



May 4th, 2013

To: Fire Chief George Lucia and Members of the Board of Directors of the Palomar Volunteer Fire Department, Community Stakeholders

From: Ronny J. Coleman, President Fireforceone

Subject: Future of the Palomar Fire Department

The purpose of this White Paper is to provide a review the past, present actions that have lead the department to its current situation. Additionally we will provide a future scenarios of the Palomar Mountain Volunteer Fire Department (PMVFD) that are going to be dependent upon policy choices by the Board of Directors.

In October of 2012, Fire Chief George Lucia asked Fireforceone to create a document that would help the Board of Directors better understand a recent sequence of events involving the department. It involves signing a contract for services. The Palomar Mountain Volunteer Fire Department is facing decision that might have a profound impact upon the organization. There are three questions to be faced in the immediate future:

- A. Does the Palomar Volunteer Fire Department have any choice in the service delivery options that are under consideration?
- B. If the PMVFD Board of Directors does not choose to sign the proposed contract what are the likely consequences?
3. If the PMVFD does sign the contract and implement the proposed changes what is the value to the community being protected?

The study was initiated at that point, with the proviso that the outcome of this process would be some form of documentation that would provide the Board of Directors and the citizens of the Palomar area with information that would help them determine a course of action over the next several years.

This document is not a Strategic Plan. I would consider it to be more of an Environmental Scan. It describes a sequence of events and information relative to the operations of the Palomar Mountain Volunteer Fire Department. Nor is this document an audit. There is no attempt in this report to argue technical aspects of the provision of fire protection. We do address practices and principles, but not at a technical level. Our desire is that this report be provided to the readers in fairly plain language rather than technical jargon. Lastly, this is not a legal treatise.

It is Fireforceone's intent to present this paper at a General Session of the Board of Directors of the Corporation. We are prepared to respond to any questions that may be posed at that time

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Introduction

It is recognized that this document will be read by three different audiences. The first will likely be the members of the Fire Service. The second audience is likely to be the elected representatives. The third is probably going to be the stakeholders and constituents of the area. Therefore, it seems prudent to provide this report in a fashion that addresses the informational needs of all three audiences. That is why this document is arranged as a series of questions and answers. The intent is to keep it as basic as possible, but address the complexities in general terms rather than fire service jargon. We will start with describing what a fire department is from the standpoint of the community.

What constitutes a fire department?

That question seems so simple that one expects everyone to understand it without much of an explanation. Unfortunately, it is probably one of the most poorly defined terms in government. There are a host of methods in which fire protection is delivered in the United States and subsequently the state of California. Fire Departments are divided at the very outset into being either governmental entities or privately owned. Contrary to many people's opinions that you are not a "real fire department" unless you are a function of government, there are literally thousands of organizations that have been created to provide fire services that are privately owned.

The Palomar Mountain Volunteer Fire Department is a 501(c)3 organization, a private organization . It is operating in the context of both local and county government.

Some fire private departments predate the existence of other levels of government, i.e. a city or a county. Others are relatively new. Most of the private fire departments that are in existence today are a direct result of failure of government to act in a timely fashion in the past. For example, there are many private fire departments that are created in areas before there is any evidence of governmental structure representing local interests. There are records to indicate that this phenomena occurred in San Diego County in the 1970s. We will discuss this in the section more in detail in the section on history.

One of the complications of understanding how fire protection is delivered is that there have been many different types of efforts to categorize the various types of fire departments. These organizations have been given names and definitions that are inconsistent. Many authors who write articles on fire protection have confused the public by giving the impression that all fire departments are the same.

They are not. The following four factors enter into whether or not fire protection is actually being carried out in a legal fashion. They are:

1. The type of entity
2. Their legal organizational status
3. The source of funding
4. The manner in which they are staffed

This confusion has been compounded by individuals that have used or abused specific terms, just assuming that other departments use the same terms to mean the same things. That is why understanding what constitutes an appropriate delivery of service cannot be treated as a simple question. One must understand the context of each form of both public and private structure in order to understand their ability to provide services, their exposure to liability and the issue of immunity.

