

# NIPOMO COMMUNITY SERVICES DISTRICT

## MINUTES

FEBRUARY 5, 2003

### REGULAR MEETING 9:00 A.M.

BOARD ROOM 148 S. WILSON STREET NIPOMO, CA

#### BOARD MEMBERS

MICHAEL WINN, **PRESIDENT**  
JUDITH WIRSING, **VICE PRESIDENT**  
ROBERT BLAIR, **DIRECTOR**  
CLIFFORD TROTTER, **DIRECTOR**  
LARRY VIERHEILIG, **DIRECTOR**

#### STAFF

DOUGLAS JONES, **GENERAL MANAGER**  
DONNA JOHNSON, **SEC. TO THE BOARD**  
JON SEITZ, **GENERAL COUNSEL**

**NOTE:** *All comments concerning any item on the agenda are to be directed to the Board Chairperson. Consistent with the Americans with Disabilities Act, NCSD Board agendas and other writings will be made available to disabled persons in an appropriate alternate format.*

**A. CALL TO ORDER AND FLAG SALUTE**

President Winn called the meeting to order at 9:02 a.m. and led the flag salute.

**B. ROLL CALL**

At Roll Call, all Board Members were present.

**C. PUBLIC COMMENTS PERIOD**

**PUBLIC COMMENTS**

Any member of the public may address and ask questions of the Board relating to any matter within the Board's jurisdiction, provided the matter is not on the Board's agenda, or pending before the Board.

**Presentations are limited to three (3) minutes or otherwise at the discretion of the Chair.**

The following members of the public spoke:

Ed Eby, NCSD resident – Read a summary of a report from NCSD water expert

Lisa Mae Neil, resident of Moss Lane within proposed annexation – Expressed concerns about the resident's well and roadways due to Trincon's development. President Winn asked her to put her questions in writing and submit them to the District for response.

**D. ADMINISTRATIVE ITEMS** (The following may be discussed and action may be taken by the Board.)

**D-1) CITY INCORPORATION**

Review Draft Request for Proposal (RFP) for a feasibility study

Mr. Jones presented the draft RFP for a feasibility study for city incorporation.

The following member of the public spoke:

Guy Murray, NCSD resident – Initial quote of \$23,500 NCSD received appears high. Nipomo Incorporation Committee (NIC) received a quote of \$15,000. NIC met and voted to support NCSD's efforts. NIC offers assistance to NCSD.

Director Trotter suggested that the RFP include a line item of "other observations consultant might make". Director Wirsing suggested that a survey be sent to residents. Director Vierheilig suggested community involvement before study is made and hold a town hall meeting. Director Blair is in favor of incorporation. President Winn wants to make sure that those areas that do not want to be included in the city be excluded from the study.

Upon the motion of Director Blair, and seconded by Director Trotter, the Board approved the Request For Proposal for a feasibility study for city incorporation with the inclusion of Mr. Trotter's comment. Vote 4-1 with Director Wirsing voting No. The Board of Directors directed Staff to ask Supervisor Achadjian if there were funds available to assist with this study.

**D-2) SOLID WASTE FRANCHISE INTERIM RATE INCREASE – PUBLIC HEARING**

Ordinance adopting solid waste rate adjustments

Tom Martin, representative from South County Sanitary Services, Inc. discussed the proposed rate increase and noted that AG, GB, Pismo and other parts of Nipomo all had a 4.2% rate increase. This rate increase is part of the annual CPI review provided for in the agreement.

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D-2) (cont) SOLID WASTE FRANCHISE INTERIM RATE INCREASE – PUBLIC HEARING

The following members of the public spoke:

Vince McCarthy, NCSd resident - Concerned about last year's rate hike of 14% and now this year's 4% rate increase. When will it stop?

Jesse Hill, 1910 Grant Ave, Arroyo Grande - Suggested NCSd look at mandatory trash pick up.

President Winn directed Staff to investigate mandatory trash pick up options.

Upon motion of Director Blair and seconded by President Winn, the Board of Directors approved Ordinance 2003-96 with a vote of 5-0, with Director Wirsing abstaining.

**ORDINANCE 2003-96**

**AN ORDINANCE OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
ADOPTING FEES AND CHARGES FOR SOLID WASTE SERVICE**

D-3) FORMATION OF STREET LANDSCAPING DISTRICT NO. 1

Setting a Public Hearing of March 19, 2003, to establish landscaping district and assessments

District legal counsel, Jon Seitz, reviewed the 100% Property Owner Petition/Ballot and the Engineer's Proposition 218 calculation. The drainage basin, Lot 29, is included in the County Flood Control and will not be maintained by NCSd. There was no public comment. The date of the public hearing needs to be changed to April 2, 2003. Upon motion of Director Vierheilig and seconded by Director Trotter, the Board of Directors approved Resolution No. 2003-851 on a vote of 4-1 with Director Blair voting no.

**RESOLUTION NO. 2003- 851**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
INITIATING PROCEEDINGS LANDSCAPE MAINTENANCE DISTRICT NO. 1  
(Pursuant to the Landscaping and Lighting Act of 1972)**

President Winn called for a break at 10:15 a.m. and reconvened at 10:26 a.m.

