes | 145,332 | 158,048 | 171,000 | 18% |
| Other | 24,808 | 282 | 2,500 | -90% |
| Total Revenue | \$ 190,008 | \$ 188,750 | \$ 198,500 | 4% |
| EXPENDITURES | | | | |
| Salaries & Benefits | 170,364 | 154,930 | 153,348 | -10% |
| Services & Supplies | 50,256 | 47,992 | 49,600 | -1% |
| Other | 122,267 | 15,000 | 20,000 | -84% |
| Total Expenditures | \$ 342,887 | \$ 217,922 | \$ 222,948 | -35% |
| Revenues less Expend. | (152,879) | (29,172) | (24,448) | -84% |
| OTHER FINANCING | | | | |
| Transfers In | 35,294 | 91,198 | 24,448 | -31% |
| Fund Balance Begin | 125,796 | 8,211 | 70,237 | |
| Fund Balance End | \$ 8,211 | \$ 70,237 | \$ 70,237 | -31% |

The materials show that an adequate reserve was not provided in FY 2010-11 (Audit data) but was re-established in FY 2011-12 (budget information). However, the documents identify a transfer in of \$91,198 but the source of these funds is unknown. The District has been requested to provide identification of what accounts were tapped to provide for the \$91,198 transferred in. At the time this report was published, this question remains unanswered and staff will update the Commission at the hearing.

As for the \$122,267 capital outlay identified in Fiscal Year 2010-11 questioned by LAFCO staff, the District provided an email description on November 13, 2012 that the District constructed four "niche" units and a memorial wall along with landscaping for \$100,938. A niche unit is the repository for cremated remains but LAFCO staff has no information as to the size of the niche units at this time. Further information will be provided at the hearing if available from the District.

While staff believes that the District is working to complying with the standards for operation of an independent special district, most specifically a public cemetery district,

serious concerns remain with its financial operations. This agency holds in excess of \$650,000 in its Pre-Need and Endowment Funds but cannot provide an explanation of its accounting. This should be resolved for the future of this facility and its service to the residents of the area.

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

The following is new information provided by the County with staff's analysis related to Service Review Determination VI.

The May staff report identified that the Board terms were not staggered in two-year increments (i.e. 2014 and 2016); one seat had a term expiration of 2013. The County Clerk of the Board is responsible for maintaining the records and coordinating the appointment process. LAFCO staff worked with the Clerk of the Board to comply with provisions of Public Cemetery District Law by staggering the terms in even years and that, "Any vacancy in the office of a member appointed to a board of trustees shall be filled *promptly*..."

On October 23, 2012 the County Board of Supervisors approved an item to establish a one-time transition term of three years for one seat which will result in an expiration of 2016 rather than 2017. The transition term for that seat will begin February 1, 2013, with an appointment sometime before. This establishes two classes of seats with a proper two-year stagger between them. The current board composition, positions, and revised term expiration dates are shown below:

| Board Member | Title | Term |
|----------------------|-------------|----------|
| Elizabeth Laferriere | Chairperson | Jan 2016 |
| Sandra Gray | Trustee | Jan 2016 |
| April Gibson | Trustee | Jan 2016 |
| Omer Snodgrass | Trustee | Jan 2014 |
| Jennifer McBain | Trustee | Jan 2014 |

As identified in the May report, Public Cemetery District Law requires three officers for a board of trustees: chairperson, vice-chairperson, and a secretary; however the secretary may be either a trustee or a district employee (§9028). Since then, the District has replaced its lead staff member and appointed that position (administrative assistant) as the secretary. The information provided by the District does not identify that the board has appointed a vice-chairperson. Staff recommends that the District appoint a board member as the vice-chairperson as required by law.

CONCLUSION TO RECONSIDERATION OF SERVICE REVIEW DETERMINATIONS

In the General Fund, expenditures have exceeded revenues annually since 2005-06, resulting in an annual decline in fund balance. Most pressing is the severe decrease from \$125,796 to \$8,211 in one year; the decrease is attributed to a capital outlay of \$100,938. However, in the following Fiscal Year, a transfer in of more than \$90,000 resolved this concern but the source of the funds has not been provided. What this reveals is a continuing concern for the financial operations of this agency.