How has the system changed over time?

The story of how fire protection has been provided in the County of San Diego is lengthy and convoluted. Palomar's evolution is contained within the context of that historical development. The studies are listed in the *Bibliography* of this paper.

Beginning in the early 1970's the issue of how structural fire protection was to be handled in this county began to evolve. Research into the sequence of events and the specific decisions that have led to the current state of affairs constitutes a major research project in itself. The bibliography at the end of this report will identify relevant documents that might be useful in understanding the history. However we are going to minimize repeating them in this paper.

In examining the creation of both public and private fire departments, the primary reason that this history is so complex is that there has never been a single unifying action that has resolved the method for providing fire protection at all local levels by the county. On June 25th, 2008, the County Board of Supervisors created the San Diego County Fire authority as a zone within County Service Area (CSA) No. 135, As result of this action LAFCO approved an expansion o f the latent powers to include the service territory of five CSAs that were then dissolved.¹

Multiple studies have been conducted. Multiple actions have been taken. The desire to avoid creating taxes and another layer of government has created an environment in which individual neighborhoods and enclaves have often had to work together to provide minimal response without adequate funding. Palomar Mountain Volunteer Fire Department was created because of the absence of any other form of protection that addressed this local need.

These historical experiences are somewhat irrelevant in the context of today's discussion for a variety of reasons. The first of these is the idea that single station fire departments are finding it increasingly more

¹ San Diego Grand Jury Report 2007-2008, May 29th, 2008

difficult to provide an adequate response to a structural fire. There is a higher need for multiple stations to work together in a system in which local organizations only have one fire station. Cooperation and collaborative behavior are absolutely essential when these situations exist. However, the desire for local control has still remained in many localities.

Secondarily, many of the locations that developed a local service through utilizing a private non-profit fire department have now grown in complexity resulting in increased demand with inadequate funds.

For example, fire departments really don't fight nearly as many fires as they do handling emergency medical care calls. An organization created to provide one type of service sometimes has difficulty expanding to provide another type of service. Unfortunately the public doesn't know the difference. Their attitude is that if they dial an emergency number, they want someone in front of their house in five minutes.

In 2008, in the aftermath of a series of catastrophic fire events, there was a reassessment on how the system was working and an effort made to develop a more coordinated and collaborative delivery system. A meeting was conducted on January 9th, 2010 in the Palomar Volunteer Fire Department Engine Bay. A recording of this event reveals that there was a sense of direction towards a higher level of collaboration. The narrative included discussions of meeting local needs, not changing the departments but rather changing the outcomes. The emphasis in this meeting was on maintaining a high level of flexibility to meet local needs.

Lastly, the federal and state governments have continually introduced mandatory duties that must be considered and performed if an organization is to engage in firefighting.

To summarize history, there have been a series of stages to the development of the current delivery system. Palomar Volunteer Fire Department is now undergoing another transition. It needs to be stated that this is not a simple process at all and is the reason for the development of this document.

What is the meaning of the term Jurisdiction?

As stated earlier, there is misinformation about the nature of "what is a fire department" based on terminology. This confusion is separate from the issue of jurisdiction. You either have it or you don't. The term Authority Having Jurisdiction (AHJ) means that you have police power of the state to require specific behaviors of the citizens living within that jurisdiction. All "jurisdictions" are governmental entities. They are described in law and given powers to behave in a very specific fashion.

A best example of jurisdiction is the concept of "boundary". Boundary is the geography and topography in a community that is subject to the actions of the AHJ. The concept of a border between cities is defined by the term "legal boundary." A county line, a district line, or even a state line provides a legal boundary in which an AHJ can invoke punishment or discipline for failure to comply.

A private fire department does not inherently possess a boundary or cannot act as an AHJ without some other legal action that creates a sphere of influence and delegated authority.

The area known as Palomar Mountain is designated as a CPP - Census Populated Place. It is not a district, nor a city, it is the county area.

