



Local Agency Formation Commission of Napa County
Subdivision of the State of California

1700 Second Street, Suite 268
Napa, California 94559
Telephone: (707) 259-8645
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<http://napa.lafco.ca.gov>

April 2, 2012
Agenda Item No. 6c (Public Hearing)

March 26, 2012

TO: Local Agency Formation Commission

FROM: Keene Simonds, Executive Officer

**SUBJECT: Consideration of a Time Extension to Complete Proceedings:
Reorganization of the Napa Berryessa Resort Improvement District**
The Commission will consider a recommendation from staff to authorize a time extension to complete a special condition tied to the previously approved reorganization of the Napa Berryessa Resort Improvement District into the Napa Berryessa Community Services District. A related and minor change to the text of the special condition is also recommended at the request of the Napa Berryessa Resort Improvement District.

Local Agency Formation Commissions (LAFCOs) are responsible under State law to approve all city and special district change of organizations or reorganizations. State law also empowers LAFCOs to establish approval conditions as long as they do not directly regulate land uses or subdivision requirements. All change of organizations and reorganizations must be finalized within one calendar year from the date of their approval unless LAFCO authorizes a one-time extension for a “reasonable” period to complete outstanding conditions or become terminated.

A. Background

Reorganization Approval

At its April 4, 2011 meeting, LAFCO of Napa County (“Commission”) initiated and approved the expedited reorganization of the Napa Berryessa Resort Improvement District (NBRID) into a new community services district (“NBCSD”) with the same boundary, duties, powers, assets, and liabilities. Approval of the reorganization was consistent with the recommendation of an earlier municipal service review prepared on the region and intended to serve two distinct Commission objectives. First, reorganization would position NBCSD to become more responsive to changes in constituent needs by having the power – subject to subsequent Commission approval – to provide additional municipal services in support of Berryessa Highlands’ continued development. Second, reorganization would improve public accountability by facilitating the delegation of responsibilities in planning for the present and future service needs of the community from the County of Napa to local residents. Specifically, reorganization is expected to directly lead NBCSD to call and conduct an election to replace the County Board of Supervisors with registered voters as the governing board.

Lewis Chilton, Chair
Councilmember, Town of Yountville

Joan Bennett, Commissioner
Councilmember, City of American Canyon

Juliana Inman, Alternate Commissioner
Councilmember, City of Napa

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County of Napa Supervisor, 1st District

Bill Dodd, Commissioner
County of Napa Supervisor, 4th District

Mark Luce, Alternate Commissioner
County of Napa Supervisor, 2nd District

Brian J. Kelly, Commissioner
Representative of the General Public

Gregory Rodeno, Alternate Commissioner
Representative of the General Public

Keene Simonds
Executive Officer

Special Approval Condition

Approving NBRID's reorganization was not subject to protest proceedings given the application of Government Code Section 56853.5; special legislation allowing LAFCOs to expeditiously reorganize resort improvement districts into community service districts without protest and election as long as the affected agencies consent and the proceedings are initiated by January 1, 2018. NBRID, however, did predicate its consent to the reorganization on the Commission including a special condition on the District first finalizing a water and sewer service contract with the Pensus Group; the entity contracted by the Bureau of Reclamation to, among other things, redevelop and operate Lupine Shores. Commission independently evaluated the merits of the special condition request and deemed it reasonable in helping to ensure the broadest revenue base available to NBCSD as it commences operations.

B. Discussion

The Commission is approaching the one-year deadline to complete the reorganization of NBRID into NBCSD and it does not appear likely the referenced special condition involving the Pensus Group will be satisfied by April 4th. Towards this end, and to help inform the Commission's decision on whether to authorize a time extension, staff contacted representatives from both NBRID and Pensus Group requesting an update on the status of the parties reaching a water and sewer service agreement. NBRID responded with a formal letter noting they continue to be committed to the reorganization and reaching agreement with Pensus Group. NBRID, however, states it has not received a response from its last agreement offer made to the Pensus Group dating back to November 21, 2011. NBRID, accordingly, is requesting the Commission authorize a time extension to complete the proceedings through December 31, 2017; a date providing the maximum amount of time to satisfy the special condition under the enabling legislation. NBRID is also requesting the Commission amend the text of the special condition to clarify the agreement shall be between the District and the concessionaire operating at the former site of Steele Park Resort, Lupine Shores.

No formal comment was provided by Pensus Group.

C. Analysis

Staff believes it would be appropriate for the Commission to authorize the time extension as requested by NBRID. As noted, extending the deadline to December 31, 2017 provides the maximum amount of time for the remaining special condition to be satisfied under the enabling legislation. Providing this maximum time extension appears particularly important given staff perceives increasing uncertainty as to whether Pensus will continue to serve as the Bureau of Reclamation's contract concessionaire for developing and operating the former Steele Park site. Providing the maximum time extension would also reaffirm the Commission's commitment in seeing the reorganization through for the purposes of achieving the objectives discussed and vetted at multiple public meetings in early 2011. Further, staff believes NBRID's requested change in the special condition text represents a minor and consistent clarification with the Commission's original intent in tying the reorganization to first securing service commitments for the District from the operator at the site formerly known as Steele Park.

D. Recommendation

Staff recommends approving the maximum time extension available – December 31, 2017 – to complete the approved reorganization of NBRID into NBCSD as detailed in the preceding section. Staff also recommends amending the text of the special condition needed to complete the reorganization as requested by NBRID; a condition that would strike any explicit reference to any one particular concessionaire in the District.

E. Alternatives for Commission Action

The following alternative actions are available to the Commission:

Alternative One (Recommend):

- (a) Approve an extension of time to complete the reorganization proceeding as requested by NBRID to December 31, 2017 or to an earlier date as specified.
- (b) Approve the request by NBRID to amend Section 9 of LAFCO Resolution No. 2011-04 to read:

“The Executive Officer shall receive notification from NBRID that it has reached a written agreement with the concessionaire at what was formerly known as Steele Park ensuring concessionaire’s connection and utilization of NBRID’s water and sewer systems and its payment of all associated fees and assessments for such services.”

Alternative Two:

Take no action. This would terminate the reorganization proceedings under Government Code 57001 as of April 5, 2012.

Alternative Three:

Continue consideration of this item to a special meeting no later than April 4, 2012 and provide direction to staff to provide any additional information as needed.

