

# NIPOMO COMMUNITY SERVICES DISTRICT

*Celebrating 44 - Years of Service 1965 - 2009*

## MINUTES

**AUGUST 12, 2009 AT 9AM**

BOARD ROOM 148 SOUTH WILSON STREET, NIPOMO, CA

### **BOARD of DIRECTORS**

JAMES HARRISON, **PRESIDENT**  
LARRY VIERHEILIG, **VICE PRESIDENT**  
MICHAEL WINN, **DIRECTOR**  
ED EBY, **DIRECTOR**  
BILL NELSON, **DIRECTOR**

### **PRINCIPAL STAFF**

BRUCE BUEL, **GENERAL MANAGER**  
LISA BOGNUDA, **ASST. GENERAL MANAGER**  
DONNA JOHNSON, **BOARD SECRETARY**  
JON SEITZ, **GENERAL COUNSEL**  
PETER SEVCIK, **DISTRICT ENGINEER**

Mission Statement: The Nipomo Community Services District's mission is to provide its customers with reliable, quality, and cost-effective services now and in the future.

00:00:00

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

President Harrison called the August 12, 2009 Regular Meeting of the Board of Directors of the Nipomo Community Services District to order at 9:00 a.m. and led the flag salute.

#### B. ROLL CALL

At Roll Call, all Board members were present.

00:01:06

#### C. PRESENTATIONS AND PUBLIC COMMENT

##### C-1) COMMANDER BRIAN HASCALL OF SLO COUNTY SHERIFF'S OFFICE Update re: South County Activities in July 2009

Commander Brian Hascall of the San Luis Obispo Sheriff's Office gave an update on the Sheriff's activities in July.

There have been quite a few vehicle burglaries occurring. Cmdr. Hascall suggested to lock vehicles and to remove valuables.

Clyde Yarborough fired a hand gun at the 200 block of Country Hill Road. After he was released from jail, he violated the restraining order, returned to his home and made threats to himself and his wife.

To protect your home and valuables, a Neighborhood Watch Program is very helpful.

The Board thanked Commander Hascall for his presentation.

##### C-2) BATTALION CHIEF BILL FISHER OF CALFIRE Update re: South County Activities in July 2009

Captain Michael Deleo reported in place of Chief Fisher.

He gave an update of the CalFire activities on the Nipomo Mesa and reviewed the activity report given to the Board and public.

In July 2009, Nipomo Station #20 had a total of 118 calls: 25 fire calls, 10 vehicle accidents, 57 medical aids and 26 other calls.

Mesa Station #22 had a total of 44 calls: 0 fire calls, 3 vehicle accidents, 26 medical aids and 15 other calls.

The Board thanked Captain Deleo for his presentation.

##### C-3) DIRECTORS' ANNOUNCEMENTS OF DISTRICT & COMMUNITY INTEREST Receive Announcements from Directors Items of District & Community Interest

President Harrison asked the Board to add an item to the agenda regarding transfer of County property.

Jon Seitz, District Legal Counsel, stated that information came to the Board subsequent to posting of the agenda and immediate action is required. Government Code § allows such additions.

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C-3) DIRECTORS' ANNOUNCEMENTS OF DISTRICT & COMMUNITY INTEREST (CONT)

Upon motion by Director Winn and seconded by Director Vierheilg, the Board unanimously agreed to place Item E-6 to the agenda. Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Winn, Vierheilg, Eby, Nelson and Harrison	None	None

Director Eby

August 12, 2009, Chamber of Commerce Mixer at the Dana Adobe from 5:30 - 7:30 p.m.  
Sept 27, 2009 – Concert at the Dana Adobe – Cuesta Night Band A limited number of tickets at \$20.00 are available. Reception 3:00 and concert at 4:00 p.m.

Director Winn

08/06/09 – Supervisor Achadjian concluded a series of meetings which included discussions of tiered rate structures among the purveyors on the Mesa. Gere Sibbach was in attendance and explained debt advisory committee.

08/11/09 – Board of Supervisors met. Brush Poppers organization was discussed, as well as C2(c) amending the Housing Element of the General Plan. The impacts on water are significant. The Board of Supervisors tentatively approved a Negative Declaration.

