

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

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PROPOSAL NO.: LAFCO 3046

HEARING DATE: JULY 15, 2009

RESOLUTION NO. 3064

A RESOLUTION OF THE LOCAL AGENCY FORMATION COMMISSION OF THE COUNTY OF SAN BERNARDINO MAKING DETERMINATIONS ON LAFCO 3046 – A SERVICE REVIEW AND SPHERE OF INFLUENCE UPDATE FOR THE NEWBERRY COMMUNITY SERVICES DISTRICT (affirmation of existing sphere of influence).

On motion of Commissioner McCallon, duly seconded by Commissioner Nuaimi, 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 May 20, 2009 and continued to June 17, 2009 at the time and place specified in the notice of public hearing and in an order or orders continuing the 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;

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

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statutorily exempt from CEQA and such exemption was adopted by this Commission on June 17, 2009. 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 affirmed for Newberry Community Services District (hereafter shown as the District) as depicted on the map attached hereto as Exhibit "A";

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 April 24, 2009 and received and filed by the Commission on June 17, 2009, 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:

While the north desert portion of San Bernardino County, in general, has experienced significant growth the Newberry community can be characterized as a rural and agricultural community that has historically experienced slow growth.

As of August 14, 2008, the District had 1,001 registered voters. Utilizing the growth forecast for transportation analysis zones, as identified in the Southern California Association of Governments (SCAG) 2008 Regional Transportation Growth Forecast and the 2000 Census estimates, the population growth projections for Newberry are as follows:

District	2000*	2010	2015	2020	2025	2030
Newberry	2,071	2,366	2,686	2,944	3,242	3,682

* 2000 Census estimate

The 2000 Census estimate and SCAG forecasts both include Harvard in the Newberry figures. For the purposes of this report, 2000 Census block data was extrapolated for the general Harvard area and removed from the 2010 to 2030 forecasts for the Newberry community.

This area is not anticipated to experience significant growth within the coming years. This determination is made due to about one-fifth of the land being publicly owned, the rural and low density residential land use designations assigned by the County, the historical divide from the Barstow community to the west, and the surrounding geographic barriers. The land ownership breakdown of the District's boundary is as follows:

Newberry CSD

Land Owner	Sq Miles	Percentage
Private	90.2	78.9%
US Bureau of Land Management	23.9	20.9%
State of California	0.1	0.1%
County of San Bernardino	0.1	0.1%
Total	114.3	100.0%

Historical trends indicate low growth in the community in comparison with other urban areas of the North Desert region of the County. However, there are future projects which will increase the need

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for public services within the community. The single most tangible factor that could limit growth will be the availability of water.

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

Water

The Newberry Springs community has no existing public water system to serve residents and water service is characterized by its acquisition through private wells. This service deficiency limits the development capacity for the Newberry Springs area but also supports the retention of its rural nature. Furthermore, the Newberry CSD does not supply water to residents; it only supplies its own facilities and provides water for fire protection purposes (water trucks). Newberry CSD's Strategic Plan indicates that water service is a long range goal and that a study would have to be conducted to determine the funding for such an endeavor which would include the need to purchase additional water rights.

Newberry CSD has water production rights (also known as Base Annual Production) to assure 23 acre-feet (AF) annually as determined by the adjudication of the Mojave Water Basin. Newberry is within Baja sub-region, and Free Production Allowance (FPA) was 70% of Base Annual Production for 2008-09, which permitted the district 17 AF of FPA. For 2009-10, FPA has been set at 65%, which currently permits Newberry 15 AF.

Producers are required to replace any water pumped above their FPA by paying the Mojave Basin Area Watermaster to purchase supplemental water or by purchasing unused production rights from another party. The historical trend for Newberry's water production indicates that it does not produce more than its FPA. Thus, it has no replacement obligation to the Watermaster. Additionally, a review of the Watermaster's water transfer records for the past four years indicates that Newberry has neither received nor transferred annual production rights with other entities.

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Newberry CSD Water Production and Water Obligations
(units in acre feet unless otherwise noted)

Water Year	Free Production Allowance (FPA)	Carryover from Prior Year	Verified Production	Unused FPA ³ or (Agency Overdraft)	Replacement Water Obligation (District overdraft)	Makeup Water Obligation (Watermaster replacement to the Baja sub-basin)
2002-03	19	19	16	19	\$0	\$0
2003-04	19	19	16	19	\$0	\$0
2004-05	19	19	16	19	\$0	\$0
2005-06	18	19	16	18	\$0	\$0
2006-07	18	18	18	18	\$0	\$0
2007-08 ¹	18	18	18	18	\$0	\$0
2008-09 ²	17	18	N/A	N/A	N/A	N/A
2009-10	15	--	--	--	--	--

sources: Mojave Basin Area Watermaster, Annual Reports of the Mojave Basin Area Watermaster for Water Years 2002/03 through 2006/07, (April 1, 2004 through April 1, 2008).