F. Procedures for Consideration

This item has been agendized as part of a noticed public hearing. The following procedures are recommended with respect to Commission's consideration of this item:

- 1) Receive verbal report from staff;
- 2) Open the public hearing (mandatory); and
- 3) Discuss item and consider action on recommendation.

Respectfully submitted,

Keene Simonds
Executive Officer

Attachments:

- 1) Letter from NBRID, dated March 13, 2012
- 2) Staff Report on Reorganization, dated April 4, 2011
- 3) LAFCO Resolution No. 2011-04, April 4, 2011

NAPA BERRYESSA RESORT IMPROVEMENT DISTRICT

March 13, 2012

Local Agency Formation Commission
Attention: Keene Simonds
1700 Second Street, Suite 268
Napa, CA 94559

Re: Response to Letter of January 6, 2012 Regarding Reorganization

Dear Mr. Simonds:

Your January 6, 2012 letter requested an update regarding the reorganization of Napa Berryessa Resort Improvement District (District) to a Community Services District (CSD) and the related negotiations between the District and the Pensus Group, concessionaire for the Lupine Shores Resort. It is our understanding that you requested this information in order to update the Commission and enable it to take appropriate follow-up action to Resolution No. 2011-04 at your upcoming meeting on April 2, 2012.

Resolution 2011-04 was adopted April 4, 2011 and utilized authorities granted to LAFCO under Senate Bill 1023 to conditionally authorize NBRID's requested reorganization from a Resort Improvement District to a CSD. The intent of the reorganization was in large part to facilitate the future transition of the governance structure from a dependent board, consisting of the Napa County Board of Supervisors, to an independent board of locally elected registered voters. Pursuant to Section 11 of Resolution 2011-04, the conditional approval is set to expire on April 4, 2012 unless extended by the Commission.

The reorganization authorized by Resolution 2011-04 was conditioned upon receipt by LAFCO of written confirmation that the District and Pensus Group had "reached a written agreement regarding the connection and utilization of the District's water and sewer system and its payment of all associated fees and assessments for such services." As of the date of this letter, no such agreement exists.

The failure to reach an agreement does not stem from a lack of effort by NBRID nor does it stem from any change in NBRID's interest in ultimately meeting the conditions of Resolution 2011-04 and completing the reorganization to a CSD. The District sent a

draft agreement to Pensus Group on November 21, 2011 that would ensure Pensus Group would utilize the District's water and wastewater systems and pay their fair share of appropriate system improvements. Although numerous inquiries have been made of Pensus Group representatives requesting a response to the draft agreement, as of this date of this letter, no response has been received. Given this lack of response by Pensus Group and the increasing uncertainty about their future as the concessionaire, NBRID requires additional time to reach an appropriate agreement to ensure its long term interests are protected upon the reorganization.

It is the District's understanding that LAFCO can grant only one extension of the expiration date of Resolution 2011-04. Accordingly, the District requests that LAFCO extend its conditional approval for NBRID's reorganization to a CSD to December 31, 2017, as the authorizing legislation for this reorganization process sunsets on January 1, 2018. This will allow the District the maximum time available to obtain an appropriate water and sewer services agreement. The District also requests that Section 9 of Resolution 2011-04 be amended to read as follows:

The Executive Officer shall receive written notification from NBRID that it has reached a written agreement with the concessionaire at what was formerly known as Steele Park ensuring concessionaire's connection and utilization of NBRID's water and sewer systems and its payment of all associated fees and assessments for such services.

If you have any questions concerning our responses please feel free to contact me.

Sincerely,



Keith Caldwell
Chairman



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April 4, 2011

Agenda Item No. 6b (Public Hearing)

March 29, 2011

TO: Local Agency Formation Commission

FROM: Keene Simonds, Executive Officer
 Brendon Freeman, Analyst

SUBJECT: Proposal to Reorganize the Napa Berryessa Resort Improvement District into the Napa Berryessa Community Services District

The Commission will consider (a) initiating and (b) approving a proposal to reorganize the Napa Berryessa Resort Improvement District into a new community services district with the same boundary, duties, powers, assets, and liabilities. The reorganization is consistent with the recommendation of a municipal service review for the affected region and would position the agency to provide additional services – subject to future approval – consistent with the evolving needs of the community. Reorganization is also expected to facilitate transitioning governance from a dependent board, comprised of the County of Napa Board of Supervisors, to an independent board, comprised of locally elected registered voters.

Local Agency Formation Commissions (LAFCOs) are responsible under State law to approve all city and special district change of organizations consistent with adopted written policies and procedures (Government Code Section 56375). Common examples of change of organizations include formations, annexations, detachments, consolidations, and dissolutions. Two or more of these actions in a single proposal are referred to as a reorganization. State law also empowers LAFCOs to establish conditions in approving changes of organization or reorganizations as long as they do not directly regulate land uses. Underlying LAFCOs' decision-making is to consider the logical and timely development of the affected agencies in context with local circumstances and needs.

A. Summary

Proposal Description

A public hearing has been scheduled for LAFCO of Napa County (“Commission”) to consider (a) initiating and (b) approving the expedited reorganization of the Napa Berryessa Resort Improvement District (NBRID) into a new community services district (CSD) with the same boundary, duties, powers, assets, and liabilities. The proposal is consistent with a recommendation of a municipal service review prepared on the region and involves two distinct and concurrent actions. The first action involves dissolving NBRID for purposes of terminating all of its corporate powers. The second action involves forming – as a successor agency to NBRID – the Napa Berryessa CSD or

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 County of Napa Supervisor, 2nd District