Governance

An important distinction must be made between organizations or entities that operate in the public sector and those that operate in the private sector is governance. This is not an artificial distinction, it is a real one. The legal status of an organization triggers different treatment under a variety of state and federal laws. It includes factors such as authority and jurisdiction of directors, workers compensation requirements, civil liability, sovereign immunity and even the IRS code.

Public entities are instruments of the governance of the United States. It includes the federal government, tribal government, states, political subdivisions of states, counties, cities, townships, and legally recognized special districts.

The private sector consists of entities that are owned, operated and managed by individuals who are not directly responsible to elected officials in the community. they are formed under the regulations of the Secretary of State. The term privately owned refers to the fact that owners, shareholders or in the case of non profits their members are not subject to governmental control.

This distinction often becomes blurred especially when it comes to volunteer fire companies. Simply stated, a private non-profit corporation is independent of government control, but simultaneously has some obligation over determining what level of service is being provided in a governmental context or they wouldn't have been created in the first place.

Corporations are legally created entities. They are accepted, approved and recognized by the state through a formalized process. Once created, the corporation has the legal capacity to enter into contracts, they can sue and be sued and are subject to provisions of the federal law that apply to the private sector. By definition there are four types of corporation. They are:

1. Municipal Corporations
2. Quasi Municipal Corporations
3. For Profit Corporations
4. Not For Profit Corporations

To create a non-profit corporation, the individuals who desire to create this corporation must file a document called the "Articles of Corporation".

PMVFD is a registered 501(c)3 Corporation in the State of California. It is registered with the California Secretary of State as Entity #C0764773 as an active corporation. The date the corporation was created (filed) was March 3, 1976. The agent for service of process is David Charles Robarts.

The business search function of the Secretary of State website indicates that there are 393 corporations in the state of California that are recognized as being fire service related. They are not all fire departments. Some are auxiliaries and support functions. Approximately 25 percent of the corporations are noted as inactive. This instrument of creation is different than the actions taken by a government entity.

The private non-profit corporation operates on community expectations. There have been numerous community events that have been held in the past relative to this idea of a private non-profit corporation but the only one that is relevant is the latest one.

On the 21st of April, 2013, a community expectations meeting was conducted over a period of two hours at the Palomar Volunteer Fire Department Headquarters. There were approximately a dozen stakeholders in attendance.

According to the minutes of that meeting there was a discussion of the recent contract proposal that spells out the scope of work (SOW) for the next five years. This has resulted in the need to review the department's future activities.

How Does Government Form Fire Departments that Function Under State Law?

Governmental entities form fire departments through their discretionary power to provide for a level of service in conjunction with state law. It should be noted that there is no requirement in the California State Constitution that requires that fire protection be provided by any political entity at any level. According to the California State Fire Marshal's synopsis of state laws and regulations, there are literally hundreds of ways that governmental entities are authorized to provide fire protection but they are not mandated to provide it.

The most distinct difference between a private non-profit corporation and a governmental entity is the matter of jurisdiction. Once a county, a city or an area, using fire district law creates a service area, the governmental entity is the Authority Having Jurisdiction (AHJ). A private non-profit organization that is established to provide fire service may do so on an ad hoc basis but does not have authority over the underlying land. In other words, a non-profit organization can provide services but may or may not have access to any funding source linked to a tax base.

Why is Risk Assessment Important

When the PMVFD was legally established it also established a level of service at that time. That level of service has undergone an evolution over the last 30 years. One question that raised in the

development of this report was what is the appropriate standard for the level of service for a community of this type?

The appropriate standard for volunteer fire departments regarding response in low demand, low consequence areas is NFPA 1720. That document assumes that volunteer fire agencies should be establishing their levels of service based upon demographics and data in their jurisdiction to meet community expectations.

