

# NIPOMO COMMUNITY SERVICES DISTRICT AGENDA

SEPTEMBER 24, 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

DOUG JONES, GENERAL MANAGER  
DONNA JOHNSON, BOARD SECRETARY  
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. (If assistance is needed, please contact the District office at least one day before the meeting.)

- A. CALL TO ORDER AND FLAG SALUTE
- B. ROLL CALL
- C. PUBLIC COMMENTS PERIOD

NEXT RESOLUTION 2003-879  
NEXT ORDINANCE 2003-98

### 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.

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

- D-1) PUBLIC HEARING – ESTABLISHING BI-MONTHLY SEWER RATES FOR BLACKLAKE DIVISION  
Adoption of an ordinance establishing sewer rates for Black Lake Division Ord 2003-98
- D-2) ANNEXATION AGREEMENT FOR ANNEXATION NO. 23 (NESTER)  
Review/approve draft Annexation Agreement for an 18-lot development on Pomeroy at Waypoint
- D-3) STATE JOBS HOUSING BALANCE INCENTIVE GRANT PROGRAM (GRANT FUNDS) (OLDE TOWNE)  
Review/approve Grant Funding agreement with SLO County to fund service connections

- E. OTHER BUSINESS

- E-1) NIPOMO WEST SIDE CLEAN UP WEEK  
Review funding for Nipomo Clean-Up Week
- E-2) NIPOMO CREEK CLEAN UP WEEK (OCTOBER 20-25)  
Land Conservancy request for financial assistance to clean creeks
- E-3) NCSD BUILDING USE POLICY  
Review existing Board room use policy

- 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 September 10, 2003, Regular Board meeting
- F-3) WATER/SEWER AGREEMENT WITH LUCIA MAR UNIFIED SCHOOL DISTRICT (RECOMMEND APPROVAL)  
Agreement for District to provide services to the Nipomo High School
- F-4) APPROVE ANNEXATION NO. 19 –NIPOMO HIGH SCHOOL - LUCIA MAR USD (RECOMMEND APPROVAL)  
Resolution acknowledging that conditions of Annex. No. 19 have been met

- G. MANAGER'S REPORT

- H. COMMITTEE REPORTS

- I. DIRECTORS COMMENTS

## CLOSED SESSION

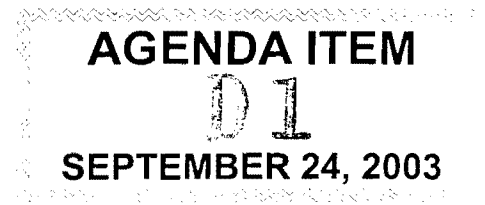
CONFERENCE WITH LEGAL COUNSEL Pending Litigation GC\$54956.9

- A. SMVWCD VS NCSD SANTA CLARA COUNTY CASE NO. CV 770214 AND ALL CONSOLIDATED CASES.
- B. WATER LINE EASEMENT ACROSS COUNTY PARK - DISTRICT NEGOTIATOR - DOUG JONES, CONFERENCE WITH NEGOTIATOR GC\$54956.8 COUNTY NEGOTIATOR - PETE JENNY, REGARDING TERMS & PRICE.

## ADJOURN

The next regular Board meeting will be October 8, 2003.

TO: BOARD OF DIRECTORS  
FROM: DOUG JONES  
DATE: SEPTEMBER 24, 2003



PUBLIC HEARING  
ORDINANCE ESTABLISHING BLACKLAKE SEWER SERVICE RATES

**ITEM**

Second reading and adoption of ordinance adjusting sewer rates for the Blacklake Division

**BACKGROUND**

In establishing the budget for fiscal year 2003-2004 for the Blacklake Division sewer fund, it was found that the fund would be in a deficit by the end of this year. The Board's Finance Committee met with staff and reviewed the proposed budget for the Blacklake Division and recommended that sewer rates be increased to cover the Blacklake Sewer Fund operation and maintenance financial requirements.

At the regular Board meeting held on September 10, 2003, your Honorable Board introduced an ordinance adjusting the sewer service rate for the Blacklake Division. Now is the time to hold a Public Hearing to review the ordinance and take public input.

**RECOMMENDATION**

After receiving any public comments on the proposed sewer rate adjustment for the Blacklake Division, your Honorable Board may have a second reading and adoption of Ordinance No. 2003-98, establishing sewer service rate for the Blacklake sewer division. The new rates will become effective December 1, 2003.

Board 2003/BL Sewer rate

**NIPOMO COMMUNITY SERVICES DISTRICT  
ORDINANCE NO. 2003-98**

**AN ORDINANCE OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
AMENDING APPENDIX A TO CHAPTER 4.12 OF THE  
NIPOMO COMMUNITY SERVICES DISTRICT CODE TO  
ESTABLISH BI-MONTHLY RATES FOR SEWER SERVICE  
WITHIN THE BLACKLAKE DIVISION**

**WHEREAS**, it is a major responsibility of the Nipomo Community Services District (District) to maintain adequate levels of revenue, equitably collected from all classes of utility customers, to meet the District's financial commitments; and

**WHEREAS**, the District's Fiscal Year 2003-2004 Budget demonstrates a \$44,226 deficit in the Blacklake Sewer Operation and Maintenance Account; and

**WHEREAS**, District Staff has prepared a Blacklake Sewer Rate Study to establish rates and charges to bring into balance the Blacklake Sewer Operation and Maintenance Account and to establish a twenty-five percent (25%) operations reserve as recommended by the District's Consultant Perry R. Louck; and

**WHEREAS**, based upon facts and analysis presented during the District Budget Hearings for 2003-2004, the Staff Study, the Staff Report, and public testimony received, the District Board of Directors finds:

- A. The public meetings adopting this Ordinance have been properly noticed pursuant to Government Code Section 54954.2 (The Brown Act);
- B. That notice has been provided pursuant to Government Code Section 54354.5;
- C. The fees, rates and charges that are the subject of this Ordinance do not exceed the estimated reasonable cost of providing the services for which the fees and/or charge or charges are imposed;
- D. That the public benefits from the logical, long-range approach to operations, maintenance and replacement of public facilities:

**NOW, THEREFORE, BE IT ORDAINED**, by the Board of Directors of the District as follows:

**Section 1. Authority.**

This Ordinance is enacted pursuant to Government Code Sections 61600 (b), 61621, and 61621.5.

**Section 2.**

Appendix A to Chapter 4.12 related to bi-monthly sewer user fees for the Blacklake Division is hereby repealed in its entirety and replaced with the bimonthly rates and charges reflected in Exhibit A attached hereto and incorporated into this Ordinance by reference.

**Section 3. Repeal of Prior Ordinances and Resolutions**

All Ordinances, sections of Ordinances and Resolutions that are inconsistent with this ordinance are hereby repealed.

**Section 4. Effect of Repeal on Past Actions and Obligations.**

This Ordinance does not affect prosecutions for Ordinance violations committed prior to the effective date of this Ordinance, does not waive any fee or penalty due and unpaid on the effective date of this Ordinance, and does not affect the validity of any bond or cash deposit posted, filed or deposited pursuant to the requirements of any Ordinance.

ORDINANCE NO. 2003-98

AN ORDINANCE OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
AMENDING APPENDIX A TO CHAPTER 4.12 OF THE  
NIPOMO COMMUNITY SERVICES DISTRICT CODE TO  
ESTABLISH BI-MONTHLY RATES FOR SEWER SERVICE  
WITHIN THE BLACKLAKE DIVISION

**Section 5. CEQA Findings**

The Board of Directors of the District finds that the fees and charges adopted by this Ordinance are exempt from the California Environmental Quality Act pursuant to Public Resources Code § 21080(b)(8) and CEQA Guidelines Section 15273. The Board of Directors further finds that the adoption of the Rules and Regulations established by this Ordinance fall within the activities described in Section 15378(b)(3) of the CEQA Guidelines which are deemed not to be "projects" for the purposes of CEQA, because it can be seen with certainty that the adoption of the Rules and Regulations may have a significant effect on the environment. The District General Manager is directed to prepare and file an appropriate notice of exemption.

**Section 6. Severance Clause.**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Ordinance. The Governing Board of the District hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsection, sentence, clause or phrase be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

**Section 7. Effect of Headings in Ordinance.**

Title, division, part, chapter, article, and section headings contained herein do not in any manner affect the scope, meaning, or intent of the provisions of this Ordinance.

**Section 8. Effective Date.**

This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage. Before the expiration of fifteen (15) days after passage it shall be posted in three (3) public places with the names of the members voting for and against the Ordinance and shall remain posted thereafter for at least one (1) week. The Ordinance shall be published once with the names of the members of the Board of Directors voting for and against the Ordinance in the Five Cities Times Press Recorder.

Introduced at a regular meeting of the Board of Directors held on September 10, 2003, and passed and adopted by the Board of Directors of the Nipomo Community Services District on the 24<sup>th</sup> day of September, 2003, by the following roll call vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAINING:

\_\_\_\_\_  
Michael Winn, President of the Board  
Nipomo Community Services District

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
DONNA K. JOHNSON  
Secretary to the Board

\_\_\_\_\_  
JON S. SEITZ  
District Legal Counsel

**ORDINANCE NO. 2003-98**

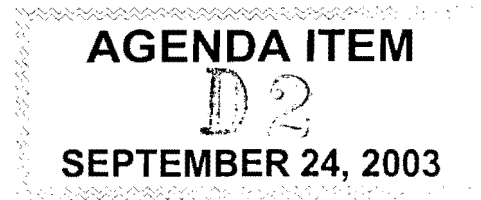
**AN ORDINANCE OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
AMENDING APPENDIX A TO CHAPTER 4.12 OF THE  
NIPOMO COMMUNITY SERVICES DISTRICT CODE TO  
ESTABLISH BI-MONTHLY RATES FOR SEWER SERVICE  
WITHIN THE BLACKLAKE DIVISION**

**EXHIBIT "A"**

**BI-MONTHLY SEWER USER FEES  
BLACKLAKE DIVISION**

<b>EFFECTIVE DATE</b>	<b>12/1/03</b>	<b>6/1/04</b>	<b>6/1/05</b>	<b>6/1/06</b>	<b>6/1/07</b>	<b>6/1/08</b>
<b>PER DUE</b>	\$62.06	\$63.66	\$64.40	\$66.34	\$68.32	\$70.38

TO: BOARD OF DIRECTORS  
FROM: DOUG JONES  
DATE: SEPTEMBER 24, 2003



ANNEXATION AGREEMENT FOR ANNEXATION NO. 23 (NESTER)

**ITEM**

Review and approve draft Annexation Agreement for an 18-lot development on Pomeroy Rd. at Waypoint, known as Annexation No. 23

**BACKGROUND**

In November 2002, the applicant for Annexation No. 23 requested to annex his property to the District. This annexation was continued until the Board reviewed, modified and approved revisions to the District's Annexation Policy. Your Honorable Board approved the Annexation Policy on September 10, 2003, therefore, you may proceed to approve the draft agreement for Annexation No. 23.

**RECOMMENDATION**

Your Honorable Board may approve the attached Annexation Agreement for Annexation No. 23 and direct staff to send it to the applicant for signature after which the District representative may execute the agreement.

**Drafting Notes:**

- ~~Draft Agreement assumes property overlies sufficient groundwater resources (Policy IV applies, include analysis in Staff Report).~~
- ~~Draft Agreement assumes District has adequate water resources to serve Project pending acquisition of supplemental water (Policy IV E (2) applies, include analysis in Staff Report).~~
- ~~The Applicant proposes cluster development, therefore Policy IV F applies (Staff to discuss with Applicant and revise Section 13 of Agreement).~~
- ~~Applicant to provide District with proof of Title.~~
- ~~The following Sections require further modifications: Introduction, Recital A, and Section 18 Notices~~
- ~~The following Sections contain my comments: Section 1, Section 8, Section 9, and Section 12~~

**2<sup>nd</sup> Discussion Draft**

**Nester Annexation**

**08-14-03**

**3<sup>rd</sup> Draft**

**For Applicant and Board Review & Comment**

**09-15-03**

RECORDING REQUEST BY AND  
WHEN RECORDED RETURN TO:  
NIPOMO COMMUNITY SERVICES DISTRICT  
P.O. Box 326  
Nipomo, CA 93444

APN# \_\_\_\_\_

Exhibit "A" – Legal Description of Property  
Exhibit "B" - District Annexation Policy  
Exhibit "C" - Hourly Rates for District Staff and Consultants

VISTA ROBLES, LLC  
ANNEXATION AGREEMENT AND  
PETITION TO FORM ZONE OF BENEFIT

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2003 by and between the Nipomo Community Services District, (herein referred to as District), and Vista Robles, LLC, a \_\_\_\_\_, (herein referred to as

("Applicant"), with reference to the following recitals.

#### RECITALS

A. Applicant is the fee title owner of certain real property (herein the "Property" or the "Area of Annexation") located at Pomeroy Road, Nipomo, California, otherwise known as Tract 2499. The subject Property is approximately eighteen and one-half (18.5) acres in area. The Property is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

B. The Property is located outside the District's Sphere of Influence as established by the Local Agency Formation Commission ("LAFCO"). Further LAFCO is in the process of updating the District's Sphere of Influence.