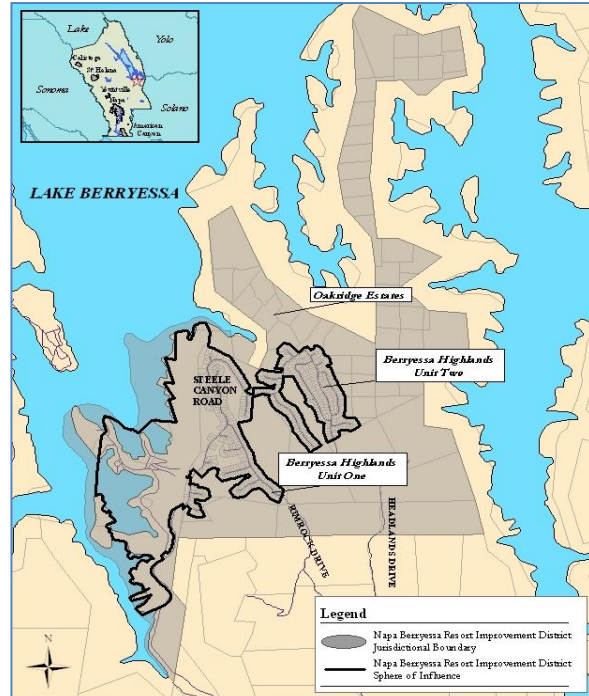
Brian J. Kelly, Commissioner
 Representative of the General Public

Gregory Rodeno, Alternate Commissioner
 Representative of the General Public

Keene Simonds
 Executive Officer

NBCSD. The proposal is consistent with a request filed by the NBRID Board on November 9, 2010 and revised on March 15, 2011 to also ask the Commission to condition approval on the District finalizing a new water and sewer service contract with its largest customer, the Pensus Group. Notably, the Pensus Group is the new concessionaire under contract with the United States Bureau of Reclamation (USBR) to operate the former Steele Park Resort, which is now known as Lupine Shores Resort.

The affected territory is legally inhabited with 529 registered voters. LAFCO staff estimates the resident population at 920. If the proposal is approved as submitted, protest proceedings would be waived consistent with California Government Code (G.C.) Section 56853.5. This statute was enacted on January 1, 2011 and authorizes LAFCOs to expeditiously reorganize RIDs into CSDs with the same boundary, powers, duties, assets, and liabilities without holding protest proceedings and election as long as the affected agency does not file written objection before the close of the hearing.



Proposal Purpose

The underlying purpose of the proposal is two-fold as detailed in the Commission's municipal service review prepared on the region; determinations for which are expected to be formally adopted on April 4, 2011. First, reorganization would position NBCSD to become more responsive to changes in constituent needs by having the power to provide additional municipal services in support of Berryessa Highlands' continued development. This statement is particularly pertinent given State law restricts NBRID to only provide water and sewer services due to a 1971 amendment to its principal act. In contrast, State law would allow NBCSD – subject to future Commission approval – to provide a full range of municipal services, such as roads, parks, and fire protection.¹ Second, reorganization would improve public accountability by facilitating the delegation of responsibilities in planning for the present and future service needs of the community from the County of Napa to local residents. Specifically, though not a condition, reorganization is expected to directly lead NBCSD to call and conduct an election to replace the County Board of Supervisors with registered voters on or before November

¹ The proposed reorganization would authorize NBCSD to only provide water and sewer services; all other services outlined under the Community Services District Act (Government Code Section 61000 et. seq.) would be latent and require subsequent approval from the Commission to activate.

2012; a date that surpasses the one-year deadline for LAFCO approval terms to be completed under State law.

Proposal Review

Staff recommends approval of the proposal subject to the standard reorganization conditions outlined under G.C. Section 56853.5(d). This includes specifying NBCSD shall succeed to, and is vested with, the same powers, duties, responsibility, obligations, liabilities and jurisdiction of the dissolved NBRID. NBCSD will also assume the same jurisdictional boundary and sphere of influence on file with the Commission as of the effective date. Staff also recommends approval of a special condition requested by NBRID to require the District to reach a new water and sewer service agreement with the Pensus Group as it relates to serving Lupine Shores Resort. Additional discussion on this special request is provided on page 12 of this report.

The Commission may consider requiring additional special conditions of approval if needed. Any additional special conditions, however, would require the Commission provide written notice to NBRID before approving the reorganization. The Commission may not take further action for 30 days from the date of notice without the written consent of NBRID. In effect, this gives NBRID an opportunity to file comments or objections to any additional special conditions. If a resolution of object is filed with respect to the special conditions, the proceedings shall be terminated.²

B. Analysis

G.C. Section 56375 delegates to LAFCOs the responsibility to approve or disapprove, with or without amendment, proposals for changes of organization or reorganizations consistent with its adopted written policies, procedures, and guidelines. LAFCOs are also authorized to establish conditions in approving proposals as long as they do not directly regulate land uses. Underlying LAFCOs' determination in approving or disapproving proposed changes of organization or reorganizations is to consider the logical and timely development of the affected agencies in context with statutory objectives and local circumstances.

Required Factors for Review

G.C. Section 56668 requires the Commission to consider certain factors anytime it reviews proposed changes of organization. No single factor is determinative. The purpose in considering these factors is to help inform the Commission in its decision-making process. An evaluation of these factors as it relates to the proposal follows.

² If the proposal is terminated, the Commission may initiate a standard reorganization, but would not be allowed to outright waive protest proceedings as allowed under the expedited process.

1) Population and population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent areas, during the next 10 years.

The affected territory is coterminous with NBRID's existing jurisdictional boundary and is approximately 1,320 acres in size. Current land uses include 358 single-family residences divided between Berryessa Highlands' three distinct subdivisions: Unit One; Unit Two; and Oakridge Estates. Lupine Shores Resort also lies within the affected territory with current uses limited to day activities, including boat launching, pending the site's redevelopment. In all, there are currently 920 estimated residents with 529 registered voters. The total assessed value is \$83.2 million.

Topography in the affected territory varies with an elevation ranging from 0 to 78 feet above sea level. The affected territory is situated along the southern shoreline of Lake Berryessa with Steele Canyon to the west and Wragg Canyon to the east.

A significant portion – approximately three-fifths – of the affected territory is undeveloped; a sizeable portion involving the 212 remaining undeveloped lots within Berryessa Highlands' Units One and Two. It is reasonable to assume the proposal, if approved, would not in and of itself result in any new significant urban growth within the affected territory in the next 10 years given no new boundary changes or service powers would be directly authorized; any new boundary changes or service powers indirectly tied to the proposal would be subject to future approval processes. Irrespective of proposal approval, residential growth within the affected territory is expected to increase incrementally over the next 10 years at 1.26% annually resulting in an estimated resident population of 1,054 by 2021. Additionally, irrespective of proposal approval, non-residential growth is also expected to increase with the planned development of Lupine Shores Resort and its commercial recreational amenities that are expected to include visitor lodging, retail, and restaurants. No new significant growth in adjacent lands to the affected territory is expected within the next 10 years due to restrictive County land use policies that require minimum lot sizes of 160 acres.