Mojave Basin Area Watermaster, Request for Assignment of Carryover Right in Lieu of Payment of Replacement Water Assessments Recommended for Filing, For Water Years 2002/03 through 2006/07.

¹ Transfers from other water agencies not reconciled yet and data is subject to amendment in Appendix I in Sixteenth Annual Report of the Watermaster due April 2010.

² Draft data (Appendix B) not available until January 2010.

³ Unused FPA is equal to the total FPA (FPA, carryover, and transfers) minus total Verified Projection, but not greater than FPA and FPA transfers.

Sewer

The community utilizes on-site wastewater disposal through septic tanks or leach field systems. There is no schedule for installation of sewer improvements. This service deficiency limits the development options for the community. County Service Area 70 overlays the entirety of the community and is authorized sewer functions; however, County policy and practice requires the creation of improvement zones in order to deliver the service.

Although authorized sewer service, Newberry does not actively provide the service but has the power in order to plan for a sewer collection and treatment system. Actual provision of sewer service would require an application to LAFCO, along with a plan for services, and Commission approval. Should Newberry desire to provide this service to only the populated segments within the district, it would need to form a zone pursuant to CSD Law. This option would require voter or landowner approval due to the need for funding the development of the system and would require LAFCO approval to provide the service.

Fire Protection

The District provides fire protection through its identified "Newberry Fire Department". The Fire Department has an ISO rating of 9 and answers on average 400 to 500 calls per year. A sampling of the calls indicates an average response time of 12.5 minutes. The Fire Department provides mutual

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aid to over 100 calls and receives aid on 60 to 80 calls. Newberry Fire has mutual aid agreements with the surrounding fire agencies which include Fort Irwin, Marine Corps Logistics Base Fire, Yermo Fire, Daggett Fire, Barstow Fire, Bureau of Land Management, and San Bernardino County Fire.

The Department currently is staffed with 22 volunteers. Each volunteer participates in an average of 400 hours of training per year. In January 2009 there were 20 volunteers. Of the 20, ten are qualified as Type II wild land firefighters, six are emergency medical technician basic, three are California State Fire Marshall certified Firefighter II, two are hazardous materials technicians, one is a Specialist, two meet FEMA Urban Search and Rescue qualifications, and one is Fire Officer certified by the California State Fire Marshal.

Newberry has two fire stations with the second station being re-activated in January 2009. Due to the addition of personnel, Station #391 was re-activated with the relocation of a water tender and a rescue vehicle. The new fire station, Station #392 – Mid Valley Station, is located on Silver Valley Unified School District property and is leased for \$1 per year. Newberry states that if the lease is not continued, then the community would not have a centrally located station.

Newberry has plans to build a training room at Fire Station #392. Currently, the firefighters train in facilities that are not temperature controlled and the planned training room would be temperature controlled. Newberry anticipates that the addition of a temperature controlled room would decrease response times since the all-volunteer firefighting force would be more likely to remain at the facility.

There are also plans to build an additional fire station within the district and install 10,000 gallon water tank structures throughout the district. The Department conducted a comprehensive survey to locate and record major water source points for placement of the station and the tanks, but the exact locations are not yet determined. This would improve Newberry's ISO rating and lower insurance premiums.

The Fire Department currently owns and operates the following equipment:

- Type 1 municipal engine, a 1999 Freightliner with a 1,000 gallon tank, a 1,250 gallon per minute (gpm) pump, a 2000 foot hose, and air and hydraulic rescue tools
- Type 2 water tender, 2000 Freightliner with a 2,200 gallon tank and a 500 gpm pump
- Type 2 water tender, 1970 Peterbuilt with a 4,000 gallon tank and a 1,500 gpm pump
- Type 1 ambulance/rescue truck, 2003 E-350, first responder – non transport, equipped to ICEMA standards
- Type 6 brush engine, 2007 Ford 350 4 x 4 with a 300 gallon tank and a 350 gpm pump.
- Trailer equipped to light rescue standards.

In addition to the storage tank listed above, the Department has also coordinated with Mojave Water Agency to place seven connection points at strategic locations along the Mojave River Pipeline. The connections provide water at the rate of 500 gallons per minute. Additionally, the Fire Department has an agreement with the Santa Fe Railroad for access to the 220,000 gallon railroad water tank located near Elementis Specialties Plant at Pioneer and Mountain View.