08/13/09 – SLO County Planning Commission will discuss Conservation Open Space Element.

08/20/09 – LAFCo will discuss park powers for the NCSD.

08/20/09 – A sub-committee of the Water Resources Advisory Committee (WRAC) will discuss impacts on water that would be of interest to NCSD.

08/24/09 – NCSD Infrastructure Committee meeting in the District Board room.

08/24/09 – South County Advisory Committee will meet at 6:30 p.m. in the District Board room.

08/27/09 – SLO County Planning Commission Study Session concerning San Miguel GPA

WRAC meeting will be the first Wednesday in September at 1:30 p.m.

Director Harrison

Brush Poppers was discussed at the Board of Supervisors meeting Aug. 11.

08/20/09 - LAFCo meeting will discuss parks.

Fire Safe Council meeting

08/27/09 – Board of Supervisors will discuss easements for Parks and Recreation for equestrian trails.

C-4) PUBLIC COMMENT ON ITEMS NOT ON AGENDA

There was no public comment.

00:22:29

D. CONSENT AGENDA

D-1) APPROVE WARRANTS

D-2) APPROVE BOARD MEETING MINUTES  
Approve Minutes of 7/22/09 Regular Meeting

D-4) SUBMIT BALLOT TO CSDA RE "SEAT A" ELECTION

Items D-3 and D-5 were pulled for separate consideration.

Upon motion by Director Winn and seconded by Director Vierheilg, the Board unanimously approved Items D-1, D-2 and D-4. Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Winn, Vierheilg, Eby, Nelson and Harrison	None	None

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D-3) AUTHORIZE SUBMISSION OF SAVINGS BY DESIGN APPLICATION TO PG&E

Bruce Buel, General Manager, explained that AECOM has informed the District about PG&E's rebate program to reward non-residential new construction. The District can benefit from the rebate program by designing energy-saving features to be used in the waterline project.

The Board discussed how the rebate should more than pay for the cost of processing the application.

Upon motion by Director Winn and seconded by Director Eby, the Board unanimously agreed to authorize the General Manager to execute and submit the application to PG&E. There was no public comment. Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Winn, Eby, Vierheilig, Nelson and Harrison	None	None

D-5) RATIFY EXECUTION OF REVISED LEASE AGREEMENT FOR PURCHASE OF BACKHOE

Bruce Buel, General Manager, explained that the Board approved the purchase of a backhoe at the July 22, 2009 meeting. The salesman informed the District that the amount presented for that approval did not include interest in the monthly payments schedule. The Board reviewed the information. Upon motion by Director Winn and seconded by Director Eby, the Board agreed to continue this item to the next meeting. There was no public comment. Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Winn, Eby, Vierheilig, Nelson and Harrison	None	None

E. ADMINISTRATIVE ITEMS

00:43:50

E-1) DISCUSS DEVELOPMENT OF GUIDELINES FOR FUTURE RATE ADJUSTMENT PROTEST PROCEEDINGS

Bruce Buel, General Manager, explained that the draft set of guidelines presented to the Board is a concept of guidelines for rate adjustment protest proceedings.

Jon Seitz, District Legal Counsel, explained that there has been some vagueness in the rate adjustment protest proceedings. The draft presented helps identify the responsible party of the bill, when bill will be mailed out. The Board questioned Mr. Seitz. Mr. Seitz said that either the property owner or the tenant (if the customer of record) may protest a rate adjustment ordinance.

There are three kinds of Proposition 318 proceedings:  
Special Tax Vote; Assessment Vote; and User Fee Protest Proceeding.

The Board asked questions and made suggestions to the draft document.