2) The need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas.

There is an existing need for organized water and sewer services within the affected territory to support the current and future development of Berryessa Highlands as well pending developing of Lupine Shores Resort. These specific services are needed to provide adequate public health and safety given the use of

private groundwater wells and septic systems are impractical due to density and topography within the community. Proposal approval would transfer water and sewer service responsibilities for the affected territory from NBRID to NBCSD with both services continuing to operate as an enterprise in which user charges would be expected to recover operating costs. Additional organized services that may be needed in the future relative to supporting the continued development of Berryessa Highlands and visitor uses tied to Lupine Shores include elevated fire protection, roads, and parks. Proposal approval would provide a direct mechanism for these and other organized services to be established by NBCSD subject to Commission approval.

3) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.

Proposal approval would strengthen social and economic interests within the affected territory by allowing NBCSD – subject to Commission approval – to establish additional municipal services consistent with the evolving needs of constituents. Proposal approval is also *expected* to facilitate the subsequent transition of NBCSD from a dependent agency governed by the County Board of Supervisors to an independent agency governed by locally elected registered voters; a transition that will improve public accountability by delegating decision-making authority to constituents (emphasis added).

4) The conformity of the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies set forth in G.C. Section 56377.

Proposal approval would conform with the adopted policies of the Commission with respect to favoring multi-service special districts over limited-service special districts in supporting unincorporated areas designated for urban-type uses under the County General Plan (General Policy Determination IV(B)).

No open-space lands would be converted as a result of proposal approval and therefore factors for consideration under G.C. Section 56377 do not apply.

5) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by G.C. Section 56016.

A small portion of the affected territory qualifies as agricultural land under LAFCO law given the existence of a limited number of commercial vineyards. The approval of the proposal, however, would not adversely affect the physical and economic integrity of these existing agricultural uses since it does not involve boundary changes or establish new service powers.

- 6) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.**

The affected territory is coterminous to NBRID's existing jurisdictional boundary on file with the Commission and recorded with the State Board of Equalization.

- 7) Consistency with the city or county general plans, specific plans, and adopted regional transportation plan.**

The proposal is consistent with the County General Plan with respect to a sizeable portion of the affected territory having been designated for an urban-type use (*Rural Residential*). The remaining portion of the affected territory is designated for a non-urban use (*Agriculture, Watershed, and Open Space*). This latter designation does create a policy conflict with forming a multiple-service special district, such as the proposed NBCSD, but is sufficiently mitigated given the local circumstance that the existing development was previously approved under the territory's former zoning standard of *Planned Community* in 1965.

- 8) The sphere of influence of any local agency applicable to the proposal.**

Close to one-fifth of the affected territory lies within NBRID's adopted sphere of influence. This portion of the affected territory comprises Berryessa Highlands' Units One and Two as well as Lupine Shores Resort. The remaining four-fifths of the affected territory was excluded from the sphere of influence at the time of its establishment in 1985 given the lack of expected urban development. The Commission updated the sphere of influence with no changes in 2007 in deference to first completing a review of reorganization options due to diseconomies of scale and issues raised in earlier studies. If the proposal is approved, it is expected the Commission will perform a sphere of influence update on the newly created NBCSD within the calendar year.

- 9) The comments of any affected local agency or other public agency.**

NBRID has previously submitted comment letters to the Commission concerning the potential reorganization of NBRID into NBCSD. These letters were filed on November 9, 2010 and March 1, 2011 and provide NBRID's consent to the proposal with a request for a special condition that the District first reach a new water and sewer service agreement with the Pensus Group to serve Lupine Shores Resort. NBRID is requesting this special condition due to a difference in RID and CSD law. Specifically, RIDs have the authority to require all residents and property owners within its boundaries to connect to both its water and sewer systems while CSDs only have the authority to require sewer connection. NBRID states this special condition would help NBCSD realize economies of scale by

ensuring Lupine Shores Resort pays its proportional share in support of operating and capital improvement costs. Copies of the comment letters are attached.

Additionally, in the course of processing this proposal, the County of Napa requested clarification regarding various issues tied to reorganization approval. Brief responses to the issues raised by the County follow.

- **Are There Additional Noticing Requirements for the Reorganization?**
Standard noticing requirements have applied to the proposal and involve publishing a one-eighth page announcement in the local newspaper along with door posting 21 days in advance of the hearing. No additional noticing will be required of the Commission if the proposal is approved unless a special condition is included that has not been formally requested of the affected agency under G.C. Section 56853.5(c); this section would require the Executive Officer to provide a 30 day notice to the affected agency before any Commission action at which time the affected agency could terminate proceedings if it files a written objection.

- **Does the Commission Resolution Approving the Reorganization Need to Specify the County Board of Supervisors Will Continue to Serve as NBRID Board?**
It is implicit that the current NBRID Board (i.e. County Supervisors) will succeed as the NBCSD Board under G.C. Section 56853.5(d)(3), which is one of the standard conditions included in the draft resolution. No election is being called as a condition of the reorganization.

- **Community Services Districts Can Provide Multiple Services. How Does This Apply to the Reorganization?**
The expedited reorganization proceedings codified under G.C. Section 56853.5 explicitly states no new powers are authorized as part of the proceedings. Accordingly, if approved, NBCSD will be authorized only to provide water and sewer services. All other services outlined under the Community Services District Act are latent and would require subsequent Commission approval to activate.

- **The Reorganization Is Intended to Facilitate An Election to Seat New Board of Directors. Is the Commission Appropriating Election Costs?**
The reorganization is intended to facilitate the eventual transition to an independent governing body. However, since the Commission is not initiating the call for an election of a new board, it is not empowered to condition the reorganization on the appropriation of future election costs.

10) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.

