

# NIPOMO COMMUNITY SERVICES DISTRICT

*Celebrating 45 - Years of Service 1965 - 2010*

## MINUTES

**JANUARY 27, 2010 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**

MICHAEL LEBRUN, **INTERIM GENERAL MANAGER**  
LISA BOGNUDA, **ASSIST. 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 meeting to order at 9:00 a.m. and led the flag salute.

#### B. ROLL CALL

At Roll Call, all Directors were present.

00:00:51

#### C. PRESENTATIONS AND PUBLIC COMMENT

##### C-1) MIKE NUNLEY OF AECOM

Update re: Waterline Intertie Project Design

Mike Nunley, AECOM Engineering Project Manager for the design phase of the waterline project, reviewed the Waterline Intertie Project report presented in the Board packet. Mr. Nunley answered questions from the Board.

The following members of the public spoke:

John Snyder, Nipomo resident, stated that even though the project has been delayed by a few years, there is a savings of \$2-3 million a year by not receiving water from Santa Maria.

Bob Blair, rural Arroyo Grande resident, stated that the residents of the Summit Station area have a contract with the District. The capacity was set aside to provide water. He does not want extra fees to pay for the waterline intertie.

Jon Seitz, District Legal Counsel, answered questions from the Board concerning District customers' water rights and costs.

##### C-2) NCSD SUPERINTENDENT TINA GRIETENS

Update re: 2009 Summary of Utility Division Activities

Tina Grietens, Utility Superintendent, reviewed the 2009 Summary of Utility Division Activities report provided in the Board packet. Ms. Grietens answered questions from the Board. Peter Sevcik, District Engineer, answered questions about the FOG (Fats, Oils and Grease) program. There was no public comment on this item.

##### C-3) NCSD WATER CONSERVATION COORDINATOR CELESTE WHITLOW

Update re: 2009 Summary of Conservation and Outreach Activities

Celeste Whitlow, Water Conservation Coordinator, was ill today and could not present the report. Mr. LeBrun answered questions from the Board. There was no public comment on this item.

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C-4) DIRECTORS' ANNOUNCEMENTS OF DISTRICT & COMMUNITY INTEREST  
Receive Announcements from Directors Items of District & Community Interest

Director Winn

- ◇ 01-25-10 SCAC met. The topic of a Minor Use Permit request for a medical marijuana dispensary was discussed to a crowd of about over 140 people. Approx 30 people spoke against the facility being located in Nipomo. About 5 people spoke for it. Commander Hascall read the Attorney General's opinion that such a dispensary would be a violation of State law. The matter will go before the San Luis Obispo County Board of Supervisors.
- ◇ 01-28-10 – Scoping meeting at the Board of Supervisors for the EIR for the Land Use and Circulation Element update. The public is welcome to attend. It will affect the entire County.
- ◇ 02-03-10 – Water Resources Advisory Committee (WRAC) will be meeting in San Luis Obispo. One topic will be the Master Water Plan.
- ◇ There are invasive mussels that could enter Lake Nacimiento and impact pipeline.
- ◇ 02-06-10 - BoS Candidate's Forum, 9:00 a.m. at the Woodlands.
- ◇ 02-11-10 – Ag Cluster Ordinance revision to be considered at Planning Commission.

Director Eby

01-21-10 – LAFCO meeting – Some property was annexed to City of San Luis Obispo and left the Dalidio property as an unincorporated island. This annexation required that the owners donate the same amount of property converted from agriculture to commercial as a permanent agriculture preserve.

LAFCO is considering modifying the Sphere of Influence for NCSD in the strawberry fields south of Nipomo since the agricultural use is expanding.

Mr. Eby is filling in as an acting member for a vacancy for the Special District's seat on LAFCO until the position is filled.

Director Vierheilig

02-06-10 - Board of Supervisors Candidates' Forum at Trilogy from 9-11:00 a.m. To date, three have announced candidacy. Those who have announced are Jim Guthrie, Mike Zimmerman and Paul Teixeira.

Director Harrison

01-28-10 – Fire Safety Council annual recognition awards meeting at the San Luis Obispo Vets Hall at 9:30 a.m.

C-5) PUBLIC COMMENT ON ITEMS NOT ON AGENDA

The following members of the public spoke:

John Snyder, Nipomo resident, stated that there was a natural percolation test south of Mesa Road. The area failed the test. He is constantly monitoring the testing.

