

*John*

**NIPOMO COMMUNITY SERVICES DISTRICT AGENDA**  
THURSDAY, OCTOBER 16, 2003 8:30 A.M.

**SPECIAL MEETING NOTICE**

MEETING LOCATION: District Board Room, 148 S. Wilson, Nipomo, CA

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The public has the right to comment on any item on the  
Special Meeting Agenda when the item is being considered.

A Special Meeting of the Nipomo Community Services District will be held on Thursday, October 16, 2003 at 8:30 a.m. in the District Board Room of the Nipomo Community Services District, 148 S. Wilson, Nipomo, CA.

**Special Meeting Agenda**

1. REVIEW STATUS OF MARIA VISTA (TRACTS 1802 AND 1856) PUBLIC IMPROVEMENT PLANS AND CONDITIONS.  
Provide Staff with directions/confirm or modify conditions.
  
2. ROAD REPAIR – BRACKEN LANE  
Appropriate funds to make road repair due to water line break.
  
3. APPROVE WARRANTS.

**ADJOURN**

*\*\*\* End Special Meeting Notice \*\*\**

TO: BOARD OF DIRECTORS  
FROM: DOUG JONES, General Manager  
JIM GARING, District Engineer  
JON S. SEITZ, District Legal Counsel  
DATE: OCTOBER 16, 2003

## AGENDA ITEM

1

OCTOBER 16, 2003

### SPECIAL MEETING MARIA VISTA ESTATES

The Developers of Tract 1802 and 1856 (Maria Vista) as outlined in this Staff Report are contesting certain Plan Check requirements and the installation of a twelve inch (12") water main and the District Engineer's requirement of justification of deep sewers. Attached to this Staff Report are the following:

1. Letter from Attorney John Fricks dated September 23, 2003; (pg. 1) {lower left corner}
2. Letter from District Legal Counsel, Jon S. Seitz, in response to the above, dated September 25, 2003; (pg. 3)
3. Letter from Attorney John Fricks dated October 6, 2003 with Exhibits A-F; (pg. 6)
4. Letter from District Legal Counsel, Jon S. Seitz, dated October 7, 2003 requesting copies of Maria Vista public improvement plans; (pg. 30)
5. Letter from Attorney John Fricks, referring to a telephone conversation with District Legal Counsel on October 6, 2003, dated October 7, 2003; (pg. 32)
6. Facsimile transmittal letter from District Legal Counsel, Jon S. Seitz, responding to Attorney John Fricks' letter of Tuesday, October 7, 2003, dated October 8, 2003; (pg. 34)
7. Letter from Attorney John Fricks transmitting certified copies of Maria Vista public improvement plans; (pg. 36) and
8. Facsimile from District Legal Counsel, dated October 8, 2003, transmitting NCSD Reimbursement Policy. (pg. 37)

By prior Board action several of the contested conditions raised in Mr. Fricks letter of September 23, 2003 (Exhibit 1) have been removed as referenced in the District's letter of September 25, 2003 (Exhibit 2) and are not proposed for reconsideration herein.

#### CONTENTIOUS NATURE OF LETTERS

Although, the attached letters threaten litigation and contain references to conversations related to what certain County Board of Supervisors, LAFCO and District Representatives have said and associated demands, these types of comments, for the purposes of this meeting, should be discounted. Further, Staff makes no comments as to the veracity of the statements, demands or conversations contained in these letters and further, District is not waiving its right to challenge the comments contained in these letters if litigation ensues. The Nipomo Community Services District is an independent Special District formed and operated pursuant to Government Code §61000 et. seq.

## DEVELOPER'S DEMAND

That the District approve Plans and Specifications (PIPS) as submitted by Developer. The Plans and Specifications are referred to by the Developer as Public Improvement Plans or PIPS. The PIPS represent the work to be performed by the Developer's contractor in constructing off-site improvements that are eventually to be accepted by the District for on-going operation, maintenance and replacement.

## PUBLIC FACILITY PLAN CHECK AND INSPECTION AGREEMENT

On April 18, 2003 the District entered into Public Facilities Plan Check and Inspection Agreement for Maria Vista Off-Site Improvements ("Agreement"). The Agreement provides in relevant part:

- b. "Applicant proposes to design and construct the following off-site improvements that are referred to as the "Project" in this Agreement:
  1. Develop and construct water improvements;
  2. Develop and construct sewer improvements;
  3. Develop and construct other improvements that are accepted by the District for operation and maintenance."
1. Construction
  - (a) The applicant, at its sole cost and expense, shall design, prepare plans and specifications (referred to by Developer as PIPS), develop and construct/install the Project. Applicant agrees to construct the Project **in accordance with District's Engineering Standards and District Standard Improvement Specifications and Drawings** (emphasis added). The Project shall be constructed by a contractor who is licensed under the of the Business and Professions Code of the State of California to do the type of work called for in the approved Plans and Specifications. **Prior to the start of construction**, District shall approve the plans and specifications and Applicant shall deposit with the District (emphasis added):
    1. Two complete sets of the approved plans;
    2. A copy of the contractor's license; and
    3. A copy of the Applicant's contract with the contractor.
    4. Proof of insurance, as required by Paragraph 14, below.
  - (b) **Applicant shall be responsible for determining whether the construction of the Project requires the payment of prevailing wages** (emphasis added) 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.csib.ca.gov](http://www.csib.ca.gov).

6. Final Inspection and Testing

Upon completion of construction of the Project and prior to District acceptance, Applicant shall notify the District thereof and request a final inspection of the Project. All facilities in the Project shall be tested to meet District requirements as required by District Standards and Specifications. The Applicant shall supply and pay for the necessary equipment, services and devices to inspect and test the improvements installed. This shall include TV inspection of sewer lines, pressure testing equipment, cleaning devices, etc.

7. Notice of Acceptance

The District **shall not provide service** and a written notice of acceptance of the Project until all of the following have occurred (emphasis added):

- (a) The Project is finally inspected, tested and approved by the District as provided in Paragraph 6, above;
- (b) An engineer's certification that the Project is constructed in substantial conformance with the plans and specifications submitted to the District;
- (c) All real property, easements required to provide service through the Project, rights-of-way, permits, licenses, and other approvals to be obtained and delivered to the District have been so obtained and delivered to the District;
- (d) The record drawings (reproducible as-builts), specifications, accounting, operation manuals and instructions, CAD disk and warranties have been provided to the District;
- (e) Applicant has paid the District all applicable fees and charges of the District, all in accordance with the rules and regulations for the District;
- (f) A detailed accounting of amounts expended for improvements (water and sewer improvements accounted for separately); and
- (g) A list of assessor parcel numbers and service addresses to be served by the Project.
- (h) Applicant provides the District with a "Maintenance Guarantee" as provided in Section 12(b) below.

**DISTRICT STAFF'S RESPONSE TO DEVELOPER'S DEMANDS:**

The Plans and Specifications (PIPS) as submitted by Developer are incomplete, do not incorporate all comments to the First Plan Check and cannot be approved at this time.

During the Plan Check process Developer switched engineers. The normal Plan Check Process for approving Plans and Specifications (PIPS) for a project of this magnitude generally requires three to four (3-4) Plan Check submittals. The Developer demands approval of the second submittal. A summary of the reasons why the second set is incomplete and cannot be approved at this time are as follows:

- a. The second set of PIPS do not incorporate all District Engineer Plan Check Comments shown on the first set of submittals. Mr. Garing will summarize the particulars, if required.
- b. The second set, on its face, requires further revisions. Mr. Garing will summarize.
- c. The second set of PIPS do not show the details of other utility companies required improvements such as cable, gas, electrical, etc. Mr. Garing will summarize these requirements.
- d. The second set of PIPS do not adequately address the District Consulting Engineers concerns regarding the depth of sewer (further summarized below).
- e. There is an ongoing dispute regarding a fire hydrant (further summarized below).
- f. There is the issue of a twelve inch (12") water main in Maria Vista Road (further summarized below).
- g. There is an issue of a twelve inch (12") water main within Vista Del Rio (further summarized below).

Each of the above listed reasons stand on its own as independent reasons why the Public Improvement Plans as submitted cannot be approved at this time.

#### FURTHER DISCUSSION

- d. DEPTH OF SEWER MAINS: The depth of the sewer lines were commented, on both the first and second set of PIPS, by the District Consulting Engineer Jim Garing. It is District Staff's position as stated in the facsimile of October 8, 2003 (Exhibit 2, paragraph 5) that the District Consulting Engineer must be satisfied as to the justification for the depth of the sewer lines as provided in the PIPS in order for the deep sewer lines to be approved.

It is Staff's understanding that Developer's engineer has contacted the District Consulting Engineer to attempt resolution of this issue. The issue is one of long-term maintenance by the District. Maintaining a twenty (20) foot deep sewer will place a burden on the District's sewer customers. Developer, in an Attachment E to Exhibit 3, page 1. Acknowledges that the typical depth of sewer lines is between seven and eight feet (7 and 8'). And that the sewer lines for the Maria Vista Project vary from eleven to twenty feet (11 to 20') with more than half of the overall length (500') at sixteen feet (16') deep.

Options:

- 1. Defer to the recommendations and opinions of District Consulting Engineer, Jim Garing;
- e. DISPUTED FIRE HYDRANT: Staff believes the disputed fire hydrant is referenced on both the first and second set of PIPS. The Developer's concerns are not completely understood by Staff. Staff has advised Developer that the District will recommend removal of the disputed fire hydrant upon receipt of a signed letter from CDF to the Nipomo Community Services District waiving the

requirements of the identified (disputed) fire hydrant. Staff's position appears to be consistent with CDF requirements as provided in Exhibit 3, Attachment B, page 2.

- f. WATER MAIN IN MARIA VISTA: The Developer's PIPS show a twelve inch (12") water main to the boundary of the subdivision and from that point an eight inch (8") water main within Maria Vista to the intersection of Maria Vista and Vista Del Rio. The District has requested the Developer to increase the size of the water main to twelve inch (12") for fire flow protection (see paragraph 1 of Exhibit 2). Staff estimates the cost of increasing this water line to twelve inches (12") to be approximately three thousand five hundred dollars (\$3,500). Jim Garing will summarize the issues related to the District's requirement of a twelve inch (12") water main.

Options:

1. Require Developer to install twelve inch (12") water main within Maria Vista; or
2. Require Developer to install a twelve inch (12") water main and District directly reimburse Developer for the differential cost for the upgrade; or
3. Delete the requirement.

- g. TWELVE INCH (12") WATER MAIN WITHIN VISTA DEL RIO: The Developer's PIPS show the installation of an eleven hundred foot (1,100') eight inch (8") water main within Vista Del Rio from the intersection of Maria Vista heading towards Hutton Road. The District has requested that Developer increase the size of this eight inch (8") water main to twelve inches (12"). The District Staff estimates the additional cost to be approximately seven thousand dollars (\$7,000). The Developer has objected to this request on three separate basis':

1. The request violates the Supreme Court decision in Noland and Dolan;
2. The request is not consistent with the District's reimbursement policies; and
3. The request may trigger prevailing wages which Developer estimates would cost Developer additional hundreds of thousands of dollars (see Exhibit 5, page 2).

The District's request for increasing the water line size from eight inch (8") to twelve inch (12") for the purposes of serving future public or private property is authorized by District Code. Section 5.01.010(B) provides in relevant part:

"B. Whenever an applicant is required as a condition of development, to construct and install any district water or sewer facilities, which will be dedicated to the district, and which has the future potential and capacity to provide service to real property parcels, not under the control or ownership of the applicant, the future reimbursement provisions of this chapter shall apply, unless the district specifically provides otherwise by ordinance or resolution"

Section 5.01.030(1) provides in relevant part:

"1. Oversizing: the estimated cost of installing the size of line required to serve applicant's needs pursuant to district's plans and specifications and the actual cost of installing a larger line at the direction of the district."

Further, because the District is willing to reimburse directly or enter into a Reimbursement Agreement with the Developer the issues of Noland (Nexus) and Dolan (rough proportionality) do not come in to play. The Developer argues, or states, that the District cannot make a requirement of oversizing because it will expose the Developer to prevailing wages. The Contract specifically provides that the Developer will be subject to prevailing wages, if required, see page 2, paragraph 1(b) above. It is Staff's belief that if the District directly reimburses the Developer for the upsizing of the water line in Vista Del Rio, that the payment of prevailing wages will be required. Staff does not believe that reimbursement for one particular part of the Project, necessarily requires prevailing wages for the entire Project. Staff has no opinion as to whether or not the Project requires prevailing wages or that a future reimbursement, if and when the District or private parties connect to the twelve inch (12") water line, require the payment of prevailing wages. The District has the option to seek an opinion from the Department of Industrial Relations ("DIR") to resolve the issue.