Information collected and analyzed in the Commission's recent municipal service review on the Lake Berryessa region indicates NBRID is nearing financial insolvency. Specifically, NBRID has developed a persistent structural budget deficit and has become dependent on discretionary loans from the County to maintain cash flow for the last three fiscal years. This ongoing deficit of expenses exceeding revenues coupled with these loan obligations have contributed to NBRID experiencing over a 300% decline in its unrestricted fund balance over the last five years from \$0.25 to (\$0.58) million. A more detailed summary of the financial standing of NBRID is provided in the following passage from Section 7.1 of the municipal service review:

“Calculations performed assessing NBRID's liquidity, capital, and profitability for 2009-2010 indicate the District finished the fiscal year with marginally adequate resources to meet short-term operational costs with significant uncertainties regarding its long-term solvency. In particular, NBRID finished with low liquidity as measured by current liabilities exceeding current assets by close to one-half. NBRID did finish with cash reserves sufficient to cover 141 days of operating expenses, but this measurement is misleading given the majority of available cash was tied to a loan from the County. Additionally, along with finishing with long-term debt equal to nearly half of its net assets, NBRID's operating expenses exceeded operating revenues by one-half.”

It is reasonable to assume proposal approval would – at minimum – not further diminish the agency's ability to adequately fund water and sewer services relative to existing conditions. Equally, it is also reasonable to assume proposal approval would improve baseline conditions if, as expected, governance transitions from the County to locally elected registered voters on or before November 2012. Importantly, this expected transition would respond to the perceived preferences of constituents and their past reluctance to approve proposed water and sewer rate increases due to increasing displeasure with the County.

Correspondence with NBRID in the course of preparing this proposal identifies the District is expected to finish 2010-2011 with another operating deficit of approximately \$0.19 million and will require another loan from the County to maintain cash flow. NBRID's short-term solvency, however, appears to be improving with the District recently approving a 60% rate increase to both water and sewer service charges, which should – assuming usage remains constant – eliminate the operating deficit by 2011-12.³ NBRID's long-term strategy to improve solvency is less certain given its primarily tied to first addressing the District's current Cease and Desist Order issued by RWQCB in 2008. In particular, the total capital improvement needs and related costs will not be

³ No uses at Lupine Shores have been incorporated into this projection. The anticipated operating surplus in 2011-2012 is estimated by NBRID at \$0.021 million.

known until NBRID's consultant, Larry Walker & Associates, completes a comprehensive inspection of the sewer collection system to mitigate existing inflow/infiltration problems. The inspection, which is being funded by Measure "A" monies, is expected to be completed later this summer.

11) Timely availability of water supplies adequate for projected needs as specified in G.C. Section 65352.5.

Information collected and analyzed in the Commission's municipal service review on the Lake Berryessa region indicates NBRID has sufficient water supplies to meet existing and projected buildout demands within the affected territory. The following passage from Section 6.1 of the municipal service review states:

"NBRID's water supply is entirely drawn from Lake Berryessa and secured through an agreement with NCFWCWD. The agreement was initially entered into in 1966 and most recently amended in 2006. It provides NBRID an annual entitlement of 300 acre-feet of raw water through 2028. The agreement also allows NBRID to purchase an additional 40 acre-feet of annual entitlement. Raw water from Lake Berryessa is captured from a floatable submerged intake system and powered by two electric pumps with a combined daily conveyance capacity of 755,000 gallons or 2.3 acre-feet.

The full delivery of NBRID's entitlement is considered reliable based on current and historical storage levels at Lake Berryessa relative to the location of the District's floatable intake system. The supply entitlement also appears sufficient to accommodate current as well as projected demands within NBRID in the timeframe of this review, which has been calculated by staff to total 42.7 acre-feet by 2015. Buildout demands are addressed in the succeeding section."

12) The extent to which the proposal will affect a city or cities and the county in achieving their respective fair shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 of Chapter 3 of Division 1 of Title 7.

Approval of the proposal would have a de minimis impact on the County meeting its future regional housing needs as determined by the Association of Bay Area Governments (ABAG).

13) Any information or comments from the landowner or owners, voters, or residents of the affected territory.

One written comment was received from a landowner within the affected territory relating to the proposal. This comment was submitted by USBR regarding the earlier municipal service review on the Lake Berryessa region. USBR acknowledges the municipal service review's recommendation to reorganize NBRID into NBCSD without providing support or objection. No other written comments from landowners or registered voters were received.

14) Any information relating to existing land use designations.

The County General Plan designates the majority of the affected territory as *Agriculture, Watershed, and Open Space* with a minimum parcel of 160 acres. This designation contemplates the subject lands will be generally used for agriculture, processing of agricultural products, and single-family residences. The remaining portion of the affected territory is designated *Rural Residential* under the County General Plan with a minimum parcel size of 10 acres. This designation contemplates predominately low density single-family residential uses in areas that are close to existing urbanized areas. Other general uses contemplated under this designation include day care centers, large residential care homes, and tourist-serving commercial. The following chart summarizes key land use allowances under both of the referenced designations.

County of Napa General Plan: Designations for Affected Territory		
Designation	<i>Agriculture, Watershed, and Open Space</i>	<i>Rural Residential</i>
General Uses	Agriculture, processing of agricultural products, single-family dwellings	Single-family dwellings, day care centers, medical care facilities, private schools, agriculture, stables
Lot Density	Minimum: 160 acres	Minimum: 10 acres

15) The extent to which the proposal will promote environmental justice.

There is no documentation or evidence suggesting the proposal would have a measurable effect with respect to promoting environmental justice.

Terms and Conditions

Standard terms prescribed for expedited reorganizations under G.C. Section 56853.5 would apply to the proposal if approved. These standard terms include the following:

- NBCSD is declared a community services district subject to all provisions under the Community Services District Act beginning with G.C. Section 61000 et seq. The exterior boundary and sphere of influence of NBCSD shall be the exterior boundary and sphere of influence of the dissolved NBRID.
- NBCSD succeeds and is vested with the same powers, duties, responsibilities, obligations, and liabilities of the dissolved NBRID.
- The status, position, and rights of any NBRID officer or employee shall not be affected by the reorganization and shall be retained by NBCSD.
- NBRID’s unexpended fund balance as of the effective date of the reorganization shall be available for use by NBCSD.