Addressing Mr. Winn's comments at the SCAC meeting, Mr. Snyder stated that it seemed Mr. Winn had mixed NCSD's policies with Mr. Winn's opinion.

Director Winn answered that he did conflate the two sets of comments as Public Comment and the NCSD report were delayed at the request of the SCAC chair until the marijuana dispensary issue was completed but that his comments were consistent with District policy.

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D. CONSENT AGENDA

- D-1) APPROVE WARRANTS
- D-2) APPROVE BOARD MEETING MINUTES  
Approve Minutes of
- D-3) ANNUAL INVESTMENT POLICY

**RESOLUTION NO. 2010-1174**  
**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE**  
**NIPOMO COMMUNITY SERVICES DISTRICT ADOPTING THE**  
**YEAR 2010 DISTRICT INVESTMENT POLICY**

- D-4) QUARTERLY INVESTMENT POLICY
- D-5) QUARTERLY FINANCIAL REPORT
- D-6) ACCEPT WATER & SEWER IMPROVEMENTS - TRACT 2663, A FIVE-UNIT SUBDIVISION LOCATED AT THEODORA STREET AND BUCKHORN PLACE

**RESOLUTION NO. 2010-1175**  
**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE**  
**NIPOMO COMMUNITY SERVICES DISTRICT ACCEPTING**  
**WATER AND SEWER IMPROVEMENTS FOR TRACT 2663**

D-7) TEFFT STREET LIFT STATION EASEMENTS (ITEM PULLED)

Michael LeBrun, Interim General Manager, stated the Item D-7 is pulled from the agenda.

Lisa Bognuda, NCS D Finance Director, answered questions from the Board about Item D-4. There was a minor change in the resolution in Item D-3.

Peter Sevcik, District Engineer, answered the question from Director Harrison concerning Item D-6.

Upon motion by Director Winn and seconded by Director Eby, the Board unanimously approved Items D1-D6, as amended in D-3. 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

01:08:30

E-1) REVIEW MILLER PARK ASSESSMENT VOTE

Michael LeBrun, Interim General Manager, reviewed the activities concerning the activation of park powers and the proposed Miller Park. During the January 5, 2010 Park Subcommittee meeting, the members of the committee supported the District moving forward with activating park powers and constructing Miller Park. The Phase I Investigation Report from Earth Systems Pacific has been received.

Mr. LeBrun answered questions from the Board.

The following members of the public spoke:

Kathy Kubiak, President Olde Towne Nipomo Association, relayed a statement from Paul Teixeira, Park Commissioner. He would like to see this project move forward.

Ms. Kubiak stated that the oil contamination should be handled by Conoco Phillips. She also stated that the project needs to move forward so as not to lose the agreement with LAFCO. Service organizations are ready to help.

Jim Tefft, Nipomo resident, stated that the District should continue with the park with money available.

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E-1) REVIEW MILLER PARK ASSESSMENT VOTE (CONTINUED)

Herb Kandel, NCS D resident, stated that the momentum is great. The large property owners did not vote. This is an opportunity to educate the public on the importance of community parks. He suggested asking Conoco Phillips for funding of a study.

Ruth Bracket, Nipomo resident, encouraged the Board to continue. Citizens of Nipomo can rally forth with this project.

Peg Miller, NCS D resident, stated that there is community support to volunteer to help with the project.

The Board discussion included these ideas: It seems that the voters did not want to pay for the on-going maintenance of the park. The unfunded O & M beyond the general benefit to District ratepayers may be approximately \$17,000 per year. Funding for the water project should be passed before the park moves forward. The Park is important, but the timing for funding was not good. Proceed with testing of hazardous material on the proposed site. Postpone park funding for one year.

Director Winn made a motion to remain committed to park efforts, apply to LAFCO for extension, continue with the testing and ask Conoco Philips for assistance. Director Eby seconded the motion. Vote 2-3 with Directors Nelson, Vierheilig and Harrison voting no.

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

Upon motion by Director Vierheilig Earth Systems Pacific or other consultant to quantify the contaminants of the site and bring the information back to the Board. At the appropriate time, pursue a one-year time extension with LAFCO. Director Eby seconded the motion. Vote 5-0.

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

*The Board took a break at 11:05 a.m. and returned at 11:15 a.m.*

*The Board considered Item E-4 next.*

02:05:09

E-4) FEE COLLECTION POLICY

Michael LeBrun, Interim General Manager, reviewed the past discussions involving the time for collection of water and sewer fees for new development.