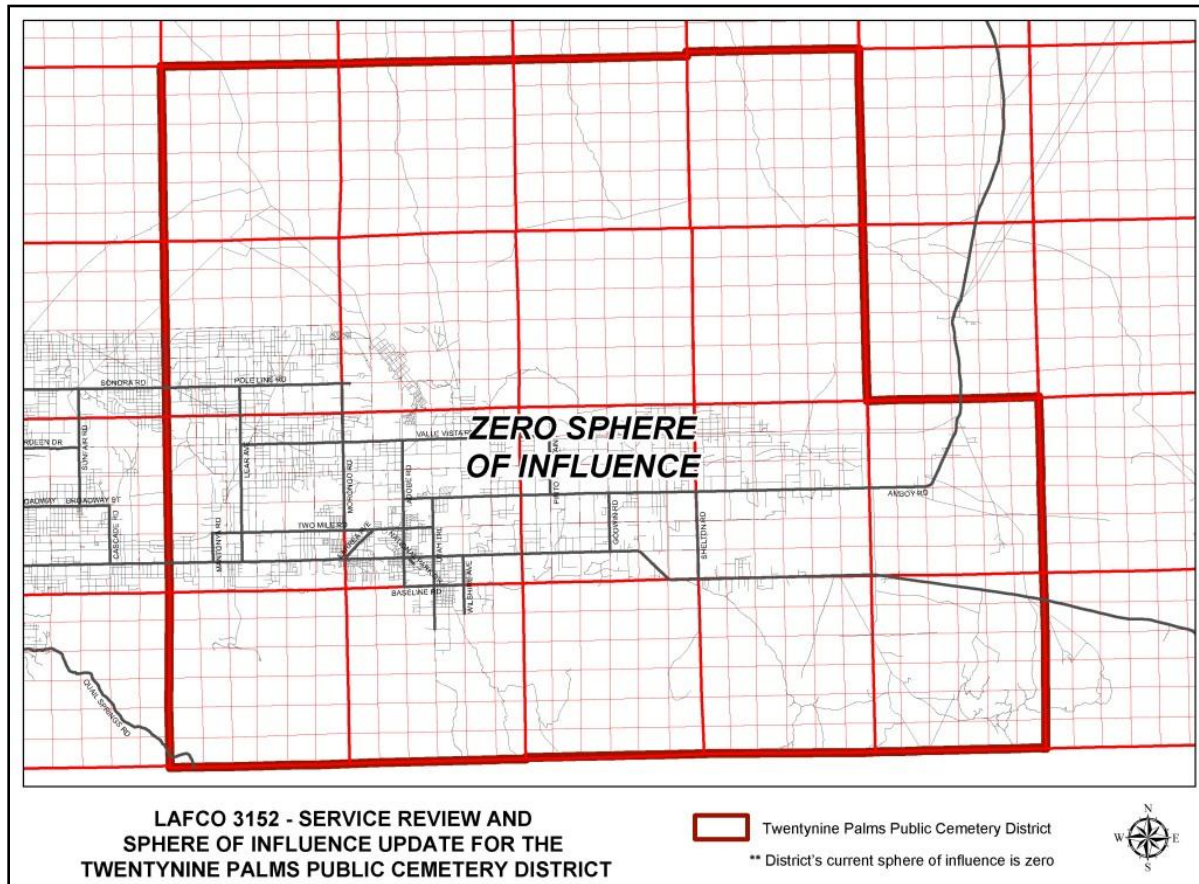
As for the Endowment Fund, throughout the service review process the District did not provide information demonstrating adequate tracking of the Endowment Care Fund and questions remain regarding its principal balance, the transfers out for operations, and the transfers in from the pre-need fund when necessary. Since the Endowment Care Fund is impressed with a public trust, LAFCO staff recommends that the District conduct a forensic audit to determine what the restricted balance should be, what the interest available for use by the District is, and establish written policies for its operation.

Structurally, the District Board of Trustees has made changes to its staff and is taking a more active role in governance. The required audits have been completed and the FY 2011-12 audit engagement is underway. The County Board of Supervisors has aligned the board terms of office so that proper staggering is now in place. At one point in the service review process, the District governed with three trustees. Currently, the District has a full five-member board. Remaining is the requirement for the board to fill the officer position of vice-chairperson.

The May staff report identified other areas of non-compliance such as the lack of an appropriations limit. The District has indicated that adoption of the FY 2012-13 appropriations limit is scheduled for the District's November 29 hearing. As indicated in the Recommendations for Commission action on page 1, staff recommends that the District provide LAFCO with the appropriation limit resolution when adopted.

RECONSIDERATION OF SPHERE OF INFLUENCE UPDATE:

Given the analysis above for the service review factors, staff's position is that the new information provided by the District and reviewed by staff does not alter the staff's primary recommendation to the Commission nor should the Commission's sphere of influence designation of a zero sphere of influence be changed. Therefore, staff recommends that the Commission affirm the designation of a zero sphere of influence designation for the Twentynine Palms Public Cemetery District (LAFCO 3152).