C. Applicant desires to annex the Property into the District. The annexation process is referred to herein as the "Project".

D. The Project will be processed in accordance with this Agreement and the District's Annexation Policies attached hereto as Exhibit "B".

E. The cost of processing the Project includes District costs (including legal, engineering, environmental assessment and administrative costs) and Local Agency Formation Commission (LAFCO) costs (including administrative costs and environmental assessment costs). Applicant acknowledges responsibility for payment of the District and LAFCO costs.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Project Description:

The Project shall consist of the Annexation of approximately eighteen and one-half (18.5) acres to be developed into eighteen (18) single family residential units and one (1) open space parcel to be used for agricultural purposes.

~~Comment: Will there be a District water connection to the "open space parcel"? What happens if agricultural use is abandoned?~~

2. Water Service Limitations:

The District's obligation to provide water service to the Area of Annexation and parcels therein is limited to the number of residential units



identified in Section 1 above. ~~Additional water service to the Area of Annexation will require a written agreement and shall be based on the availability of and payment for supplemental water.~~

3. Groundwater Resources:

The proposed Area of Annexation overlies sufficient groundwater resources.

4. District Processing Costs:

A. At the time of execution of this Agreement, Applicant shall deposit with the District the sum of six thousand dollars (\$6,000) for District services more particularly described in Recital E above. The Applicant authorizes the District to withdraw from the deposit payment for services pursuant to this Agreement as they are incurred by District.

District will notify Applicant whenever the deposit is reduced to one thousand dollars (\$1,000) or less. Within 15 days after such notification is mailed, Applicant shall make an additional deposit in the same amount as the initial deposit.

B. Upon completion of the annexation, any funds deposited by Applicant in excess of the District's costs shall be refunded to the Applicant. Conversely, any costs incurred by the District over and above the amount requested by Applicant shall be paid by Applicant upon demand.

5. Payment of District's Fees and Charges

A. Annexation Fees: Prior to final LAFCO approval of the proposed Annexation, Applicant shall deposit with District the sum of nine thousand two hundred and fifty dollars (\$9,250) representing the District's Annexation fees.

B. District Connection and Capacity Charges: Prior to recording the final map for the Project ~~LAFCO approval~~, Applicant shall pay District, District's then established connection and capacity charges for District services. The District's water capacity charge shall be reduced by that portion attributed to well production.

C. Supplemental Water Charges: Prior to final LAFCO approval Applicant shall deposit with the District the sum of one hundred eighty thousand dollars (\$180,000) or equivalent securities acceptable to the District to be

applied to District administrative and consultant costs in acquiring supplemental water and to offset costs of supplemental water.

6. Obligations of Applicant: In addition to the obligations of Applicant referenced in this Agreement, the Applicant shall have the following additional obligations:

A. Provide information, petitions, studies and proposals as requested by District for analysis, processing and/or approvals.

B. At Applicant's sole cost, Applicant shall promptly and diligently process the Project through LAFCO. If annexation has not been completed within twelve (12) months from the date of this Agreement, the District shall have the right to terminate this Agreement at any time thereafter, unless such time for completion is extended by written agreement. Such extension must be requested in writing by the Applicant prior to the expiration of said two (2) month period. If the Agreement is terminated the District shall have no further obligation under this Agreement. Upon termination the District shall refund any deposits made by Applicant which have not been used by the District prior to the date of termination.

C. Pursuant to District's Standard Plan Check and Inspection Agreement, design and construct, at its sole cost, water infrastructure and other infrastructure improvements to be dedicated to the District, to the Area of Annexation and the development contained therein.

D. Applicant shall, be responsible for determining whether the infrastructure improvements to be constructed pursuant to subparagraph C above, require the payment of prevailing wages and if so, Applicant shall to the extent required by the California Labor Code, pay no less than the applicable prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the wage determination are on file at the District's office or are otherwise available on the Web at [www.cslb.ca.gov](http://www.cslb.ca.gov).

E. Comply with all conditions placed on the Project by LAFCO.

F. Provide District with an agricultural easement as described in Section 8, below.

7. Obligations of District:

Applicant and the District understand and agree that processing the Project by the District and the LAFCO will require many discretionary approvals. Therefore, there are no promises or guarantees that the Project will be successfully processed/approved by the District and/or LAFCO.

In the event that the Project is withdrawn or not approved, then the District will return the unused deposit to Applicant as provided in Section 3 4B, above and the deposit referenced in Section 5 A and C above..

District staff time and consultant time will be charged at the rates described in Exhibit "C", attached hereto. If environmental consultants are required by District then Applicant shall be responsible for payment of such costs.

~~8. Delivery of Water Service~~

~~The District's current water resources are adequate to supply the Area of Annexation consistent with the service levels identified in paragraph 1 above. The District will provide water to the Area of Annexation upon LAFCO's final approval and the District's acceptance of infrastructure improvements.~~

~~9.8. Dedications and Covenants:~~

~~Prior to final LAFCO approval of the Annexation, Applicant shall provide to District, in a form to be approved by District, an agricultural easement for the open space parcel that will include the following:~~

- ~~A. Provisions that implement the District's Annexation Policies related to cluster developments as approved by the District Board of Directors on September 10, 2003; and~~
- ~~B. Authorize the District to abate the accumulation of solid waste, litter and construction and demolition waste accumulating on the open space parcel; and~~
- ~~C. Authorize the District to abate weeds and other fire hazards created on the open space parcel.~~
- ~~D. Provide that the District may collect its costs, including administrative costs, labor costs and attorney's fees in abating the nuisances referenced in paragraphs B and C above as a lien on the open space parcel pursuant to Government Code §§ 61621.2 and 61621.3.~~

9. Delivery of Water Service

The District's current water resources are adequate to supply the Area of Annexation consistent with the service levels identified in paragraph 1 above. Subject to Applicant complying with the terms and conditions of this Agreement the District will provide water to the Area of Annexation upon LAFCO's final approval and the District's acceptance of infrastructure improvements.

10. Petition to Establish Zone of Benefit: Pursuant to §61700 et seq. of the Government Code, Applicant hereby petitions the District to form a Zone of Benefit as follows:

A. The boundaries of the zone shall be co-terminus with the Area of Annexation.

B. The purpose of the zone of benefit is for fixing and collecting special rates for furnishing supplemental water to the Area of Annexation.

C. Prior to final LAFCO approval, District shall approve the Petition to establish the Zone of Benefit as herein provided.

D. Prior to final LAFCO approval, Applicant shall provide District with a recordable document that provides constructive notice to each potential owner of lots within the Area of Annexation of the formation of the Zone of Benefit and rate covenant.

11. Rate Covenants: Applicant hereby covenants and agrees on behalf of Applicant and future residents and property owners within the zone established by Section 9, above to pay special water rates and charges within the zone for acquiring and providing supplemental water to the Area of Annexation. Said rates and charges shall be based on the Project's prorata share of the cost of supplemental water, as determined by the District's Engineer, and shall provide for District recovery of the following:

A. One hundred percent (100%) of water transportation and other capital facilities to be constructed to deliver supplemental water to the District.

B. One hundred percent (100%) of District Staff, Engineering, Legal, Environmental and Consultant time in acquiring the supplemental water source.

C. One hundred percent (100%) of any reserve requirement to purchase supplemental water.

D. Eighty percent (80%) of the delivery cost of supplemental water.

~~12. Management of Open Space: Staff to discuss with Applicant may want to consider forming Homeowner's Association and an Assessment District to manage open space in the event that agricultural use fails.~~

~~13.12. Customer of the District: Upon annexation the residents and commercial users within the Area of Annexation shall become "regular customers" of the District with no greater entitlements to water service than any other District resident.~~

13. Indemnification and Hold Harmless

To the extent allowable by law, Applicant agree to hold District harmless from costs and expenses, including attorneys' fees, incurred by District or held to be the liability of District in connection with District's defense of its actions in any proceeding brought in any State or Federal court challenging the District's actions with respect to the project. Applicant understands and acknowledges that District is under no obligation to defend any legal actions challenging the District's actions with respect to The Project.

The Applicant recognizes and hereby agrees that the District and its directors, officers, employees and agents shall not be liable for any injury or death to any person or damage to any property arising from the performance of any work required hereunder by the Applicant, its officers, employees, independent contractors or agents. The Applicant shall protect, indemnify and hold the District harmless from any and all claims, causes of actions, demands or charges and from any loss or liability, including all costs, penalties, expenses, attorney's fees, litigation costs, and other fees arising out of or in any way connected with the performance or with the failure to perform under this Agreement by Applicant, its officers, employees, independent contractors or agents, including, but not limited to, the construction of the Project. In addition, if the District, its directors, officers, employees or agents should be sued as a result of such performance, the District may notify the Applicant which then shall have the duty to defend the District, its directors, officers, employees or agents, or, at the District's option, pay for such defense including, but not limited to, payment of all reasonable attorney's fees and expenses incurred by

the District, its directors, officers, employees or agents.

1445. Term of Agreement and Termination

This Agreement shall become effective on the date first above written and shall remain in effect until terminated by the mutual consent of the parties or as otherwise provided in this Agreement

Prior to final LAFCO approval of the Project, Applicant may terminate this Agreement with fifteen (15) days written notice to District. Termination shall not relieve Applicant of its responsibility for payment of costs incurred by District to the date of termination as provided in Section 3 of this Agreement.

~~16~~15. Waiver of Rights

Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

~~17~~16. Entire Agreement

This Agreement is freely and voluntarily entered into by the parties after having the opportunity to consult with their respective attorneys. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. The parties, in entering into this Agreement, do not rely on any inducements, promises, or representations made by each other, their representatives, or any other person, other than those inducements, promises, and representations contained in this Agreement. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the Applicant and the District.

~~18~~17. Notices

All notices, statements, reports, approvals, requests, bills or other communications that are required either expressly or by implication to be given by either party to the other under this Agreement shall be in writing and signed for each party by such officers as each may, from time to time, be authorized in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a

United States Post Office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown below:

NIPOMO COMMUNITY SERVICES DISTRICT

Doug Jones, General Manager  
Nipomo Community Services District  
P.O. Box 326  
Nipomo, CA 93444

APPLICANT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

~~19~~18. Successors and Assigns: The District and Applicant agree that Applicant's Obligations, Agreements and Covenants contained in this Agreement shall run with the land and shall be binding upon Applicant, its heirs, successors, executors, administrators, and assigns and shall inure to the benefit of District and its successors and assigns.

~~20~~19. Headings

The paragraph headings used in this Agreement are for reference only, and shall not in any way limit or amplify the terms and provisions hereof, not shall they enter into the interpretation of this Agreement.

~~21~~20 Cooperation

Each party to this Agreement agrees to do all things that may be necessary, including, without limitation, the execution of all documents which may be required hereunder, in order to implement and effectuate this Agreement.

22.21. Interpretation of this Agreement

The parties acknowledge that each party and its attorney have reviewed, negotiated and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the transactions contemplated by this Agreement.

23.22. Venue

This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

24.23. Agreement to be Recorded:

Applicant and District intend and consent to the recordation of this Annexation Agreement and Petition to Form Zone of Benefit between the Nipomo Community Services District and Applicant in the office of the County Recorder of the County of San Luis Obispo.

25.24. Recitals

The recitals A through D of this Agreement are incorporated herein by this reference and made a part hereof.

26.25 Authority to Execute Agreement :

A. Applicant represents and warrants that: (a) it is duly organized and legally existing under the laws of the State of California and is duly qualified to do business in the State of California; (b) this Agreement will constitute, legal, valid and binding obligations of Applicant enforceable in accordance with its terms; and (c) the execution and delivery of this Agreement is within Applicant's power and authority without the joinder or consent of any other party.



B. Indemnity. Applicant and the undersigned jointly and severally agree to defend, indemnify and hold the District harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) arising out of the representations and warranties of Subsection A above.

In Witness Whereof, District and Applicant have executed this Agreement the day and year first above written.

APPLICANT:

By: \_\_\_\_\_

(Note: Signature must be notarized)

By: \_\_\_\_\_

(Note: Signature must be notarized)

DISTRICT:

By: \_\_\_\_\_

Michael Winn, President of  
the District Board of Directors,

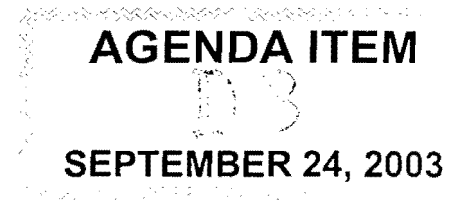
Attest:

Approved as to Form

\_\_\_\_\_  
Donna Johnson  
Secretary to the Board

\_\_\_\_\_  
Jon S. Seitz,  
District Legal Counsel

TO: BOARD OF DIRECTORS  
FROM: DOUG JONES  
DATE: SEPTEMBER 24, 2003



STATE JOBS HOUSING BALANCE INCENTIVE GRANT PROGRAM  
(SJHBIG) GRANT FUNDS  
OLDE TOWNE

**ITEM**

Review/approve grant funding agreement with SLO County to fund service connections (Olde Towne)

**BACKGROUND**

The San Luis Obispo County has received a SJHBIG in the amount of \$159,383.00. The County wishes to allocate this grant to the Nipomo area. A part of the allocation would be for installation of water and sewer services along the Tefft Street project (Olde Towne) to prevent the street from being dug up in the future for such services. The District's cost for installing the services is approximately \$95,000 plus administrative costs.