Upon motion by Director Winn and seconded by Director Eby, the Board unanimously agreed to set a public hearing to September 9, 2009, for the reading and adoption of the revised "Guidelines for the Submission and Tabulation of Protests". Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Winn, Vierheilig, Nelson, Eby and Harrison	None	None

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01:11:07

E-2) CONDUCT SEMI-ANNUAL REVIEW OF WATER ALLOCATION AND DISCUSS TRANSFER OF WATER BETWEEN USE GROUPS

Upon motion of Director Vierheilig and seconded by Director Winn, the Board unanimously agreed to staff's recommendation to develop revisions to Sections 3.05.030 and 3.05.060 for future Board consideration based on the assessment feasibility research from The Wallace Group. Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Vierheilig, Winn, Eby, Nelson and Harrison	None	None

The following members of the public spoke:

John Belsher, attorney representing Bill Kengel -- stated that, though the agendized item was not about his client's project, it would be affected. He urged the Board to reallocate water to the MF and LOW categories.

Greg Nester, local developer – stated that the Board should be straight up. If 34 AFY of water is available, that is what the Board should allow. A developer needs to rely on what the Board has declared available.

Upon motion of Director Vierheilig and seconded by Director Winn, the Board agreed to make the changes to the categories as follows:

CATEGORY	FROM	TO
SFR/DUP	21.9	7.1
SEC	3.4	0
MF	6.9	25.0
LOW I	2.1	2.1

Vote 4-1, with Director Eby dissenting.

YES VOTES	NO VOTES	ABSENT
Directors Vierheilig, Winn, Nelson and Harrison	Director Eby	None

*The Board took a break at 11:17 a.m. and returned at 11:30 a.m.*

02:16:48

E-3) DISCUSS REVISIONS TO DISTRICT CODE REGARDING EXTENSION OF INTENT-TO-SERVE LETTER EXPIRATION DEADLINES

Bruce Buel, General Manager, reviewed the existing Intent-to-Serve letter issuance policy, in regard to expiration deadlines. The present policy allows two years for processing the project. A one-year extension is possible upon request. The Board discussed the time it takes for a project to get through all SLO County Building Department permit requirements.

The following member of the public spoke:

Greg Nester, local developer – thanked the Board for considering extending the present time limits. He explained about the County's added "sunset clause". He asked if the Board could also look at extending the 240-day window for the County to deem the project application to be complete.

The Board discussed possible staff time required for studying the time it takes for the County to process an application through to the completion of the project.

Upon motion by Director Harrison and seconded by Director Winn, the Board agreed to direct staff to bring back an ordinance to extend the Intent-to-Serve letter expiration date to three years with the possibility of a one-year extension upon request from the developer. Vote 4-1, with Director Eby dissenting.

YES VOTES	NO VOTES	ABSENT
Directors Vierheilig, Winn, Nelson and Harrison	Director Eby	None

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02:49:44

I. CLOSED SESSION ANNOUNCEMENTS

Jon Seitz, District Legal Counsel, announced the following items to be discussed in Closed Session.

1. CONFERENCE WITH DISTRICT LEGAL COUNSEL PENDING LITIGATION GC§54956.9 SMVWCD VS. NCSD (SANTA CLARA COUNTY CASE NO. CV 770214, SIXTH APPELLATE COURT CASE NO. H032750 AND ALL CONSOLIDATED CASES).
2. CONFERENCE WITH DISTRICT LEGAL COUNSEL PENDING LITIGATION GC SECTION 54956.9; MARIA VISTA ESTATES VS. NCSD ET AL. (CASE NO. ND07-10362RR IN UNITED STATES BANKRUPTCY COURT, CENTRAL DISTRICT, NORTHERN DIVISION)
3. ANNUAL PERFORMANCE REVIEW OF GENERAL MANAGER PURSUANT TO GOVERNMENT CODE SECTION 54597

J. PUBLIC COMMENT ON CLOSED SESSION ITEMS

There was no public comment.

K. ADJOURN TO CLOSED SESSION

The Board adjourned to Closed Session at 12:04 p.m.

L. OPEN SESSION

ANNOUNCEMENT OF ACTIONS, IF ANY, TAKEN IN CLOSED SESSION

The Board came back into Open Session at 1:43 p.m.

Jon Seitz, District Legal Counsel, announced that the Board heard an update on the items listed above but took no reportable action.

02:52:50

E-4) DISCUSS CHAMBER REQUEST TO SPONSOR AUGUST 22, 2009 CHILI COOK-OFF

Bruce Buel, General Manager, explained that the Nipomo Chamber of Commerce requested the District take part in the September 19, 2009 (date was changed) Chili Cook-Off. The Board discussed the prospect. There was no public comment. Upon motion by Director Winn and seconded by Director Vierheilg, the Board unanimously agreed to decline the request but thank the Chamber for the invitation. Vote 5-0.