Options:

1. Require the Developer to install twelve inch (12") water main within Vista Del Rio with the District entering into a reimbursement agreement providing that if the District or a private party connect to the twelve inch (12") water line that the Developer be reimbursed the differential cost of the upsizing; or
2. Require Developer to install a twelve inch (12") water main within Vista Del Rio and the District to directly reimburse Developer for the differential cost of the upsizing; or
3. Defer decision and instruct Staff to seek a DIR opinion as to payment of prevailing wages (Staff understands there is approximately a twelve (12) day turn around); or
4. Delete the requirement.

#### **FUTURE OBLIGATIONS OF DEVELOPER**

1. Complete sewer force main, lift station(s), and associated facilities per Public Facility Construction Plan Check and Inspection Agreement (plans have not been submitted);
2. Complete Dana Well No. 1 and Dana Well No. 2 Improvements, connect Dana Wells to District water system pursuant to Public Facility Construction Plan Check and Inspection Agreement (plans have not been submitted).

These future obligations are not at issue. Reference is made only to put the Project in context of the overall development and District water and sewer service to the Maria Vista subdivision.

#### **STAFF RECOMMENDATIONS**

##### OPTION A.

1. Require further Plan Check submittals;
2. Defer resolution of sewer depth to District Consulting Engineer;
3. Require Developer to increase water line to twelve inches (12") within Maria Vista to the intersection of Maria Vista and Vista Del Rio;

4. Confirm Staff's request that Developer increase the eight inch (8") water line within Vista Del Rio to twelve inches (12") with the District entering into a reimbursement agreement for the differential cost, if and when private parties or the District connect to the twelve inch (12") water line;
5. Delete fire hydrant requirement upon receipt of a letter from CDF as outlined above.
6. Recommend, but do not require, that Developer's engineer meet with Jim Garing to review first and second submittals and the Board's action at this meeting prior to re-submitting further Plans and Specifications.

OPTION B.

1. Require further Plan Check submittals;
2. Defer resolution of sewer depth to District Consulting Engineer;
3. \*Require Developer to install twelve inch (12") water main in Maria Vista with the District to directly reimburse Developer for the differential cost for the upsizing;
4. \*Confirm Staff's request that the Developer upgrade to a twelve inch (12") water line within Vista Del Rio with the District to directly reimburse Developer for the differential costs of the upgrade;
5. Delete fire hydrant requirement upon receipt of a letter from CDF as outlined above;
6. Recommend, but do not require, that Developer's engineer meet with Jim Garing to review first and second submittals and the Board's action at this meeting prior to re-submitting further Plans and Specifications.

\* Modified from Option A.

OPTION C.

Assumes Board will not require twelve inch (12") water main in Maria Vista related to fire flows but wants to verify Developer's claim of exposure to prevailing wages prior to reaching a final decision on water main upgrades.

1. Require further Plan Check submittals;
2. Defer resolution of sewer depth to District Consulting Engineer;
- 3/4 Direct Staff to seek DIR opinion related to prevailing wages in regards to the Project and the associated upgrades;
5. Delete fire hydrant requirement upon receipt of a letter from CDF as outlined above;
6. Recommend, but do not require, that Developer's engineer meet with Jim Garing to review first and second submittals and the Board's action at this meeting prior to re-submitting further Plans and Specifications.

OPTION D.

Amend or modify Staff's recommendations contained in Options A, B, and/or C, above.





**OGDEN & FRICKS LLP**

656 Santa Rosa Street, Second Floor  
San Luis Obispo, California 93401  
Phone: 805-544-5600 Fax: 805-544-7700  
www.ogdenfricks.com

September 23, 2003

*By Fax and Personal Delivery*

File No. 5009-01

Jon S. Seitz, Esq.  
Shipsey & Seitz, Inc.  
1066 Palm Street  
San Luis Obispo, CA 93401

**Re: Maria Vista Estates**

Dear Mr. Seitz:

The undersigned, along with attorney Marshall E. Ochylski, represents Maria Vista Estates, developer of the project known as Tracts 1802 and 1856, recently annexed by your client, the Nipomo Community District, into the District. Maria Vista is extremely distressed about the District's conduct in reviewing and failing to approve Maria Vista's proposed public improvement plans (PIPs) and, as indicated below, will not endure any further delays.

Prior to the September 10, 2003 public hearing, District staff refused to approve Maria Vista's proposed public improvement plans (PIPs) unless the plans were revised to include, among other things, (i) extension of a new 12" water line through the Maria Vista project with a terminus at Hutton Road, (ii) inclusion of an 8" gravity feed sewer line to the property line of Linda Vista Farms, (iii) installation of water and sewer mains inside the project in dimensions that would only be necessary to support other projects, (iv) provision of underground water and sewer utilities to six (6) existing homes not part of Maria Vista's project, (v) raising pre-designed sewer line depths, and (vi) placement of a fire hydrant in the middle of open space.

On September 10, 2003, the Board considered in public hearing and approved, via a 4-1 vote, Maria Vista's Expanded Initial Study/Mitigated Negative Declaration dated August 2003 relating to the Sewer Main Extension proposed by Maria Vista to service 77 homes at its project. This approval, and the manner in which it was approved,<sup>1</sup> seemed to be the last hurdle in getting Maria Vista's PIPs approved by the NCSD, without the belated conditions previously demanded by NCSD staff. Despite this action by the NCSD Board, when Maria Vista personnel asked to have its PIPs signed off by NCSD staff, they were informed that such approval would not be forthcoming until the above-described changes were included in the PIPs.

Not only did there appear to be disturbing differences between the public position of the NCSD Board (as indicated in the September 10 meeting) and the private position taken by

<sup>1</sup> For instance, during the public hearing, several comments were made by Board members concerning the administrative "frustration" that Maria Vista and Erik Benham, one of its principals, endured through processing of the project. The Board indicated that it did not want this project to encounter any additional delays or to suffer any additional conditions in processing the public improvement plans. The Board made clear its intentions by including language requiring additional Board oversight at the project.

Jon S. Seitz, Esq.

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September 23, 2003

NCSD staff and certain of its Board members but Maria Vista was understandably concerned that these additional improvements would cause problems for it at the County level. At a meeting yesterday with Katcho Achadjian, Paul Hood, and Mike Winn, Katcho informed all attendees that the NCSD could not make such requirements of the Maria Vista project and, to the extent that they had been made requirements, they would be rescinded. Katcho indicated that the NCSD's added conditions inappropriately infringed upon the County's authority in short-term and long-term planning in the Nipomo area.

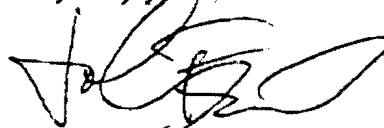
For his part, Mike Winn reversed course and denied that he and others had made the above conditions -- an interesting position considering the conditions were redlined on Maria Vista's PIPs by NCSD staff. Most importantly, Winn confirmed that the PIPs had been checked by NCSD engineering and that NCSD staff would approve the PIPs immediately (without inclusion of the above, or any other, conditions). Again, Maria Vista believed that there would be no further delay in the NCSD's approval of its PIPs.

This morning, when Maria Vista personnel contacted Mike Winn to arrange for pick-up of the signed PIPs, Mr. Winn again changed his story and indicated that the plans would have to be changed by Maria Vista in an unspecified manner and then resubmitted for engineering plan check before any approval would be granted. These plans have been checked, double-checked, and triple-checked by NCSD engineers. Maria Vista interprets Mr. Winn's latest stance as (i) a third attempt to have Maria Vista complete the above-described improvements and/or (ii) another delay tactic designed specifically to damage Maria Vista.

Maria Vista's patience has come to an end and it will tolerate no additional NCSD delays in approving its PIPs. With the NCSD Board meeting tomorrow, September 24, Maria Vista expects to have in hand signed, approved PIPs by Noon on Thursday, September 25, 2003. Should the NCSD fail to deliver such approved PIPs by that time, Maria Vista will immediately file suit against the NCSD and initiate a formal investigation into the conduct of the NCSD staff and board members throughout the duration of this project, including during the Save the Mesa lawsuit.

I am hopeful that the District recognizes that this is its last chance to avoid costly litigation -- seeking both a writ and damages -- and allows Maria Vista to continue on its simple goal to build out its previously-approved project.

Very truly yours,



John W. Fricks

JWF/jwf

cc: Mr. Katcho Achadjian (by fax only)  
Mr. Mike Ryan (by fax only)  
Mr. Paul Hood (by fax only)  
Client (by email only)  
Marshall E. Ochylski, Esq. (by email only)

000002

JON S. SEITZ  
MICHAEL W. SEITZ  
KAROL M. VOGT

SHIPSEY & SEITZ, INC.  
A LAW CORPORATION  
1066 PALM STREET  
POST OFFICE BOX 953  
SAN LUIS OBISPO, CALIFORNIA 93406  
(805) 543-7272 FAX (805) 543-7281  
JON S. SEITZ  
District Legal Counsel  
Nipomo Community Services District

JOHN L. SEITZ  
(1924-1986)  
GERALD W. SHIPSEY  
(RETIRED)

September 25, 2003

Via Facsimile & Hand Delivery

John W. Fricks  
OGDEN & FRICKS, LLP  
656 Santa Rosa, 2<sup>nd</sup> Floor  
San Luis Obispo, CA 93401

Re: Maria Vista Estates

Dear Mr. Fricks:

I am in receipt of your letter dated September 23, 2003, regarding Maria Vista Estates and I have discussed the same with the District's Board of Directors on September 24, 2003.

Please accept the following as the District's response:

1. The District will require a twelve (12) inch water line for fire protection in Santa Maria Vista to the intersection Vista del Rio (Blocks 4 and 6, shown in yellow on the attached Exhibit).
2. The District will not require a twelve (12) inch water main extension in Vista del Rio down to Hutton Road (shown as pink on the attached Exhibit).
3. The District will require a twelve (12) inch water main in Vista del Rio as it runs through Blocks 10 and 11 on the attached Exhibit and shown in green. The District will reimburse your client the differential cost between the installation of an eight (8) inch water main and a twelve (12) inch water main for this segment of the main, pursuant to District Reimbursement Ordinance, if and when, the District or others connect to the line.
4. The District will not require your client to construct a sewer main along Santa Maria Vista, as shown in Block 4 of the attached Exhibit.

000003

EXHIBIT

2

Mr. Fricks  
September 25, 2003  
Page 2 of 3

5. The District can only make a determination regarding its approval of sewer line depths upon an evaluation of topographical map of the entire subdivision along with an engineer's justification for the depth of the sewer line. It is my understanding that the District has made prior requests for this map, that have gone unanswered. It must be remembered that the District will eventually accept these sewer lines for long term maintenance, which will be impacted by the depth of the sewer lines.
6. It is my understanding, from your client's testimony at the September 24, 2003 Board Meeting, that he is willing to "stub out" water and sewer service for future service to those persons who may connect to the water and sewer mains (as shown in hatched blue marks) in Block 10 of the attached Exhibit. The District will review the topographical map requested in number 6 above to determine where best to place the "stub outs" for water and sewer service.
7. The District only requires fire hydrants to be placed in road right-of-ways pursuant to CDF requirements. (Please have your client identify the location of the disputed fire hydrant).

I suggest that your client immediately take steps to provide the Nipomo Community Services District with a topographical map covering the entire subdivision and a satisfactory engineering explanation as to the need to construct sewer mains at the depths shown on prior submittals.

As required by Section 1 (a) of the Plan Check and Inspection Agreement, upon the District's receipt of two (2) sets of revised plans in compliance with paragraphs 1-6 above and which incorporate prior plan check comments not addressed in your September 23, 2003 letter, the District will promptly review the plans for compliance.

Please be advised that the District takes strong exception to many of the statements contained in your letter of September 23, 2003, related to the processing of your client's project. However, in the hopes of reaching an amicable resolution I will not address them here.

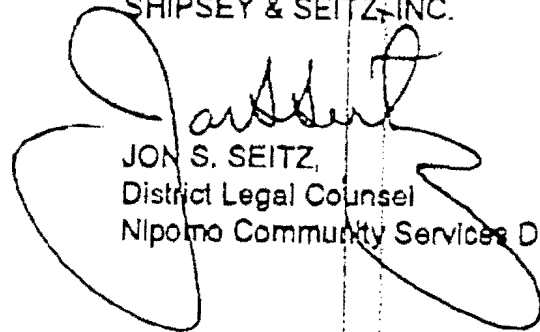
Lastly, it is the District's understanding that your client holds an easement for the street shown in Block 10 (blue hatched). Please accept this letter as requesting a copy of that easement.

Mr. Fricks  
September 25, 2003  
Page 3 of 3

This letter is intended to be an expression of the District's requirements for Plan Check approval and is therefore not subject to Evidence Code §1152.