Attached for the Board's review is an agreement for funding the water and sewer services from the grant proceeds.

**RECOMMENDATION**

Staff recommends that your Honorable Board approve the attached agreement and authorize the President of the Board to execute the agreement.

**AGREEMENT REGARDING USE OF STATE JOBS HOUSING BALANCE  
INCENTIVE GRANT PROGRAM FOR TEFFT STREET IMPROVEMENTS  
IN THE NIPOMO OLDE TOWNE AREA**

**THIS AGREEMENT** is made and entered into \_\_\_\_\_, 2003, by and between the **NIPOMO COMMUNITY SERVICES DISTRICT**, (hereinafter referred to as the "NCSD"), and the **COUNTY OF SAN LUIS OBISPO**, a political subdivision of the State of California (hereinafter referred to as "the County").

**WITNESSETH:**

**WHEREAS**, the County has been determined to be eligible to receive a Grant Fund of \$159,383.00 herein Grant Fund from the State of California's Jobs Housing Balance Incentive Grant Program; and

**WHEREAS**, the County is willing to transfer from the Grant Fund to the NCSD sufficient monies to reimburse NCSD costs in implementing the Tefft Street Project. A Project of community wide interest; and

**WHEREAS**, both the County and NCSD agree that the Project commonly known as the "Olde Towne Street Lighting Project" is also a project of community wide interest; and

**WHEREAS**, the NCSD is willing to accept and expend the Grant Funds as herein provided; and

**NOW**, therefore, in consideration of the mutual promises, recitals and other provisions hereof, the parties agree as follows:

- 1. Transfer of Grant Fund.** Subject to the terms and conditions of this Agreement (including the availability of HCD Grant funds to the County), County shall provide to the NCSD the amount of \$159,383 to reimburse the NCSD for the Tefft Street Enhancement

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Project as referenced in Section 3 (a) below.

**2. Projects of Community-wide Interest.** As used herein projects of community-wide interest and benefit means those projects (Project or Projects) that are subject to prior review and approval by the County and the NCSD.

**3. Agreed to Projects of Community-wide Interest.** The following projects are agreed as between the NCSD and the County as projects of community-wide interest and benefit:

**(a) Tefft Street enhancement project.**

- (i)** The installation of sewer and water laterals and similar related piping before Tefft Street is re-paved preventing further degradation of the street herein referred to as the "Tefft Street Project".
- (ii)** To the extent allowed by law, NCSD shall require property owners benefiting from the Tefft Street Project to each pay an amount of money equal to the improvements extended to their parcel.
- (iii)** Funds collected by the District as re-payment from property owners shall be segregated and subsequently re-used by the NCSD for projects of community-wide interest as defined in Section 2. above.
- (iv)** At the request of County, during the term of this Agreement, the NCSD shall submit an annual report to the County Department of Planning and Building including the following: expenditures to date, listing of

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IN THE NIPOMO OLDE TOWNE AREA**

funds that have been repaid by property owners benefiting from the Tefft Street Project, the status of the program including any problems encountered. Reports shall be submitted to the County within thirty (30) days of the County's request.

**(b) Olde Towne Street Enhancement Project.**

After reimbursement of District's costs pursuant to Paragraph 1 above the remaining balance of the Grant Fund shall be used by County to help fund the Olde Towne Street Enhancement Project.

**4. Term of Agreement.** The term of this Agreement shall commence on the date first above written and shall terminate after the Grant Fund has been completely expended on Projects of community-wide interest or ten (10) years whichever comes first.

**5. Administrative Costs.** NCSD's reasonable administrative costs, including engineering, legal and insurance are reimbursable costs that may be charged to the Grant Fund.

**6. Termination of Agreement for Cause.** If the County determines that the NCSD has incurred obligations or made expenditures for purposes which are not permitted or are prohibited under the terms and provisions of this Agreement, or if the County determines that the NCSD has failed to fulfill its obligations under this Agreement in a timely and professional manner, then the County shall have the right to terminate this Agreement effective immediately upon giving written notice thereof to NCSD. Termination shall have

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no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to effective date of such termination. If the County's termination of the Agreement with the NCSD for cause is defective for any reason, including but not limited to the County's reliance on erroneous facts concerning the NCSD's performance, or any defect in the notice thereof, the County's maximum liability shall not exceed the amount payable to the NCSD under paragraph one (1) of this Agreement.

**7. Sources and Availability of Funds.** It is understood by the parties hereto that the funds being used for the purposes of this Agreement are funds furnished to the County through the State of California Department of Housing and Community Development pursuant to the provisions of the Jobs/Housing Balance Incentive Grant Fund. Notwithstanding any other provision of this Agreement, the liability of the County shall be limited to HCD grant funds available for the Project pursuant to this Agreement. The NCSD understands that the County must wait for release of funds from the HCD before grant funds may be advanced or reimbursed. The County shall incur no liability to the NCSD, its officers, agents, employees, suppliers, or contractors for any delay in making any such payments.

**8. Reimbursement of Improper Expenditures.** If at any time within applicable statutory periods of limitation it is determined by the County that funds provided for under the terms of this Agreement have been used by or on behalf of the NCSD in a manner or for

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purposes not authorized the NCSD shall, at the County's request, pay to the County an amount equal to one hundred percent of the amount improperly expended.

**9. Records.**

- (a) All records, accounts, documentation and all other materials relevant to a fiscal audit or examination shall be retained by the NCSD for a period of not less than three (3) years from the date of termination of this Agreement.
- (b) If so directed by the County upon termination of this Agreement, the NCSD shall cause all records, accounts, documentation and all other materials relevant to the Projects to be delivered to the County as depository.
- (c) The NCSD understands that it shall be the subject to the examination and monitoring by the County Auditor-Controller for a period of five (5) years after the final payment under this Agreement.

**10. Audit.**

- (a) All records, accounts, documentation and other materials deemed to be relevant to the Projects funded by the Grant Fund shall be accessible at any time to the authorized representatives of the county on reasonable prior notice, for the purpose of examination or audit.
- (b) An expenditure which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the County or its designee by the NCSD. Expenditures for Activities not

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described in this Agreement shall be deemed authorized if the performance of such Activities is approved in writing by the County prior to the commencement of such Activities.

- (c) Absent fraud or mistake on the part of the County, the determination by the County of allowability of any expenditures shall be final.

**11. Indemnification.**

- (a) The Indemnification clause referenced in sub-paragraph (b) below shall apply to all construction Projects (such as the Tefft Street Project) that will be performed under the supervision of NCSD or other Projects agreed to pursuant to paragraph 2 of this Agreement when the County requires indemnification as a condition of its approval.
- (b) The NCSD shall defend, indemnify and save harmless the County, its officers, agents and employees from any and all claims, demands, damages, costs, expenses, judgements, or liability occasioned by the performance or attempted performance of the provisions hereof, or in any way arising out of this Agreement, including, but not limited to, (a) those predicated upon theories of violation of statute, ordinance or regulation, violation of civil rights, (b) any adverse determination made by the Internal Revenue Service or the State Franchise Tax Board with respect to the NCSD that would establish a County liability for failure to make social security and income tax withholding



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payments, (c) inverse condemnation, (d) equitable relief, or (e) any wrongful act or any negligent act or omission to act on the part of the NCSD or of agents, employees, or independent contractors directly responsible to NCSD ; providing further that the foregoing obligations to defend, indemnify and save harmless shall apply to any wrongful acts, or any actively or passively negligent acts or omissions to act, committed jointly or concurrently by NCSD, its agents, employees, or independent contractors and the County, its agents, employees, or independent contractors. Nothing contained in the foregoing indemnity provisions shall be construed to require indemnification for claims, demand, damages, costs, expenses or judgments resulting solely from the conduct of the County.

**12. Insurance.** NCSD shall obtain and maintain for the entire term of this Agreement and NCSD shall not perform any work under this Agreement until NCSD has obtained comprehensive general liability insurance, in companies acceptable to the County, and authorized to issue such insurance in the State of California. Said insurance shall consist of the following:

- (a) **Liability Insurance** - NCSD shall maintain in full force and effect, for the period covered by this Agreement, comprehensive liability insurance. This comprehensive general and automobile liability insurance shall include, but not be limited to, protection against claims arising from bodily and personal

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injury, including death resulting therefrom, and damage to property, resulting from any act or occurrence arising out of NCSD operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amount of insurance shall be not less than one million dollars (\$1,000,000) combined single limit coverage for bodily and personal injury, including death resulting therefrom, and property damage.

The following endorsements shall be attached to the policy:

- (i) If the insurance policy covers an "accident" basis, it must be changed to "occurrence".
  - (ii) The policy must cover personal injury as well as bodily injury.
  - (iii) The County, its officers, agents, and employees shall be named as additional insured under the policy, and the policy shall provide that insurance will operate as primary insurance and that no other insurance affected by the County will be called upon to contribute to a loss hereunder.
- (b) **Workers' Compensation Insurance** - In accordance with the provisions of Labor Code Section 3700, NCSD is required to be insured against liability for workers' compensation or to undertake self-insurance for any individuals working as employees of NCSD. NCSD agrees to comply with such provisions before commencing the performance of the Project under this

**AGREEMENT REGARDING USE OF STATE JOBS HOUSING BALANCE  
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Agreement.

- (c) The following requirements apply to all insurance to be provided by NCSD:
  - (i) A certified copy of each insurance policy and a certificate of insurance shall be furnished to the County within sixty (60) days after execution of this Agreement. A certificate alone is not acceptable. Provided, however, a certificate of insurance shall be furnished to the County prior to the approval of any advances by the Auditor-Controller of the County pursuant to this Agreement.
  - (ii) Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the County.
  - (iii) Approval of the insurance by the County shall not relieve or decrease the extent to which NCSD may be held responsible for payment of damages resulting from NCSD's services or operations pursuant to this Agreement.
- (d) If NCSD fails or refuses to procure or maintain the insurance required by this paragraph, or fails or refuses to furnish the County with required proof that insurance has been procured and is in force and paid for, the County shall have the right, at the County's election, to forthwith terminate this Agreement.
- (e) **Limitation on Insurance.** The insurance clauses referenced in sub-

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paragraphs (a), (b), (c) above shall only apply to all construction Projects (such as the Tefft Street Project) that will be performed under the supervision of NCSD.

**13. Equal Employment Opportunity.** During the performance of this Agreement, NCSD agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, and specifically agrees to comply with the provisions of Section 202 of Presidential Executive Order No. 11246.

**14. Entire Agreement and Modification.** This Agreement sets forth the full and entire understanding of the parties regarding the matter set forth herein, and any other prior or existing understandings or agreement by the parties, whether formal or informal, regarding any matters are hereby superseded or terminated in their entirety. No changes, amendments, or alterations shall be effective unless in writing and signed by all parties hereto. NCSD specifically acknowledges that in entering into and executing this Agreement, NCSD relies solely upon the provisions contained in this Agreement and no others.

**15. Contractors and Subcontractors.** NCSD agrees to, and shall require its subcontractors to agree to:

- (a) Perform the Projects funded by the Grant Fund in accordance with federal, state and local building codes as applicable.
- (b) Maintain at least the minimum state-required workers' compensation

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insurance for those employees who will perform the Project or any part of it.

- (c) Maintain, if so required by law, unemployment insurance, disability insurance and liability insurance in an amount to be determined by the State which is reasonable to compensate any person, firm, or corporation who may be injured or damaged by NCSD or any subcontractor in performing the Project or any part of it.

**16. Compliance with County and State Laws and Regulations.** NCSD agrees to comply with all County and State laws and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity and all other matters applicable to NCSD, its subcontractors, and the Project.

**17. No Assignment Without Consent.** Inasmuch as this Agreement is intended to secure the specialized services of NCSD, NCSD shall not have the right to assign or transfer this Agreement, or any part hereof or monies payable hereunder, without the prior written consent of the County, and any such assignment or transfer without the County's prior written consent shall be considered null and void.

**18. Law Governing and Venue.** This Agreement has been executed and delivered in the State of California, and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the law of the State of California. All duties and obligations of the parties created hereunder are performable in San Luis Obispo County, and such County shall be that venue for any action, or proceeding

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that may be brought, or arise out of, in connection with or by reason of this Agreement.

**19. Enforceability.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**20. Effect of Waiver.** County's waiver or breach of any one term, covenant or other provision of this agreement shall not be a waiver of a subsequent breach of the same term, covenant or provision of this Agreement or of the breach of any other term, covenant or provision of this Agreement.

**21. Notices.** Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices required to be given to County shall be addressed as follows: Victor Holanda, Director of Planning and Building, County of San Luis Obispo, County Government Center, San Luis Obispo, California, 93408. Notices required to be given to NCSO shall be addressed as follows: Doug Jones, Director, Nipomo Community Services District, 148 S. Wilson Street, Nipomo, CA 93444.