05:56:31

E-5) AUTHORIZE REQUESTING SUPERVISOR ACHADJIAN TO PLACE AN ITEM ON A BOARD OF SUPERVISORS AGENDA REGARDING ADOPTION OF A JOINT POWERS AGREEMENT BETWEEN NCSD AND THE COUNTY FOR FUNDING THE WATERLINE INTERTIE PROJECT

Bruce Buel, General Manager – reviewed the suggestion from Supervisor Achadjian for the District to request an item be placed on a Board of Supervisor's Meeting Agenda regarding adoption of a JPA for funding the Waterline Intertie Project.

The following member of the public spoke:

John Snyder, Nipomo resident – stated that the map submitted in the staff letter is inaccurate and should be corrected.

Board discussion ensued.

Upon motion by Director Eby and seconded by Director Winn, the Board authorized the General Manager to draft a letter to Supervisor Achadjian, as outlined in the staff report and incorporate the suggested changes to the draft. Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Eby, Winn, Vierheilg, Nelson and Harrison	None	None

03:08:30

E-6 REVIEW SLO COUNTY PROPOSAL TO TRANSFER OWNERSHIP OF 10 PROPERTIES TO SANTA BARBARA COUNTY

Bruce Buel, General Manager, explained this item will be before the Planning Commission August 13, 2009.

Upon motion by Director Eby and seconded by Director Winn, the Board agreed to authorize the General Manager to rescind the objections to the proposed transfers except that mineral rights should be reserved. Vote 4-1, with Director Harrison dissenting.

YES VOTES	NO VOTES	ABSENT
Directors Eby, Winn, Vierheilig, and Nelson	Director Harrison	None

03:16:00

F. MANAGER'S REPORT

Bruce Buel, General Manager, presented the Manager's Report.

The meeting with the Blacklake representatives went well.

He added that the Waterline Intertie Project Narrative Report for August 2009 has been prepared and will be put on the website. There are some corrections needed on the last two pages. Instead of "per capita", the report should state "per connection". There was no public comment.

03:24:04

G. COMMITTEE REPORT

Bruce Buel, General Manager reviewed the Committee Report. There was no public comment.

03:26:50

H. DIRECTORS' REQUESTS TO STAFF AND SUPPLEMENTAL REPORTS

Director Winn

- o Can a ratepayer provide water to another customer or business off of their parcel?  
 Mr. Buel answered no. Mr. Winn stated that it is being done and needs to be stopped.
- o Asked Mr. Seitz what circumstance a board member is required to report ex parte conversations.
- o Agendize for Closed Session – action NCS D is taking on the EIR for the Inclusionary Housing Ordinance.
- o Reserve spot on Closed Session for potential litigation on Housing Element.
- o Agendize kinds of appeals District should be making toward stipulating settlement.
- o Emergency Water Regulations
- o District list of concerns with the Technical Group

Director Vierheilig

Urban Water Management Plan – Why not have Urban Wastewater Management Plan planning document for wastewater?

I. CLOSED SESSION ANNOUNCEMENTS

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J. PUBLIC COMMENT ON CLOSED SESSION ITEMS

There was no public present to comment.

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K. ADJOURN TO CLOSED SESSION

The Board adjourned to Closed Session at 2:13 p.m.

03:42:53

L. OPEN SESSION

ANNOUNCEMENT OF ACTIONS, IF ANY, TAKEN IN CLOSED SESSION

The Board came back into Open Session at 3:01 p.m.

Jon Seitz, District Legal Counsel, announced that the Board heard an update on Item 1 listed above but took no reportable action.

ADJOURN

President Harrison adjourned the meeting at 3:02 p.m.

➤ **THE FOLLOWING REGULAR BOARD MEETING IS AUGUST 26, 2009  
TENTATIVELY SCHEDULED ITEMS INCLUDE:**

- Emergency Water Shortage Regulations
- Miller Park Environmental Determination