Once you have had a chance to review the contents of this letter, please give me a call with your questions or comments.

Very Truly Yours,  
SHIPSEY & SEITZ, INC.

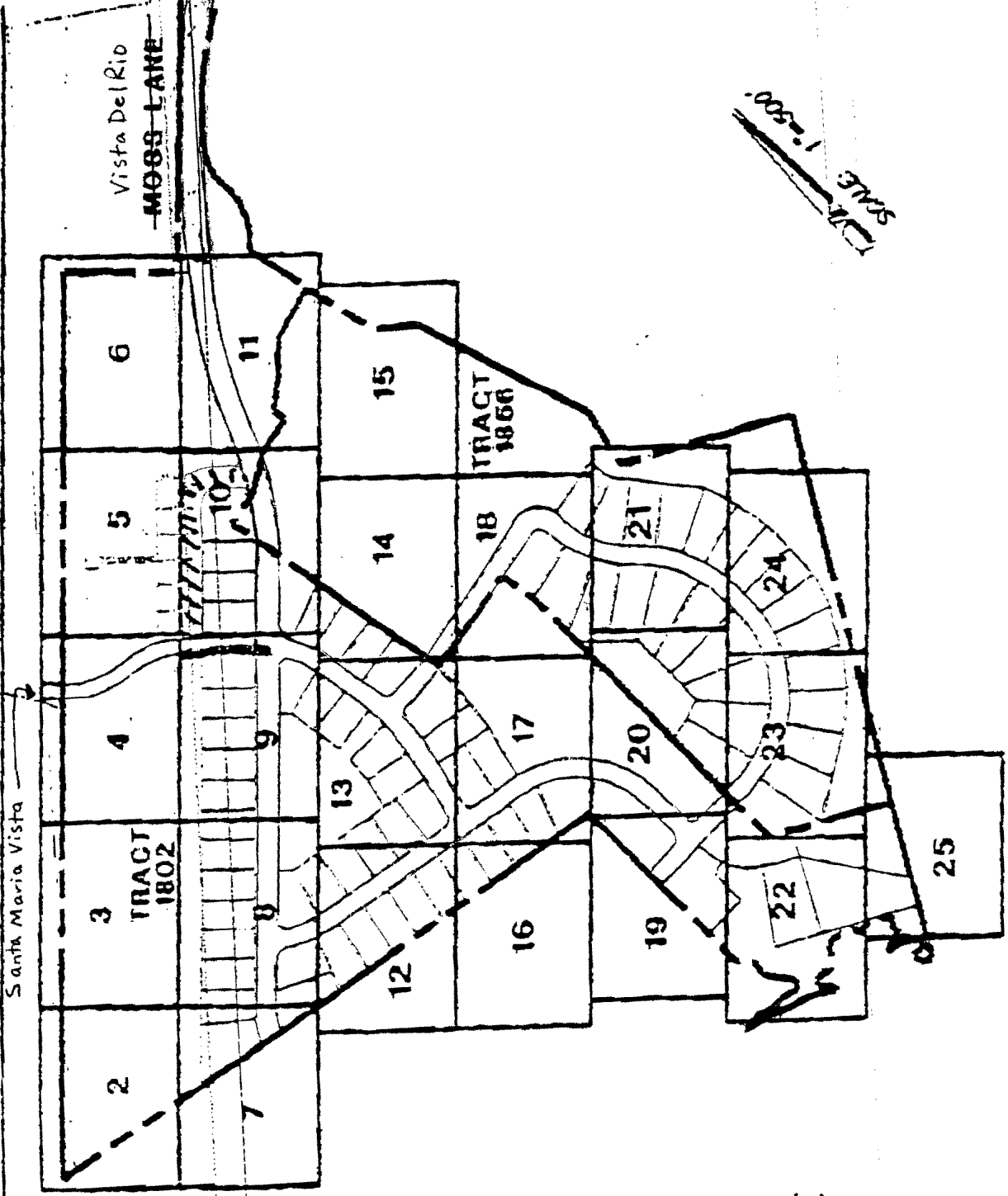


JON S. SEITZ,  
District Legal Counsel  
Nipomo Community Services District

JSS:jb

cc: Marshall Ochylski, Esq. via fax  
Doug Jones, General Manager, Nipomo Community Services District via fax  
Mike Winn, President, Board of Directors, Nipomo Community Services District  
via email

# SHEET KEY



000005A

SCALE 1"=50'

ENGINEERING

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EXIST

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**OGDEN & FRICKS LLP**  
 656 Santa Rosa Street, Second Floor  
 San Luis Obispo, California 93401  
 Phone: 805-544-5600 Fax: 805-544-7700  
 www.ogdenfricks.com

October 6, 2003

*By Fax and Personal Delivery*

File No. 5009-01

Jon S. Seitz, Esq.  
 Shipsey & Seitz, Inc.  
 1066 Palm Street  
 San Luis Obispo, CA 93401

Re: *Maria Vista Estates/Tracts 1802 and 1856*

Dear Mr. Seitz:

I have received and reviewed with my client, Maria Vista Estates, your letter of September 25 identifying the "District's requirements for Plan Check approval" for Maria Vista's Public Improvement Plans (PIPs) that have been pending before the District for several months. Because of the District's new purported grounds for the requirements listed in your September 25 letter, and in the interests of thoroughness, I have reviewed all of the relevant documents so that they may be attached -- an exercise that required a short delay in responding to your letter.

Please note that I have taken the liberty of copying the NCSD Board as well as Supervisors Achadjian and Ryan and other County personnel with a copy of your September 25 letter (Exhibit A hereto) and this letter response (with additional attachments) as it appears that several of them never received, nor were apprised of, the NCSD's continuing "requirements" being imposed upon Maria Vista. I take this action as well because I am aware that NCSD personnel informed Supervisor Achadjian's office that the dispute between the NCSD and Maria Vista had been resolved when they knew full well that it had not.<sup>1</sup> This misstatement aborted Supervisor Achadjian's drafting of a written response to the NCSD in support of Maria Vista's position. As this is yet another example of NCSD duplicity, Maria Vista will ensure that Supervisor Achadjian and others get accurate information directly from Maria Vista about its positions and viewpoints from here forward.

I provide Maria Vista's comments and responses based on the numbered items in your letter (your language is in italics):

1. *The District will require a twelve (12) inch water line for fire protection on Santa Maria Vista road to the intersection of Vista del Rio.* Maria Vista Response: In a letter dated March 8, 1990 (enclosed as Exhibit B), CDF/SLO County Fire Department affirmed that the Maria Vista project must comply with the Uniform Fire Code as amended. CDF ultimately adopted the 1997 edition of the Uniform Fire Code (excerpted in Exhibit C), which indicates

<sup>1</sup> This is a source of ongoing frustration for Maria Vista. As indicated in my letter of last week, Mike Winn informed Katcho in a meeting also attended by Erik Benham and Paul Hood that Maria Vista's PIPs would be approved immediately without any requirement of extending the 12-inch water main into the project. Maria Vista then received your September 25 letter that contained such requirements.

Jon S. Seitz, Esq.

- 2 -

October 6, 2003

that, for community water systems, the system shall provide a minimum of 1,000 gallons of water per minute for 120 minutes, have a minimum water main size of not less than six (6) inches, and have pressures between 20 and 150 psi. The Maria Vista project meets such requirements without having to extend the twelve (12) inch main into the project an additional 500 feet (+/-) on Santa Maria Vista road.

To refresh the District's recollection, I attach, as Exhibit D, a letter dated November 9, 2001 from the District's contract engineer, Jim Garing of Garing, Taylor & Associates, Inc., to Doug Jones, the District's general manager, which confirms that, after a September 20, 2001 fire flow pressure test, the predicted fire flow pressure at the water main<sup>2</sup> as it enters the Maria Vista project is 1,000 gallons per minute at 32 pounds per square inch residual. Mr. Garing concludes "this is acceptable fire flow, and leaves a margin for further pressure drop in order to serve the tract. This data may be utilized in sizing the internal tract water mains." Until September 25, the District had considered an eight (8) inch water main beginning at the tract boundary to be sufficient for fire protection within the project as, in January 2001, Maria Vista's engineer provided the NCSD with its plans to use for the internal tract water mains based upon using an eight (8) main beginning at the property boundary. Moreover, Maria Vista's calculations indicate that use of the eight (8) inch water main throughout the Maria Vista project easily satisfies CDF requirements. (See Exhibit E). Indeed, as indicated in Mr. Hodge's WaterCAD report, fire flow pressures within the tract (using only an 8 inch pipe within the project's boundaries) are within a range of 69.68 psi and 82.74 psi, meaning that all of the hydrant pressures are comfortably within the range of 20-150 psi required by CDF. (See Exs. C, E.)

Until your September 25 letter (some 21 months after receiving Maria Vista's plans to use eight-inch water mains), no agent of the NCSD or the CDF ever raised internal fire flows as a concern or, more importantly, as a basis for requiring Maria Vista to extend the twelve (12) inch line an additional 500 feet into the project. Given Maria Vista's satisfaction of CDF requirements,<sup>3</sup> the timing of the NCSD's newfound concern, and the other requirements contained in your September 25 letter, this "requirement" smacks of pre-text as the NCSD merely wants Maria Vista to extend the twelve (12) inch main to satisfy the NCSD's own planning agenda (discussed below).

2. *The District will not require a twelve (12) inch water main extension in Vista del Rio down to Hutton Road.* Maria Vista Response: Maria Vista is pleased that the District has reconsidered its requirement to extend the twelve (12) inch water main through the entire Maria Vista project with a terminus at Hutton Road. Of course, the NCSD's withdrawal of the prior requirement calls into question whether there ever was a legal basis for the demanded water main extension. Frankly, I see no way in which the District's now-waived requirement ever passed legal muster. First, the internal twelve (12) inch water main is not necessary to the development of the Maria Vista project. Therefore, the District's motive in requiring the larger water main can only be described as an attempt to conduct ill-advised and inappropriate long-range planning and

<sup>2</sup> Mr. Garing assumes that the Maria Vista water line extension is a 12 inch, C900, class 150 transmission line (inside diameter of 11.63 inches), precisely the specifications of the water line installed by Maria Vista.

<sup>3</sup> It is quite telling, but not surprising, that the NCSD's dubious fire flow "requirement" is unsupported by any engineering calculations from Mr. Garing or CDF or even a written concern from CDF. Indeed, Mr. Hodge has recently spoken with Mr. Garing and been informed that Mr. Garing has no in-project fire flow concerns if Maria Vista uses an 8 inch water main beginning at the project boundary.



Jon S. Seitz, Esq.

- 3 -

October 6, 2003

land use. Despite its apparent desire to conduct planning activities within its sphere of influence, the District is not permitted to do so as such activities are within the exclusive purview of the County. See Cal. Govt. Code § 61600 (listing the enumerated purposes and powers of community services districts). This is the reason that the District's most recent actions have concerned several County officials, including Supervisor Achadjian.

Second, the District's development condition (inclusion of the 12-inch water main through Blocks 10 & 11 of Exhibit A) does not bear the required relationship to the projected impact of Maria Vista's proposed development. Dolan v. City of Tigard, 512 U.S. 374, 388, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994); see also Nollan v. California Coastal Commission, 483 U.S. 825, 837, 107 S.Ct. 3141, 94 L.Ed.2d 677 (1987). Again, the project does not require a twelve-inch water main so the District's condition does not withstand Constitutional scrutiny.

3. *The District will require a twelve (12) inch water main in Vista del Rio as it runs through Blocks 10 and 11. The District will reimburse your client the differential cost between the installation of an eight (8) inch water main and a twelve (12) inch water main for this segment of the main, pursuant to District Reimbursement Ordinance, if and when, the District or others connect to the line.* Maria Vista has three (3) problems with this requirement. First, Maria Vista is puzzled how this segment extension of the water main (an additional 1,000 +/- feet) fall within the purview of the District and pass the Dolan impact test (see Response to No. 2). Clearly, it suffers the same fatal flaws that the now-waived requirement did. The NCSD is engaging in long-term planning, which is beyond its governmental reach, and is attempting to impose a condition that does comport with the impact of the Maria Vista project.

Second, as I understand it, the standard District Reimbursement Ordinance indicates that the District or private developers are only obligated to contribute to such a reimbursement district if, and only if, the subsequent users install laterals directly off of this segment of the water main. Since, the only properties who could be expected to lateral directly off this segment of the main are the existing six homes (who would lateral off of the stub outs identified in No. 6 below), the potential for reimbursement is minimal.