According to the District's Fire Operational Plan, the short-term and long-term goals of the Fire Department are:

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Short-term goals (3 to 5 years):

- Develop a headquarters station, training center, and emergency operations center near the center of the District
- Secure at least five 10,000 to 15,000 gallon portable tanks.
- Reduce ISO Rating to 8 or better.
- Develop a large volume well and tank.
- Replace 1970 Peterbuilt water tender.

Long term goals (5 to 10 years):

- Construct headquarters station/training center/emergency operations center
- Relocate Station 391 two miles east, moving off the Newberry fault and out of a radio dead zone
- Assist in promotion of local water district *[while this goal may be part of the Fire Operational Plan, it appears to be for the district overall]*
- Add two Type 3 Fire Engines

Park and Recreation

Newberry owns and operates one park on 9.8 acres that includes a community center, Fire Station #391, a caretaker's home, playground, picnic area, and ball field. The ball field has lights for night play and can be configured as a baseball diamond or soccer field.

The Community Center was built in 1954 and provides a location for food distribution, shelter in case of a disaster, health clinics, veterinary clinics, and community and group events. Maintenance and upkeep of the park and the community center is provided by the live-in caretaker. Newberry states that the building is in above average condition due to ongoing upkeep and maintenance. Due to the age of the facility, Newberry indicates that future remodeling projects need to occur. Plans include remodeling the kitchen and restrooms and installation of energy efficient windows. Revenues have been set aside for major repairs of the park facilities and the caretaker's home.

According to staff from the County Community Development and Housing Department, Newberry applied for and received a Community Development Block Grant in FY 2006-07 to improve the parking lot at the park. The District intends to construct new restrooms at the park but plans or details were not provided. In 2008, the First District of the County Board of Supervisors awarded a \$5,000 grant to Newberry CSD for eight picnic tables for the park.

Streetlights

Newberry CSD maintains 39 streetlights. Southern California Edison owns the streetlights, and the District provides for payment of the utility costs for operation of the streetlights. There are no plans at this time to increase the number of the streetlights. There is no other existing service provider for streetlights in the area (County Service Area 70 which overlays the agencies is authorized streetlighting services, but requires creation of an Improvement Zone to provide), and the service is adequately provided. The future need for streetlights will increase as the population grows, dependent upon the implementation of the County's Night Sky Ordinance within this portion of the desert. The purpose of the Night Sky Ordinance is to encourage outdoor lighting practices and systems that will minimize light pollution, conserve energy, and curtail the degradation of the

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nighttime visual environment. Future developments may require public streetlights for major intersections for public safety purposes.

Road Maintenance

Newberry CSD is not currently authorized to provide the function or service of road services, however the district purchased a grader in August 2006 for roughly \$49,000 with funds from the \$350,000 one-time donation received in 2004 from the Kiewit Pacific Corporation. After Newberry received the donation, it conducted a survey asking its residents how to utilize the windfall. The results of the survey indicated that approximately 85% of the respondents wanted the funds to be used for roads - grading in particular. In turn, Newberry purchased the grader and began grading roads. The purchase practices were questioned regarding bids, etc. The District has indicated that the road grader purchased is used and that a bid process was not utilized nor was it required for the purchase of used machinery. The District further states that it considered 18 machines and chose a machine that was owned by a municipality and that it considered cost and previous use in making its determination.

According to Newberry, grading does not occur on private roads. Primarily, the grader was purchased in order to keep the non-maintained County roads in acceptable condition for fire protection and EMS services. Rain and other varied weather conditions result in road conditions that make it difficult for emergency vehicles to arrive on the scene. In 2006 and 2007 Newberry graded about 25 miles of road, and road grading continued into 2008. No information has been provided related to the 2009 grading activities anticipated by the District.

LAFCO informed District representatives of the potential for incurred liability when an agency performs road services. Newberry stated that its insurance company covers the grader but is not aware that road service, in the form of grading, is actually provided. As for funds to operate and maintain the service, road service is not an enterprise activity. Therefore, the funds to maintain the road grader and pay for the service use portions of the property tax revenues generated from throughout the entirety of the district that are also used to pay for streetlighting, park and recreation, and fire services.

The District has been informed on more than one occasion that in order for Newberry CSD to actively provide road service either within a portion or to the entirety of the district, CSD Law requires the activation of latent powers subject to LAFCO approval (Government Code Section 61106). Newberry has not formally requested or been authorized by LAFCO to perform this function and/or service. LAFCO has informed Newberry that activation of its latent road powers would require the submission of an application to LAFCO with a plan for service which would include the identification of the financing for the service provision. Newberry is actively grading on public roads and such an action requires written consent from the County, as outlined in CSD Law [Section 61100(l)].