D-4) ANNEXATION NO. 22 – TRACT 2784 – PUDWILL

Review resolution conditionally approving annexation No. 22 and Annexation Agreement

Greg Nester, agent for Pudwill - Pudwill applied for annexation because it is a county requirement that he apply because his project is next to NCSd boundaries. The project has its own water available to service the Tract and they can form their own water company.

The following members of the public spoke:

John Snyder, outside NCSd boundary - Stated his comments apply to agenda items D4, D5, D6 and D7. NCSd opposed Woodlands because of lack of adequate water and now are annexing 4 new properties. Mr. Snyder gave a handout to the Board. He stated that an EIR is required.

Vince McCarthy, NCSd resident – Asked, “Do we have the water or don't we”?

Greg Nester, agent for Pudwill – Stated that an EIR is not required.

District legal counsel reviewed annexation agreement. LAFCO is lead agency for purposes of annexation and in charge of doing the initial study for environmental review and should include both sphere of influence change and the actual annexation itself. Urban Water Management Plan draft will be presented at next meeting.

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D-4) (CONT) ANNEXATION NO. 22 – TRACT 2784 – PUDWILL

The following modifications to agreement:

1. Paragraph 5 C, strike this sentence “Applicant acknowledges that said obligation to construct water infrastructure requires Applicant to pay prevailing wages” and insert the following “Applicant shall be responsible for determining whether the construction of the water infrastructure or other public improvements to be dedicated to the District will require the payment of prevailing wages for such construction, and, if so, shall comply with all applicable requirements.
2. Paragraph 2 A, include the word “FIRM” in the sentence “The parties shall work cooperatively to identify a FIRM available supplemental water source for providing water to the project”.

The motion by Director Blair and seconded by President Winn was to approve the annexation agreement with the modifications made to Paragraph 2 A and 5C. The motion failed on a vote of 2-3, with Directors Wirsing, Trotter and Vierheilg voting no.

District legal counsel asked the Board of Directors if there is any modifications to the agreement that would make it acceptable or don't spend any more time on the agreement.

President Winn stated that the Board of Directors has three options: 1. Deny service 2. Amend the agreement or 3. Wait until the Urban Water Management Plan and the Beeby Study is released. Director Vierheilg suggested that the language of the agreement needs to be crystal clear.

President Winn asked for a motion to direct Staff to recraft the language of the agreement to meet the standards of certainty about the supplement source of water and come back on the February 19 meeting. Director Vierheilg made that motion and Director Trotter seconded the motion. Vote 4 to 1, with Director Blair voting no.

The following member of the public spoke:

Homer Fox, NCSD resident – Is motion legal since it is not on the agenda? District Legal Counsel addressed that the motion is within the Brown Act.

John Snyder, outside the District – Believes that there is inconsistency between what Mr. Jones and Markman, Water Attorney are saying regarding forming mutual water companies.

Ed Eby, NCSD resident – Has no problem with this annexation, however, annexation agreement should distinguish between those that are sitting on water and those that are not. Supplemental water should not come from Santa Maria Basin.

Greg Nester, agent for Pudwill – Both parties need to agree on the agreement. The language is too open-ended. He suggested that all annexations should be denied until these issues are resolved.

D-5) ANNEXATION NO. 23 – TRACT 2499 –LEM

Review resolution conditionally approving annexation No. 23 and Annexation Agreement

See D-6

D-6) ANNEXATION NO. 24 – LYN ROAD (Previously called Robertson Annexation)

Review water service report, resolution conditionally approving the annexation and annexation agreement

Director Wirsing made a motion to table Items D5 and D6 for two weeks until the next agenda. Director Blair seconded the motion.

The following members of the public spoke:

Greg Nester, agent for Pudwill and Lem – Concerned about the timing of these annexations and the costs that will be added to the projects.

Director Blair removed himself from the Board of Directors.

Bob Blair, NCSD resident – Spoke in favor of Pudwill's project.

Director Blair then placed himself back on the Board of Directors.

Homer Fox, NCSD resident – Can't understand why NCSD won't let him develop

Jim Kinninger, NCSD resident – Felt that this was confusing and hard to understand with policy changing in the middle of making a decision.

Gene Mintz, 1712 Lyn Road – Annexation No. 24 is a hardship case. They will have development restrictions and they should be considered differently.

After public comment, the vote was unanimous to table Items D5 and D6 for two weeks.

D-7) REQUEST FOR ANNEXATION – NIPOMO HILLS

Request to annex approximately 88 acres for a 600 unit housing development at Thompson Ave and Knotts St.

President Winn announced that he lives on Knotts Street, north of the development, and will not participate in the discussions and pursuant to new rules of the Brown Act, he will leave the room. Other than living next to the development, he does not have any other reason for leaving. President Winn turned the meeting over to Vice President Wirsing.