Third, should this requirement (as well as No. 1 above) stand, it is possible that the public improvement project will be deemed subject to prevailing wage laws, a determination that would cost Maria Vista hundreds of thousands of dollars. (Precedential Public Work Coverage Determination Case No. 2001-041, *City of Clovis Sewer Improvements Project* (August 15, 2002)). The risk of being subject to prevailing wage laws is simply unacceptable.

4. *The District will not require your client to construct a sewer main along Santa Maria Vista, as shown in Block 4. Maria Vista response: See Response No. 6.*

5. *The District can only make a determination regarding its approval of sewer line depths upon an evaluation of topographical map of the entire subdivision along with an engineer's justification for the depth of the sewer line. It is my understanding that the District has made prior request for this map, that have gone unanswered. It must be remembered that the District will eventually accept these sewer lines for long term maintenance, which will be impacted by the depth of the sewer lines. Maria Vista response: Your understanding is incorrect. The NCSD, for several months, has had copies of the Maria Vista grading plans, which*

000008

Jon S. Seitz, Esq.

- 4 -

October 6, 2003

necessarily provide detailed topographical data for the entire subdivision. Asking for a single topographical map that encompasses all 84 acres of the project would require a change in scale that will make the map either (i) impossible to read because of the proximity of the elevation lines or (ii) of little use as the District's engineer would not have sufficient detail to understand the varied slopes within the project as each topographical line would have to represent larger elevation changes. This project has undulating elevations and, as such, the only necessary or useful document to review topography for purposes of sewer main depths -- the topography included within Maria Vista's grading plans -- has been in the District's possession for months.

More distressingly, this belated concern about the sewer depths is tantamount to another stall tactic on the part of the District. The District has known for 2 years (approximately) that Maria Vista designed the sewer system to include some relatively-deep mains.<sup>4</sup> In the Hodge letter (attached as Exhibit E), Mr. Hodge confirms that he had conversations in 2001 directly with Doug Jones, who understood and approved the reasons for the sewer line depths. Mr. Jones was made aware then of the need to go deep with the sewer lines to avoid (i) a much-longer forced sewer main and (ii) the installation of a second sewer lift station at the project. Both instances would not only increase initial construction costs but also significantly increase ongoing maintenance costs that may later be borne by the District. At that time, in or about November 14, 2001, Mr. Jones asked for, and received substantially wider sewer easements so that maintenance of the deeper lines could be done effectively. (I attach for your review as Exhibit F a November 14, 2001 sewer and slope easement that contemplates a 45-foot sewer easement.)

6. *It is my understanding, from your client's testimony at the September 24, 2003 Board Meeting, that he is willing to "stub out" water and sewer service for future service to those persons who may connect to the water and sewer mains in Block 10. The District will review the topographical map requested above to determine where best to place the "stub outs" for water and sewer service. Maria Vista response: Maria Vista will place the water and sewer stub outs at the intersection of Moss Lane and Vista del Rio as promised. Maria Vista has no intention of extending the gravity-feed sewer line to the intersection of Santa Maria Vista and Moss Lane as previously requested by the District (No. 4 above).*

7. *The District only requires fire hydrants to be placed in road right-of-ways pursuant to CDF requirements. (Please have your client identify the location of the disputed fire hydrant. Maria Vista response: Maria Vista directs your attention to Block 20 of the Sheet Key.*

Maria Vista again reiterates its demand that the NCSD sign and approve its proposed PIPs immediately, without requiring Maria Vista to extend the twelve (12) inch water main anywhere within the project's boundaries. As you might imagine, the cost of the impending litigation between Maria Vista and the District will be quite substantial; however, the damages suffered, and to be suffered, by Maria Vista will easily dwarf such costs. I urge the NCSD to reconsider its position set forth in your September 25 letter and comply with Maria Vista's quite-reasonable demand no later than Thursday, October 9, 2003.

---

<sup>4</sup> Of course, while the depths of certain of the Maria Vista sewer mains are greater than the norm, they are not as deep as several projects recently approved and/or completed by the NCSD.

Jon S. Seitz, Esq.

- 5 -

October 6, 2003

Please contact me with any questions.

Very truly yours,



John W. Fricks

JWF/jwf

Enclosures

cc: (All w/ enclosures)  
Supervisor Katcho Achadjian (by hand delivery)  
Supervisor Mike Ryan (by hand delivery)  
James B. Orton, Esq., County Counsel (by hand delivery)  
Mr. Jay Johnson, County Planning (by hand delivery)  
Mr. Paul Hood (by hand delivery)  
Mr. Mike Winn, NCSD Board (by hand delivery)  
Ms. Judith Wirsing, NCSD Board (by hand delivery)  
Mr. Bob Blair, NCSD Board (by hand delivery)  
Mr. Clifford Trotter, NCSD Board (by hand delivery)  
Mr. Larry Vierheilig, NCSD Board (by hand delivery)  
Client  
Marshall E. Ochylski, Esq. (by hand delivery)

000010

JON S. SEITZ  
MICHAEL W. SEITZ  
KAROL M. VOIT

SHIPSEY & SEITZ, INC.  
A LAW CORPORATION  
1066 PALM STREET  
POST OFFICE BOX 953  
SAN LUIS OBISPO, CALIFORNIA 93406  
(805) 543-7272 FAX (805) 543-7281  
JON S. SEITZ  
District Legal Counsel  
Nipoma Community Services District

JOHN L. SEITZ  
(1974-1986)  
GERALD W. SHIPSEY  
(RETIRED)

September 25, 2003

Via Facsimile & Hand Delivery

John W. Fricks  
OGDEN & FRICKS, LLP  
856 Santa Rosa, 2<sup>nd</sup> Floor  
San Luis Obispo, CA 93401

Re: Maria Vista Estates

Dear Mr. Fricks:

I am in receipt of your letter dated September 23, 2003, regarding Maria Vista Estates and I have discussed the same with the District's Board of Directors on September 24, 2003.

Please accept the following as the District's response:

1. The District will require a twelve (12) inch water line for fire protection in Santa Maria Vista to the intersection Vista del Rio (Blocks 4 and 6, shown in yellow on the attached Exhibit).
2. The District will not require a twelve (12) inch water main extension in Vista del Rio down to Hutton Road (shown as pink on the attached Exhibit).
3. The District will require a twelve (12) inch water main in Vista del Rio as it runs through Blocks 10 and 11 on the attached Exhibit and shown in green. The District will reimburse your client the differential cost between the installation of an eight (8) inch water main and a twelve (12) inch water main for this segment of the main, pursuant to District Reimbursement Ordinance, if and when, the District or others connect to the line.
4. The District will not require your client to construct a sewer main along Santa Maria Vista, as shown in Block 4 of the attached Exhibit.

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EXHIBIT A PAGE 1 OF 4

Mr. Fricks  
September 25, 2003  
Page 2 of 3

5. The District can only make a determination regarding its approval of sewer line depths upon an evaluation of topographical map of the entire subdivision along with an engineer's justification for the depth of the sewer line. It is my understanding that the District has made prior requests for this map, that have gone unanswered. It must be remembered that the District will eventually accept these sewer lines for long term maintenance, which will be impacted by the depth of the sewer lines.
6. It is my understanding, from your client's testimony at the September 24, 2003 Board Meeting, that he is willing to "stub out" water and sewer service for future service to those persons who may connect to the water and sewer mains (as shown in hatched blue marks) in Block 10 of the attached Exhibit. The District will review the topographical map requested in number 6 above to determine where best to place the "stub outs" for water and sewer service.
7. The District only requires fire hydrants to be placed in road right-of-ways pursuant to CDF requirements. (Please have your client identify the location of the disputed fire hydrant).

I suggest that your client immediately take steps to provide the Nipomo Community Services District with a topographical map covering the entire subdivision and a satisfactory engineering explanation as to the need to construct sewer mains at the depths shown on prior submittals.

As required by Section 1 (a) of the Plan Check and Inspection Agreement, upon the District's receipt of two (2) sets of revised plans in compliance with paragraphs 1-6 above and which incorporate prior plan check comments not addressed in your September 23, 2003 letter, the District will promptly review the plans for compliance.

Please be advised that the District takes strong exception to many of the statements contained in your letter of September 23, 2003, related to the processing of your client's project. However, in the hopes of reaching an amicable resolution I will not address them here.

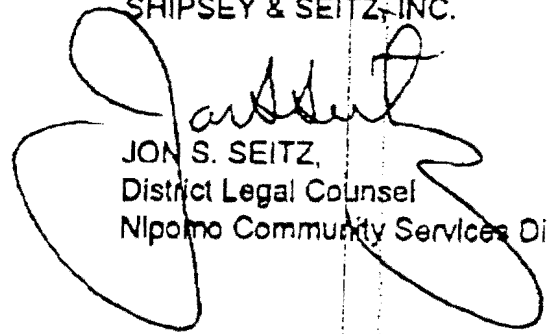
Lastly, it is the District's understanding that your client holds an easement for the street shown in Block 10 (blue hatched). Please accept this letter as requesting a copy of that easement.

Mr. Fricks  
September 25, 2003  
Page 3 of 3

This letter is intended to be an expression of the District's requirements for Plan Check approval and is therefore not subject to Evidence Code § 152.

Once you have had a chance to review the contents of this letter, please give me a call with your questions or comments.

Very Truly Yours,  
SHIPSEY & SEITZ, INC.



JON S. SEITZ,  
District Legal Counsel  
Nipomo Community Services District

JSS:jb

cc: Marshall Ochylski, Esq. via fax  
Doug Jones, General Manager, Nipomo Community Services District via fax  
Mike Winn, President, Board of Directors, Nipomo Community Services District via email

000013

# SHEET KEY

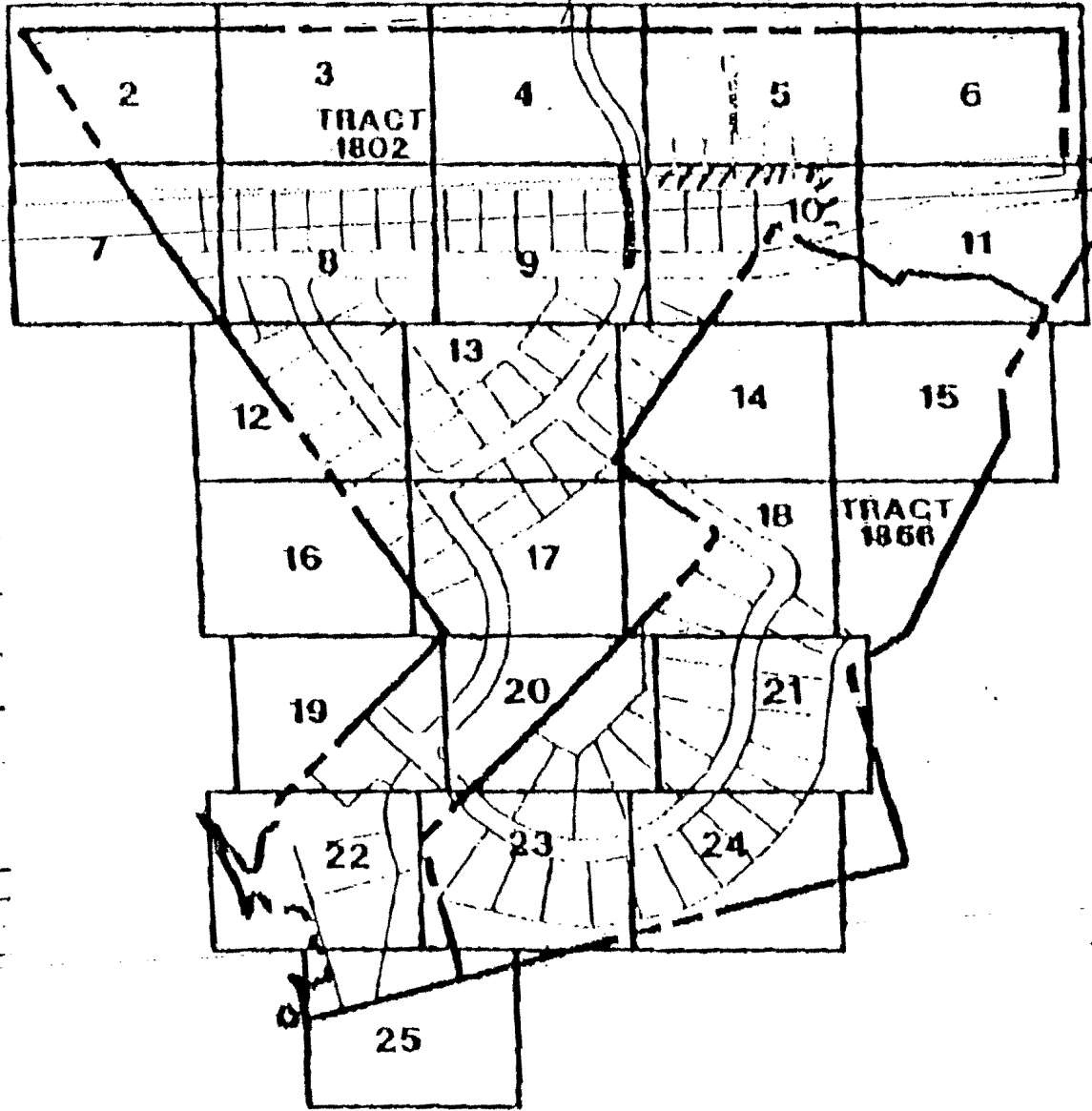
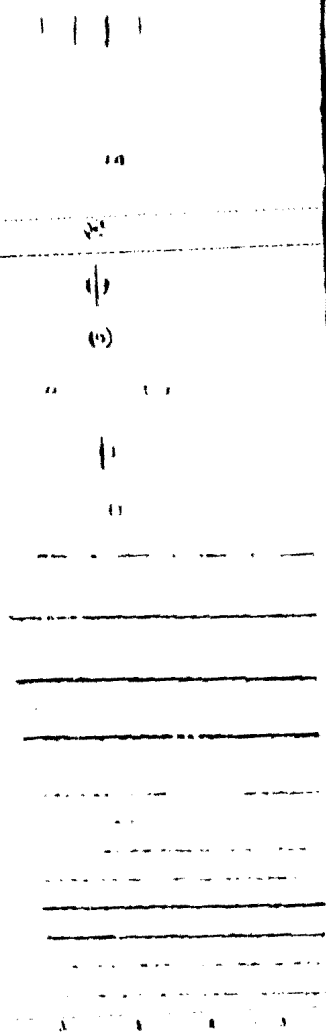
Page 10/25