Provided that any party may change such address by notice in writing to the other parties and thereafter notices shall be transmitted to the new address.

**22. Opinions and Determinations of Good Faith.** Where the terms of this Agreement provide for action to be based upon opinion, judgment, approval, review or determination of

**AGREEMENT REGARDING USE OF STATE JOBS HOUSING BALANCE  
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either party hereto, such terms are not intended to be and shall never be construed to permit such opinion, judgment, approval, review or determination to be arbitrary, capricious or unreasonable. the District and the County shall each act in good faith in performing their respective obligations as set forth in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**NIPOMO COMMUNITY SERVICES DISTRICT    COUNTY OF SAN LUIS OBISPO**

By: \_\_\_\_\_  
Michael Winn, President

By: \_\_\_\_\_  
Chairperson of the Board of Supervisors

By: \_\_\_\_\_  
Donna Johnson, Secretary

Attest: \_\_\_\_\_  
Julie Rodewald, County Clerk

[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.  
County Counsel

By: \_\_\_\_\_  
Deputy County Counsel

Dated: \_\_\_\_\_

TO: BOARD OF DIRECTORS  
FROM: DOUG JONES  
DATE: SEPTEMBER 24, 2003

**AGENDA ITEM**

**SEPTEMBER 24, 2003**

**NIPOMO WEST SIDE CLEAN UP WEEK**

**ITEM**

Review possible funding for Nipomo West Side Clean up Week (November 15-22)


**BACKGROUND**

The District, in the past, participated in Nipomo Clean program where the County and representatives of the community cleaned up areas in Nipomo. The District assisted in the program by appropriating funds from the District's Solid Waste Fund for expenditures. The qualified costs from vendors were invoiced to the District for payment. A similar program is being proposed for this year. Detailed information will be distributed later.

**RECOMMENDATION**

Your Honorable Board may authorize funding from the Solid Waste Fund for expenditures relating to solid waste collection within the District boundary.



TO: BOARD OF DIRECTORS  
FROM: DOUG JONES   
DATE: SEPTEMBER 24, 2003

**AGENDA ITEM**  
**E2**  
**SEPTEMBER 24, 2003**

NIPOMO CREEK CLEAN-UP WEEK  
OCTOBER 20-25

**ITEM**

Land conservancy request for financial assistance to clean creeks

**BACKGROUND**

The District received correspondence from Mr. Hill of the Land Conservancy requesting financial assistance for the second annual Creek Clean-Up Week scheduled for October 20-25. The attached correspondence is self-explanatory. If your Honorable wishes to financially assist in Creek Clean-Up Week, you may direct staff accordingly.

**RECOMMENDATION**

If your Honorable wishes to financially assist in Creek Clean-Up Week, the funds could come from the District's Solid Waste Fund Account.

Board 2003/OctoberClean UpWeek.DOC



10 September 2003

Mr. Doug Jones, General Manager  
Board of Directors  
Nipomo Community Services District  
148 South Wilson Street  
P.O. Box 326  
Nipomo, CA 93444-0326

RE: 2<sup>nd</sup> Annual Nipomo Creek Clean-Up Week

Dear Mr. Jones and Board of Directors:

I am writing to request financial assistance from the Nipomo Community Services District for the removal and disposal of debris from Nipomo Creek and its tributaries during the upcoming 2<sup>nd</sup> Annual Nipomo Creek Clean-Up Week. This event is scheduled for October 20-25<sup>th</sup> and is intended to help reduce flooding by removing trash and downed vegetation from the creek channels before the winter rains come. The planning and implementation of this event is a collaborative effort between the Land Conservancy of San Luis Obispo County, Central Coast Salmon Enhancement, the California Department of Fish and Game, the California Conservation Corps, and Mr. Lupe Esquivel, ranch manager for the Dana Family Trust.

The Nipomo Community Services District approved funding of \$2,400 last year to compliment thousands of dollars in other donated funds and in-kind contributions of labor and material from around the community. Last year's event was very successful and represented a new standard for collaboration between landowners, agencies, and non-profit groups.

Given this success, we would like to continue and expand these efforts on an annual basis. This year's clean up activities are planned to be more extensive than before, with several new landowners participating. Our anticipated costs will be around \$8,000. We very much need the support of the District to help cover these costs. Any funds put forth by the District would, of course, only be spent within the District's boundaries. You may recall that the flooding which occurred on March 5, 2000 caused approximately \$1.3 million in damage to homes, businesses, and farmlands in Nipomo. A modest investment on your part now can go a long way towards helping to reduce the community's exposure to this type of catastrophe again.

I would like to thank you very much for your consideration of the above request for financial assistance, and ask that this proposal be heard at the September 24<sup>th</sup> board meeting in advance of our scheduled clean-up week. It is rare that one sees such commitment to local creeks as is occurring now in Nipomo. It is our hope that the Nipomo Community Services District will continue to be a partner in this worthy event.

On behalf of the above mentioned parties,

Robert A. Hill  
Conservation Planning Associate and Project Manager


SEP 11 2003

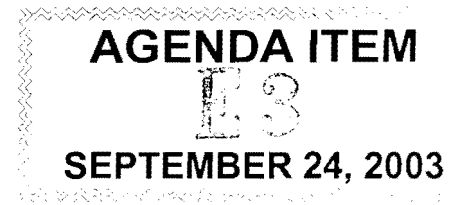
THE LAND CONSERVANCY OF SAN LUIS OBISPO COUNTY

P. O. BOX 12206, SAN LUIS OBISPO, CA 93406

805-544-9096 • 805-544-5122 FAX • LC@SPECIAL-PLACES.ORG • WWW.SPECIAL-PLACES.ORG

Copy of document found at [www.NoNewWipTax.com](http://www.NoNewWipTax.com)

TO: BOARD OF DIRECTORS  
FROM: DOUG JONES   
DATE: SEPTEMBER 24, 2003



## NCS D BUILDING USE POLICY

### ITEM

Review existing Board Room Use Policy

### BACKGROUND

At the regular meeting of September 10, 2003, your honorable Board wished to put this item on the agenda for discussion purposes of reviewing the building use policy.

After the District office was built in 1997, the Board established a Building Use Policy which would allow other public entities and groups within the District boundary to use the Board room for activities and meetings. The existing building policy is attached for review and comment.

### RECOMMENDATION

After your Honorable Board has reviewed the existing policy, you may direct staff to make changes or modifications as you see fit.

Board 2003/Board room policy

RESOLUTION NO. 2002-812

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
NIPOMO COMMUNITY SERVICES DISTRICT  
ESTABLISHING A BOARD ROOM POLICY

**WHEREAS**, the Nipomo Community Services District's (herein "District") wishes to adopt a Board Room Use Policy, and

**WHEREAS**, based on the staff report, staff presentation and public comment, the District finds that the policy established by this Resolution are fair and reasonable.

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

1. The policy establishing the Nipomo Community Services District Board Room Use Policy, attached hereto as Exhibit "A", is hereby approved and adopted.

On the motion of Director Trotter, seconded by Director Winn and on the following roll call vote, to wit:

AYES: Directors Trotter, Winn, Wirsing, Blair and Mobraaten  
NOES: None  
ABSENT: None  
CONFLICTS: None

The foregoing hereby adopted this 3rd day of April, 2002.



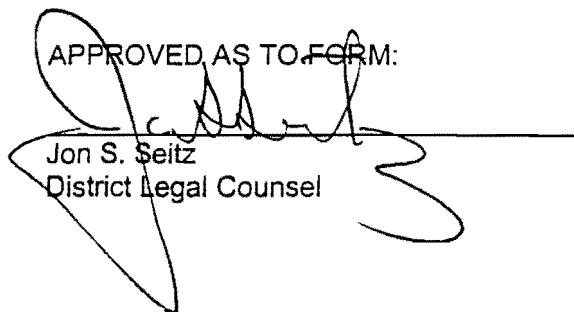
Richard Mobraaten, President  
Nipomo Community Services District

ATTEST:



Donna K. Johnson  
Secretary to the Board

APPROVED AS TO FORM:



Jon S. Seitz  
District Legal Counsel

**NIPOMO COMMUNITY SERVICES DISTRICT  
BOARD ROOM USE POLICY**

The District Board Room (sometimes referred to as the "facility") is available to the community of Nipomo in accordance with the following Guidelines;

A. Regular Use:

1. Subject to District use, the District Board Room is available Monday through Friday from 8:30 a.m. to 4:00 p.m.
2. The Board Room is not available on Sundays and District holidays.
3. The rental charge is as follows:
  - \$10.00 per hour, or fraction thereof with a minimum charge of one hour for residents of Nipomo Community Services District
  - \$15.00 per hour, or fraction thereof with a minimum charge of one hour for non-residents
  - No charge for governmental agencies

B. Evenings and Saturdays:

1. Subject to staff availability, the District Board Room is available weekday evenings until 10:30 p.m. and Saturdays from 8:00 a.m. to 4:00 p.m.
2. In addition to the charge referenced in Paragraph A3 above, fifty dollars (\$50.00) will be charged for District office personnel to open and close the building.
3. The fifty dollars (\$50.00) referenced in Paragraph B2 above may be waived if a District Director volunteers to open and close the Board Room.
4. Whoever opens and closes the building (District office personnel or Board of Directors) need not remain at the District office during the reserved time.

C. The following rules apply to the proposed use/occupancy of the Board Room:

1. The use of the Board Room is limited for the purposes of conducting meetings and programs that benefit the community of Nipomo such as youth groups, community groups and other governmental agencies.
2. A refundable cleaning/security deposit of one hundred (\$100.00) is required for the use of the facility, with a designated contact person. Deposits are refunded upon satisfactory acceptance of the facility's condition at the end of the event. Refunds are issued through the District approximately two (2) weeks after the date of use.
3. Permission by the District for a group to use of the Board Room is not an endorsement by the District of that particular group's policies. The name "Nipomo Community Services District" may not be used in

NIPOMO COMMUNITY SERVICES DISTRICT  
BOARD ROOM USE POLICY

the promotion of an event without specific written permission from the District Board of Directors. Any promotion initiated by an applicant prior to receiving written permission for use may result in cancellation of the reservation.

4. The seating capacity is limited to sixty four (64) persons.
5. The District's Board Room is not intended for long term use by any one group. Therefore a particular group's use of the Board Room is limited to four times per month and cannot be reserved for more than two (2) consecutive days for a single event.
6. Reservations for use of the Board Room must be made by an adult (over 18 years old) on the District's standard reservation form that is available at the District's office located at 148 South Wilson, Nipomo. Reservations will not be confirmed until a deposit is paid.
7. Any changes to confirmed reservations must be made no later than five (5) working days prior to the event, or they will not be honored. All changes must be made during regular business hours through the District at (805) 929-1133. Users should carefully plan their event dates, times, and setup to avoid changes to the original reservation.
8. If a need arises to cancel a reservation for the District Board Room, the District will refund fees in full if District is given at least five (5) working days advance notice; otherwise the fees will not be refunded.
9. The General Manager or his/her designee is responsible for approving requests for use and may, at his/her discretion, grant exceptions to these guidelines as deemed appropriate. The General Manager may not waive the rental fees for non-residents or groups outside of the Nipomo Community Services District boundary.
10. The District General Manager reserves the right to refuse use of the Board Room to any group or Applicant for previous misuse.
11. All uses are subject to approval based upon availability, maintenance schedules, and nature of use. The District reserves the right to cancel a group's reservation if the use of the room is essential for official District business.
12. Requests from District residents for fee waiver shall be made in writing to the District General Manager no later than thirty (30) working days prior to the scheduled event.
13. Users are encouraged to inspect the Board Room and restrooms upon arrival and note any problems at that time to a staff member on duty.
14. Groups shall not charge an admission fee or have merchandise sales.

NIPOMO COMMUNITY SERVICES DISTRICT  
BOARD ROOM USE POLICY

15. Users are required to present evidence of suitable liability insurance in which the District is named primary additional insured. Special Events Insurance may be obtained through the District.
16. Smoking in the premises or within twenty-five (25) feet of a doorway is prohibited.
17. Food and drink, except for water, are not permitted in the District Board Room. Kitchen facilities are not available.
18. Permission to use the room is not transferable to other groups. All reservations must be approved through the District.
19. Activities, which will cause excessive wear and tear, will not be allowed, such as handicrafts, activities involving pets, etc.
20. Provisions for adequate protection of exhibits are the responsibility of the Applicant. The District assumes no responsibility for exhibits or materials brought into the District Board Room and does not provide supervision, security or staffing for gatherings.
21. Noise and activity levels should be controlled by the sponsoring group so as not to interfere with the neighborhood or normal District operations.
22. Exhibits or decorating shall not be nailed, stapled, taped, or glued to the ceilings, soundproofing panels, painted surfaces or floors. The Applicant is responsible for all costs associated with any damages incurred during its usage, including District staff time needed to correct the situation. Charges will be deducted from the cleaning/security deposit and additional billing may be necessary.
23. Security of personal property as well as the District's property from theft and vandalism is the sole responsibility of the group representative whose name appears on the reservation form. Therefore, the room should not remain unattended due to breaks, intermissions, etc., during the reserved time. In the event that the group recesses during their reserved time slot, a responsible adult should remain on site.
24. Any group who does not have the reserved room completely vacated of all their attendees at the confirmed ending time of their room reservation, will be considered late. A written warning may be issued to the group and future use of the room may be jeopardized.
25. Groups using the room are responsible for setting up and putting away all furniture needed for their event (please make sure that reservation includes sufficient time to accomplish this). NCSD is not responsible for providing additional tables and chairs. When a group

NIPOMO COMMUNITY SERVICES DISTRICT  
BOARD ROOM USE POLICY

takes possession of the room, the furniture will be set up in a standard configuration. Any deviation from this room configuration (e.g., more tables, fewer chair, changes to the layout of tables and chairs) will be the responsibility of the user group and requires staff approval to ensure that fire code regulations have been met. At the conclusion of the event, tables and chairs must be returned to room configuration (a diagram is posted in the Board Room for reference) (copy attached). If the room is not returned to the proper setup, a written warning may be issued to the group and future use of the room may be jeopardized.

