

**LOCAL AGENCY FORMATION COMMISSION
COUNTY OF SAN BERNARDINO**

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PROPOSAL NO.: LAFCO 3034

HEARING DATE: November 19, 2008

RESOLUTION NO. 3039

A RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION OF THE COUNTY OF SAN BERNARDINO MAKING DETERMINATIONS ON LAFCO 3034 – A SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR THE BARSTOW CEMETERY DISTRICT (sphere reduction to a zero sphere of influence and recommendation that dissolution of the Barstow Cemetery District take place with the successor being either the formation of a County Service Area or seeking special legislation to allow the transfer of the Barstow Cemetery District to the City of Barstow; with referral to the County Auditor/Controller-Recorder for further investigation of the Barstow Cemetery District’s financial matters, followed by referral to the District Attorney Integrity Unit if that investigation is insufficient, with notification to the Grand Jury of these findings).

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 and a sphere of influence update mandated by Government Code Section 56425 have been conducted by the Local Agency Formation Commission of the County of San Bernardino (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 her 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 October 15, 2008 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 protests; the Commission considered all plans and proposed changes of organization, objections and evidence which were made, presented, or filed; it received evidence as to whether the territory is inhabited or uninhabited, improved or unimproved; and all persons present were given an opportunity to hear and be heard in respect to any matter relating to the application, in evidence presented at the hearing;

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WHEREAS, a statutory exemption has been issued pursuant to the provisions of the California Environmental Quality Act (CEQA) indicating that this service review and sphere of influence update are statutorily exempt from CEQA and such exemption was adopted by this Commission on October 15, 2008. The Clerk was directed to file a Notice of Exemption within five working days of its adoption;

WHEREAS, based on presently existing evidence, facts, and circumstances filed with the Local Agency Formation Commission and considered by this Commission, it is determined that the sphere of influence shall be reduced to a zero sphere of influence for Barstow Cemetery District (hereafter shown as the District) as depicted on the map attached hereto as Exhibit "A"; and,

WHEREAS, the determinations required by Government Code Section 56430 and local Commission policy are included in the report prepared and submitted to the Commission dated October 7, 2008 and received and filed by the Commission on October 15, 2008, a complete copy of which is on file in the LAFCO office. The determinations of the Commission are:

1. Growth and population projections for the affected area:

According to the Southern California Association of Governments (SCAG), the 2000 population for the District was approximately 33,905. Anticipated growth within the District is anticipated to be slow. Although the lands within the District contain the full range of land uses, the vast majority of the District is unincorporated land and is rural in nature. Utilizing the growth forecast for transportation analysis zones, as identified in the SCAG 2008 Regional Transportation Growth Forecast, the District's population projections are as follows:

2010 – 35,875	2025 – 48,994
2015 – 40,529	2030 – 53,255
2020 – 44,906	

2. Present and planned capacity of public facilities and adequacy of public services, including infrastructure needs or deficiencies:

The District operates one memorial park located approximately one mile outside the Barstow city limits but within its sphere of influence. The site address of the memorial park is 37067 Irwin Road and is operated in the name of Mountain View Memorial Park (memorial park). At present, the memorial park has a capacity of 8,900 plots with 25% vacancy.

The District owns three parcels (one is vacant) comprising 22 acres. Two parcels contain the memorial park on 17 acres, and vacant parcel comprises five acres.

LAFCO staff confirmed with District staff that it operates without a master plan or any other adopted plans.

3. Financial ability of agencies to provide services:

Revenues and Expenditures

Revenues are comprised of service fees, the district's share of the general property tax levy, and interest. Approximately two-thirds of the revenues are derived from service fees. Therefore, the District is dependent on a source of revenue that is not guaranteed. Although

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this is not a guaranteed source, the financial documents show that its receipt is generally constant.