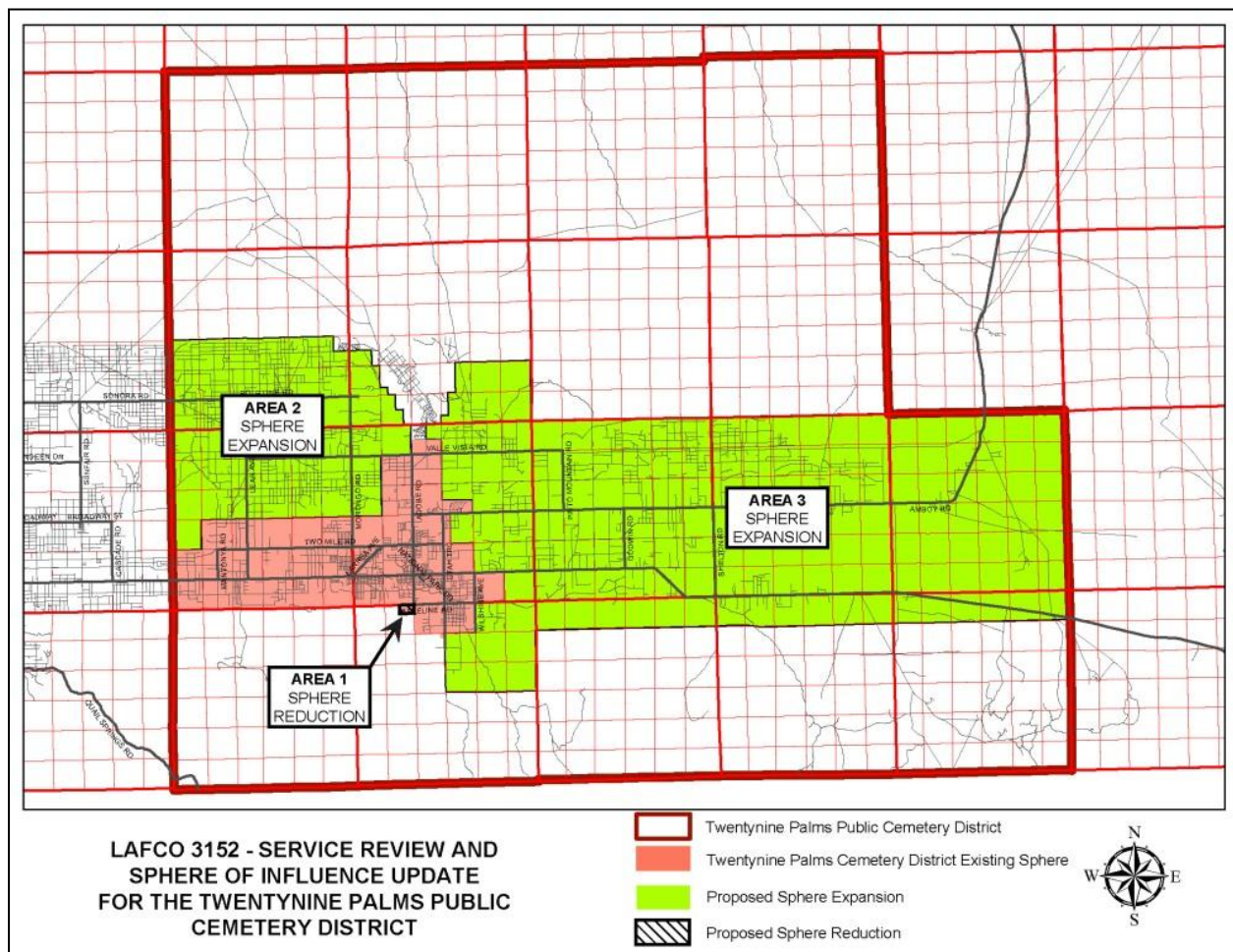
This determination indicates the Commission's concern with the operations of the District and the potential for another agency to undertake this operation. The Commission is mandated to return for its second cycle review for the South Desert in five years and over this period LAFCO staff has identified conditions for continuing review of the District. If the operations of the District improve, at that time the Commission may return the Agency's sphere of influence.

However, contrary to staff's recommendation, should the Commission determine that the financial and operational issues outlined in this report and those outlined at the May 2012 hearing have been satisfied and that the District's Board of Trustees have made sufficient strides in bringing controls to the agency that a zero sphere of influence is no longer appropriate the following considerations should be made.