While a CSD may perform road services on another public agency's roads, if it obtains written permission, two preceding actions are paramount. First, Section 61106 (a) requires a CSD to obtain LAFCO approval in order to activate a latent power; regardless if the service is to be provided to a portion or to the entirety of the district.

Second, according to CSD Law and County requirements, the District needs to obtain written permission from the County allowing it to perform road maintenance on public roads. The District has adopted a resolution requesting County permission, but the District has not provided LAFCO with a copy of the written consent from the County. Staffs at the County Public Works,

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Transportation Division office and the Clerk to the Board of Supervisors have indicated that there is no record of receipt of Newberry's resolution requesting consent. According to County Transportation staff, in order to grade non-maintained roads the District would need to submit an "Application for Encroachment Permit". If the County determines that the roads are in their system and do not object to the grading, then a "Letter of No Objection" would be issued. LAFCO has informed Newberry CSD of the County's response and application process.

While the intent and purpose for providing the service are a benefit to the community, the extent of the road grading without authorization and the lack of adherence to CSD Law, LAFCO Law, and County Public Works/Transportation application requirements described above is a serious concern to the Commission. Further the District in written correspondence has indicated that it intends to continue providing this service even though it has neither LAFCO authorization nor County permission. It is the Commission's recommendation that Newberry CSD immediately submit the application materials, including a plan for services and the County's Letter of No Objection to LAFCO so that Commission consideration for activation can commence to secure compliance with applicable provisions of law.

3. Financial ability of agencies to provide services:

The District experiences financial challenges stemming from lack of incoming revenue each year in comparison to annual expenditures. The ongoing operations of the District are primarily funded by property taxes. Fire protection and related activities comprise the largest expense and its cost increases annually. The District does not adhere to the constitutional requirements for the establishment of an appropriations limit and statutes related to finances of a community services district.

Community Services District Law (Government Code Section 61000 et seq.) promotes financial accountability by requiring:

- An adopted budget (§61110 et seq.) – CSD Law requires the adoption of an annual budget and requires the general manager to forward a copy of the final budget to the county auditor. Newberry adopts annual budgets. Newberry's budget provided for FY 2008-09 does not provide any revenue sources and does not provide a figure for the fund balance carried forward. According to staff at the County Auditor-Controller/Recorder, the District is current.
- Adoption of annual appropriations limits under the Gann Initiative (§61113) – Article XIII B of the State Constitution (Gann Limit) mandates local Government agencies to establish an appropriations limit, which is further acknowledged by Government Code 61113. In 1977-78 the tax rate of the District was \$0.9110 per \$100 of assessed value. The District falls within the requirements of Article XIII B of the State Constitution, as it was over the \$0.125 (12 ½ cents) per \$100 of assessed value tax rate in 1977-78, and therefore, must have an appropriations limit.

After meeting with LAFCO, the District is now aware of the requirement for annual appropriations limits. Newberry staff has informed the Commission that it obtained the formula to establish an appropriations limit from the County Auditor and is attempting to contact personnel at the County Auditor Property Tax Division to help establish the appropriations limit. Although Newberry does not have an appropriations limit, the District is making a fair attempt to comply with the Gann Limit.

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- Regular audits and annual financial reports (Sections 26909 and 61118) – Section 26909 of the Government Code requires regular audits of district accounts and records, which is further acknowledged by Government Code 61118. Additionally, CSDs are required to forward their audits to the State Controller and County Auditor. According to records on file at the State Controller and County Auditor, the last audit received for Newberry CSD was for FY 2006-07 received in January 2009.

The District's most recent audit submitted for this review is for FY 2006-07 and financial transaction reports were submitted for FY 2005-06 and 2006-07. Since the last audit performed was for FY 2006-07, a comprehensive review of the District's finances could not be completed. The materials provided do, however, reveal that nearly all of the District's revenues are from the receipt of the District's share of the one percent ad valorem property tax. Additionally, in FY 2004-05 the Kiewit Pacific Corporation provided a one-time \$350,000 donation to the District to garner support for operation of a rock quarry and asphalt batch plant for approximately two years in the southern portion of the district.

The District states that the lump-sum donation was deposited into a dedicated fund. Since the receipt of the funds, capital purchases have been comprised of the purchase of the road grader and a 2007 Ford 350 Type 6 Brush Engine. It cannot be determined from what fund the purchases were made because the District did not have a capital projects fund for those years. When comparing the year-end balance of \$496,906 from the FY 2004-05 audit with the year-end balance of \$320,401 from the FY 2006-07 financial transaction report, the District's funds decreased by \$176,505. In addition it is understood that an annual allocation of funds is made to the community senior center to support its operations.