Expenditures are primarily comprised of salaries and benefits and services and supplies. Salaries and benefits are for two employees and comprise roughly half of annual expenditures. The salary and benefit breakdown for FY 2006-07 is as follows:

Salaries	\$117,839
Overtime	\$ 1,836
Benefits	\$101,412
Total	\$221,087

Funds

The District maintains five operating funds that are maintained within 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
- Open and Close Fund: for future site openings
- Principal Fund: reason unknown
- Endowment Fund: to remain in perpetuity, only the interest and gains can be spent

The chart below shows the balances of the five funds from FY 2000-01 through present. The financial documents that LAFCO has obtained reveal a change in accounting practices in 2004 that does not provide for an accurate comparison throughout the years without additional information. Further, the District has not provided current budget information, and without current budgets LAFCO staff cannot ascertain the nature of major expenditures.

Barstow Cemetery District Fund Balances (2001 – Present)

Fiscal Year	General	Pre-Need Sale	Open/Close (Pre-Need Fee)	Principal	Endowment
2000-01	\$225,081	\$231,212	\$594,612	--	\$432,348
2001-02	106,880	272,447	653,902	--	484,263
2002-03	136,625	240,649	689,491	--	526,825
2003-04	1,039,259	--	--	--	554,879
2004-05	1,002,554	85,067	n/a	--	497,173
2005-06	67,250	52,054	n/a	--	434,343
2006-07	40,169	54,724	706,564	--	490,425
2007-08	20,445	27,013	625,872	5,255	532,815
9/17/2008	(1,916)	(12,499)	610,182	5,308	542,034
10/1/2008	50,272	(11,496)	613,562	5,308	488,423

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sources: FY 2000/01 - 2004/05: Barstow Cemetery District audits
FY 2005/06 - 2006/07: Barstow Cemetery District year-end trial balance, obtained from the
County of San Bernardino
2008 Balances: County of San Bernardino Financial Accounting System

Endowment Fund

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)). The chart above shows that the endowment fund decreased by roughly \$150,000 in 2005 and decreased again in 2008. The financial documents available do not indicate the reason for the endowment fund decrease in 2005.

On September 19, 2008 the General Accounting Section of the County Auditor-Controller/Recorder notified the District that its general fund and pre-need sale fund were operating in a cash deficit. As identified in the chart above, the general fund was deficient \$1,916 and the pre-need sale fund was deficient \$12,499. To rectify the situation, on September 23, 2008 the District completed two inter-fund transfers (\$28,049 and \$27,018) totaling \$55,067 from its endowment fund to the general fund. Only the interest and gains can be utilized from an endowment fund. Without current audits, LAFCO staff cannot determine if only interest and gains were transferred to the general fund. The District states that it only utilizes the interest.

Revenue Account – Other Services

Additionally, unclear to the Commission is the nature of Account 9800 (Other Services) in the budgets and trial balances. Since at least 2004, this account receives revenues in the range of \$230,000 to \$295,000 per year. District staff has not provided a clear answer to the operations of Account 9800. In reviewing the financial documents available, Account 9800 contains all revenues received that are not property taxes or interest. Transfers then occur from the general fund to the other funds. Without additional documentation, the mechanism and policy for transfers between funds cannot be determined.

U.S. Bank

According to the audit, a local checking account is maintained for depositing cash and monies received until they are transferred to the County Treasury. However, for the current fiscal year through October 1, 2008, the District has transferred \$5,803 from its general fund to U.S. Bank. LAFCO staff cannot determine if U.S. Bank is the local checking account that receives the District's cash deposits.

In general, the lack of access to the District's budgets and audits did not provide the Commission the opportunity to ascertain the efficacy and legal compliance of the District's finances.

Appropriations Limit

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Article XIII B of the State Constitution (Gann Limit) mandates local government agencies to establish an appropriations limit. Section 9 of this Article provides exemptions to the appropriations limit. Specifically, Section 9 (c) exempts the appropriations limit for special districts which existed on January 1, 1978 and which did not levy an ad valorem tax on property in excess of 12 ½ cents per \$100 of assessed value for the 1977-78 fiscal year. The Commission has verified that the District’s levy in 1977-78 was 8.52 cents per \$100. Therefore, the District is exempt from establishing an appropriations limit.

