

Memorandum

TO: East Contra Costa Fire Protection District Board of Directors
Brian Helmick, Interim Fire Chief

FROM: Shayna M. van Hoften, Legal Counsel
Jerett T. Yan

DATE: September 29, 2017

RE: Legal Analysis of Process for Detachment from or Dissolution of the District

As a result of insufficient funding to enable the East Contra Costa Fire Protection District (District) to provide robust fire prevention and response services, several community leaders and residents have questioned whether their jurisdictions might be better served by another fire services provider, whether already in existence or formed specifically to assume this new responsibility.

This memorandum addresses some legal prerequisites and potential implications of (1) detachment of territory from the District and/or (2) dissolution of the District. Withdrawal by any constituent community, or complete dissolution of the District, would require the approval of the Contra Costa Local Agency Formation Commission (LAFCO). A key component of the LAFCO's evaluation of the request is whether the detachment or dissolution would have negative consequences on the quality of fire protection services in the District's service area. Based on this standard, the LAFCO would be unlikely to approve any significant detachment from the District, or a complete dissolution of the District, unless and until one or more existing or new agencies are willing and able to provide a better level of service than the District without degrading service in any portion of the District's service area.

I. BACKGROUND

At the request of Contra Costa County, the City of Oakley and the City of Brentwood, the Contra Costa LAFCO formed the District in 2002 by consolidating three separate fire protection districts (East Diablo Fire District, Bethel Island Fire District and Oakley Fire District). Under the Fire Protection District Law of 1987 (Cal. Health & Safety Code §§ 13800 *et seq.*), the District has the power to provide services relating to the protection of lives and property, including fire protection services, rescue services, and emergency medical services. (Cal. Health & Safety Code § 13862.) The District provides these services to approximately 114,000 residents in an area covering 249 square miles comprised of the City of Brentwood, the City of Oakley, and neighboring portions of unincorporated Contra Costa County.

Due to ongoing budgetary constraints, the District's current revenues allow it to operate three fire stations—down from eight stations in 2010—and fund operation of the CalFire Sunshine station during non-fire season. The reduced level of fire protection service is a growing cause for concern in the District's service area. In response to the reduced level of services that the District is currently able to provide, several community leaders and residents have considered proposals to detach from or dissolve the District.

II. A DETACHMENT OR DISSOLUTION MUST IMPROVE SERVICES TO THE ENTIRE AFFECTED TERRITORY

Both detachment and dissolution of a fire protection district constitute a "change in organization" requiring an approval from the County's LAFCO. (Cal. Gov. Code §§ 56021, 56650 *et seq.*) Approval of a change in organization is an elaborate process involving, among other steps, a petition to LAFCO, preparation of a series of studies, and a hearing before LAFCO. An approved petition may be subject to a protest election. (Gov. Code §§ 56702 *et seq.* (detachment), 57077.1 *et seq.* (dissolution).)

A key aspect of LAFCO's review of an application for detachment or dissolution is whether the proposed change in organization would result in more efficient provision of services to the entire affected territory. As part of this process, the applicant must submit a plan for providing services to the *entire* affected territory after the change in organization, which must analyze how service will be provided and financed. (Cal. Gov. Code § 56653.) Additionally, the LAFCO must evaluate the petition on factors including:

- The need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas.
- The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.

(Cal. Gov. Code § 56668 (emphasis added).)

Further, LAFCO's policies and procedures disfavor detachment. LAFCO's Commissioner Handbook states "Detachment from a region-wide district which provides service to multiple communities outside the incorporation area should not be approved unless the Commission determines that there is an overriding benefit from the detachment." (Handbook, Chapter 2.1 at 16.) In other words, a detachment or dissolution that decreases the level of service in the affected territory as a whole would face serious challenges to approval, even if it were to provide localized improvements in service.

III. EFFECTS OF DETACHMENT OR DISSOLUTION

Given the relatively small size of communities within the District and the multi-engine involvement needed for fire response, detachment of a community or dissolution of the District would be unlikely to improve fire protection service. Instead, it would be more likely to degrade fire protection service.

Detachment or dissolution could result in the creation of one or more additional municipal fire departments or new special districts to provide fire protection services (Successor Agencies), and/or a series of annexations or mergers. Upon a city or other community's detachment from the District, the withdrawing city or community would be obligated to join or contract with

Memorandum To:
Board of Directors
September 29, 2017
Page 3

another fire service, or hire or contract for a new fire chief and form a fire department. (Cal. Gov. Code § 38611.) Cities not located in a fire district *must* provide fire service; counties *may* provide fire service, but are not required to do so through a fire department or otherwise. (See *New Hampshire Ins. Co. v. City of Madera* (1983) 144 Cal.App.3d 298.) As a result, dissolution of the District could leave the unincorporated areas of Contra Costa County currently within the District's service area virtually without fire protection services. (See memo "Analysis of the District's Legal Authority and Obligation to Provide Fire Protection Services" for further discussion on the power and responsibility of cities and counties to provide fire protection services in the absence of a fire protection district.)

Placing the obligation of providing fire protection services on multiple departments and/or districts could reduce the ability of Successor Agencies to provide service in the event of an emergency. All of the stations in the District's service area currently operate under a unified command structure with a single set of protocols to provide coordinated service throughout the jurisdiction. Successor Agencies would need to determine how they would cooperate with each other and other local fire protection agencies to provide fire protection services in the event of a large scale emergency. This would require the negotiation and implementation of new automatic and mutual aid agreements, with or without other agreements for the sharing of resources and expertise with one another.

Detachment or dissolution also could worsen the financial situation of the District, and any Successor Agencies. Upon detachment, LAFCO would distribute the financial obligations of the District between the withdrawing entity and the District. (Cal. Gov. Code §§ 57450 *et seq.*) Upon dissolution, LAFCO would distribute the District's financial obligations among the City of Brentwood, the City of Oakley, and the County. (Cal. Gov. Code § 57354.) These obligations would include the District's current contracts, as well as its retirement and healthcare obligations to its current and former employees. As a result, detachment and dissolution are not solutions to the District's budgetary constraints; rather, Successor Agencies would inherit and/or share the District's current financial problems. Studies further suggest that fragmenting local government services into multiple agencies providing the same service can increase costs. (See e.g., Hendrick et al. *Does Local Government Fragmentation Reduce Local Spending?*, Urban Affairs Review (2011), Christopher Goodman, *Local Government Fragmentation & the Local Public Sector: A Panel Data Analysis*, Public Finance Review (2013), Bruce Katz and Elizabeth Kneebone, *On Ferguson, Fragmentation, and Fiscal Disparities*, Brookings.com (2015).) In the District's case, reconstituted cooperative administration may be possible, but more likely, dividing the service area into multiple Successor Agencies would multiply the costs of administering fire protection services, resulting in a corresponding decrease in the resources available to provide the services themselves.

In conclusion, a request for detachment of a city or other community from the District, or complete dissolution of the District, requires approval from LAFCO, which must review and evaluate the impact of the proposed change on the provision of fire protection service throughout the District's service area. As a detachment or dissolution would likely have a negative impact on the ability of the District and any Successor Agencies to provide service, as well as on their financial situations, such an application would likely face substantial scrutiny from LACFO under both State law and LAFCO policies.