The District provides for the maintenance of 39 streetlights, which includes the payment of electricity charges for their operation. However, for FY 2005-06 and 2006-07 the District identifies its expenditures for this service as being \$32,377 and \$29,270 respectively. No clarification of this expenditure has been received.

The District is dependent on its share of the one-percent general levy and grants and rebates. The information provided indicates that this is not enough to fund capital and needed improvements for the long-term.

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Newberry CSD Financial Transaction Report Summary

Activity	Total Revenues	Total Expenditures	Net Income (Loss)	Total Debt
FY 2006-07				
Fire Protection	\$ 113,179	\$ 174,866	\$ (61,687)	\$ 49,410
Lighting and Lighting Maintenance	\$ 2,032	\$ 29,270	\$ (27,238)	\$ -
Recreation and Park	\$ 91,550	\$ 143,990	\$ (52,440)	\$ -
Total	\$206,761	\$ 348,126	\$ (141,365)	\$ 49,410
FY 2005-06				
Fire Protection	\$ 121,765	\$ 125,038	\$ (3,273)	\$ 72,292
Lighting and Lighting Maintenance	\$ 1,723	\$ 32,377	\$ (30,654)	\$ -
Recreation and Park	\$ 77,746	\$ 61,574	\$ 16,172	\$ -
Total	\$201,234	\$ 218,989	\$ (17,755)	\$ 72,292
FY 2004-05				
Fire Protection	\$ 91,753	\$ 100,327	\$ (8,574)	\$ 105,401
Lighting and Lighting Maintenance	\$ 1,576	\$ 1,596	\$ (20)	\$ -
Recreation and Park	\$422,103	\$ 59,674	\$ 362,429	\$ -
Total	\$515,432	\$ 161,597	\$ 353,835	\$ 105,401
Note: Includes \$350,000 one-time donation from Kiewit Foundation				

source: State of California. California State Controller. *Special Districts Annual Report*, for fiscal years 2004-05, 2005-06, and 2006-07.

Salaries and Stipends

For FY 2007-08, the district budgeted \$43,270 for salaries and stipends.

Salary/Stipend	FY 2007-08
Administrator Salary	\$ 9,600
Chairperson Stipend	\$ 6,000
Secretary Salary	\$ 7,500
Fire Department Stipend	\$ 16,570
Caretaker Salary	\$ 3,600
Total	\$ 43,270

According to the Fiscal Year 2007-08 budget, the Caretaker's Salary is \$3,600. The Commission is not aware if Newberry CSD rents the caretaker's residence to the caretaker at a reduced rate and if the district identifies it as a paid benefit subject to income tax withholding.

Fire Department

Revenues for the Fire Department are comprised of billing for services, monies received by the Newberry CSD, and grants. According the documents provided by the district, residents within the district are not charged for fire and emergency medical services. As a cost recovery mechanism, non-residents are billed for emergency services. Because Newberry CSD utilizes property tax revenues to fund its operations, the Fire Department relies upon grants to fund its ongoing activities and special projects. According to the budget, grants are a significant source for the acquisition of

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equipment, are sought to promote public safety, and will be the primary source for disaster planning, mitigation and response projects in the future. The District applied for three grants during FY 07-08:

- Firefighter Assistance Grant – for fire and emergency response equipment, \$52,920. The Department applied for but has not yet been approved for the grant.
- Community Development Block Grant – for medical equipment, \$18,787. The Fire Department applied for and has been approved for this grant.
- Homeland Security Grant – for purchase of a cargo trailer with generator to house and respond with rescue equipment, \$11,500. The District has applied for but has not yet received the grant.

The Commission has a concern that grants will be the primary source for disaster planning, mitigation and response projects in the future. Grants are not a steady source of revenue, and the dependence on grants is an indicator of the challenges that the district will encounter in the short and long-run to support ongoing maintenance and operation of fire and safety services.

Newberry CSD activities

The District's general budget is for the District's activities, excluding fire, and includes payroll and operations and maintenance. As for revenues, the budgets do not break-down the sources of revenues. Rather, revenues are simply listed as Deposits, Funds Transferred, and Interest. Further, revenues are not differentiated between the Fire Department and remainder of the district's activities. A more detailed revenue section of the budget is needed in order to adequately review the revenue stream and the distribution of revenues among its activities. However, the annual Final Transaction Reports that the District files with the State Controller does break down the revenue by source and activity. The Commission recommends that the District incorporate a revenue breakdown in future budgets. The District has indicated that it is developing a general ledger type of accounting that will provide for better accounting and data presentation.