26. Users are expected to abide by all laws and ordinances set forth by all local, state and federal agencies. Users are also expected to comply with rules and regulations for facility use and obey all District staff members in attendance at facility. Non-compliance will result in cancellation of reservation and loss of fees paid.
27. To assure the safety of the users, all occupancy requirements must be followed and fire exiting pathways and doors must be kept clear for the duration of all reserved events.
28. Personal items may be used in the rooms only during the reserved time slot and may not be stored overnight. In addition, they may not create a potential hazard to others or to the room. Large items, such as full size pianos, must be professionally installed, and should be coordinated with District staff to ensure that there will not be any access or clearance problems.
29. All reservation concerns should be reported to the District Manager or his/her designee, during normal working hours.
30. The District may cancel or reschedule use of the District's Board Room for any reason deemed necessary. Users will be given as much notice as possible. Fees will be refunded, through the District, approximately two (2) weeks after the date of notification.
31. The District is not responsible for accidents, injury or loss of individual property during the facility's use.
32. District staff and Board of Directors may enter the room during Applicant's event for the purposes of conducting District business.



Board Room Configuration

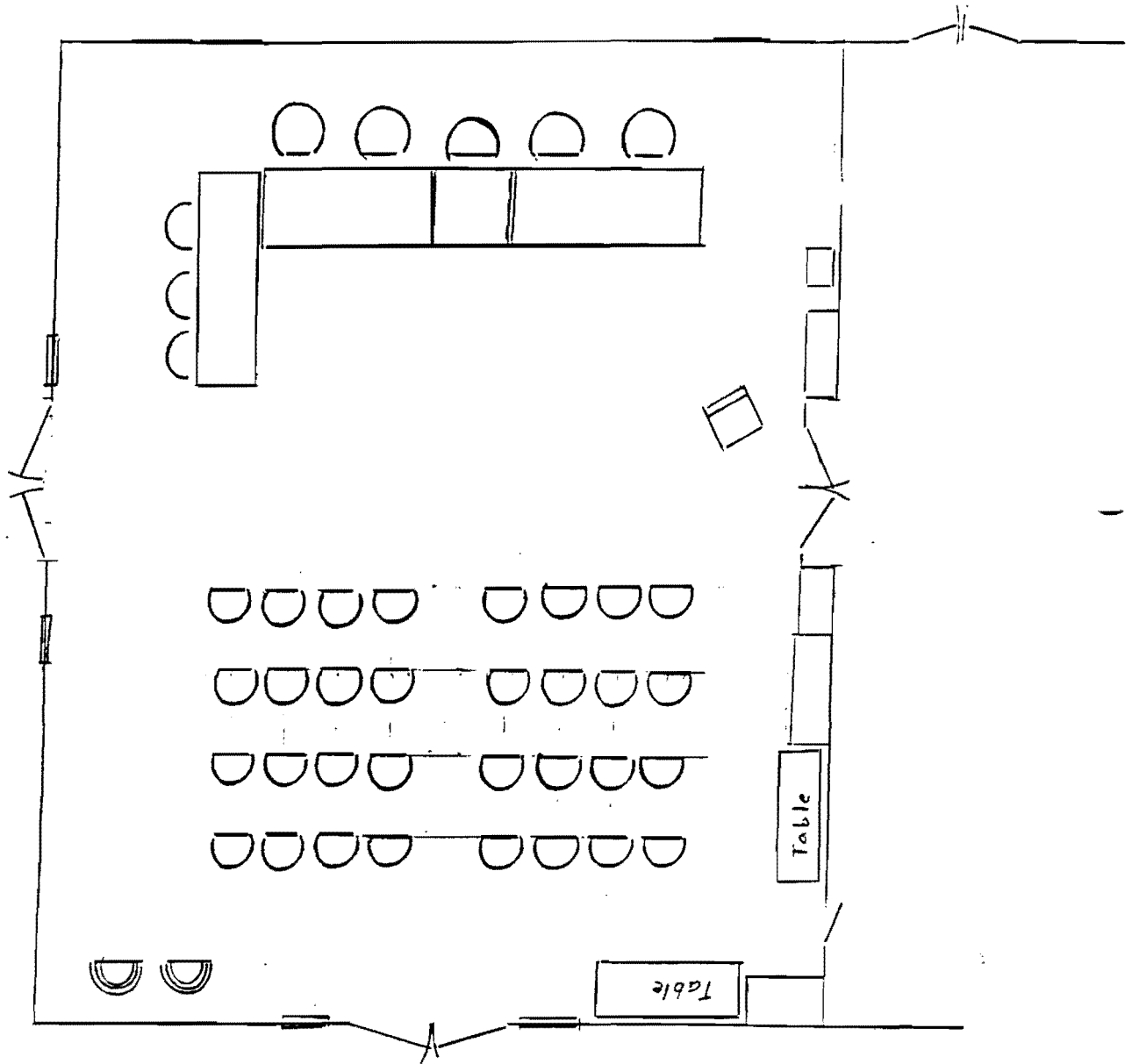
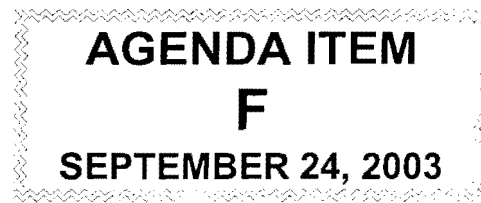


EXHIBIT A

TO: BOARD OF DIRECTORS  
FROM: DOUG JONES  
DATE: SEPTEMBER 24, 2003



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 brackets.

- F-1) WARRANTS [RECOMMEND APPROVAL]
- F-2) BOARD MEETING MINUTES [RECOMMEND APPROVAL]  
Minutes of September 10, 2003, Regular Board meeting
- F-3) WATER/SEWER AGREEMENT WITH LUCIA MAR UNIFIED SCHOOL DISTRICT (RECOMMEND APPROVAL)  
Agreement for District to provide services to the Nipomo High School
- F-4) APPROVE ANNEXATION NO. 19 –NIPOMO HIGH SCHOOL - LUCIA MAR USD (RECOMMEND APPROVAL)  
Resolution acknowledging that conditions of Annex. No. 19 have been met

**WARRANTS SEPTEMBER 24, 2003**

**AGENDA ITEM  
F-1  
SEPTEMBER 24, 2003**

**HAND WRITTEN CHECKS**

Corrected

18660	08-27-03	ED EBY	100.00
18661	08-27-03	TRI STATE SEMINAR	45.00
18662	09-02-03	STATE COMP FUND	3,357.76
18663	09-10-03	SLO COUNTY REC	94.00
18664	09-10-03	SLO COUNTY REC	25.00
18665	09-12-03	WHITAKER CONST	36.00
18666	09-19-03	MID STATE BANK	196.45
18667	09-19-03	POSTMASTER	134.42

**COMPUTER GENERATED CHECKS**

Check Number	Check Date	Vendor Number	Name	Gross Amount	Discount Amount	Net Amount	Invoice #	Payment Information Description
8563	09/10/03	EMP01	EMPLOYMENT DEVELOP DEPT	461.78	.00	461.78	A30908	STATE INCOME TAX
8564	09/12/03	MID01	MIDSTATE BANK-PR TAX DEP	1581.72 471.96	.00 .00	1581.72 471.96	A30908 1A30908	FEDERAL INCOME TAX MEDICARE (FICA)
			Check Total.....:	2053.68	.00	2053.68		
8565	09/12/03	MID02	MIDSTATE BANK - DIRECT DP	14560.32	.00	14560.32	A30908	NET PAY DEDUCTION
8566	09/12/03	PER01	PERS RETIREMENT	2953.05 69.03	.00 .00	2953.05 69.03	A30908 1A30908	PERS PAYROLL REMITTANCE MILITARY SERVICE CR
			Check Total.....:	3022.08	.00	3022.08		
8567	09/12/03	SIM01	SIMMONS, DEBRA	150.00	.00	150.00	A30908	WAGE ASSIGNMENT
8568	09/12/03	STA01	STATE STREET GLOBAL	735.00	.00	735.00	A30908	DEFERRED COMP
			Check Total.....:	15990.00	.00	15990.00		
008587	09/24/03	NIP01	NIPOMO ACE HARDWARE INC	250.76	.00	250.76	399854	MISC SUPPLIES
008588	09/24/03	PAC01	SBC/MCI	44.45 83.39 60.25	.00 .00 .00	44.45 83.39 60.25	T1655241 T1655243 T1655244	9290161 PHONE 9291133 PHONE 9291341 PHONE
			Check Total.....:	188.09	.00	188.09		
008589	09/24/03	PER05	PERFORMANCE METER, INC	5360.72 1415.70	.00 .00	5360.72 1415.70	6711 6724	16 METER/ KNOLLWOOD 2 FIRE HYDRANT METERS
			Check Total.....:	6776.42	.00	6776.42		
008590	09/24/03	QUI01	QUILL CORPORATION	6.75 21.44	.00 .00	6.75 21.44	3494899 3502309	SUPPLIES SUPPLIES
			Check Total.....:	28.19	.00	28.19		
008591	09/24/03	QUI03	QUINN RENTAL SERVICES	6.42	.00	6.42	2046372	QUIK CRETE
008592	09/24/03	REY01	REYNOSO, CARLOS CPA	3300.00	.00	3300.00	063003	AUDIT-PROGRESS BILLING
008593	09/24/03	SAI01	SAIC	16904.33	.00	16904.33	399455	SMV GROUNDWATER LITIGATION
008594	09/24/03	SAN09	SAN LUIS MAILING SERVICE	110.00 765.95	.00 .00	110.00 765.95	26572 26572A	MAIL BILLS POSTAGE FOR BILLS
			Check Total.....:	875.95	.00	875.95		
008595	09/24/03	SHI01	SHIPSEY & SEITZ, INC	9896.90	.00	9896.90	081503	LEGAL SERVICES
008596	09/24/03	SLO02	DIV OF ENVIRON HEALTH	1057.98 420.00	.00 .00	1057.98 420.00	26980 27043	CROSS CONNECTION LAB
			Check Total.....:	1477.98	.00	1477.98		
008597	09/24/03	SOU01	SOUTH COUNTY SANITARY	14.58	.00	14.58	391209	TRASH COLLECTION
008598	09/24/03	TRO01	TROTTER, CLIFFORD	100.00	.00	100.00	09243	REG BD MEETING 092403
008599	09/24/03	UND01	UNDERGROUND SERVICE ALERT	150.00	.00	150.00	30090060	UNDERGOUND SERVICE ALERTS
008600	09/24/03	USA01	USA BLUEBOOK	271.64	.00	271.64	714724	SUPPLIES