With respect to demographics, Palomar Mountain is considered to be an isolated rural area. It sits at an elevation of 5,325 feet. According to the CSA 110 description in the LAFCO Document the fire department protects a resident population of approximately 690 people. They protect approximately 35.5 square miles. The area has a transient population that varies at different times of the year and is consistent with seasonal activity. The area has one fire station located at 21610 Crestline Road, Palomar, CA 92060. The current per capita fire cost is approximately \$216.00. The area is surrounded by the Cleveland National Forest, California State Park and they have one major target hazard; the Palomar Observatory. Its sphere of influence was adopted on June 6th, 1983 and re-affirmed May 7th, 2007.

The PMVFD is the only consistent provider of emergency services in spite of the presence of both state and federal areas. The US Forest Service does not provide year round fire coverage nor does the California State Park system. There are no available resources that can respond to assist you within a reasonable timeframe.

Access to this entire area is limited. There are two roads that provide access. One is labeled the East Grade; the other is labeled the South Grade. South Grade Road, the stretch of San Diego County Route S6 going from State Route 76 to the summit is the primary access. The road has a consistent track record of having many motorcycle, bicycle and motor vehicle accidents. There are more than 20 hairpin curves in one 7 mile stretch.

The access roads are both on the same side of the mountain and terminate on Hwy 76. There are no available fire suppression resources that can respond to assist PMVFD within a reasonable timeframe for initial action. The closest responding resource is 45 minutes away. That asset is the Rincon Cal Fire Station 70.

The department has an annual call workload of approximately 125 calls per year, the majority of which are not fire calls but EMS calls. The highway discussed previously results in exposure for automobile, motorcycle and bicycle accidents. Hiking and other recreational activity injuries are also common.

In terms of the Declaration of Deployment, PMVFD is the only emergency service on the mountain top. When this department was first organized in the 1970s, there were no published standards for volunteer fire departments in the NFPA inventory. However, PMVFD was originally created using traditional approaches for response, which included concepts of turnout, travel and staffing formulas to meet rural requirements. The department has been monitoring the development of response standards and has evaluated their needs on a frequent basis. However, the department has not published an actual Declaration of Deployment. Their anticipated level of service is to provide initial attack on

medical aids and incipient fires within a basic coverage area of about 15 minutes. When a simultaneous event occurs, there is a need to provide back-up.

The department is concerned that the current methods of providing service need to be addressed to maintain the communities expectation based on past experience.

In order to understand the nature of fire protection in San Diego County one needs to recognize that it has been evolving over many decades. What were once small intersections in agricultural areas have grown from a smattering of small buildings to the beginnings of communities. If one visited a map of San Diego in 1900, it would be basically agrarian with a minimum number of urbanized communities.

As stated earlier, there is no requirement that mandates fire protection on the landscape. However, there is a distinction in how land is looked at by local government versus the state. The State of California saw fit many years ago to create a geographical discrimination called a State Responsibility Area (SRA). That SRA was designated so that the watershed could be protected. What was not designated as an SRA was then designated as a Local Responsibility Area (LRA).

Over time, structures have been allowed to be built in areas where there is no local fire department responsible for providing initial attack on structural fires. This does not mean that there wasn't a response because historically there were cases where existing fire protection agencies would respond into other areas that were not their jurisdiction from an altruistic point of view. Someone had to go.

In effect, local communities had to make up their mind as to what kind of fire protection they wanted. When cities were created many of them created fire departments. In areas that were not cities, many of them chose to become fire districts. In actuality, there are many different types of districts that can and have been used to create fire departments.

Lastly, there are areas in which there was no governmental entity that chose to provide a service level. This is where many communities opted to create a private fire department under the provisions of the 501(c)3 designation. Essentially these departments were created based upon local risk and lack of response by government.

Finance

One of the concepts that need to be understood is that there is no such thing as a free fire department.

The acquisition of equipment and facilities is a prerequisite to doing anything. One cannot perform fire suppression without the tools to do the job. Staffing is another matter. The vast majority of most fire protection starts off as a volunteer service due to the fact that there is a limited amount of money available to purchase equipment and facilities. Depending upon the population of an area the amount of funds that are available can be on a scale of miniscule to minimal. However, a private non-profit fire department has no ability to demand any specific level of funding. In addition the administrative aspects of providing workers compensation and appropriate benefits are a budgetary concern.