Newberry CSD is not authorized by LAFCO to perform road services, yet has purchased a road grader from one-time donation funds. According to the budgets the annual costs for operating and maintaining the road grader are roughly \$5,000 per year. The costs identified for the grader are for supply, repair, wages, fuel, upgrade, and insurance, no identification of salary for operator was included. Funding to support the on-going costs come from revenue sources that also pay for the authorized services (fire protection, park and recreation, and streetlighting).

Outstanding Debt

In January 2009 the District made the final payment to Kansas State Bank of Manhattan for the purchase of a fire truck. The District states that it currently does not have any outstanding debt.

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

Newberry CSD does not currently share facilities with other agencies.

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

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Local Government Structure and Community Service Needs

Newberry is an independent district and is governed by a five-member board of directors. Representation on the board of directors is at-large and members are voted by the electorate or are appointed by the County Board of Supervisors. A review of the County Registrar of Voters records indicates that within the past ten years, the district has had elections in 2001, 2003, and 2007. As of August 14, 2008, the district had 1,001 registered voters. Below is the composition of the board, their positions, and terms of office as of November 1, 2008:

Board Member	Title	Term
Sandra Wise Brittian	Chair (President)	2009
Diana Williams	Finance Officer	2009
Wesley S. Sperry	Director	2009
Debbie Farrington	Vice Chair (Vice President)	2011
Robert Royalty	Director	2011

Newberry contracts with an administrative consultant to function as the general manager. The contracted person also is an elected official and full-time employee for another local government agency. Office hours for the district are Tuesday, Wednesday, and Thursday from 9:30 am – 2:30 pm. The Commission has a concern regarding the office hours of the district in relation to the contracted general manager being an elected official and employee for another local Government agency. This situation does not allow for the supervision of the District office staff during office hours and could conflict with their other position. This, in the Commission's position, does not lend to available and responsive governance of an agency.

Also employed by Newberry are a caretaker that handles facility upkeep and minor repairs and a secretary. On March 10, 2009 the Newberry CSD board included the duties of the Treasurer with the position of the secretary. This position is bonded through the Special Districts Risk Management Authority. The board appoints a volunteer Fire Chief to run the Fire Department.

Board hearings are held on the fourth Tuesday of each month at 6:00 p.m. at the Newberry Community Center. Agendas are posted 72 hours prior to regularly scheduled hearings and 24 hours prior to special hearings. Newberry has a website to inform the residents of activities, events, and district services. Residents can also use the website to submit comments and concerns.

Newberry operates with an annual balanced budget. The budget is adopted at a public hearing and the public is invited to attend the budget workshops. The board is provided with a monthly finance report, and a quarterly finance report is available to the public and available at the general manager's office. An independent bookkeeper accounts for Newberry's finances. The general manager processes payroll and payments with the Finance Director overseeing the process.

Operational Efficiency

The District participates in the Special Districts Risk Management Authority, a joint-powers authority, for general insurance and workers compensation. The district also participates in the Electronic Clean-up Program for the Daggett, Yermo, and Newberry communities. The communities rotate the drop-off location in order to assist residents.

Newberry participates in the disaster council made up of volunteer citizens of the Daggett, Yermo, and Newberry communities and meets to discuss community safety issues. The Council has established its mission and has begun the process of utilizing resources to create its disaster plan.

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FEMA representatives provided a three-day training session. There is no memorandum of understanding at this time.

Government Structure Options

There are two types of government structure options:

1. Areas served by the agency outside its boundaries through "out-of-agency" service contracts;
2. Other potential government structure changes such as consolidations, reorganizations, dissolutions, etc.

Out-of-Agency Service Agreements:

The District does not currently provide services outside its boundaries.

Government Structure Options:

The District, in preparing the municipal service review, did not indicate that there were consolidations or other structure options available. While the discussion of some government structure options may be theoretical, a service review should address all possible options.

- Dissolution of the district. The community has a present and probable need for municipal services, and dissolution of the district is not desirable, let alone feasible at this time. Rather, more effective and responsive Government is needed for the community in addition to the growing activities and traffic along Interstates 15 and 40.
- Removal of the district's fire protection powers with County Fire as the successor. One theoretical possibility would be to remove the district's fire protection powers, expand the sphere of influence of the San Bernardino County Fire Protection District, and concurrently annex the territory to County Fire and its North Desert Service Zone. The Board of Supervisors would be the ex-officio board of directors, and County Fire would then succeed to the property tax revenues attributable to fire protection of the District.