**COMPUTER GENERATED CHECKS**

Check Number	Check Date	Vendor Number	Vendor Name	Gross Amount	Discount Amount	Net Amount	Invoice #	Payment Information Description
008601	09/24/03	USP01	U S POSTAL SERVICE	49.85	.00	49.85	091003 E	STAMPED ENVELOPES
				370.00	.00	370.00	091003 S	STAMPED ENVELOPES
			Check Total.....:	419.85	.00	419.85		
008602	09/24/03	VAL01	VALLEY SEPTIC SERVICE	1613.40	.00	1613.40	1213	JETTING SEWER LINES
				837.60	.00	837.60	1261	JETTED SEWER LINES
				825.60	.00	825.60	1266	JETTED SEWER LINES
				710.10	.00	710.10	1274	JETTED SEWER LINES
			Check Total.....:	3986.70	.00	3986.70		
008603	09/24/03	VIE01	VIERHEILIG, LARRY	100.00	.00	100.00	092403	REG BD MEETING 092403
008604	09/24/03	WIN01	WINN, MICHAEL	100.00	.00	100.00	092403	REG BD MEETING 092403
008569	09/24/03	AVC01	AVCO FIRE EXTINGUISHER C.	159.01	.00	159.01	9610	ANNUAL FIRE EXTINGUISHER
008570	09/24/03	BCS01	BASIC CHEMICAL SOLUTIONS	808.14	.00	808.14	S1380536	SODIUM HYPOCHLORITE
				288.31	.00	288.31	S1380538	SODIUM HYPOCHLORITE
			Check Total.....:	1096.45	.00	1096.45		
008571	09/24/03	BLA01	BLAIR, ROBERT L	100.00	.00	100.00	092403	REG BD MEETING 092403
008572	09/24/03	BLA02	BLAIR, ROBERT L	946.28	.00	946.28	A30919	REIMBURSEMENT-CSDA ANNUAL
008573	09/24/03	CCM01	COMPUTER NETWORK SERVICES	449.90	.00	449.90	12875	COMPUTER SUPPORT
008574	09/24/03	COM02	COMMUNICATION SOLUTIONS	414.62	.00	414.62	3201	REPAIR AT LIFT STN - LA M
008575	09/24/03	COR01	CORBIN WILLITS SYSTEMS	608.90	.00	608.90	A30915	MONTHLY MAINTENANCE/SUPPL
008576	09/24/03	CRE01	CREEK ENVIRONMENTAL LABS	30.00	.00	30.00	K3278	BL WWTP LAB
				30.00	.00	30.00	K3306	BL WWTP LAB
				30.00	.00	30.00	K3379	BL WWTP LAB
				30.00	.00	30.00	K3421	BL WWTP LAB
				30.00	.00	30.00	K3495	BL WWTP LAB
				30.00	.00	30.00	K3544	BL WWTP LAB
			Check Total.....:	180.00	.00	180.00		
008577	09/24/03	DIG01	DIGITAL WEST NETWORKS	15.00	.00	15.00	6637	DOMAIN TRANSFER
008578	09/24/03	DIR01	DIRECT SHRED	24.00	.00	24.00	8921	SHRED CONFIDENTIAL
008579	09/24/03	FGL01	FGL ENVIRONMENTAL	4014.00	.00	4014.00	307766A	STATE UCMR ALL WELLS
				907.20	.00	907.20	308015A	WELL TESTING 2 BL 7 TOWN
				44.80	.00	44.80	308535A	BL WWTP LAB
				44.80	.00	44.80	309060A	BL WWTP LAB
				44.80	.00	44.80	309061A	TOWN WWTP LAB
			Check Total.....:	5055.60	.00	5055.60		
008580	09/24/03	GAR01	GARING TAYLOR & ASSOC	433.83	.00	433.83	3679	MARIA VISTA SEWER/PARK EA
				77.37	.00	77.37	3680	DANA FOOTHILL TANK SITE
				200.75	.00	200.75	3681	TEFFT ST LIFT STN BID
				2647.50	.00	2647.50	3682	OLDE TOWNE PROJECT
				206.00	.00	206.00	3683	TR 1802 & 1856
				204.75	.00	204.75	3684	PARK EASEMENT
			Check Total.....:	3770.20	.00	3770.20		
008581	09/24/03	GOV03	GOVCONNECTION, INC.	298.37	.00	298.37	35600974	PRINTER-COLOR
008582	09/24/03	IKO01	IKON OFFICE SOLUTIONS	47.20	.00	47.20	16444671	COPIER MAINTENANCE
008583	09/24/03	JON01	DOUG JONES	110.00	.00	110.00	A30919	PER DIEM-CSDA ANNUAL CONF
008584	09/24/03	KIN01	KINKO'S	320.02	.00	320.02	13472	PUBLIC NOTICE-BL SEWER RA
				40.41	.00	40.41	324571	TOWN SEWER RATE NOTICES
			Check Total.....:	360.43	.00	360.43		
008585	09/24/03	M&E01	M & E BACKHOE	1484.04	.00	1484.04	10530	ABANDON LINE BETWEEN PRIM
008586	09/24/03	MJR01	M J ROSS CONSTRUCTION INC	11970.00	.00	11970.00	4732	OLDE TOWNE WATER SERVICES
				4020.00	.00	4020.00	4733	OLDE TOWNE RELOCATE HYDRA
008605	09/24/03	WIR02	WIRSING, JUDY	100.00	.00	100.00	092403	REG BD MEETING 092403
008606	09/24/03	WOO01	DOUGLAS WOOD & ASSOCIATES	1935.21	.00	1935.21	091003	TRT 1802 & 1856 MIT NEG D

# NIPOMO COMMUNITY SERVICES DISTRICT

## MINUTES

SEPTEMBER 10, 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

DOUG JONES, GENERAL MANAGER  
DONNA JOHNSON, BOARD SECRETARY  
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. (If assistance is needed, please contact the District office at least one day before the meeting.)*

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

President Winn called the meeting to order at 9:01 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.

Robert Dimmit, NCSD resident – stated that he questioned how the Story Street sewer line reimbursement was spread. [The Board suggested that he come into the office for a detailed explanation.]

Ed Eby, NCSD resident – requested that the Board agendaize the supplemental water situation that the Board can report on regularly, such as plans, etc.

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

##### D-1) ENVIRONMENTAL REVIEW OF A SEWER LIFT STATION AND FORCE MAIN – MARIA VISTA

Public Hearing for review/adoption of an environmental expanded initial study/mitigated negative declaration of a sewer lift station/force main for Tract 1802 and 1856 (Maria Vista) Mr. Doug Wood of Douglas Wood and Associates in San Luis Obispo reviewed the preparation of the Environmental Expanded Initial Study/Mitigated Negative Declaration. He answered questions and responded to comments from the Board.

Director Vierheilig – Section IV-1 - the Nipomo Creek watershed area is larger than 2200 acres. Section V-3 consider the County's track record in relation to their attitude with development. Section V-11 – Nipomo Mesa Lupines were not mentioned. Section V-16 - Substantiation - needs communication system for sewer pumps. Section VI-1 Mitigation measures– suggested area to be seeded with drought-tolerant grasses.

Director Wirsing – asked if a second pump station would increase capacity. [Answer - It would not increase the number of users without property owners going through quite a few requirements, e.g., LAFCo, SLO County, etc.]

Director Trotter – asked if the design of the pump station could add more velocity. [The line was designed to accommodate the sewage for 121 homes. It is possible to move more sewage because the pipe sizes do not come in small increments. The line eliminates the potential constraint. i.e. Larger pumps could be added but the force main size would remain the same. Any change would require additional design and future approvals.]  
Mr. Trotter asked if this line would be growth inducing. [Answer – There would only be more connections to the proposed line if the property owners along the line go through all the approval steps required by all the agencies involved.]

Director Winn – asked if a force main rather than a gravity main made it more difficult for more connections. How much excess capacity is allowed through the size of pipe designed? [Answer: Yes, it would be more difficult to connect to a force main. The line was designed for 121 houses. With some design changes in the lift station, the number could increase.]

**MINUTES SUBJECT TO BOARD APPROVAL**

The following members of the public spoke:

Ed Eby, NCSD resident – Stated that he does not agree that the project is “not growth inducing” but perhaps more growth enabling. He asked if there would be stub-outs for future connections. [Answer: The plans do not show stub-outs.]

Homer Fox, NCSD resident – asked why this project required 6” sewer main when his project required an 8” sewer main. [The Maria Vista project requires a force main. Mr. Fox’s project requires gravity flow sewer main, which has a minimum size of eight (8) inches.]

Marshall Ochylski, attorney for Mr. Benham – There were no comments submitted during the review period before this meeting. The project was approved and is going forward. The Regional Board and the NCSD preferred to have the project connect to the sewer system. Growth inducement - Mr. Benham does not own more property to connect to the sewer line. He has no incentive to install a larger line than is planned.

Director Wirsing – asked if this sewer line would be able to receive reimbursement such as other lines. [Mr. Seitz answered that if other property was connected, it would be subject to reimbursement to Mr. Benham but any development would need to go through all the hurdles. The project description is up for approval. If the project description is amended, it would require further CEQA review. The project does not include dual lines or extra stub outs.]

Mr. Ochylski – The other six homes on the property are included in the CEQA document.

The Board took a short break.

Erik Benham, principal for Maria Vista – stated that he has not been solicited to add more services along the line. He stated that he wanted to remind the Board that NCSD, the County, and the Regional Water Quality Control Board asked him to come to the District for services.

President Winn closed the Public Comment period.

Director Blair – stated that he is concerned that the State required the County to have 18,000 houses built and the District is giving this project a hard time.

Jon Seitz, District Legal Counsel suggested additional verbiage to the recitals:

“Any change in project as described shall be returned to the Board for review.”

Director Wirsing stated that she didn’t have much faith in the LAFCo or CEQA reports; the people have no voice in the matter and feels that the County planned this by not having all the information from the beginning. Upon motion of Director Vierheilg and seconded by Director Blair, the Board approved Resolution 2003-877 with the changes as mentioned. Vote 4-1, with Director Wirsing voting no.

RESOLUTION NO. 2003-877  
A RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
NIPOMO COMMUNITY SERVICES DISTRICT  
ADOPTING A MITIGATED NEGATIVE DECLARATION AND  
AUTHORIZING THE GENERAL MANAGER TO  
FILE A NOTICE OF DETERMINATION FOR  
SEWER MAIN EXTENSION TO SERVE MARIA VISTA DEVELOPMENT

**MINUTES SUBJECT TO BOARD APPROVAL**

- D-2) ORDINANCE TO ESTABLISH BLACKLAKE SEWER SERVICE FEES  
Introduction of Ordinance adjusting sewer rates for the Blacklake Division

The Board discussed the proposed sewer rate adjustment for the Blacklake Division. There was no public comment. Director Blair made the motion to have the ordinance read in title only. Director Vierheilig seconded the motion. There was no public comment. Vote 5-0. Jon Seitz, District Legal Counsel, read Ordinance 2003-98 in title only.

**ORDINANCE NO. 2003-98  
AN ORDINANCE OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
AMENDING APPENDIX A TO CHAPTER 4.12 OF THE  
NIPOMO COMMUNITY SERVICES DISTRICT CODE TO  
ESTABLISH BI-MONTHLY RATES FOR SEWER SERVICE  
WITHIN THE BLACKLAKE DIVISION**

Upon motion of Director Trotter and seconded by Director Blair, the Board unanimously approved the introduction of Ordinance 2003-98 and set a Public Hearing for adoption for September 24, 2003. Vote 5-0

- D-3) REVIEW ANNEXATION POLICY  
Review/approve modifications to the District's Annexation Policy

Jon Seitz, District Legal Counsel, reviewed the proposed changes in the District's Annexation Policy.

The following members of the public spoke:

Ed Eby, NCSD resident – stated that he likes the policy better now. He stated that he is pleased with the portion that talks about annexing land overlying water. He also mentioned that the policy should read 6,000 sq. ft. building site not 6,000 sq. ft. building.

Greg Nester, outside District resident, Nipomo developer – stated that he was concerned about the \$10,000.00 deposit being difficult getting a loan before approval.

President Winn – requested to change some wording to Cluster Development F-2.

Director Blair – stated that he does not agree with the \$10,000 deposit.

Upon motion of Director Trotter and seconded by Director Wirsing, the Board unanimously approved Resolution 2003-878 amending the District's Annexation Policy with the changes in the draft as discussed by the Board. Vote 5-0

**RESOLUTION NO. 2003-878  
A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
AMENDING THE DISTRICT'S ANNEXATION POLICY**

- D-4) DRAFT ANNEXATION AGREEMENT FOR ANNEX. NO. 23 - NESTER  
Review administrative draft agreement for conceptual approval

The Board discussed a draft agreement for the proposed Annexation No. 23, Tract 2499.

The following member of the public spoke:

Greg Nester, Nipomo developer – stated that he agreed to combine the open space area in the subdivision next door and the open space area in the proposed annexation area to be placed in an Ag easement in perpetuity, with District as party to the agreement.

Upon motion of Director Vierheilig and seconded by Director Blair, the Board approved the annexation agreement as amended and directed staff to bring the agreement back for final approval. Vote 5-0, with Director Wirsing abstaining.

**MINUTES SUBJECT TO BOARD APPROVAL**

**E. OTHER BUSINESS**

- E-1) WATER SERVICE TO THE DANA ADOBE (SLO COUNTY HISTORICAL SOCIETY) (DISCUSSION ITEM)  
Review existing water service agreement

The following member of the public spoke:

Lisa Vanderstad, representative for the Dana Adobe Nipomo Amigos – requested that the District continue the agreement to provide water to the Dana Adobe.

Directors Blair and Winn said that they would not support supplying water outside of the District's sphere of influence and asked D.A.N.A. to retract their letter to LAFCo opposing their being within the District's Sol. General Manager, Doug Jones suggested that a letter be sent to the San Luis Obispo County Historical Society, titleholder to the Adobe, asking them to include resolution of this matter in any plans to transfer title to D.A.N.A.

This item was tabled to a future meeting.

Director Trotter left the meeting at 12:10 p.m.

- E-2) SAN LUIS OBISPO COUNTY DRAFT HOUSING ELEMENT (DISCUSSION ITEM)  
Review Housing Element

The Board discussed the San Luis Obispo County Draft Housing Element. A committee consisting of Directors Blair and Winn was appointed to review and make comments and recommendations. There was no public comment.

- E-3) REVIEW DISTRICT LEGAL COUNSEL'S FEE SCHEDULE  
Review/approve legal counsel's fee schedule

Jon Seitz, District Legal Counsel, presented a revision of the fee schedule for legal services for the District. There was no public.