The revenues cited under CSA 110 include property tax, voter approved assessment and County Fire Enhancement Funds.

Limitations of being a Private fire department

In the early days of providing a fire protection system into a community, a notification system was very simple. Most entities had a seven digit telephone number, answered the phone themselves and set off a local bell or siren to alert the community. While this system worked satisfactorily for isolated communities it has begun to evolve into a different authority today. Most phone systems are utilizing 9-1-1 and very few private fire departments control the ways and means the community has of accessing emergency services. While the fire department might be just a block or two down the road, when the citizen dials 9-1-1 it does not go to that organization but rather goes to an AHJ under government control. All calls for service today are handled by the Governmental dispatch system.

Agreements and Understandings

There has been a formation of a private corporation to create a legally recognized entity. This is the functional equivalent of a governmental entity. This basis is self-determination by the citizens of the community. The corporation can open a bank account, hold title to land, sue and be sued, hire and fire employees, and can provide services consistent with its charter. It can also enter into agreements with other entities including governmental.

That is the current condition. PMVFD has been engaged in month long negotiations with the San Diego County Fire Authority. To date, the fire department has been unwilling to sign a contract renewal based upon the fire authority's unwillingness to accept specific self-determinations that the current organization feels are critical to meeting local needs.

The delivery of the current system in the future is dependent upon the decision to sign the Scope of Work as distributed by the San Diego County Fire authority.

A non-profit corporation may or may not be held subject to the provision of open meeting laws such as those in California often characterized as the Brown Act. Provided a corporation adheres to the requirement of the state (Secretary of State) it can continue to exist perpetually regardless of whether or not it continues providing a specific type of service that created it. Corporations are required to file an annual report and may be subject to fees and fines for failure to do so.

Community Expectations

As of the writing of this report community expectations are not defined. There are various stakeholder groups that have made observations, but there is not a cohesive report of their concerns and support for any specific course of action. It has been stated that the feelings of most of the constituents are reflected in the elected officers of the Board of Directors, therefore, the Boards expectations are relevant to the discussion.

What are the expectations of the Board of Directors?

The Board believes that it deserves the respect of county government for their past efforts of providing fire protection which was not provided by any other entity. ²	The Board does not believe that they have a need to be an all- risk fire department based on their topography and financial conditions.
They expect to engage in self-determination to a degree that it can be sustained in the current environment.	The elimination of locally available volunteers is detrimental to an effective level of service on the mountain top.* ³
The Board has expressed interest in being as cost - effective as possible.	Revenue streams are not keeping up with costs. Therefore costs need to be kept under control
The delivery system is changing and becoming more expensive , but the communities demographics is not changing at all. This leaves the current property owners to bear increased costs when they occur.	The elimination of local volunteers from the staffing mix is detrimental to the community and should be restored.

What are the issues that the Fire Chief is concerned about?

He is of the belief that One size does not fits all	Loss of ability for our Chief, DC and Board to promote members of our own crew.
Loss of ability for the Chief, DC and Board to decide the best use of our own Fire Department Equipment	Inability for a sworn officer of the Peace to carry personal fire arm while on a response call
Depending upon aid that will be dispatched by the county from the valley floor, medical or fire assistance that is forty five (45) minutes away	Should Cal Fire be asked by the county to provide medical or fire assistance to the community Homeowners face a potential loss in their ability to purchase fire insurance protection for their own homes
PMVFD Board members, elected by the community, become a less potent force in their role as a conduit to county Fire District Officials downtown who make all the decisions on issues that pertain to us	Supervisor Term Limits now in place could tilt concerns of the County Board of Supervisors in favor of city instead of rural fire concerns in the out years
Past record of county in the handling of some projects that have been attempted to be addressed in the past that have failed.	The idea that Palomar is being treated as if it is an "all-risk Community, when the predominate response factor is medical aids.