UCL-0-03 2:13PM

803 543 /281;

Sent BY: SHIPSEY & SELTZ;

EXIST



MOSS LANE

HUTTON ROAD

SCALE 1"=500'

000014

PAGE 4 OF 4

REVISIONS

ENGINEERING DEVELOPMENT

18-  
ELO

# CDF / SLO COUNTY FIRE DEPARTMENT

635 N. SANTA ROSA • SAN LUIS OBISPO • CALIFORNIA 93401 • 805/543-4244

March 8, 1990

Mr. Ted Bench  
Department of Planning/Building  
County of San Luis Obispo  
County Government Center  
San Luis Obispo, CA 93408

RECEIVED  
MAR 14 1990  
S.L.O. COUNTY  
PLANNING DEPT.

Dear Ted:

### Development/Tract Map Plan

Permit Number: Tract 1802/D890422D

Name: Hyman Ingber/Elster

I have reviewed the proposed Tract 1802 map plans submitted for the 52 lot "suburban residential" subdivision project located on Moss Lane near Hutton Road, south of Nipomo. The property is located within the "moderate" fire hazard severity area and will require a minimum 12-15 minute response time from the nearest County Fire Station. The applicant and project shall meet the minimum fire/life safety requirements of the Uniform Fire Code (1988) with amendments.

### FIRE SAFETY DURING CONSTRUCTION, Uniform Fire Code, Article 87

\* Access Roads

Fire department access roads shall be established and maintained in accordance with the Uniform Fire Code, Section 10.207, Section 87.103 (b).

\* Water Supply

Water mains and hydrants shall be installed and be operational in accordance with the provisions of the Uniform Fire Code, Section 10.301(c), Section 87.103(c).

### FIRE EXTINGUISHING SYSTEM

The proposed "residential suburban" development has a response time of 12-15 minutes from our Nipomo Fire Station located near Tefft Street and Highway 101. The appropriate response time from the nearest County fire station should not exceed 6-7 minutes as identified in the Framework for

000015

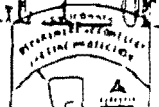
EXHIBIT B PAGE 1 OF 3

SERVING MANY OF THE UNINCORPORATED AREAS OF SAN LUIS OBISPO COUNTY

Including the communities of:

Avila Valley

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





18

Mr. Ted Bench  
March 8, 1990  
Page 2

Planning, Page 8-13. Because the development would not be provided a minimum level of service, I am requesting as a "condition of approval", that all residential units have installed a fire/life safety residential sprinkler system meeting the National Fire Protection Association Pamphlet 13 "D".

#### FIRE FLOW

Emergency water supplies shall meet the minimum fire flow requirements as identified in the Uniform Fire Code, Section 10.301 (c) as amended and Appendix III-A.

#### COMMUNITY WATER SYSTEM

The proposed project shall provide a minimum 1,000 gallons of water per minute for 120 minutes. The minimum water main size shall not be less than six (6) inches.

#### WATER SUPPLY CONNECTIONS

Fire fighting water systems are to be provided with any of the following standards to enable connection by emergency fire equipment [UFC 10.301(c) (amended)]:

- \* Subdivision/Commercial/Industrial/Retail/Service and Manufacturing shall meet San Luis Obispo County Engineering Department Standard Improvement Specification and Drawing, Section 11.351.1724. Fire hydrants shall have two (2), 2 1/2 inch outlets with National Standard Fire thread and one (1) four inch (4") suction outlet with National Standard Fire thread.
- \* Other uses not identified shall be approved by the Chief.
- \* Signing: Each hydrant/fire valve shall be identified by a reflectorized blue dot by the following:
  - (a) Within three (3) feet of the water connection.
  - (b) On a fire resistant sign/post or on non-skid surface off center of roadway to the fire hydrant side.

The proposed project will require several fire hydrants for fire suppression operations. Fire hydrants are to be located with a maximum normal spacing of 300-500 feet as measured along vehicular travel ways. The County Fire Department will assist in hydrant placement and approve distribution system when submitted.

#### ACCESS

Fire apparatus access roads shall be provided and maintained in accordance with the Uniform Fire Code, Section 10.207.

000116

EXHIBIT B PAGE 2 OF 3

18-~~11~~  
4

Mr. Ted Bench  
March 8, 1990  
Page 3

Width - The unobstructed width shall be 20 feet.

Surface - All roads and driveways shall be constructed to meet the load weight of 18 tons and provide a surface so as to maintain all-weather driving capabilities.

Grade - Any grade exceeding 15% shall be non-skid with a minimum gradient of 20%.

Bridges - Applicant shall provide a "Letter of Certification" from a licensed engineer verifying minimum load design.

Premise Identification - Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background.

SUBDIVISION REVIEW AND APPROVAL

The proposed subdivision will require a final inspection certifying all fire/life safety requirements have been completed prior to recordation of the final map.

If I can provide additional information or assistance, please call 543-2446.

Sincerely,

LARRY FLAGG  
Fire Captain - Specialist

ajc

- cc: Lew Killion, Battalion Chief
- Michael T. Hershman, 85 Industrial Way, Buellton, CA 93427
- Mid-State Engineers, 669 Pacific Street,
- San Luis Obispo, CA 93401
- SLO County Environmental Coordinator

000117

EXHIBIT B PAGE 3 OF 3

# CDF/SAN LUIS OBISPO COUNTY FIRE DEPARTMENT

Dan Turner, Chief

Information (805) 543-4244 ext. 2220

635 North Santa Rosa \* San Luis Obispo \* California 93405

## RESIDENTIAL REQUIREMENTS

The San Luis Obispo County Land Ordinance (LUO) requires a Fire Safety Plan for projects that require a permit from the County Planning/Building Department. The Fire Safety Plan is intended to indicate fire prevention measures that will minimize risks to life and property in the event of fire and medical/rescue emergencies.

San Luis Obispo County adopted the 1997 edition of the Uniform Fire Code and pertinent amendments relative to specific fire and life safety requirements.

The Fire Safety Plan is reviewed as part of the permit approval process. The plan must be approved by CDF/SLO County Fire Department prior to permit issuance. Plans shall be submitted to CDF/San Luis Obispo County Fire Department, 635 N. Santa Rosa, San Luis Obispo, CA. 93405.

A final inspection by CDF/SLO County Fire Department is required prior to occupancy. As soon as all fire/life safety improvements have been fulfilled please call and arrange for an inspection date. Please allow five (5) working days for final inspection to be completed.

PLANS WITH INCOMPLETE OR ILLEGIBLE INFORMATION WILL BE RETURNED FOR COMPLETION OR REVISION, AND MAY DELAY THE PERMIT ISSUANCE PROCESS.

### GENERAL FIRE SAFETY REQUIREMENTS

DWELLINGS AT OR EXCEEDING 5000 SQUARE FEET FLOOR AREA INCLUDING AN ATTACHED GARAGE SHALL BE PROTECTED WITH A NATIONAL FIRE PROTECTION ASSOCIATION PAMPHLET 13D SPRINKLER SYSTEM.

#### Fire Flow

Emergency fire fighting water supplies shall meet one of the following requirements:

#### Community Water System

If the proposed project is served by a community water system, it shall provide a minimum of 1,000 gallons of water per minute for 120 minutes. The minimum water main size shall not be less than six (6) inches. Pressures may not be less than 20 psi, nor more than 150 psi. A fire hydrant shall be within 500 feet of all structures to be served and shall have two (2), 2 ½ inch outlets with National Standard Fire Thread, and (1) four inch (4") suction outlet with National Standard Fire Thread (see Exhibit 7).

A will-serve letter from the water purveyor shall be provided with the plot plan verifying minimum fire and distance of nearest fire hydrant to each structure affected by this requirement.

000018



Civil Engineering  
Surveying  
Project Development

Post-It Fax Note	7671	Date	# of pages
To	Mike Hodge	From	DJ
Co./Dept	EOA	Co.	
Phone #		Phone #	
Fax #	549-8704	Fax #	

November 9, 2001

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

SUBJECT: NCSO ABILITY TO SERVE MARIA VISTA (TRACT 1802, 1808 AND 1856).

Dear Doug,

The proposed Maria Vista Tracts lie considerably southerly of the existing District boundary. The developers have proposed a point of connection for water service for the tracts at approximately Southland Street and Orchard Avenue. The proposed water transmission main is a 12 inch, C909 pvc water main. Based upon our recent conversation, a C900 12 inch watermain (class 150) may be utilized instead.

Based upon adopted County standards, the Maria Vista Tracts, totaling 115 dwelling units would have a peak domestic demand of 391 gallons per minute. When this domestic demand is added to the residential fire flow requirement of 1,000 gallons per minute, the total tract demand including domestic and fire flows would be 1,391 gallons per minute.

Assuming that a 12 inch, C900, class 150 transmission main is utilized (inside diameter 11.63 inches), the friction slope of this transmission main at maximum flows of 1,391 gallons per minute would be 0.4 feet per 100 feet of main. Based upon 0.4 feet per 100 feet, and a total length of 13,500 feet, a transmission friction loss of 54 feet would occur at a flow rate of 1,391 gallons per minute between the proposed point of connection and the westerly tract boundary.

The results of a fire flow test conducted on September 20, 2001 on a fire hydrant at Southland Street near Orchard Avenue indicate that the flow achieved was 1,088 gallons per minute at 50 psi residual pressure. Based upon a static pressure of 87 psig and these results, one can predict that the fire flow at this hydrant at 1,000 gallons per minute would result in a residual pressure of 56 pounds per square inch.

Utilizing the above data, and using the 12-inch transmission main, one can further predict the fire flow at the westerly Maria Vista Tract boundary to be 1,000 gallons per minute at 32 pounds per square inch residual. This is acceptable fire flow, and leaves a margin for further pressure drop in order to serve the tract. This data may be utilized in sizing the internal tract water mains. Maximum velocity in the 12 inch diameter main at this maximum flow rate would be approximately 4 feet per second which is also acceptable.

As mentioned in the expanded Initial Study/Mitigated Negative Declaration prepared for the Maria Vista Tracts, extraction of water as a resource extraction impact has been analyzed as part of the hydrologic section for the South County Area Plan Update adopted by the County Board of Supervisors.

The developer has proposed activation of the Dana Wells as the preferred method to be used by the District to extract water from the groundwater basin to supply the Maria Vista Tracts. When activated, the Dana wells are capable of producing nearly 500 acre feet per year. Since the Maria Vista Tracts will consume far less water than that capable of being extracted by the Dana wells, the activation of these wells will be more than sufficient to serve the Maria Vista tracts.

EXHIBIT D PAGE 1 OF 2

000019

Sent By: SHIPSEY & SEITZ;

805 543 7281;

Oct-6-03 2:16PM;

Page 16/25

May 12 03 10:13a

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805-925-0422

F.2

10/02/03 13:29

805 928 1932

NIPOMO C.S.D.

GARRING TAYLOR ASSOC

4891321

10/02/03  
F.2


Doug Jones  
November 9, 2001  
Page 2

In summary, the Nipomo Community Services District system is capable of serving the Maria Vista Tracts if a 12 inch class 150 C900 water main is extended from the Southerly district service area to the Tracts and the Dana wells are activated to provide extraction of the water resource needed.