Upon motion of Director Wirsing and seconded by Director Blair, the Board unanimously approved the revised fee schedule.

**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 August 27, 2003, Regular Board meeting

Minutes – Correct D-5 showing Mr. Eby as Vice President of "Save the Mesa" rather than President.

There was no public comment.

Upon motion of Director Vierheilig and seconded by Director Blair, the Board unanimously approved the Consent Agenda as amended. Vote 4-0 with Director Trotter absent.

**G. MANAGER'S REPORT**

The Santa Maria litigation court date has been postponed to October 8<sup>th</sup> because of the recall election.

**MINUTES SUBJECT TO BOARD APPROVAL**



H. COMMITTEE REPORTS

Annexation Committee – Directors Wirsing & Winn met and the results were as noted in the packet items.

Personnel Committee, Directors Trotter and Winn will meet to discuss the job description for the new General Manager.

Housing Element Committee set with Directors Blair and Meeting date to be decided.

I. DIRECTORS COMMENTS

Director Vierheilig – announced that Julia from the Nipomo Creek water shed steering group will be speaking at a meeting tonight.

Director Wirsing – stated that she was listening to a copy of the last Board meeting and the tape cut off when the Board was voting for an issue. Also, she would like to discuss the March 2002 letter to Noel King at a future meeting.

President Winn – stated that he has heard many comments commending the NCSD staff for cooperation with the Olde Towne project.

He wishes to commend Lisa for her work on the rate distribution chart for Blacklake.

He stated that he was disappointed with the slow completion of the draft cityhood feasibility study.

He stated that the questionnaire concerning cityhood should be mailed soon.

He would like to agendize consideration of a request for monies for Nipomo West Side Clean-Up planned for November 15-22, 2003.

He also asked if the policy for use of the Board room could be put on the agenda.

He would like to schedule a time to visit with the Templeton and Cambria Community Services Districts to check out how they handle parks.

CLOSED SESSION

There was no need to go into Closed Session.

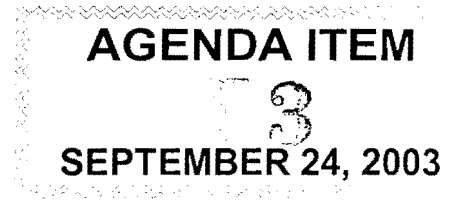
ADJOURN

President Winn adjourned the meeting at 12:40 p.m.

**The next regular Board meeting will be September 24, 2003.**

**MINUTES SUBJECT TO BOARD APPROVAL**

TO: BOARD OF DIRECTORS  
FROM: DOUG JONES *DJ*  
DATE: SEPTEMBER 24, 2003



WATER /SEWER AGREEMENT WITH LUCIA MAR UNIFIED SCHOOL DISTRICT

**ITEM**

Agreement for District to provide water and sewer services to the Nipomo High School

**BACKGROUND**

The District staff has prepared a new agreement to supply water and sewer services to the new Nipomo High School. District staff has met with the School District staff and has generated the attached agreement. This Board's School Committee (Directors Blair and Vierheilig) met and reviewed the agreement. The agreement was presented to the Lucia Mar Unified School District Board on September 16, 2003 and was approved.

This agreement is now presented to your Honorable Board for approval.

**RECOMMENDATION**

Staff recommends that your Honorable Board approve the attached agreement and authorize the President of the Board to execute the document.

Board 2003/High School agreement 9-03

**AGREEMENT FOR WATER AND SEWER SERVICE BETWEEN  
THE NIPOMO COMMUNITY SERVICES DISTRICT  
AND THE LUCIA MAR UNIFIED SCHOOL DISTRICT**

**1. PARTIES AND DATE.**

This Agreement for Water and Sewer Service ("Agreement") is made and entered into this \_\_\_\_\_, 2003 by and between the **Nipomo Community Services District**, a community services district organized and operating pursuant to the provisions of the California Government Code ("Community Services District" or "District") and the **Lucia Mar Unified School District**, a public school district organized and operating pursuant to the provisions of the California Education Code ("School District").

**2. RECITALS.**

**2.1** The School District has constructed and currently operates a high school on certain real property ("Property") located in the County of San Luis Obispo ("County"). The Property is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. The Property is currently located outside and immediately adjacent to the Community Services District's service boundaries.

**2.2** Pursuant to all prior Agreements ("Prior Agreements") the School District has requested and the Community Services District has agreed to provide the Property with sewer service and limited water service.

**2.3** Pursuant to Section 3.17 of the Prior Agreements the Community Services District has terminated the Prior Agreements and offered to refund School District certain costs identified in the Prior Agreements.

**2.4** Pursuant to the Prior Agreements both parties acknowledged that School District has:

- A. Paid Sewer Capacity Charges (Section 3.4.3 A.1);
- B. Paid a Water Capacity Fee (Section 3.4.3.A.2);
- C. Paid Fire Capacity Fees (Section 3.4.3.A.3);
- D. Deposited Tefft Street Water Line Upgrade Fees (Section 3.4.3.A.4);
- E. Provided detailed plumbing plan for on-site water and sewer facilities (Section 3.4.4);
- F. Submitted to District, offer of dedication of the connecting facilities, engineer's certification, certification of School District's water treatment facilities by County Health Department, verification of employment by School District of certified operator, summary of costs of water and sewer improvements constructed by School District. (Section 3.4.6)

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- G. Constructed and connected a well (Dana Well No. 3) to the District's water distribution system for the purposes of providing water to the Property.
- H. Installed a four inch (4") irrigation meter and a three inch (3") domestic consumption meter at the Property.
- I. Installed a water meter at the point of connecting Dana Well No. 3 to District water distribution system.
- J. Constructed and connected sewer laterals to serve the Property.

**2.5** The Property is the subject of annexation proceedings (Annexation No. 19) that is currently being considered for approval by the Local Agency Formation Commission.

**2.6** The purpose of this Agreement is to identify the conditions and obligations of each of the parties to accomplish the following:

- A. The Community Services District wheeling water from Dana Well No. 3 through District's water distribution system to the Property;
- B. The Community Services District providing the Property with limited water service during periods of emergency as defined herein;
- C. The Community Services District providing the Property with sewer service; and
- D. School District's payment of a portion of Tefft Street Sewer Lift Station costs.

**3. AUTHORITY TO ENTER AGREEMENT.**

Pursuant to Government Code Section 56133 this Agreement is entered into by the Community Services District and the School District to replace in their entirety the terms and conditions of Prior Agreements.

**4. DESIGNATED REPRESENTATIVES.**

Lisa Bognuda, the Community Services District's Administrative Assistant, at telephone (805) 929-1133 is the representative of Community Services District and will administer this Agreement for and on behalf of the District. Diana Larsen, Deputy Superintendent, Business, at telephone number 805-474-3000 ext. 1070 is the authorized representative of School District and will administer this Agreement for and on behalf of School District. Changes in designated representatives shall be made only after advance written notice to the other party.

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AND THE LUCIA MAR UNIFIED SCHOOL DISTRICT**

**5. NOTICES.**

All notices and filing of reports required or permitted to be given under this Agreement shall be given to the respective parties, in writing, by first class mail, postage prepaid or as otherwise delivered as follows:

Community Services District:      Nipomo Community Services District  
P.O. Box 326  
Nipomo, CA 93444  
Attn: Lisa Bognuda, Administrative Assistant  
Fax: (805) 929-1932

School District:                      Lucia Mar Unified School District  
Deputy Superintendent, Business  
602 Orchard Street  
Arroyo Grande, CA 93420  
Attn: Diana Larsen  
Fax: : 805-473-1593  
Email: dlarsen@lmusd.org

Or at such other address or to such other person that the parties may from time to time designate.

**6. TERM.**

The term of this Agreement shall be from the date first hereinabove written until either Party terminates this Agreement pursuant to Section 25.3 herein.

**7. OBLIGATION OF SCHOOL DISTRICT TO PROVIDE WATER SUPPLY.**

**7.1** The School District shall be the party obligated and responsible for providing and constructing one or more water sources to satisfy the daily water requirements of the Property to be operated as a high school.

**7.2** Upon School District designating a water source other than Dana Well No. 3, Community Services District and School District agree to amend this Agreement to provide for the wheeling of water from the alternate source.

**8. OWNERSHIP OF WATER FACILITIES.**

School District shall be the owner of water (including wells) and connection facilities constructed by School District for providing water to the Property.

**AGREEMENT FOR WATER AND SEWER SERVICE BETWEEN  
THE NIPOMO COMMUNITY SERVICES DISTRICT  
AND THE LUCIA MAR UNIFIED SCHOOL DISTRICT**

**9. OPERATION AND MAINTENANCE OF SCHOOL DISTRICT WATER FACILITIES.**

The School District, at its sole cost, shall be responsible for the operation, maintenance and replacement of the following:

**9.1** Dana Well No. 3 and all water facilities, including meters, to transport the water from Dana Well No. 3 to the Community Services District's water distribution system; and

**9.2** Water pipes and meters on and from the Property to the connection points of the Community Services District's water distribution system.

**10. OBLIGATIONS OF COMMUNITY SERVICES DISTRICT TO WHEEL WATER.**

Subject to the terms and conditions of this Agreement Community Services District shall transport and store water supplied by Dana Well No. 3 for the benefit of the high school located on the Property.

**11. RATES AND SERVICES FOR WATER WHEELING.**

For water produced by Dana Well No. 3 and delivered through the Community Services District's water distribution system to the meters on the Property, School District shall pay to Community Services District:

**11.1** Ninety percent (90%) of the Community Services District's Town Division meter charge, as amended from time to time (minus the charge for the Santa Maria Valley Groundwater litigation); and

**11.2** Sixty-three percent (63%) of the Town Division water rates, as amended from time to time.

**12. FIRE FLOW CAPACITY.**

Subject to Community Services District's water system demands District will provide School District up to four hundred thousand (400,000) gallons of water for fire emergencies.

**13. SCHOOL DISTRICT WATER STORAGE.**

The Parties recognize that temporary short falls may occur in School District's obligation to produce sufficient water to meet the daily water demands of the High School (i.e. breakdowns, maintenance and excess temporary demand at the High School, etc.). Therefore, the Community Services District will allow School District to store up to three

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thousand five hundred (3,500) hcf of water produced by Dana Well No. 3, that is not delivered to meters at the Property, to meet temporary short falls as they occur. Subject to Community Services District's operational demands and constraints, the Community Services District shall deliver the "stored or credit water" to the Property. School District shall pay, on a monthly basis, as provided in Section 22 below, the rates referenced in Section 11 above for delivery of the "stored or credit" water to the Property.

**14. INTERRUPTION IN SCHOOL DISTRICT'S WATER PRODUCTION.**

**14.1** To the extent the Community Services District has water supply, production capacity or delivery capacity, that is/are in excess of Town Division water customer demands, then during periods when the School District wells do not meet production requirements by reason of repair, maintenance/or loss of capacity and the School District's storage capacity (referenced in Section 13 above) has been depleted herein "Period of Emergency", then the Community Services District agrees to provide School District with excess water, on an annual and non-cumulative basis, commencing on the first day of the month succeeding the approval of this Agreement by the Community Services District as follows:

A. Domestic Water:

The first fifteen hundred units (1,500 hcf), delivered through the domestic meter for non-irrigation purposes at one hundred percent (100%) of the Community Services District's Town Division meter and water rates as amended from time to time. All additional water delivered through the domestic meter for non-irrigation purposes at two hundred percent (200%) of the District's Town Division meter and water rates as amended from time to time.

B. Irrigation Water:

The first one thousand units (1,000 hcf), delivered through the irrigation meter for irrigation purposes at one hundred percent (100%) of the Community Services District's Town Division meter and water rates as amended from time to time. The next one thousand units (1,000 hcf), delivered through the irrigation meter at two hundred percent (200%) of the District's Town Division meter and water rates as amended from time to time.

From and after delivery of the two thousand units (2,000 hcf) (referenced above), all additional water delivered through the irrigation meter at three hundred percent (300%) of the District's Town Division meter and water rates as amended from time to time.

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**C. Calculation of Charges:**

In calculating Community Services District charges for water delivered to Property pursuant to subsections A and B above, Community Services District shall first apply all water produced by Dana Well No. 3 to the water delivered through the irrigation meter at the rates referenced in Section 11 above.

**14.2** School District shall make payment to Community Services District for water delivered pursuant to this Section as provided in Section 22 below.

**14.3** The School District shall give prompt, written notice to Community Services District of either of the following:

- A. Any interruption or anticipated interruption of well production for maintenance and repair; and
- B. Loss of production capacity of wells operated by School District.

**14.4** During Periods of Emergency School District shall take all steps within its reasonable control to:

- A. Assure that the maintenance and repair work is completed as soon as possible; or
- B. In the event of loss of production capacity, secure an alternate means of satisfying School District's obligations referenced in Section 7 above, including the purchase of supplemental water separately or from the Community Services District if available.