Long-term Debt

The District holds no long-term debt.

4. Status of, and opportunities for, shared facilities:

The Commission is not aware of any facilities shared with other agencies.

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

Local Government Structure and Accountability for Community Service Needs

The District is an independent, self-governed, special district and is comprised of five trustees appointed at large to four-year staggered terms. Below is the composition of the current board, their positions, and terms of office:

Board Member	Title	Term
Thomas V. Nelson	Chair	2010
Vincent I. Wright	Vice-Chair	2010
Ernest J. Mc Michael	Trustee	2010
Marian Bell *	Clerk	2007
Stanley Edward Hignett *	Trustee	2007

* According to the Clerk of the Board of Supervisors, appointees serve until they are replaced.

In 1985, the District filed a fictitious business name change and operates as “Mt. View Memorial Park” and plans on continuing business with the same name. The audits state that the District’s accounting records are maintained by the County Auditor-Controller/Recorder and are recorded under the name “Barstow Cemetery District”. Cemetery District Law mandates that all public cemetery districts either have the words “Cemetery District” or “Public Cemetery District” in its official name. LAFCO staff is of the understanding that the official name of the agency is the Barstow Cemetery District and the cemetery grounds and local operating name is Mt. View Memorial Park.

Board meetings are held on the second Wednesday of each month at 5 p.m. at the memorial park. Cemetery District law mandates that the board of trustees shall meet at least once every three months. The District also does not maintain a website.

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The District is required by State law to forward its audits and budgets to the State Controller and County Auditor. However, the District is in non-compliance with this mandate as described below.

- Government Code §26909 requires special districts to file their annual audits with the State Controller and the County Auditor. According to staff at the State Controller's office, the District has filed audits for FY 2003-04 and FY 2006-07. Audits for FY 2004-05 and FY 2004-05 were not filed. According to staff at the County Auditor-Controller/Recorder, the last audit received was for FY 2003-04.
- Health and Safety Code §9070 requires the board of trustees of cemetery districts to adopt a final budget and forward a copy of the final budget to the county auditor. The last budget received by the County Auditor was for FY 2006-07.

Operational Efficiency

The District contributes to the California Public Employees Retirement System (CalPERS), a public employee defined benefit pension plan.

Government Structure Options

There are two types of government structure options:

Out-of-Agency Service Agreements:

LAFCO staff is unaware if the District provides services outside of its boundaries. Given the large size of the District and nature of its business, it is unlikely that service is provided by the District outside of its boundaries. Further, non-residents can be buried at the memorial park, subject to additional fees. It is not known if the District charges higher rates for non-residents.

Other Government Structure Options:

While the discussion of some government structure options may be theoretical, a service review should address possible options.

- Cemetery service to be provided by the City of Barstow. In 1994, AB 1335 gave LAFCO the authority to initiate reorganizations of special districts. In response to this new legislative authority, San Bernardino LAFCO drafted a list of 30 potential reorganizations that were possible under these provisions. Dissolution of the District with the City as the successor was one of the potential reorganizations discussed. These concerns were expressed in 1994 and are expressed in this resolution.

However, current law (Health and Safety Code Section 8125) authorizes cities to survey, lay out, and dedicate for burial purposes no more than five acres of public lands. The 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. AB 1932 (Smyth), effective January 1, 2009, authorizes the City of Simi Valley to operate a cemetery on public lands containing five acres or more.

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- Maintenance of the status quo. In this option, there are no changes to the District. However, the District's current sphere is the original sphere of the City of Barstow. The current sphere needs to re-evaluated to meet current circumstances.
- Assignment of a sphere of influence to be coterminous with the City of Barstow's sphere of influence. However, the District's boundaries are vastly larger than the City's sphere.
- Assignment of a zero sphere of influence. The District has no master plans, does not comply with State law, is currently experiencing financial challenges, and its non-responsiveness poses serious questions as to its long-term viability and ability to plan for the future.
- Assignment of a sphere of influence to be coterminous with its boundaries.