- NBCSD shall have ownership, possession, and control of all books, records, papers, offices, equipment, supplies, moneys, funds, appropriations, licenses, permits, entitlements, agreements, contracts, claims, judgments, land, and other assets and property, real or personal, owned or leased by, connected with the administration of, or held for the benefit or use of, the dissolved NBRID.
- No payment for the use, or right of use, of any property, real or personal, acquired or constructed by NBRID shall be required by reason of the succession pursuant to the reorganization, nor shall any payment for NBCSD's acquisition of the powers, duties, responsibilities, obligations, liabilities, and jurisdiction be required by reason of that succession.
- All ordinances, rules, and regulations adopted by NBRID in effect immediately preceding the effective date of the reorganization, shall remain in effect and shall be fully enforceable unless amended or repealed by NBCSD, or until they expire by their own terms. Any statute, law, rule, or regulation in force as of the effective date of the reorganization, or that may be enacted or adopted with reference to the NBRID shall mean NBCSD.
- All allocations of shares of property tax revenue pursuant to California Revenue and Taxation Code along with special taxes, benefit assessments, fees, charges, or any other impositions of NBRID shall remain in effect unless amended or repealed by NBCSD, or they expire by their own terms.
- NBRID's established appropriations limit shall be NBCSD's appropriations limit.
- Any court action by or against NBRID shall continue in the name of NBCSD. The substitution shall not in any way affect the rights of the parties to the action.
- No contract, lease, license, permit, entitlement, bond, or any other agreement to which NBRID is a party shall be void or voidable by reason of the reorganization.
- NBRID's existing obligations, including bonds and other indebtedness, shall be the obligations of NBCSD. Any continuing obligations or responsibilities of NBRID for managing and maintaining bond issuances shall be transferred to NBCSD without impairment to any security contained in the bond instrument.
- The affected territory will be subject to all previously authorized rates, charges, fees, assessments, and taxes that were lawfully enacted by NBRID upon the effective date of the reorganization.

With respect to special conditions, as previously discussed, NBRID requests that reorganization be contingent on the District first reaching a water and sewer service agreement with the Pensus Group to serve Lupine Shores Resort. NBRID is requesting this special condition due to a difference in RID and CSD law. Specifically, RIDs have the authority to require all residents and property owners within its boundaries to connect

to both its water and sewer systems while CSDs only have the authority to require sewer connection. NBRID states this special condition would help NBCSD realize economies of scale by ensuring Lupine Shores Resort pays its proportional share in support of operating and capital improvement costs. Importantly, NBRID's consent of the reorganization is contingent on inclusion of this special condition, which is necessary in order to qualify for the expedited proceedings provided under G.C. Section 56853.5; proceedings that waive protest proceedings. Irrespective of the issue of consent, staff believes the requested special condition is reasonable and helps to ensure NBCSD's success by providing a larger revenue base to support future operations.

Property Tax Exchange

G.C. Section 56810(a)(2) specifies the Commission shall determine the amount of property tax to be exchanged for proposals that include the formation of a special district. Consistent with the expedited reorganization proceedings provided under G.C. Section 56853.5, the Commission shall determine as a condition of proposal approval that NBRID's existing share of property tax revenues be allocated in full to NBCSD.⁴

Environmental Review

Discretionary actions by public agencies are subject to the California Environmental Quality Act (CEQA) any time an underlying activity will result in a direct or indirect physical change to the environment. A lead agency has the principal responsibility for carrying out or approving a project consistent with the provisions of CEQA. This includes determining whether the underlying activity qualifies as a project under CEQA. If the activity is determined to be a project, the lead agency must determine if an exemption applies or if additional environmental review is needed. A responsible agency is accountable for approving an associated aspect of the underlying activity and must rely on the lead agency's determination in making its own CEQA finding.

The Commission serves as lead agency for the proposal given it has discretionary approval authority regarding the approval or denial of the project: concurrent dissolution of NBRID and formation of NBCSD. Staff has reviewed the proposal in accordance with CEQA and finds the project is exempt from further review under Title 14 of the California Code of Regulations Section 15320. This exemption applies to any reorganization of a local governmental agency where there are no changes to the geographic area in which previously existing powers are exercised. Staff has identified no responsible agencies to the project.

⁴ NBRID's current share of the 1% property tax is 0.00017%. In 2009-10, NBRID received a total of \$0.07 million in property tax revenues.

Conducting Authority Proceedings

The Commission is authorized to waive conducting authority proceedings and election under G.C. Section 56853.5 as long as a resolution of objection is not filed by NBRID by the close of the hearing.

D. Options for Commission Action

Staff has identified three broad options for Commission consideration with respect to the proposal. These options are summarized below.

- Option One:** Approve the proposal as prepared by staff subject to the standard and special conditions outlined on pages 10 to 12 of this report.
- Option Two:** Continue consideration of the item to a future meeting if more information is required. This includes identifying and discussing additional possible conditions of approval with NBRID if desired.
- Option Three:** Disapprove the proposal. Disapproval would statutorily prohibit the initiation of a similar proposal for one year.

E. Recommendation

Staff recommends the Commission approve the proposal consistent with Option One as outlined in the preceding section.

F. Procedures for Consideration

The following procedures are recommended with respect to the Commission's consideration of this item:

- 1) Receive verbal report from staff;
- 2) Invite public comment, if any (discretionary);
- 3) Discuss item and consider action on recommendation.

Respectfully submitted,

Keene Simonds
Executive Officer

Brendon Freeman
Analyst

Attachments:

- 1) Draft Resolution of Approval
- 2) Correspondence from NBRID
- 3) NBRID Resolution No. 2011-01
- 4) Chaptered Senate Bill 1023

RESOLUTION NO. 2011-04**RESOLUTION OF
THE LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY
MAKING DETERMINATIONS****INITIATION AND APPROVAL TO REORGANIZE THE NAPA BERRYESSA RESORT
IMPROVEMENT DISTRICT INTO THE NAPA BERRYESSA COMMUNITY SERVICES DISTRICT**

WHEREAS, the Local Agency Formation Commission of Napa County, hereinafter referred to as the "Commission," is responsible for administering the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (California Government Code Section 56000 et seq.);

WHEREAS, the Commission is authorized under California Government Code Section 56375 to initiate and approve, with or without conditions, changes of organization or reorganizations involving the formation, consolidation, merger, and dissolution of special districts;¹

WHEREAS, the Commission is further authorized under Section 56853.5 to initiate the expedited reorganization of a resort improvement district into a community services district that succeeds to the same powers, duties, boundaries, assets, obligations, and liabilities as the resort improvement district proposed to be dissolved;

WHEREAS, pursuant to Section 56853.5, the Commission may approve an expedited reorganization without protest proceedings or election so long as no resolution of objection has been filed by the affected agency prior to the close of the hearing;

WHEREAS, on April 4, 2011, the Commission adopted a written statement of determinations with respect to its municipal service review of the Lake Berryessa Region prepared pursuant to Section 56430. Consistent with the determinations of the municipal service review, the Commission hereby initiates this proposal to expedite the reorganization of the Napa Berryessa Resort Improvement District, hereinafter "NBRID" - to dissolve the Napa Berryessa Resort Improvement District and to form, as its successor, the Napa Berryessa Community Services District, hereinafter "NBCSD";

WHEREAS, this serves as the resolution of application pursuant to the provisions of Section 56652;

WHEREAS, the Commission heard and fully considered the Executive Officer's report on this proposal and all the evidence presented at a duly noticed public hearing held on April 4, 2011; and

WHEREAS, the Commission has considered all the factors required by law under California Government Code Section 56668.