**14.5** Upon a finding by Community Services District Board of Directors that there is not sufficient excess water to provide water to School District, as provided in this Section, then the Community Services District shall have the following options:

- A. Terminating further delivery of District water to the Property; or
- B. Further restricting the delivery of District water to the Property.

**15. STANDBY CHARGE FOR DISTRICT WATER FOR FIRE SERVICE.**

School District shall, on a monthly basis, pay the Community Services District's monthly standby charge for fire protection.



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**16. OBLIGATION OF COMMUNITY SERVICES DISTRICT TO PROVIDE PROPERTY WITH SEWER SERVICE.**

Subject to the terms and conditions of this Agreement and the Rules and Regulations of the Community Services District as amended from time to time, the Community Services District shall provide the Property with sewer service.

**17. TEFFT STREET SEWER LIFT STATION.**

School District agrees to pay Community Services District its reasonable share of the applicable costs to upgrade the Tefft Street sewer lift station based on capacity allocation. With respect to these Sewer Lift Station costs, the Community Services District shall provide written documentation establishing, to the reasonable satisfaction of the School District, the applicable costs and the reasonable allocation. If the parties are unable to agree upon the reasonable allocation formula or resulting cost to the School District, the parties shall resolve the dispute through binding arbitration with an arbitrator mutually acceptable to both parties. If the parties are unable to agree upon an arbitrator, then either party can request the Presiding Judge of the San Luis Obispo Superior Court to appoint an arbitrator. Said appointment shall be binding on the parties. The cost of arbitration shall be borne equally by the parties with each party being responsible for its individual attorneys fees and costs.

**18. OPERATION AND MAINTENANCE OF SCHOOL DISTRICT SEWER FACILITIES.**

The School District, at its sole cost, shall be responsible for the operation, maintenance and replacement of sewer laterals to the point of connection to Community Services District's sewer mains.

**19. RATES AND CHARGES FOR SEWER SERVICE.**

School District agrees to pay the Community Services District for sewer service delivered to the Property the Community Services District's customary rates, charges as amended from time to time for such services that are applicable to property within Community Services District Town Division.

**20. SCHOOL DISTRICT'S COMPLIANCE WITH REGULATIONS.**

**20.1** The School District agrees to abide by all rules and regulations of the Community Services District regarding the provision of water and sewer service to the Property. With respect to water treatment standards, the School District shall comply with all applicable federal, state and county laws, rules and regulations. All water delivered to District facilities must meet the Community Services District and State Department of

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Health Services requirements for water quality. If any applicable water standards are not met, the School District shall immediately terminate water delivery and notify the Community Services District.

**20.2** School District shall maintain and make available to the Community Services District, upon reasonable notice and during normal business hours, all records and permits, pertaining to the Dana Well No. 3, other School District wells and the School District's water treatment system.

**20.3** All water quality monitoring reports required by the County of San Luis Obispo and/ or the California State Health Departments shall be promptly forwarded to the Community Services District.

**20.4** Subject to prior notice to School District, the Community Services District may, but without obligation, conduct water quality samplings of School District's water production facility.

**21. LIMITATION ON COMMUNITY SERVICES DISTRICT DELIVERY OF WATER AND SEWER SERVICE TO THE PROPERTY.**

Community Services District delivery of water and sewer service through Community Services District water distribution systems to the Property is subject to interruptions or other delays for operational maintenance and replacement of said facilities, without offset or recourse, to the same extent as any other Community Services District's customers.

**22. PAYMENT OF DISTRICT RATES AND CHARGES.**

All Community Services District sewer service and water service fees and charges shall be paid by School District within twenty-five (25) days of receipt of the Community Services District's billing statement. Said billing statement shall include a statement of the School District's water delivered to Community Services District water distribution system, the amount of water delivered to the Property and the amount of water stored in the Community Service's District water distribution system pursuant to Section 13 above.

**23. REPRODUCIBLE AS-BUILTS**

School District shall forward to Community Services District, on or before December 19, 2003, reproducible as-builts for the following School District facilities:

A. Dana Well No. 3 and all water facilities including meters, to transport the water from Dana Well No. 3 to the Community Services District's water distribution system.

**AGREEMENT FOR WATER AND SEWER SERVICE BETWEEN  
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B. Water pipes and meters on and from the Property to the connection points of the Community Services District's water distribution system.

C. Sewer laterals to the point of connection to the Community Services District's sewer mains.

**24. ANNEXATION.**

The terms and conditions of this Agreement shall survive Annexation.

**25. MISCELLANEOUS.**

**25.1 Conditions and Covenants.** The obligations of School District under this Agreement are both covenants and conditions.

**25.2 Groundwater litigation.** Notice is provided that Nipomo Community Services District has been made a party to that lawsuit entitled *Santa Maria Valley Water Conservation District, et al. v. City of Santa Maria, et al.*, Santa Clara Superior Court Case No. CV770214. The case involves competing claims to the right to produce water from and/or store water in the Santa Maria Valley Groundwater Basin, the water source from which Nipomo Community Services District derives the water which it serves. The District is now unable to predict with any certainty the outcome of the above-referenced litigation. However, the litigation conceivably could result in a limitation on the availability of groundwater for the District's production and/or an increase in the cost of water which the District serves to its water customers.

**25.3 Termination.** This Agreement may be terminated by either party, based on the default of the other party, upon written notice given at least three hundred and sixty-five (365) days in advance. Unless otherwise agreed to in writing, termination does not release School District's obligation for payment of rates and charges as provided herein.

**25.4 No Waiver of Default.** No delay or omission of Community Services District to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of such default or an acquiescence therein.

**25.5 Sections and Headings.** The headings of the Sections in this Agreement shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

**25.6 Attorneys' Fees.** If any party to this Agreement commences any legal proceeding concerning any aspect of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, and all costs and expenses incurred in connection

**AGREEMENT FOR WATER AND SEWER SERVICE BETWEEN  
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with the action or proceeding, including but not limited to, expert witness fees, court reporter fees and collection expenses.

**25.7 Entire Agreement/Amendment.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

**25.8 Binding Upon Successors and Assigns; Covenant Running with the Property.** This Agreement shall be binding upon and shall inure to the benefit of the School District and the Community Services District, and their respective heirs, successors, grantees, transferees, lessees and permissible assigns. It is intended to be and shall be a covenant running with the Property.

**25.9 Prohibition Against Assignment.** The School District may not assign this Agreement or any interest in it without the prior written consent of the Community Services District.

**25.10 Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of California.

**25.11 Cooperation / Further Acts.** The parties shall fully cooperate with one another in attaining the purposes of this Agreement. In connection therewith, the parties shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient as related thereto.

**25.12 Severability.** The invalidity of any provision of this Agreement shall not affect the validity, enforceability of any other provision of this Agreement.

**25.13 Good Faith.** Where the terms of this Agreement provide for action to be based upon opinion, judgment, approval, review or determination of either party hereto, such terms are not intended to and shall never be construed to permit such opinion, judgment, approval, review of determination to be arbitrary, capricious or unreasonable. The Parties shall each act in good faith in performing their respective obligations as set forth in this Agreement.

**25.14 Interpretation of this Agreement.** The parties acknowledge that each party and its attorney have reviewed, negotiated and revised this Agreement and that the normal

**AGREEMENT FOR WATER AND SEWER SERVICE BETWEEN  
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rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the transactions contemplated by this Agreement.

**25.15 Venue.** This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed and delivered as of the date first above written.

**NIPOMO COMMUNITY SERVICES DISTRICT**

**LUCIA MAR UNIFIED SCHOOL DISTRICT**

By:

By:

\_\_\_\_\_  
Board President

\_\_\_\_\_  
Board President

Attest:

\_\_\_\_\_  
Board Secretary

Attest:

\_\_\_\_\_  
Board Secretary

*Approved as to Form:*

*Approved as to Form:*

\_\_\_\_\_  
District Legal Counsel


\_\_\_\_\_  
Best Best & Krieger LLP  
Legal Counsel

**AGREEMENT FOR WATER AND SEWER SERVICE BETWEEN  
THE NIPOMO COMMUNITY SERVICES DISTRICT  
AND THE LUCIA MAR UNIFIED SCHOOL DISTRICT**

**EXHIBIT "A"  
LEGAL DESCRIPTION OF PROPERTY**

LOTS 1, 2, 3, 4, 6, 7, 8, 11 AND 12 OF THE RESUBDIVISION OF THE NORTHERN PART OF LOT 24 OF THE H.C. WARDS SUBDIVISION OF THE RANCHO NIPOMO, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP RECORDED APRIL 13, 1887 IN BOOK A, PAGE 15 OF MAPS.

HIGH SCHOOL/AGREEMENT CLEAN 9-2-03

TO: BOARD OF DIRECTORS  
FROM: DOUG JONES   
DATE: SEPTEMBER 24, 2003



APPROVING ANNEXATION NO. 19  
NIPOMO HIGH SCHOOL  
LUCIA MAR UNIFIED SCHOOL DISTRICT

**ITEM**

Resolution acknowledging that conditions of Annexation No. 19 have been met

**BACKGROUND**

The School District and the Water District have been working together to finalize Annexation No. 19, which is the Nipomo High School site. With the finalization of the agreement between the School District and the Water District for providing services to the new Nipomo High School, the requirements for annexation have been satisfied.

**RECOMMENDATION**

Staff recommends that your Honorable Board approve the attached resolution acknowledging that the conditions for Annexation No. 19 have been satisfied.

Board 2003/Annex 19 approval

**RESOLUTION NO. 2003-annex 19**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
NIPOMO COMMUNITY SERVICES DISTRICT ACKNOWLEDGING THAT CONDITIONS  
OF ANNEXATION FOR ANNEXATION NO. 19  
(LUCIA MAR UNIFIED SCHOOL DISTRICT)  
HAVE BEEN SATISFIED**

**WHEREAS**, on August 19, 1999, the Nipomo Community Services District ("District") and the Lucia Mar Unified School District ("Applicant") entered into an Agreement to provide District services to the new Nipomo High School on an approximate 77-acre parcel known as "Annexation No. 19"; and

**WHEREAS**, on or about October 18, 2001, the Local Agency Formation Commission ("LAFCo") adopted Resolution No. 2001-18 **RESOLUTION DETERMINING THAT THE ENVIRONMENTAL IMPACT REPORT PREPARED BY THE LUCIA MAR UNIFIED SCHOOL DISTRICT AS LEAD AGENCY IS ADEQUATE AND COMPLETE, APPROVING THE SPHERE OF INFLUENCE AND SERVICE REVISION, DETERMINING THAT THE ENVIRONMENTAL IMPACT REPORT PREPARED BY THE LUCIA MAR UNIFIED SCHOOL DISTRICT IS ADEQUATE AND COMPLETE, AND CONDITIONALLY APPROVING ANNEXATION NO. 19 TO THE NIPOMO COMMUNITY SERVICES DISTRICT** (herein "LAFCO Resolution"); and

**WHEREAS**, Section 4 of the LAFCO Resolution stated:

4. That Annexation No. 19 to the Nipomo Community Services District, being further identified in the files of this Commission as File No. 5-R-01, is hereby conditionally approved, subject to the following condition:
  - A. The Nipomo Community Services District's approval, by resolution, of compliance with the conditions of Nipomo Community Services District's Resolution No. 2001-789, dated October 2, 2001, including but not limited to the payment of all District fees and costs associated with the annexation, including District annexation fees, provision of water to the site by the Lucia Mar Unified School District, independent of the Nipomo Community Services District's water production facilities, the provision of sewer service to the property, and supplying infrastructure to and within the proposed area of annexation.

**WHEREAS**, based on the Staff Report, Staff presentation, the records on file with the District and public testimony the Board of Directors finds as follows:

- A. That in compliance with the LAFCO conditions, Applicant has entered into an Agreement to provide water production and transmission facilities and sewage collection and transmission facilities to the property and supplying infrastructure to and within the proposed area of annexation.
- B. That in compliance with LAFCO conditions Applicant has paid the water and sewer capacity fees and costs associated with the annexation.



RESOLUTION NO. 2003-Annex 19

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
NIPOMO COMMUNITY SERVICES DISTRICT ACKNOWLEDGING THAT CONDITIONS OF ANNEXATION  
FOR ANNEXATION NO. 19 (LUCIA MAR UNIFIED SCHOOL DISTRICT)  
HAVE BEEN SATISFIED

**WHEREAS**, the purpose of this resolution is to provide LAFCO with confirmation that all LAFCO conditions have been satisfied.

**NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT AS FOLLOWS:**

1. The above recitals are true and correct and incorporated herein by reference.
2. That a certified copy of this Resolution shall be delivered to the Local Agency Formation Commission as providing written confirmation that all conditions of Section 4 of the LAFCO Resolution have been satisfied.

On the motion of Director \_\_\_\_\_ seconded by Director \_\_\_\_\_, and on the following roll call vote, to wit:

AYES: Directors  
NOES:  
ABSENT:  
CONFLICT:

The foregoing resolution is hereby adopted this \_\_\_\_\_ day of September, 2003.

\_\_\_\_\_  
Michael Winn, President  
Nipomo Community Services District

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Donna K. Johnson,  
Secretary to the Board

\_\_\_\_\_  
Jon S. Seitz,  
District Legal Counsel