Jon Seitz, District Legal Counsel, answered questions from the Board.

The following members of the public spoke:

Jerry Bunin, Director of the Home Builders Association, stated that economic conditions at the present time have changed and made financing for development difficult. He proposed that the developers pay 10% down and the rest of the fees at the time the building permit is issued.

Terry Flatley, local developer, stated that with the current rules, he cannot go ahead with his project currently underway. With the proposed changes, he could continue with the project.

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E-4) FEE COLLECTION POLICY (CONTINUED)

Bill Kenge, local developer, stated that the District did not give out all the water allocations that it had allowed for last year and probably will not give them out this year. He suggested that the developers need some help in the industry.

Gwen Pelfrey, from Coast National Bank, spoke to the Board on funding for projects. She suggested collecting District fees at the time of occupancy. The developers need consideration. Ms. Pelfrey answered questions from the Board.

Pat Flatley, local developer, spoke in relation to his project at 691 W. Tefft Street. He stated that it would be \$650,000 in District fees to get a Will Serve Letter from the District. He is looking for some relief to go ahead with projects.

Lisa Bognuda, NCSD Finance Director, answered questions from the Board. Ms. Bognuda stated that the District cannot rely on County staff not to issue building permits until District fees are paid. The District is in a sound financial position because of the current policies in place.

The Board discussed the state of financing. District capital improvements are completed with the capacity fees previously collected.

Jerry Bunin, Home Builders Association Representative, stated that the Home Builders Assoc. does not disagree with the fees but with the timing of their collection.

Upon motion by Director Winn and seconded by Director Vierheilg, the Board unanimously agreed to direct staff to explore what means of securing a reliable process to develop with the County in a way the District has a high certainty of getting good results and bring a draft proposal to the Board that the developer would pay 10% down and the with 100% of the fees before the building permits are issued. Also, staff should bring a fiscal analysis of what that would mean. Vote 5-0.

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

*The Board considered Item E-2 next.*

03:41:27

E-2) CONSIDER REQUEST TO MODIFY EXISTING INTENT-TO-SERVE LETTER FOR PARCEL 2 OF CO 06-0225

Peter Sevcik, District Engineer, reviewed the request from the developer of Parcel 2 of Parcel Map CO 06-0225 that the District reconsider the phasing of the current Intent-to-Serve letter based on the new ordinance and the 0.69 AFY water allocated to the project from the recently-recorded parcel map. Mr. Sevcik answered questions from the Board.

The following member of the public spoke:

Terry Orton, engineer for the project, stated that he would like to see approval of the request to modify the existing Intent-to-Serve letter to bring it into line with the change in policy last fall.

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E-2) CONSIDER REQUEST TO MODIFY EXISTING INTENT TO SERVE LETTER FOR PARCEL 2 OF CO 06-0225 (CONTINUED)

The Board discussed the request. Upon motion by Director Winn and seconded by Director Vierheilig, the Board unanimously agreed to direct staff to approve the applicant's request and issue a revised Intent-to-Serve letter, as outlined in the Board packet. Vote 5-0.

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

The Board considered Closed Session next.

03:54:25

I. CLOSED SESSION ANNOUNCEMENTS

Jon Seitz, District Legal Counsel, announced the following items to be considered during Closed Session:

1. CONFERENCE WITH DISTRICT LEGAL COUNSEL RE: PENDING LITIGATION PURSUANT TO GC §54956.9 SMV/WCD VS. NCSO (SANTA CLARA COUNTY CASE NO. CV 770214, SIXTH APPELLATE COURT CASE NO. H032750 AND ALL CONSOLIDATED CASES).
2. CONFERENCE WITH LEGAL COUNSEL RE: PENDING LITIGATION PURSUANT TO GC SECTION 54956.9; NCSO VS. COUNTY SLO, ET AL. (CASE #CV090010)
3. CONFERENCE WITH LEGAL COUNSEL PENDING LITIGATION GC§54956.9 MARIA VISTA VS. NCSO (CASE NO. CV 040877), MARIA VISTA VS. NCSO (CASE NO. CV 061079), AND MARIA VISTA VS. LINDA VISTA FARMS, NCSO ET AL. (CASE NO. CV 040150);
4. INITIATION OF LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9 ( 1 CASE)
5. INSTRUCTION TO NEGOTIATORS MICHAEL LEBRUN, JON SEITZ AND LILLIAN JEWELL PURSUANT TO GOVERNMENT CODE SECTION 54956.8 FOR PURCHASE OF EASEMENT INTEREST IN APN 090-291-040, 041, 042, 043 AND 044 (OWNER: LINDA VISTA FARMS, NEGOTIATOR: (JACQUELINE FREDERICK)
6. INTERIM GENERAL MANAGER PERFORMANCE EVALUATION PURSUANT TO GOVERNMENT CODE SECTION 54957