Based upon its evaluation, the Commission supports the designation of a zero sphere of influence and further recommends that the dissolution of the District take place with the successor being either formation of a County Service Area or seeking special legislation to allow transfer of the District to the City of Barstow; referral to the County Auditor/Controller-Recorder for further investigation of the District's financial matters, followed by referral to the District Attorney Integrity Unit if that investigation is insufficient, with notification to the Grand Jury of these findings.

WHEREAS, the following determinations are made in conformance with Government Code Section 56425 and local Commission policy:

1. Present and Planned Uses:

Anticipated growth within the District is anticipated to be slow. Although the lands within the District contain the full range of land uses, the vast majority of the District is unincorporated land and is rural in nature.

2. Present and Probable Need for Public Facilities and Services:

There is a current and future public need for burial services in this overall area of the County. Further, non-residents can be buried at the memorial park, subject to additional fees.

3. Present Capacity of Public Facilities and Adequacy of Public Services

The District owns and operates the memorial park from one-twelve acre parcel and owns two additional vacant parcels totaling 10 acres. At present, the memorial park has a capacity of 8,900 plots available with 25% vacant. In general, the District is able to increase its burial grounds by one-third when the need arises. However, the District has no master plans or studies to evaluate or plan for future needs. The District is currently experiencing financial challenges and does not comply with State law by not forwarding its audits to the State Controller and not forwarding its audits and budgets to the County Auditor. Further, the District is non-responsive to LAFCO's requests to complete the legislatively mandated municipal service review and sphere of influence update.

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4. Social and Economic Communities of Interest:

The City is the core of the social and economic community of interest for the entire Barstow community. The study area also includes all or portions of the communities known as Barstow Heights, Hinkley, Grandview, Lenwood, Hodge, Kramer Junction and Harper Dry Lake. However, since most of the area is unincorporated, it is likely that some residents in the area do not believe they share social or economic ties with the City.

5. Additional Determinations

- The Commission’s Environmental Consultant, Tom Dodson and Associates, has determined the changes outlined for the Barstow Cemetery District sphere of influence are statutorily exempt from environmental review.
- Legal advertisement of the Commission’s consideration has been provided through publication in *The Daily Press* through a publication of a 1/8 page legal ad and in *Desert Dispatch*, as required by law. In accordance with Commission Policy #27, an 1/8th page legal ad was provided in lieu of individual notice because the service reviews for the community of Barstow, in aggregate, would have exceeded 1,000 notices.
- 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 were reviewed and considered by the Commission in making its determinations.

WHEREAS, pursuant to the provisions of Government Code Section 56425(i) the range of services provided by the Barstow Cemetery District shall be limited to the following:

DISTRICT	FUNCTIONS	SERVICES
Barstow Cemetery District	Cemetery	Burials, selling plots, opening and closing of graves

WHEREAS, having reviewed and considered the findings as outlined above, the Commission determines to assign a zero sphere of influence for the Barstow Cemetery District and further recommends that the dissolution of the District take place with the successor being either formation of a County Service Area or seeking special legislation to allow transfer of the District to the City of Barstow; referral to the County Auditor/Controller-Recorder for further investigation of the District’s financial matters, followed by referral to the District Attorney Integrity Unit if that investigation is insufficient, with notification to the Grand Jury of these findings;

NOW, THEREFORE, BE IT RESOLVED by the Local Agency Formation Commission of the County of San Bernardino, State of California, that this Commission shall consider that the Barstow Cemetery District has a zero sphere of influence; it being fully understood that establishment of such a sphere of influence is a policy declaration of this Commission based on existing facts and circumstances which, although not readily changed, may be subject to review and change in the event a future significant change of circumstances so warrants;

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

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

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

I, KATHLEEN ROLLINGS-McDONALD, Executive Officer of the Local Agency Formation Commission of the County of San Bernardino, 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 November 19, 2008.

DATED:

KATHLEEN ROLLINGS-McDONALD
Executive Officer