Should the Commission choose this option staff would recommend that the sphere of influence be modified to include those areas as outlined in the May 2012 sphere of influence update to include the Commission's definition for the Twentynine Palms community and the remainder of the Wonder Valley community, as reflected by the boundaries for County Service Area 70 M or the San Bernardino County Fire Protection District Zone FP-4. This would retain some areas outside the sphere of influence which are

currently within the boundaries of the District. In order to accomplish this option, staff would advise the Commission to approve the following sphere of influence amendments as shown on the map which follows:

- Reduce the District's existing sphere by approximately 65 acres (Area 1) to exclude an area along the south comprising of previously privately-owned parcels that are now generally public lands within the Joshua Tree National Park;
- Expand the sphere for the District along the northwest by approximately 28,200 acres (Area 2) which is within the community definition for Twentynine Palms;
- Expand the sphere for the District along the east by approximately 99,271 acres (Area 3) which is within the community definition for Twentynine Palms and the remainder of the Wonder Valley community, as reflected by the boundaries for County Service Area 70 M or the San Bernardino County Fire Protection District Zone FP-4.



DISTRICT RESPONSE:

The District has provided a letter outlining the measures it has taken over the past few months. As a part of this response, the District has submitted its request that the Commission reconsider its previous sphere of influence designation and to provide the District with a coterminous sphere of influence at this hearing. The District's response is included as Attachment #4.

This request does not comply with the option that the staff provided at the May hearing which identified that the District's existing boundary is not reflective of the community of Twentynine Palms and Wonder Valley. Therefore, LAFCO staff cannot support this request as an option. As outlined above, however, should the Commission choose to provide the agency with a sphere of influence, staff would recommend only the one reflective of these communities.

ENVIRONMENTAL DETERMINATION:

The Commission's Environmental Consultant, Tom Dodson and Associates, has recommended that Commission approval of any sphere designation option would not alter the existing operations or obligations of the service provider in the area and would not adversely affect any existing physical facilities. Therefore, either action would be statutorily exempt from environmental review. Mr. Dodson's response is included as Attachment #5.

Retain a Zero Sphere of Influence – Commission's Prior Action

At the May hearing, the Commission certified that a zero sphere of influence designation for the District was statutorily exempt from environmental review, and directed the Executive Officer to file the Notice of Exemption within five days. This filing was completed. Should the Commission's reconsideration of LAFCO 3152 result in the affirmation of this prior decision as recommended by staff, then the prior environmental determination will be unaffected and no further environmental determinations are necessary.

Commission Designation Other Than a Zero Sphere of Influence

However, should the Commission determine to adopt a different sphere of influence designation through this reconsideration, the Commission would need to make a new environmental determination. As outlined in the letter from the Commission's environmental consultant, Tom Dodson of Tom Dodson and Associates, dated May 4, 2012 the community definition option would be statutorily exempt from environmental review. Therefore, staff would recommend that the Commission would need to adopt a new environmental determination to certify that the modified sphere of influence designation for the District (LAFCO 3152) is statutorily exempt from environmental review, and direct the Clerk to file the Notice of Exemption within five days.

ADDITIONAL DETERMINATIONS:

- As required by State Law notice of the reconsideration by the Commission was provided in the same manner as the original consideration through publication in a newspaper of general circulation, the *The Desert Trail* for the August 2012 hearing. 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 Commission Proposal/Application Processing Policy #9, 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 was provided to affected and interested agencies, County departments, and those agencies and individuals requesting mailed notice.
- Comments from landowners/registered voters and any affected agency will need to be reviewed and considered by the Commission in making its determinations.

CONCLUSION:

Staff's position related to the sphere of influence designation is that the new information provided by the District does not warrant a change in the Commission's zero sphere designation for the District. However, staff would commend the District for the steps it has taken over the past few months to rectify some of the deficiencies identified in the May staff report. Based upon these efforts, staff recommends that the Commission rescind its previous direction to submit the Commission's determinations to the Grand Jury and District Attorney Public Integrity Unit as a formal complaint.

Staff recommends that the Commission take the actions listed on pages 1 and 2 to amend the service review determinations and affirm its prior zero sphere of influence designation.

However, should the Commission determine that the District has sufficiently addressed the concerns previously identified to allow for a sphere of influence designation, staff has provided the Commission with the actions necessary to complete that option and recommends that it be limited to generally the territories of the communities of Twentynine Palms and Wonder Valley as defined by the Commission.

KRM/MT

Attachments:

1. [Map of LAFCO 3152 – Approved by the Commission in May 2012](#)
2. [Amended Service Review and Sphere of Influence Update for Twentynine Palms Cemetery District](#)
3. [New Information Received from the District](#)
 - a. FY 2009-10 Audit

- b. FY 2010-11 Audit
- c. FY 2012-13 Adopted Budget
- 4. [Letter from District dated October 31, 2012](#)
- 5. [Response from the Commission's Environmental Consultant](#)
- 6. [Draft Resolution No. 3163](#)