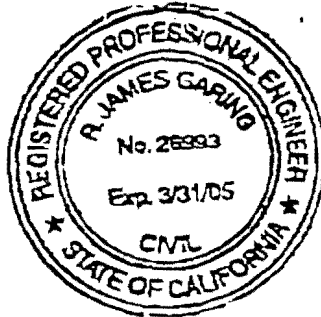
If you have any questions please contact me.

Very Truly,

GARRING. TAYLOR & ASSOCIATES, INC

  
Jim Garing P.E.  
District Engineer

T:\ND01-052\Adj.cty\Maria Vista.wtr



000020

EXHIBIT D PAGE 8 OF 2



civil engineers | land surveyors | land planners

October 6, 2003

Trincon, Inc.  
124 West Main St., Suite C  
Santa Maria, Ca. 93458

Attention: Erik Benham  
Re: Maria Vista Estates, Tracts 1802 & 1856, Sewer Line Depths and Fire Flows

Dear Erik:

I have prepared this letter in response to our recent conversation regarding the sewer and water system design for the above referenced project and the Nipomo Community Services District (NCSD) plan check of that work.

It's important to note that even though **eda** Design Professionals originally prepared the public improvement plans, including the sewer and water network, we are no longer the "engineer of work" and therefore we are not responsible for the final design as depicted on those plans. However, you have asked us to respond to plan check comments from NCSD since those comments are about the sewer layout originally designed by **eda**. We hope the following facts, that occurred during our time as "engineer of work", will help expedite the plan check process and approval of those plans.

Sewer Line Depths

As per our discussion, the area of concern for the NCSD is the designed sewer line depth between lot 8 in tract 1856 and the sewage lift station adjacent to station is 16+00.00 at Vista Del Rio. The length of this sewer main as shown on the plans is approximately 985'.

It is my understanding from our conversation that in your attempt to obtain approval from the Nipomo Community Services District (NCSD) for the sewer and water design, they have recently asked why the aforementioned portion of sewer line exceeds the typical depth of seven (7) to eight (8) feet. Specifically, the depth of the sewer line in question varies from 11' to 20', with more than half of the overall length (500') at 16' deep.

000021

EXHIBIT E PAGE 1 OF 1

Page 2  
October 6, 2003

The purpose of designing a portion of the sewer network at the aforementioned depths was to avoid the need for a second lift station, which would have collected sewage from 29 residential lots, thereby minimizing the length of sewer force main. A second lift station would cause both a significant increase in construction/development costs and also would significantly increase the ongoing maintenance costs for the project's sewer system.

As you may recall, the need for the deep sewer line was a by-product of much larger design considerations; overall earthwork, storm drains and retention basin design, and most importantly, keeping the lots in 1856 at or above existing ground. The pad elevations were designed to maximize views and avoid the appearance of tract 1856 being significantly lower than tract 1802.

In most cases, these design considerations take priority over utility depths and in this case, we believe, have not created a burden for the NCSD because more than half of the deeper sewer line lies in an open space parcel with easy access from each end.

In addition, during the design phase in 2001, our office discussed this specific matter with Doug Jones while confirming the deeper sewer lines would be allowed as we satisfied NCSD's requirement for an expanded sewer easement width. Our discussions ended with a request for a 45' wide easement to accommodate the deeper sewer line as shown on our plans. The deeper than normal sewer lines are the only reason that the NCSD asked for, and received, a substantially wider sewer easement.

#### Fire Flow Requirements

The other matter you brought to my attention was a plan check comment from the NCSD requiring the extension of the 12" water line from the tract boundary to Vista Del Rio. You have said that the NCSD is requiring the larger water line in order to provide for adequate fire flow pressure within the tract. Contrary to this latest request, the NCSD approved water line plans, prepared by **eda**, showing a 12" water line from Southland to the tract boundary. These plans were prepared as such at the direction of NCSD, based on the supporting calculations from their district engineer, James Garing.

Prior to the preparation of the plans, and at our request, Doug Jones provided our office a copy of the aforementioned calculations, in letterform, discussing NCSD's ability to serve the two tracts. Mr. Garing's narrative calculations indicate the need for a 12" water line extended to the tract boundary in order to supply the necessary fire flow and domestic demand. Our plans specifically depict this requirement.

EXHIBIT E PAGE 2 OF 7  
**eda** - design professionals

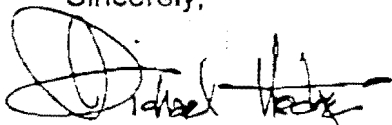
000022

Page 3  
October 6, 2003

Our office also has completed an evaluation of the on-site pipe network using WaterCAD, a water system analysis software program, which is commonly used in the industry and distributed by Haestad Methods, Inc. The results show all fire hydrants to meet the minimum fire flow requirements of 1,000 gallons per minute with reserves for domestic use. In conclusion, the installation of additional 12" water line is unnecessary to meet CDF requirements. I have attached a copy of the WaterCAD report for your review.

If our office can help you with other matters, please call to discuss or meet.

Sincerely,



Michael Hodge, R.E. #34804

EXHIBIT E PAGE 3 OF 7

eda - design professionals

000023

1998 Santa Barbara Street, San Luis Obispo, CA 93401

805-549-8658 & Fax 805-549-8704



Sent By: SHIPSEY & SEITZ;

### Steady State Analysis

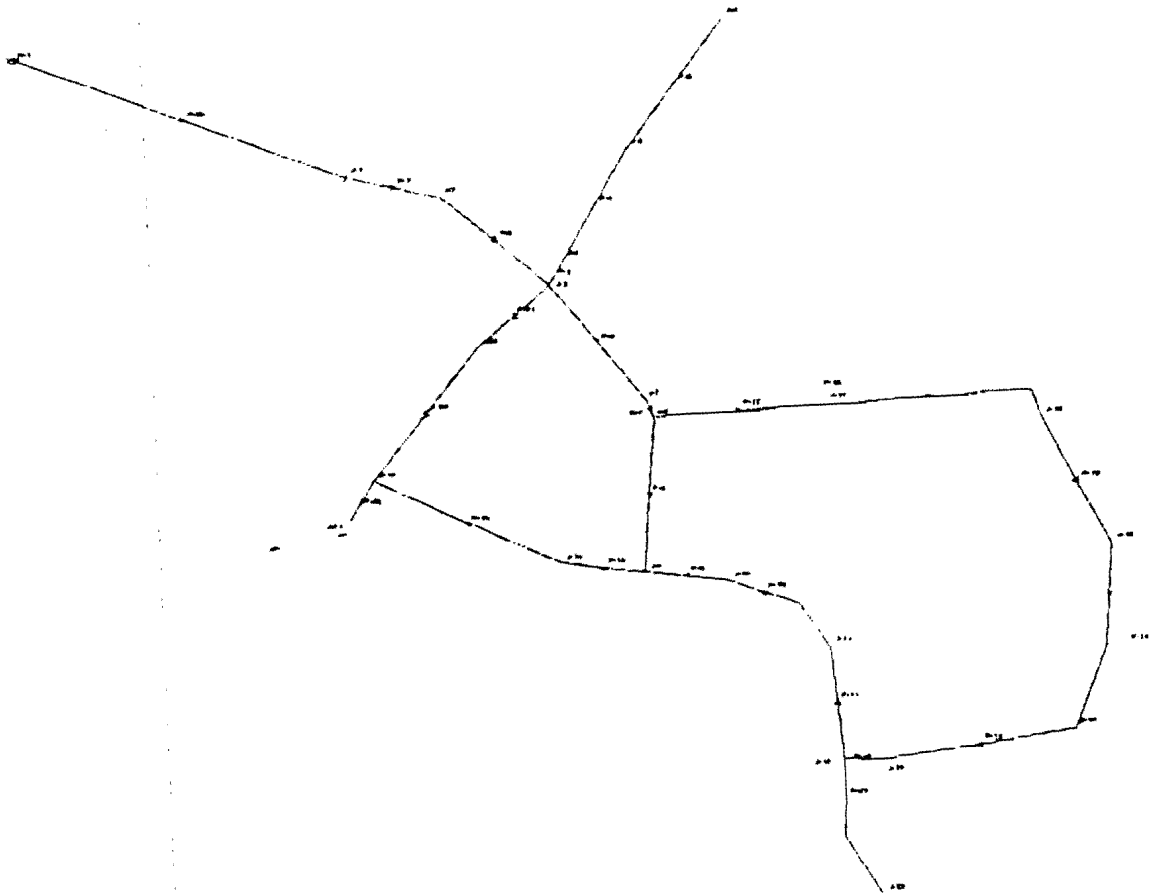


EXHIBIT E PAGE 4 OF 7

Project Title: Tract 1802 & Tract 185e  
k:\22518000\water\project1.wcd  
10/03/03 10:28:07 AM

Engineering Development Assoc  
Heested Methods, Inc. 37 Brookside Road Waterbury, CT 08708 USA (203) 755-1668

Project Engineer: EDA  
WaterCAD v1.0 [035]  
Page 1 of 1

000024

### Steady State Analysis Junction Report

Node Label	Elevation (ft)	Demand Type	Demand (gpm)	Demand Pattern	Calculated Demand (gpm)	Hydraulic Grade (ft)	Pressure (psi)	Pressure Head (ft)
J-1	284.98	Demand	0.00	Fixed	0.00	478.30	82.74	191.34
J-2	282.11	Demand	0.00	Fixed	0.00	471.16	81.75	189.05
J-3	283.25	Demand	0.00	Fixed	0.00	461.68	77.18	178.43
J-4	283.30	Demand	0.00	Fixed	0.00	461.68	77.14	178.38
J-5	281.21	Demand	0.00	Fixed	0.00	461.68	78.04	180.47
J-6	278.21	Demand	0.00	Fixed	0.00	461.88	79.34	183.47
J-7	285.49	Demand	0.00	Fixed	0.00	459.67	75.32	174.18
J-8	285.61	Demand	0.00	Fixed	0.00	459.40	75.15	173.79
J-9	291.93	Demand	0.00	Fixed	0.00	458.18	71.89	166.25
J-10	287.85	Demand	0.00	Fixed	0.00	458.27	73.70	170.42
J-11	282.42	Demand	0.00	Fixed	0.00	458.40	76.10	175.98
J-12	286.99	Demand	0.00	Fixed	0.00	458.52	74.18	171.53
J-13	283.58	Demand	0.00	Fixed	0.00	458.58	75.67	175.00
J-14	279.78	Demand	0.00	Fixed	0.00	458.72	77.38	178.94
J-15	277.72	Demand	0.00	Fixed	0.00	468.00	78.35	181.18
J-16	278.92	Demand	0.00	Fixed	0.00	459.08	77.91	180.16
J-17	284.68	Demand	0.00	Fixed	0.00	459.26	75.49	174.68
J-18	295.98	Demand	0.00	Fixed	0.00	457.11	69.68	161.13
J-19	288.48	Demand	0.00	Fixed	0.00	454.82	71.84	168.14
J-20	285.32	Demand	0.00	Fixed	0.00	458.44	74.86	173.12
J-21	290.02	Demand	1,391.00	Fixed	1,391.00	452.66	70.33	162.64
J-22	287.42	Demand	0.00	Fixed	0.00	458.52	73.99	171.10

SHIPSEY & SEITZ PAGE 5 OF 7

Project Title: Tract 1802 & Tract 1856

k:\22518000\water\project1.wcd

10/03/03 10:25:12 AM

© Haostad Methods, Inc.