NOW, THEREFORE, THE COMMISSION HEREBY RESOLVES, DETERMINES, AND ORDERS as follows:

ACTION APPROVING NBRID REORGANIZATION

¹ Hereinafter all section references are to the California Government Code unless otherwise noted.

1. The Commission determines this proposal is exempt from environmental review under the California Environmental Quality Act pursuant to Section 15320 of Title 14 of the California Code of Regulations. This proposal is categorically exempt as a reorganization of a local governmental agency where the changes do not alter the geographic area in which previously existing powers are exercised.
2. The proposal to dissolve the Napa Berryessa Resort Improvement District and to form the Napa Berryessa Community Services District as the successor agency is APPROVED and assigned the following distinctive short-term designation:

REORGANIZATION OF THE NAPA BERRYESSA RESORT IMPROVEMENT DISTRICT INTO THE NAPA BERRYESSA COMMUNITY SERVICES DISTRICT

3. The affected territory is shown in the vicinity map provided in Exhibit "A." A recorded map and description of the affected territory is on file with the Commission. The Executive Officer shall amend these documents to reflect the approved reorganization.
4. NBCSD is authorized to provide potable water and sewer services in the affected territory. All other service powers enumerated under the Community Services District Law, Government Code Section 61000 et seq., are latent.
5. A plan for NBCSD to provide potable water and sewer services within the affected territory is provided in Exhibit "B" pursuant to Government Code Section 56653.
6. The Commission makes the following determinations pursuant to Government Code Sections 56881, subdivisions (b)(1) and (b)(2), respectively:
 - (a) The public costs of NBCSD operating as a community services district are likely to be substantially similar to all reasonable alternatives, including existing costs associated with operating as a resort improvement district.
 - (b) The reorganization promotes public access and accountability for community services, needs, and financial resources.
7. Pursuant to Government Code Section 56886.5, the Commission determines that NBCSD will be able to provide services in a more accountable manner than NBRID upon transitioning to an independent district governance body as set forth in the transition plan adopted by NBRID on March 1, 2011, which is attached as Exhibit "C". The Commission further determines it has not been demonstrated that NBRID can feasibly provide the services in a more efficient manner than the community service district to be formed, NBCSD.
8. The proposal is subject to all of the following standard conditions as required under Government Code Section 56853.5(d):
 - (a) NBCSD is declared to be, and shall be deemed a community services district as if the district had been formed pursuant to the Community Services District Law. The exterior boundary and sphere of influence of NBCSD shall be the exterior boundary and sphere of influence of the dissolved NBRID.
 - (b) NBCSD succeeds to, and is vested with, the same powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the dissolved NBRID.

- (c) The status, position, and rights of any officer or employee of NBRID shall not be affected by the transfer and shall be retained by the person as an officer or employee of NBCSD.
- (d) NBCSD shall have ownership, possession, and control of all books, records, papers, offices, equipment, supplies, moneys, funds, appropriations, licenses, permits, entitlements, agreements, contracts, claims, judgments, land, and other assets and property, real or personal, owned or leased by, connected with the administration of, or held for the benefit or use of, the dissolved NBRID.
- (e) The unexpended balance as of the effective date of the expedited reorganization of any funds available for use by NBRID shall be available for use by NBCSD.
- (f) No payment for the use, or right of use, of any property, real or personal, acquired or constructed by NBRID shall be required by reason of the succession pursuant to the expedited reorganization, nor shall any payment for NBCSD's acquisition of the powers, duties, responsibilities, obligations, liabilities, and jurisdiction be required by reason of that succession.
- (g) All ordinances, rules, and regulations adopted by NBRID in effect immediately preceding the effective date of the expedited reorganization, shall remain in effect and shall be fully enforceable unless amended or repealed by NBCSD, or until they expire by their own terms. Any statute, law, rule, or regulation in force as of the effective date of the expedited reorganization, or that may be enacted or adopted with reference to the NBRID shall mean NBCSD.
- (h) All allocations of shares of property tax revenue pursuant to Part 0.5 (commencing with Section 50) of the California Revenue and Taxation Code, special taxes, benefit assessments, fees, charges, or any other impositions of NBRID shall remain in effect unless amended or repealed by NBCSD, or they expire by their own terms.
- (i) The appropriations limit of NBRID that was established pursuant to Division 9 (commencing with Section 7900) of Title 1 of the Government Code shall be the appropriations limit of NBCSD.
- (j) Any action by or against NBRID shall not abate, but shall continue in the name of NBCSD, and NBCSD shall be substituted for NBRID by the court in which the action is pending. The substitution shall not in any way affect the rights of the parties to the action.
- (k) No contract, lease, license, permit, entitlement, bond, or any other agreement to which NBRID is a party shall be void or voidable by reason of the enactment of the expedited reorganization, but shall continue in effect, with NBCSD assuming all of the rights, obligations, liabilities, and duties of NBRID.
- (l) Any obligations, including, but not limited to, bonds and other indebtedness, of NBRID shall be the obligations of NBCSD. Any continuing obligations or responsibilities of NBRID for managing and maintaining bond issuances shall be transferred to NBCSD without impairment to any security contained in the bond instrument.
- (m) Upon the effective date of the proposal, the affected territory will be subject to all previously authorized rates, charges, fees, assessments, and taxes that were lawfully enacted by NBRID.