While there are benefits to regionally providing fire protection services and potential economies of scale that could be achieved, neither the District nor County Fire has indicated support for this option due to the limited financial resources available. Without the revenues, the Commission suggests that the potential for joint powers contracts to achieve economies of scale or functional consolidations of service for the area should be evaluated by the existing agencies.

- Consolidation with the two adjacent community services districts. Consolidation would allow for economies of scale and provide the opportunity for streamlined governance and compliance with CSD Law.
- Maintain the district in its current status. In this option, there are no changes to the District and it is the option supported by the District as identified in responses received during the review of the draft report and conveyed during the January 21, 2009 community meeting.

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

1. Present and Planned Uses:

The vast majority of the lands within the District are assigned designations of Resource Conservation (allowing one unit to 40 acres) and varying levels of Rural Living by the County General Plan. Other land use designations include Agricultural, Commercial (Industrial and Highway), Freeway, Regional Industrial, Residential Single, and Open Space. This community is not anticipated to experience significant growth within the coming years due to about one-fifth of the land being publicly owned, the low-density land use designations assigned by the County, the historically low growth rate, the lack of a municipal-type water provider, and the surrounding geographic barriers.

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

Lack of municipal level water and sewer service throughout the region hinders the growth of the community and the needed revenue associated with growth to maintain municipal services. Although the district is rural and agricultural in nature, the populated center is anticipated to support growth based upon the general plan land use designations assigned by the County of San Bernardino. A municipal water service provider to serve the populated center of the community would provide a reliable and safe source of water for domestic, industrial, commercial, and fire protection uses.

The entirety of the community utilizes on-site wastewater disposal through septic tanks or leach field systems. This service deficiency limits the development capacity for the community. The District does not currently provide sewer service and there are no other existing entities available to provide sewer service. County Service Area 70 overlays the entirety of the community and is authorized sewer functions; however, County policy and practice requires the creation of improvement zones in order to deliver the service. Although authorized sewer service, Newberry does not actively provide the service but has the power in order to plan for a sewer collection and treatment system and respond on any potential utilization of package treatment plants.

The District experiences challenge related to fire protection services given the limited resources available, and is reliant upon other fire protection agencies for mutual aid to fulfill this mission. The need for fire services is also anticipated to remain constant within the district but the needs of the transient traffic along Interstates 15 and 40 and the railroads traveling through the area will increase as traffic is anticipated to increase.

The need for park and recreation is anticipated to generally remain constant as the population is not anticipated to increase significantly.

The need for streetlighting is also anticipated to remain generally constant. Southern California Edison owns the streetlights, and the district provides for payment of the utility costs for operation of the streetlights. There are no plans at this time to increase the number of the streetlights. There is no other existing service provider for streetlights in the area even though County Service Area 70 overlays the entirety of the community and is authorized streetlighting services, and the service is adequately provided. The future need for streetlights will increase as the population grows, dependent upon the implementation of the County's Night Sky Ordinance within this portion of the desert. The purpose of the Night Sky Ordinance is to encourage outdoor lighting practices and systems that will minimize light pollution, conserve energy, and curtail the degradation of the

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nighttime visual environment. Future developments may require public streetlights for major intersections for public safety purposes.

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

The park and recreation services are adequately met by the District but they are generally dependent upon grants for improvements and construction.

The District is authorized by LAFCO to provide fire protection services. As of January 2009 has two operational fire stations, and provides for a fire master plan identifying its operations and future considerations.

The District experiences financial challenges stemming from lack of revenue in comparison to expenditures. The operations of the district are funded by its share of the ad valorem property taxes. Fire protection and related activities comprise the largest expense and increase annually. Moreover, a comprehensive review of the district's finances could not be completed due to the lack of current audits. Further the District does not adhere to certain statutes related to finances of a community services district. Of concern to the Commission is the current and future viability of the District. A review of the financial documents indicates that the District does not receive enough incoming revenue to adequately support the ongoing operations of the district.

4. Social and Economic Communities of Interest:

The social community of interest is the District and its residents. Economic communities of interest are the Interstate 15 and 40 corridors, agriculture, mining industries, and the Silver Valley Unified School District.

5. Additional Determinations

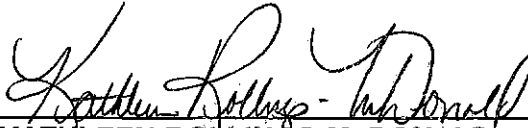
- Legal advertisement of the Commission's consideration has been provided through publication in *The Desert Dispatch* through a publication of an 1/8th page legal ad, as required by law. In accordance with Commission Policy #27, an 1/8th page legal ad was provided in lieu of individual notice because the service review for the community, 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.