Engineering Development Assoc

37 Brookside Road Waterbury, CT 06708 USA (203) 755-1666

Project Engineer: EDA

WaterCAD v1.0 [035]

Page 1 of 1

000025

**Steady State Analysis  
Pipe Report**

Link Label	Length (ft)	Diameter (in)	Material	Roughness	Minor Loss	Initial Status	Current Status	Discharge (gpm)	Start Hydraulic Grade (ft)	End Hydraulic Grade (ft)	Headloss (ft)
P-1	198.00	8	PVC	150.0	0.00	Open	Open	1,391.00	476.30	471.16	5.14
P-2	365.00	8	PVC	150.0	0.00	Open	Open	1,391.00	471.18	461.68	9.48
P-3	61.00	8	PVC	150.0	0.39	Open	Open	0.00	461.68	461.68	0.00
P-4	414.00	8	PVC	150.0	0.00	Open	Open	0.00	461.68	461.68	0.00
P-5	620.00	8	PVC	150.0	0.00	Open	Open	0.00	461.68	461.68	0.00
P-6	345.00	8	PVC	150.0	0.39	Open	Open	605.04	461.88	459.67	2.01
P-7	33.00	8	PVC	150.0	0.39	Open	Open	605.04	459.87	459.40	0.27
P-8	361.00	8	PVC	150.0	0.39	Open	Open	451.32	459.40	458.18	1.22
P-9	200.00	8	PVC	150.0	0.39	Open	Open	-153.72	458.18	458.27	0.09
P-10	298.00	8	PVC	150.0	0.00	Open	Open	-153.72	458.27	458.40	0.13
P-11	259.00	8	PVC	150.0	0.39	Open	Open	-153.72	458.40	458.52	0.12
P-12	123.00	8	PVC	150.0	0.00	Open	Open	153.72	458.58	458.52	0.05
P-13	328.00	8	PVC	150.0	0.00	Open	Open	153.72	458.72	458.58	0.14
P-14	402.00	8	PVC	150.0	0.00	Open	Open	153.72	458.90	458.72	0.18
P-15	408.00	8	PVC	150.0	0.00	Open	Open	-153.72	458.90	459.08	0.18
P-16	412.00	8	PVC	150.0	0.00	Open	Open	153.72	459.28	459.08	0.18
P-17	311.00	8	PVC	160.0	0.00	Open	Open	153.72	469.40	459.28	0.14
P-18	191.00	8	PVC	150.0	0.00	Open	Open	-605.04	457.11	458.18	1.06
P-19	432.00	8	PVC	150.0	0.39	Open	Open	-605.04	454.62	457.11	2.50
P-20	423.00	8	PVC	150.0	0.00	Open	Open	-785.98	454.62	458.44	3.82
P-21	342.00	8	PVC	150.0	0.39	Open	Open	785.98	461.68	458.44	3.24
P-22	57.00	8	PVC	150.0	0.39	Open	Open	1,391.00	454.62	452.66	1.96
P-23	227.00	8	PVC	150.0	0.39	Open	Open	0.00	458.52	458.52	0.00
P-24	13,600.00	12	PVC	160.0	0.00	Open	Open	1,391.00	533.00	476.30	56.70

EXHIBIT E PAGE 6 OF 7

### Steady State Analysis Reservoir Report

Node Label	Reservoir Surface Elevation (ft)	Reservoir Inflow (gpm)	Hydraulic Grade (ft)	Reservoir Outflow (gpm)
R-1	533.00	-1,391.00	533.00	1,391.00

$$332' + (87 \text{ PSI} \times 2.307 \frac{\text{ft}}{\text{PSI}}) = 533 \text{ FT}$$

APPROX. GROUND ELEV. @ HYDRANT  
 SOUTHLAND ST  
 NEAR RICHARD AVE

STATIC PRESSURE

HGL

EXHIBIT E PAGE 7 OF 7

November 14, 2001

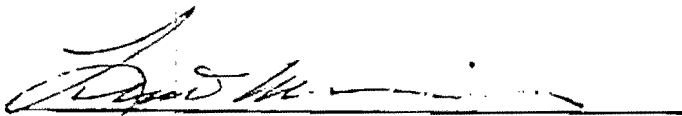
**EXHIBIT B  
Legal Description  
(Sewer and Slope Easement)**

A portion of Lot 29 of H. C. Ward's Subdivision of Rancho Nipomo, in the County of San Luis Obispo, State of California, according to map filed in Book A, page 13 of Maps, filed in the office of the County Recorder of said County, being more particularly described as follows:

A forty-five (45) foot wide strip of land, lying easterly of and adjacent to the following described line:

Beginning at the most Northeasterly corner of Lot 33 of Tract 1802 according to map filed in Book \_\_\_\_, Page \_\_\_\_ of Maps, records of said County; thence North 9° 03' 47" West, along the boundary of said Tract 1802, a distance of 573.18 feet.

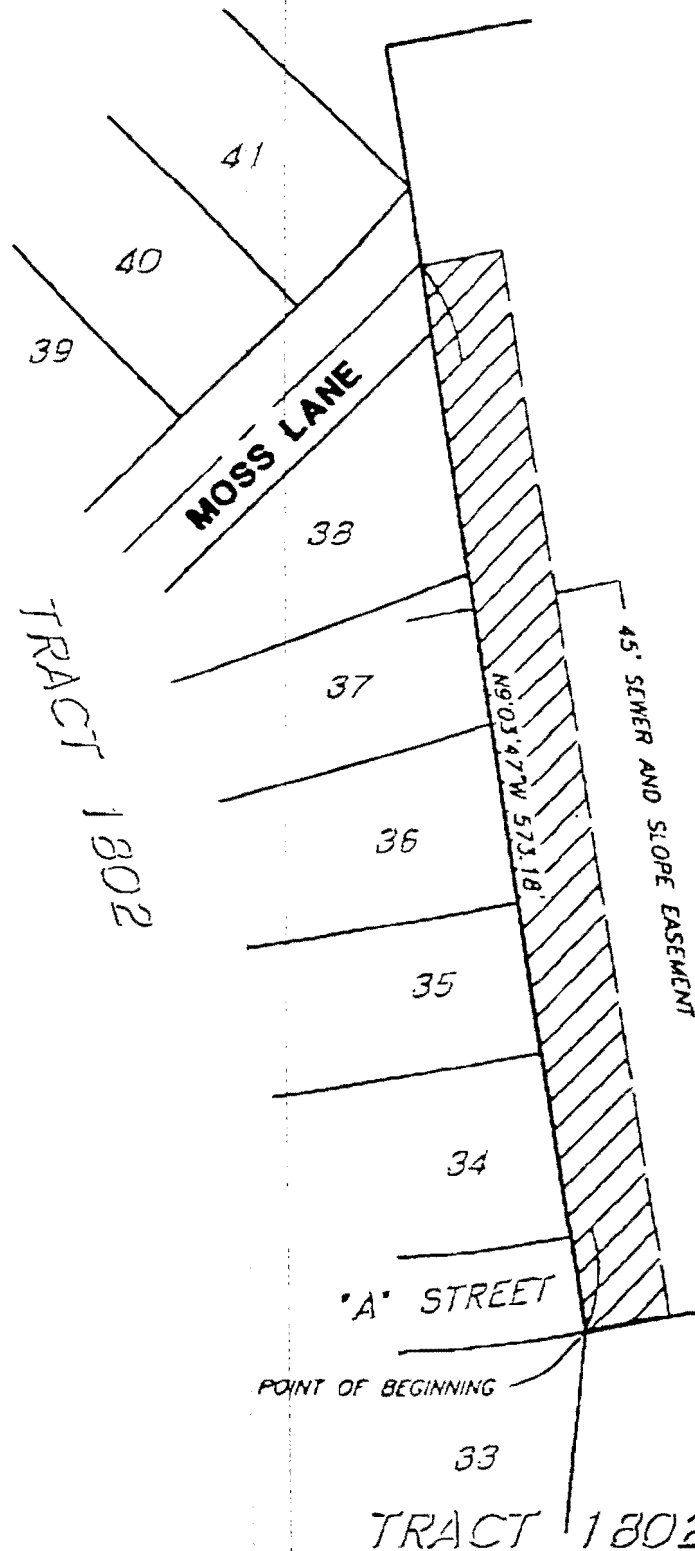
The above described strip of land is graphically shown on Exhibit C attached hereto and made a part hereof.

  
Linda M. Richardson, P.L.S. 6904 (exp. 6/2005)



# EXHIBIT C

OPEN SPACE  
LOT 54



GRAPHIC SCALE



( IN FEET )  
1 inch = 100 ft.

PTN. LOT 29  
RANCHO NIPOMO  
A MB 13

**EDA** ENGINEERING  
DEVELOPMENT  
ASSOCIATES  
ENGINEERING - LAND SURVEYING - PLANNING  
1320 NIPOMO STREET, SAN LUIS OBISPO, CA 93401

## SEWER AND SLOPE EASEMENT

JOB NO. 2.2518.000 DATE: 11-12-01

000029

JON S. SEITZ  
MICHAEL W. SEITZ

SHIPSEY & SEITZ, INC.  
A LAW CORPORATION  
1066 PALM STREET  
POST OFFICE BOX 953  
SAN LUIS OBISPO, CALIFORNIA 93406  
(805) 543-7272 FAX (805) 543-7281  
JON S. SEITZ  
District Legal Counsel  
Nipomo Community Services District

JOHN L. SEITZ  
(1924-1986)  
GERALD W. SHIPSEY  
(RETIRED)

October 7, 2003

FACSIMILE COVER SHEET

RE: MARIA VISTA ESTATES/TRACTS 1802 AND 1856

TO: JOHN W. FRICKS, ESQ.  
OGDEN & FRICKS, LLP

FAX NO: 544-7700

cc: DOUG JONES, GENERAL MANAGER  
NIPOMO COMMUNITY SERVICES DISTRICT

FAX NO: 929-1932

cc: JIM GARING, DISTRICT CONSULTING ENGINEER  
NIPOMO COMMUNITY SERVICES DISTRICT

FAX NO: 489-6723

FROM: JON S. SEITZ, DISTRICT LEGAL COUNSEL

TOTAL NUMBER PAGES TRANSMITTED: 2 (Including cover sheet)  
(If all pages of transmittal not received, Call (805)543-7272.)

Dear Mr. Fricks:

This fax transmittal will confirm our telephone conversation of Monday, October 6, 2003, when I requested that your client provide the District with the following:

- A. A complete set of plans related to on-site improvements that were initially checked by the District with District Plan Check Comments;
- B. A complete set of the second submittal of plans for on-site improvements that were checked by the District, with District Plan Check Comments; and
- C. Any additional plans related to on-site improvements that were checked by the District that contain District Plan Check Comments.

The District is prepared to either reimburse your client for the copies, or on the other hand, you can deliver the original set of plans to the District, or my office, and the District will have the plans copied and return the same to your office.

000030

Maria Vista Plan Check Fax  
October 7, 2003  
Page 2

The plans, as requested by this fax transmittal, will assist the District in responding to your letters of September 23 and October 6, 2003.

Thank you for your prompt attention to this matter.

If you should have questions, please call.

JON S. SEITZ, DISTRICT LEGAL COUNSEL  
NIPOMO COMMUNITY SERVICES DISTRICT

The information contained in this facsimile message is intended only for the personal and confidential use of the designated recipient. This message may be an attorney-client communication and as such is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that you have received this document in error, and that any review, dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us by mail.

000031



OGDEN & FRICKS LLP  
656 Santa Rosa Street, Second Floor  
San Luis Obispo, California 93401  
Phone: 805-544-5600 Fax: 805-544-7700

RECEIVED  
10/22/03

October 7, 2003

By Fax and U.S. Mail

File No. 5009-01

Jon S. Seitz, Esq.  
Shipsey & Seitz, Inc.  
1066 Palm Street  
San Luis Obispo, CA 93401

Re: *Maria Vista Estates/Tracts 1802 and 1856*

Dear Mr. Seitz:

While I do not make it a practice of documenting my telephonic conversations with local attorneys, I am deeply troubled by the telephone call I received from you yesterday, October 6, between 5:00 and 5:30 p.m. and, therefore, must do so in this instance. Your call was made approximately three hours after you received my October 6 letter on behalf of Maria Vista Estates in which Maria Vista rejected the bulk of the recent public improvement requirements sought by your client, the Nipomo Community Services District (NCSD), in your September 25 letter to me.

While my letter was quite detailed, lengthy and raised numerous issues regarding NCSD activities, you informed me that the first thing that you did upon receipt of it was to contact the Department of Industrial Relations (DIR) in an attempt to seek a "determination" from the DIR whether any or all of the Maria Vista public improvement projects would be subject to California prevailing wage laws.<sup>1</sup> When I asked you why you would make that call so quickly after receipt of my October 6 letter, you acted defensively and finally responded that you simply wanted to verify the accuracy of one of the many arguments in my October 6 letter. This explanation strains credulity.

First, Maria Vista still does not understand why the NCSD cares whether Maria Vista pays prevailing wage. The NCSD Plan Check and Inspection Agreement dated April 8, 2003 expressly states that Maria Vista, not the NCSD, is responsible for determining whether construction of the public improvements subjects Maria Vista to prevailing wage laws and to comply with same. (See Agreement at ¶ 1(b).) As both Marshall Ochylski and I have informed you, Maria Vista has researched California law and concluded that there is no clear legal authority to compel payment of prevailing wage on this project. Payment of prevailing wage in no way benefits the NCSD but would potentially harm Maria Vista.

Second, Maria Vista's prevailing wage concerns about the 12 inch water main extension required by the NCSD and attendant reimbursement ordinance were the third basis for Maria Vista's refusal to accede to the NCSD's demand on one of its many requirements. You apparently ignored the first two bases: (i) that the extension violated the U.S. Constitution

<sup>1</sup> You indicated that the DIR was unwilling to give oral determinations, opinions, or advice on the subject.