J. PUBLIC COMMENT ON CLOSED SESSION ITEMS

There was no public comment.

K. ADJOURN TO CLOSED SESSION

The Board adjourned to Closed Session at 1:06 p.m.

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L. OPEN SESSION

ANNOUNCEMENT OF ACTIONS, IF ANY, TAKEN IN CLOSED SESSION

The Board came back into Open Session at 3:28 p.m.

Jon Seitz, District Legal Counsel, announced the following:

The Board heard an update on Items 1, 2, and 3 above and took no reportable action.

The Board heard an update on Item 5 (real property negotiations) and gave instructions to legal counsel.

The Board reviewed Item 6 above and maintains confidence in Mr. LeBrun and looks forward to his continued employment.

The Board did not discuss Item 4 above.

003:57:41

E-3) REVIEW DRAFT REQUEST FOR PROPOSALS FOR EDUCATION AND OUTREACH SERVICES ASSOCIATED WITH WATERLINE INTERTIE PROJECT

Michael LeBrun, Interim General Manager, explained the process in preparing a Request for Proposal for outreach services for the Waterline Intertie Project. He provided the Board and public a copy of the proposed RFP to be circulated to a number of prospective consultants.

Jon Seitz, District Legal Counsel, read from Assembly Bill 9, which outlines the use of public funds to advertise for a particular project. The Board discussed the RFP.

Upon motion by Director Eby and seconded by Director Vierheilig, the Board unanimously authorized the circulation of the Request for Proposals, as amended, to appropriate, potential contractors. Vote 5-0.

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

04:23:24

E-5) APPOINTMENT OF AN AD-HOC COMMITTEE FOR WIP EDUCATION AND OUTREACH

The Board discussed forming an ad-hoc committee to assist in the public outreach and education related to the District's waterline intertie project.

Upon motion by Director Winn and seconded by Director Vierheilig, the Board unanimously agreed with President Harrison's appointment of Director Eby as chair and Director Winn as member to the ad-hoc committee to work with the outreach contractor and staff. Vote 5-0.

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

04:38:20

F. MANAGER'S REPORT

Michael LeBrun, Interim General Manager, presented the report in the Board packet. Additional information included: Schedule for the Urban Water Management Plan Update, Sundale Well update, General Manager brochure from Bob Murray & Associates, Summit Station property owner repair request, roof off of Via Concha Well caused damage to adjacent property owner's fence, and information from Greg Burns, lobbyist for the District in DC.

G. COMMITTEE REPORT

There was no Committee Report.

04:48:00

## H. DIRECTORS' REQUESTS TO STAFF AND SUPPLEMENTAL REPORTS

Director Nelson

Would like an update on the ConserveTrack software purchased.

Director Vierheilig

Rate payers have been asking what went into the rate study. Would like to have more clarity of the numbers for the COP amounts. Mr. LeBrun stated that the information will be coming at a near future meeting. There may be grant programs available or low-interest loans, such as through IBank and USDA.

Director Eby

Would like to discuss the letter of endorsement for the Dana-Adobe at the next meeting.

Director Winn

- ◇ Would like more information about status of the Water Conservation Education Program by Science Discovery. The contract stipulated that Board was to be invited to a presentation to be made to the Lucia Mar School District Board.
- ◇ Asked about a UPS for each computer in the District.
- ◇ Will be going to UCLA Friday, January 29, 2010, and will present the Board with the information upon his return.
- ◇ Will be having surgery February 12, 2010.
- ◇ Flight and rooms for Washington, DC trip are booked
- ◇ Would like with Board President Harrison to set up conversation with Greg Haas early in February.

Director Harrison

Put on next meeting's agenda to change a future Board meeting date.

## ADJOURN

President Harrison adjourned the meeting at 4:38 p.m.

- Next Regular Board Meeting is February 10, 2010