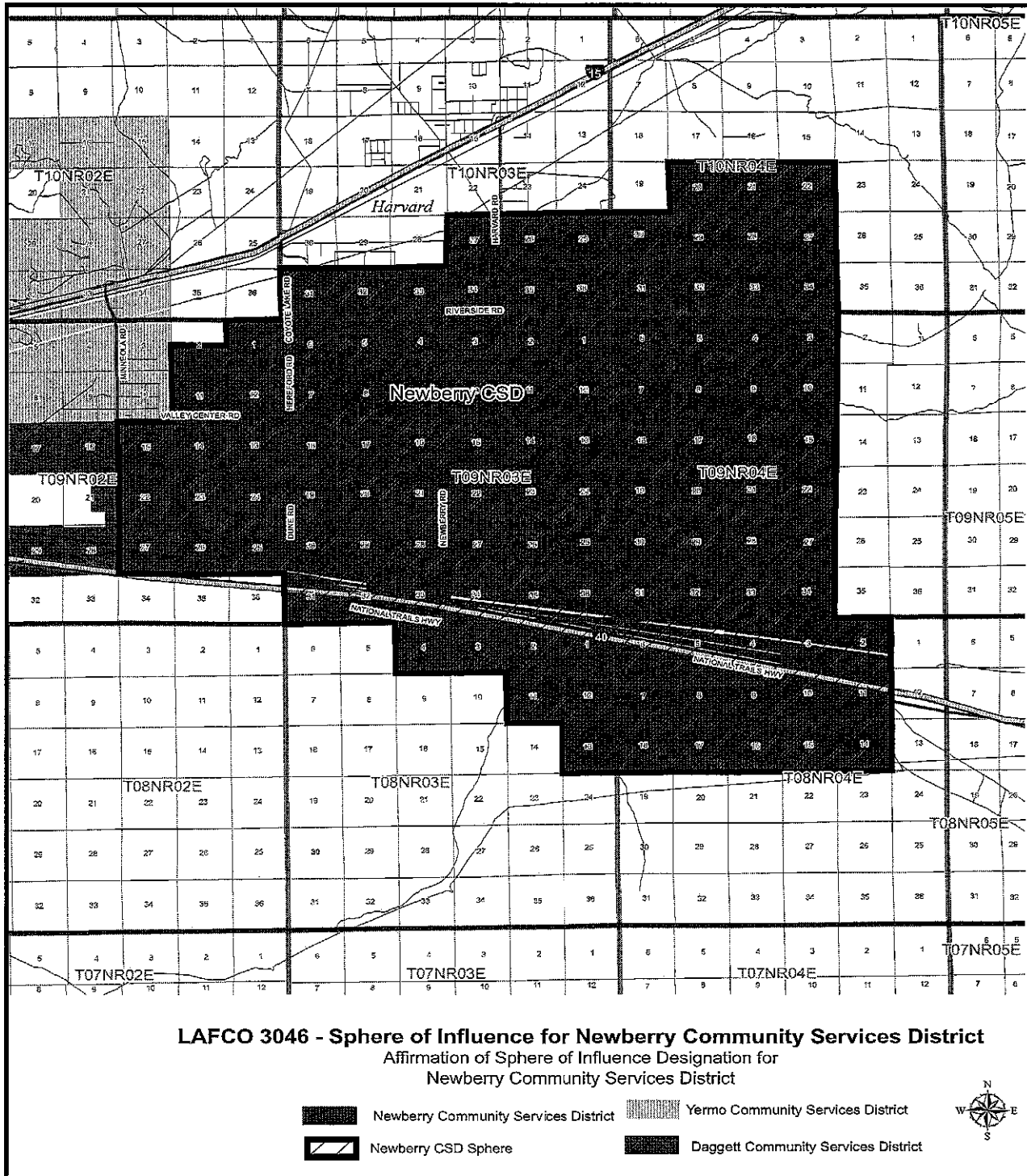
WHEREAS, pursuant to the provisions of Government Code Section 56425(i) the range of services provided by the Newberry Community Services District shall be limited to the following:

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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 July 15, 2009.

DATED: July 16, 2009


KATHLEEN ROLLINGS-McDONALD
Executive Officer



LAFCO 3046 - Sphere of Influence for Newberry Community Services District
 Affirmation of Sphere of Influence Designation for
 Newberry Community Services District

-  Newberry Community Services District
-  Newberry CSD Sphere
-  Yermo Community Services District
-  Daggett Community Services District