What Options can the Board consider? The following are the policy options the Board of Directors of the PMVFD may wish to consider:

Options the Board has	Consequences?
A. You can sign the contract as proposed by SDCFA	If the Board signs the contract none of the issues raised by the Fire Chief are resolved. There will be

² Poomacha Fire, 2007

³ Easter Sunday Fire 2013

	ongoing conflict.
B. You might not sign the contract and attempt to maintain the current system by operating on your own	The County could discontinue providing emergency dispatch to the department and turn off the radios to provide emergency communications to the responding units.
C. You can continue to conduct negotiations to change contract?	You could request an extension to continue to determine the conditions that your Board does not want to relinquish. File a letter with the County requesting an extension.
D. You could consider a change of governance to form an independent District?	Seek legal advice on the advisability and legality. Make contact with LAFCO. This is not likely to be received favorably, based on the history in the area.
E. Consider dissolution of the 501(3) C and let the fire protection responsibility fall back to the County.	Engage in dialogue with respect to an alternative use of the assets owned by the Corporation. redirect the non-profit into another discipline.

Long Term Projections for this department

What is likely to happen?	Potential outcomes
What happens if you sign the contract with no amendments.	Loss of local determination of service level.
If you try to go own your own	Loss of support from the County, Minimum growth and development to support increased costs.
Continue negotiations	Improved working relationships over time
Change Governance	Rejection by LAFCO
Dissolution of Not for Profit ⁴	Impact upon the existing residents and transient owners of an unknown amount.

Possible Courses of action

What has to happen?	Why is this important?	Who is going to do it?
Consider acquisition of Legal	To protect your legal interests	Requires Board Action

⁴ After reviewing the Secretary of State's corporate inventory of fire departments it is clear that many of the private non-profit fire departments have gone inactive over the last few years. However, it is also clear that some of them have become more like support units than emergency responders. Many have evolved into benevolent organizations that provide community support for the people that created the private non-profit corporation in the first place.

Counsel		
Conduct audit of Not for profit assets	To be better prepared in the event of dissolution of the not for profit status	Board Direction to the staff
Restore Local Volunteer Cadre	To have a dependable response force	The Fire Chief
Consider Community Meeting of Property Owners and Residents	Collect input from stakeholders	By Board Direction

Ultimate Desirable Outcome:

After reviewing all of the documents and the processes that were described the following statement was reviewed with departmental staff to see what the PMVFD interests are in this decision process. The following statement is a combination of the response generated.

The Palomar Mountain Volunteer Fire Department is interested in becoming an active participant in a regional cooperative effort, but not at the price of losing all rights of self determination in its own area. We are interested in negotiating in good faith, but are not interested in a unilateral imposition of criterion that is not based upon our local needs. The Board would prefer to have a collaborative and cooperative atmosphere in which to conduct business and to provide services.

Glossary of Terms

Articles of Incorporation – a corporations organizing documents, which, when duly filed with the Secretary of State's Office creates the corporation. Once accepted and acknowledged by the State, the articles of incorporation become the equivalent of a charter or a constitution for that corporation.

Association – a group of individuals who act in furtherance of a specific purpose without incorporating. This type of organization is also known as an unincorporated organization.

Census Designated Place (CDP)

CDP is the abbreviation for Census designated place, the statistical counterpart of incorporated places and are delineated to provide data for settled concentrations of population that identifiable by name but are not legally incorporated under the laws of the state in which they are located. CDPs are delineated cooperatively by state and local officials and the Census Bureau, following Census Bureau guidelines.

Corporation – a legally created entity that has been accepted approved and recognized by the State through a formalized process.

Fire District – a political subdivision of the state that has the authority to impose taxes and organize the deployment of fire and emergency services. (Also known as a Fire Protection District) In the State of California there are also Special Districts that carry out multiple functions, water districts and park districts that operate fire protection.

Non-Profit Corporation – a corporation formed for some charitable, benevolent or other purpose not designed to result in profits that will benefit its owners, directors or officers. It is sometimes called a Not For Profit Corporation.

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