District legal counsel stated that Staff is not asking for approval today. It is being presented as a concept - the idea of NCSD buying water from Cal Cities for this project. Possibilities of ramifications of approving what type of agreement would be negotiated if this project would move forward:

1. NCSD buys water from Cal Cities
2. Cal Cities sells water to the project and NCSD wields it.
3. Project, as presented in staff report, would likely have to verify a 20 year water supply under the Government Code and Water Code.
4. EIR needs to be completed?
5. Other issues that need to be addressed.

The following members of the public spoke:

Vince McCarthy, NCSD resident - Project does not follow General Plan

Spike Wheeler, Agent for Project – He is waiting for a letter from Cal Cities and will give it to NCSD when he gets it. He stated that project is just starting the process.

Jim Kinninger, NCAC Chairman – Handed out a letter to the Board of Directors which outlined the NCAC concerns for the project.

Ed Eby, Save the Mesa Representative – Handed out a letter to the Board of Directors, which outlined Save the Mesa concerns for the project.

Upon motion of Director Vierheilig and seconded by Director Trotter, the Board unanimously approved tabling this matter until the project is further along in the processing with the County. Vote 4-0.

Director Winn returned to the Boardroom.

E-1) REVIEW OF BOARD OF DIRECTOR BY-LAWS

Annual review of the By-Laws

District Legal Counsel reviewed the by-laws

The following members of the public spoke:

Jesse Hill, 1910 Grant Ave. Arroyo Grande – Asked about incompatible offices for NCSD and NCAC

Dick Mobraaten, NCSD resident – By-laws should elaborate on duties of the President of NCSD.

Upon motion of Director Blair and seconded by Director Wirsing, the Board of Directors unanimously approved Resolution 2003-852. Vote 5-0.

**RESOLUTION NO. 2003-852**  
**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE**  
**NIPOMO COMMUNITY SERVICES DISTRICT**  
**ESTABLISHING BOARD BY-LAWS**

E-2) REQUEST TO STORE NCAC ITEMS IN THE DISTRICT BOARD ROOM

NCAC request to have a cabinet(s) for storage of items

The Board discussed the possibility of using the Boardroom for storage of business items. Mr. Jones suggested that the NCAC place their own lock on the existing cabinets in the Boardroom rather than using their own filing cabinets. District Legal Counsel pointed out that NCAC is an appointed government agency.

The following members of the public spoke:

Dick Mobraaten, NCSD resident- Felt that NCSD should not be the custodian for outside organizations and is against placing the cabinets at NCSD.

Jim Kinninger, NCAC Chairman – Requested NCSD support.

Upon motion of Director Trotter and seconded by Director Vierheilig, the Board of Directors approved the request to allow NCAC documents to be stored in the Boardroom cabinet. Vote 5-0 with Director Blair abstaining.

F. **CONSENT AGENDA** *The following items are considered routine and non-controversial by staff and may be approved by one motion if no member of the Board wishes an item be removed. If discussion is desired, the item will be removed from the Consent Agenda and will be considered separately. Questions or clarification may be made by the Board members without removal from the Consent Agenda. The recommendations for each item are noted in parenthesis.*

F-1) WARRANTS [RECOMMEND APPROVAL]

F-2) BOARD MEETING MINUTES [RECOMMEND APPROVAL]

Minutes of January 22, 2003, Regular Board meeting

F-3) ACCEPTANCE OF WATER IMPROVEMENTS-TRACT 2370 (KRICHEVSKY) (RES APPROVAL)

Resolution accepting water improvements

Director Trotter temporarily left the Boardroom.

There was no public comment. Upon motion of Director Vierheilig and seconded by Director Wirsing, the Board unanimously approved the consent agenda. Vote 4-0.

Director Trotter returned to the Boardroom.

G. **MANAGER'S REPORT**

Doug Jones, District General Manager, presented information on the following:

G-1) AWWA CONFERENCE

G-2) SLO COUNTY ANNUAL RESOURCE REPORT

There was no public comment.

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**H. COMMITTEE REPORTS**

Director Vierheilig reported that the Finance Committee met on January 31. Additions or modifications can be made to the draft purpose statement. Director Wirsing reported on the Chamber Luncheon.

**I. DIRECTORS COMMENTS**

Director Vierheilig suggested that job duties/functions be written down for the committees.

The Board of Directors went into Closed Session at 12:55 p.m.

**CLOSED SESSION**

CONFERENCE WITH LEGAL COUNSEL Pending Litigation GC§54956.9

- A. SMVWCD VS NCSD SANTA CLARA COUNTY CASE NO. CV 770214 AND ALL CONSOLIDATED CASES.
- B. ANTICIPATED/INITIATE LITIGATION, ONE CASE

CONFERENCE WITH NEGOTIATOR GC§54956.8

- C. WATER LINE EASEMENT ACROSS COUNTY PARK - DISTRICT NEGOTIATOR - DOUG JONES,  
COUNTY NEGOTIATOR - PETE JENNY, REGARDING TERMS & PRICE. POSSIBLE LITIGATION INITIATION GC§54956.9

**NO REPORTABLE ACTION**

**ADJOURN**

President Winn adjourned the meeting at 1:20 p.m.

***The next regular Board Meeting will be held on February 19, 2003, at 9:00 a.m.***