9. The proposal is also subject to the following special condition as requested by NBRID:
- (a) The Executive Officer shall receive written notification that the Pensus Group – contact concessionaire for Lupine Shores Resort – and NBRID have reached a written agreement regarding the connection and utilization of the District’s water and sewer system and its payment of all associated fees and assessments for such services.
 - (b) Should the Executive Officer receive the notification and execute the Certificate of Completion pursuant to Government Code Section 57202 before July 1, 2011, the effective date of the reorganization shall be July 1, 2011.
 - (c) Should the Executive Officer receive the notification on or after July 1, 2011, the effective date of the reorganization shall be set as provided in Paragraph 13.
10. The Commission approves the proposal subject to the conditions set forth above and with the explicit expectation that the successor governing board of NBCSD (the Napa County Board of Supervisors) will call an election to transfer governance to registered voters residing within the affected territory upon the completion of the transition plan as adopted by NBRID on March 1, 2011, which is attached as Exhibit “C”.
11. All conditions shall be satisfied within one calendar year unless extended by the Commission.
12. The Commission orders the reorganization without conducting authority proceedings and an election in accordance with California Government Code Section 56853.5.
13. The effective date of the reorganization shall be the date of recordation of the Certificate of Completion with the County of Napa Clerk-Recorder’s Office, except as otherwise provided in Paragraph 9.

The foregoing resolution was duly and regularly adopted by the Commission at a public meeting held on April 4, 2011, by the following vote:

AYES: Commissioners KELLY, BENNETT, INMAN, LUCE, and WAGENKNECHT

NOES: Commissioners NONE

ABSTAIN: Commissioners NONE

ABSENT: Commissioners DODD and CHILTON

ATTEST: Keene Simonds
Executive Officer

Recorded by: 
Kathy Mabry
Commission Secretary

EXHIBIT A
Vicinity Map of Affected Territory

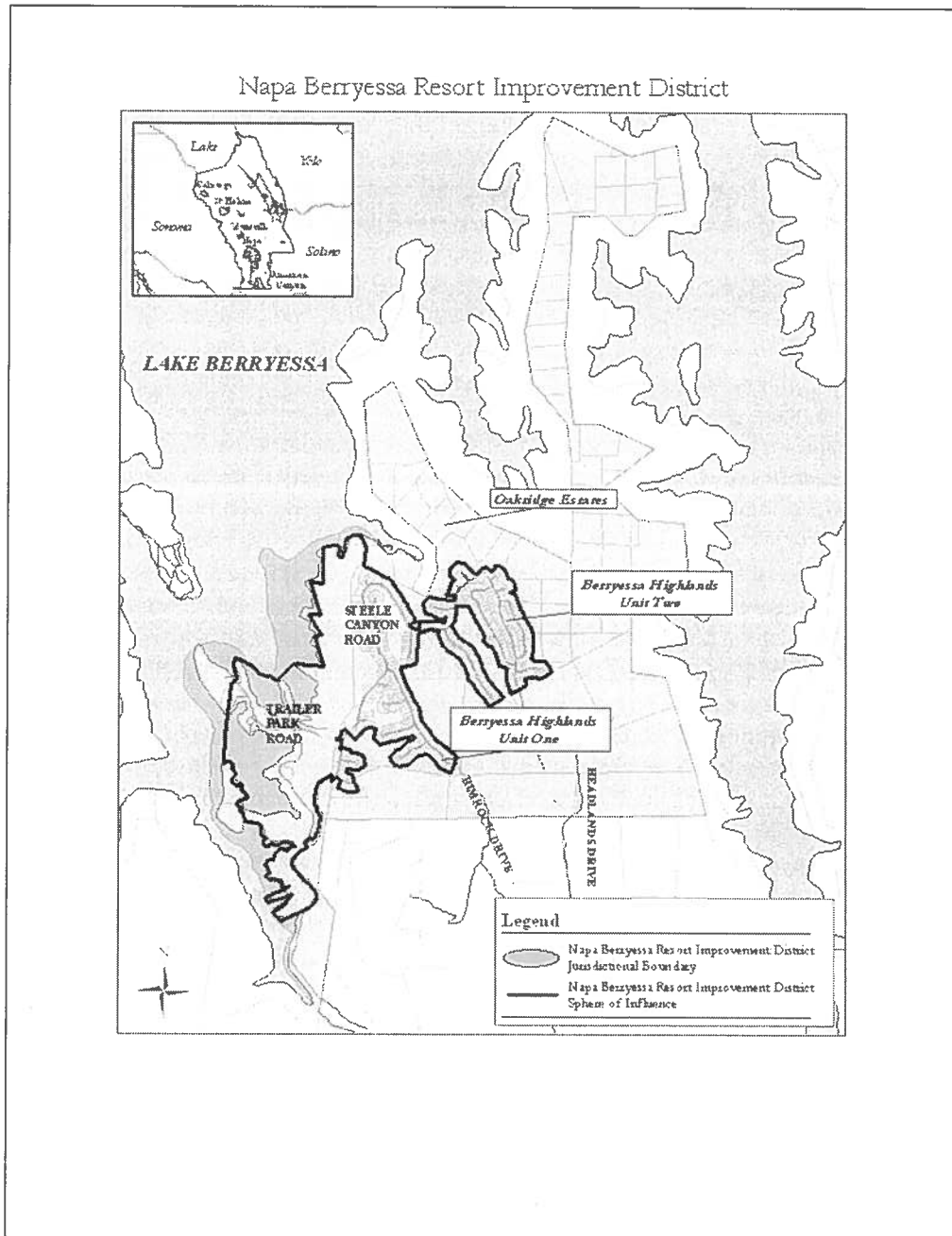


EXHIBIT B
Plan of Services

In accordance with the requirements enumerated under California Government Code Section 56653, the Commission makes the following statements with respect to NBCSD's plan to provide services within the affected territory.

1. NBCSD shall provide potable water and sewer services in the affected territory.
2. The level and range of potable water and sewer services provided by NBCSD shall be substantially similar to existing potable water and sewer services currently provided by NBRID.
3. At the time reorganization is recorded, NBCSD shall immediately assume all existing potable water and sewer services currently provided by NBRID.
4. The reorganization is not contingent on any infrastructure improvements within the affected territory.
5. NBCSD will finance potable water and sewer services principally through user fees adopted by ordinance and subject to all other provisions of law.