000032

EXHIBIT

5

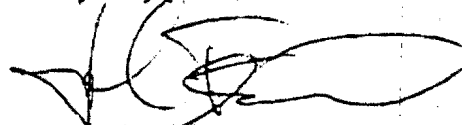
pursuant to U.S. Supreme Court's Dolan decision and evidenced the NCSD's attempt to exercise powers (i.e. long-range planning) that it does not have; and (ii) the reimbursement ordinance available to Maria Vista was a mirage as little or no money would ever be reimbursed to Maria Vista. Let me be clear. Regardless of the effect of the extension on prevailing wage issues, Maria Vista refuses to install the twelve-inch water line as required by the NCSD.

Third, in your position as counsel for the NCSD, you are necessarily aware of dozens of housing subdivision projects, past and present, with public improvement plans requiring installation of water, sewer, and other amenities that are to be turned over to the NCSD upon completion of such improvements. As such, those projects have improvements similar in nature to the Maria Vista public improvements. Maria Vista has personal knowledge of many of these projects and, none of them are subject to, or have paid, prevailing wage. I am certain you are aware of many such projects as well. Why you would question such a prevailing wage determination in this instance and not the others is quite curious. Was it your intention to bring prevailing wage to all similarly-situated private projects within the County?

At best, Maria Vista believes that your immediate call to the DIR yesterday strongly suggests an attempt to use prevailing wage laws as leverage to get Maria Vista to satisfy the NCSD's September 25 requirements when Maria Vista is not otherwise legally obligated to do so. At worst, your attempt to get a DIR determination would, if it resulted in an adverse ruling from the DIR, subject the Maria Vista public improvements to prevailing wage and cost Maria Vista hundreds of thousands of dollars and, thus, appears to be a punitive response to Maria Vista's public refusal to acquiesce to the NCSD's demands.

You asked me during our conversation whether I was the type of lawyer with whom you would have to "watch every word you say" or whether I was a lawyer who wanted to "get things done." Know this: I am a lawyer who recognizes veiled threats for what they are and who does not respond favorably to them. I also get things done -- be it informally or through the litigation process -- and will see this project through to approval and completion.

Very truly yours,



John W. Fricks

JWF/jwf

- cc: Supervisor Katcho Achadjian (by facsimile only)
- Supervisor Mike Ryan (by facsimile only)
- James B. Orton, Esq., County Counsel (by facsimile only)
- Mr. Paul Hood (by facsimile only)
- Mr. Mike Winn, NCSD Board (by facsimile only)
- Ms. Judith Wirsing, NCSD Board (by facsimile only)
- Mr. Bob Blair, NCSD Board (by facsimile only)
- Mr. Clifford Trotter, NCSD Board (by facsimile only)
- Mr. Larry Vierheilg, NCSD Board (by facsimile only)
- Client
- Marshall E. Ochylski, Esq. (by facsimile only)

000033

JON S. SEITZ  
MICHAEL W. SEITZ  
KAROL M. VOGT

SHIPSEY & SEITZ, INC.  
A LAW CORPORATION  
1066 PALM STREET  
POST OFFICE BOX 253  
SAN LUIS OBISPO, CALIFORNIA 93406  
(805) 543-7272 FAX (805) 543-7281  
JON S. SEITZ  
District Legal Counsel  
Nipomo Community Services District

JOHN L. SEITZ  
(1924-1986)  
GERALD W. SHIPSEY  
(RETIRED)

October 7, 2003

Via Facsimile

John W. Fricks  
OGDEN & FRICKS, LLP  
656 Santa Rosa, 2<sup>nd</sup> Floor  
San Luis Obispo, CA 93401

Re: Maria Vista Estates

Dear Mr. Fricks:

Please be advised that, except for your statement that the telephone conversation occurred between 5:00 p.m. and 5:30 p.m. on Monday, October 6, 2003, I disagree with virtually every statement contained in your letter of October 7, 2003.

As you will undoubtedly recall the purpose of my call was to obtain the P.I.P.S. that were submitted to the District that included the District's Plan Check Comments (as stated in prior phone conversations, your client has the only set) to allow the District to further evaluate the comments contained in your letters of October 6<sup>th</sup> and September 23, 2003. I have previously faxed to your office a letter confirming this request.

I did mention that I had called the D.I.R. regarding the claim contained in your October 6, 2003, letter regarding what events trigger prevailing wages that would be "unacceptable to your client". I advised that you that the D.I.R. does not provide informal opinions on prevailing wage issues and that the D.I.R. would require a formal request. At this point you accused my client of attempting to extort concessions from your client by investigating claims asserted by you in your October 6, 2003, letter. You then accused me of spending three (3) hours with the D.I.R. as some sort of extortion plot (I assume because of the delay in the delivery of the October 6<sup>th</sup> letter and my phone call).

As you will recall, I advised you that I spent the lion's share of yesterday afternoon conferencing with the San Luis Obispo County Planning Department regarding other clients and had spent less than five (5) minutes making inquiry to the D.I.R. You then apologized for your accusations of my wrongdoing.

Please be advised that I routinely investigate legal claims asserted by lawyers relating to my clients. The assertions in your letter of October 6, 2003 will not be excepted from what I consider to be my duty.

000034

EXHIBIT 6

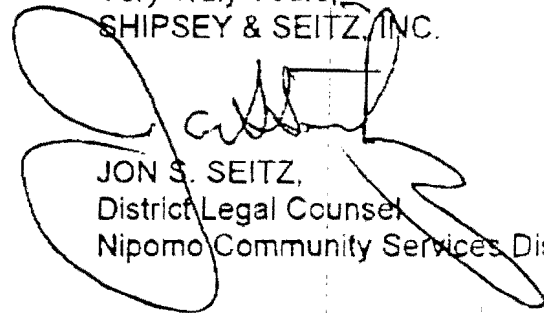
Mr. Fricks  
October 7, 2003  
Page Two

It was only in response to your accusations of wrongdoing regarding the investigation of claims contained in your letter, that I advised you that it is my preference that attorneys, in attempting to resolve competing issues, do not make blind accusations about clients, their attorneys or their motives. Nor do I believe that reinventing conversations, in letters, and then forwarding them to policy makers and third parties assists anyone in reaching a resolution. One could easily question your motives in doing so.

It is my hope that we can work cooperatively to resolve issues related to our clients by focusing on the issues.

Thank you for your consideration of these matters. If you should have questions, please call.

Very Truly Yours,  
SHIPSEY & SEITZ, INC.



JON S. SEITZ,  
District Legal Counsel  
Nipomo Community Services District

JSS:jb

cc: Marshall Ochylski, Esq. via fax  
Doug Jones, General Manager, Nipomo Community Services District via fax

000035

**OGDEN & FRICKS LLP**  
656 Santa Rosa Street, Second Floor  
San Luis Obispo, California 93401  
Phone: 805-544-5600 Fax: 805-544-7700

October 7, 2003

*By Fax and Hand Delivery*

File No. 5009-01

Jon S. Seitz, Esq.  
Shipsey & Seitz, Inc.  
1066 Palm Street  
San Luis Obispo, CA 93401

Re: *Maria Vista Estates/Tracts 1802 and 1856*

Dear Mr. Seitz:

Attached please find certified copies of Maria Vista's public improvement plans. Please note that the both sets of plans bear NCSD comments.

Consistent with my other letters on this subject, I again ask that the NCSD approve the PIPs as shown and sign them immediately.

Very truly yours,



John W. Fricks

JWF/jwf  
Attachment

000036

EXHIBIT 7

JON S. SEITZ  
MICHAEL W. SEITZ

SHIPSEY & SEITZ, INC.  
A LAW CORPORATION  
1066 PALM STREET  
POST OFFICE BOX 933  
SAN LUIS OBISPO, CALIFORNIA 93406  
(805) 543-7272 FAX (805) 543-7281  
JON S. SEITZ  
District Legal Counsel  
Nipomo Community Services District

JOHN L. SEITZ  
(1924-1986)  
GERALD W. SHIPSEY  
(RETIRED)

October 8, 2003

FACSIMILE COVER SHEET

RE: MARIA VISTA ESTATES/TRACTS 1802 AND 1856

TO: JOHN W. FRICKS, ESQ. w/ enclosures  
OGDEN & FRICKS, LLP

FAX NO: 544-7700

cc: MARSHALL OCHYLSKI, ESQ. w/enclosures

FAX NO: 544-4594

cc: DOUG JONES, GENERAL MANAGER w/o enclosures  
NIPOMO COMMUNITY SERVICES DISTRICT

FAX NO: 929-1932

cc: JIM GARING, DISTRICT CONSULTING ENGINEER w/o enclosures  
NIPOMO COMMUNITY SERVICES DISTRICT

FAX NO: 489-6723

FROM: JON S. SEITZ, DISTRICT LEGAL COUNSEL

TOTAL NUMBER PAGES TRANSMITTED: 5 (Including cover sheet)  
(If all pages of transmittal not received, Call (805)543-7272.)

Dear Mr. Fricks:

For your files, you will find appended to this fax transmittal the District's Reimbursement Ordinance referenced in Section 3 of your October 6, 2003 letter.

In reference to Paragraph 5 of your October 6, 2003 letter, and subsequent to our prior conversation of this date, Jim Garing (District Consulting Engineer) confirms that EDA represented to him that the requested topographical map was contained in their computer files and would normally be provided at no charge. EDA felt they couldn't provide the computer generated map because Mr. Benham was no longer their client. However, EDA did represent that the computer file (including those files required to put together the topographical map) was transferred to Mr. Benham's new engineer. It is my understanding that EDA is willing to assist Mr. Benham's new engineer in locating the requested topographical map contained in the transferred computer files. To avoid confusion I suggest that your client's engineer contact Mr.

EXHIBIT 8

000037

Maria Vista Fax  
October 8, 2003  
Page 2

Garing directly to confirm the scope of the requested topographical map. Providing the District with the requested topographical map, as previously requested, is a material element in bringing the issue of sewer depth to resolution.

In reference to Paragraph 7 of your October 6, 2003 letter, upon receipt of a signed letter from CDF addressed to the Nipomo Community Services District waiving the requirement of the identified (disputed) fire hydrant, Staff will recommend that the hydrant be deleted from the PIPS. However, Staff cannot absolutely guarantee approval of Staff recommendations.

Lastly, this letter will confirm that the District Board of Directors is prepared to hold a morning public special meeting on Wednesday, October 15, or Thursday, October 16, 2003 to provide the District Staff with direction on proceeding with processing of your client's public improvement plans (including conditions). It's my understanding you are confirming with your client the appropriate date and time. Mr. Garing has advised me that he only has a limited opportunity to appear on Thursday, October 16, 2003, so this date is a clear preference to the District.

Please call with questions.

Jon S. Seitz,  
District Legal Counsel  
Nipomo Community Services District

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Chapter 5.01

REIMBURSEMENT AGREEMENTS

Sections:

- 5.01.010 Purpose and applicability.
- 5.01.020 Definitions.
- 5.01.030 Reimbursement of excess costs.
- 5.01.031 Application for reimbursement.
- 5.01.040 Ten-year repayment obligation.
- 5.01.050 District to serve as collection agency.
- 5.01.060 District administrative costs.
- 5.01.070 District connections.
- 5.01.080 All other district water and sewer charges in effect.
- 5.01.090 District liability.

5.01.010 Purpose and applicability.

A. This chapter is intended to provide an equitable procedure for at least partial reimbursement to private parties who construct and dedicate district facilities to serve their private property, if such facilities are also used thereafter to directly serve and benefit private property owned by others.

B. Whenever an applicant is required as a condition of development to construct and install any district water or sewer facilities, which will be dedicated to the district, and which has the future potential and capacity to provide service to real property parcels, not under the control or ownership of the applicant, the future reimbursement provisions of this chapter shall apply, unless the district specifically provides otherwise

by ordinance or resolution. (Ord. 98-87 § 38 (part), 1998)

5.01.020 Definitions.

As used in this chapter the following words shall have the following meanings:

"Applicant" means subdivider, developer and/or builder.

"District" means the Nipomo Community Services District.

"District facilities" means water lines, sewer mains and sewer lift stations and appurtenant facilities.

"Engineer" means district engineer. (Ord. 98-87 § 38 (part), 1998)

5.01.030 Reimbursement of excess costs.

A. Excess costs equal the sum of the following:

1. Oversizing: the estimated cost of installing the size of line required to serve applicant's needs pursuant to district's plans and specifications and the actual cost of installing a larger line at the direction of the district.

2. Off-site development: a pro rata share of the costs of installing district facilities and appurtenances pursuant to district plans and specifications beyond the property of the applicant that are subject to probable future use by connectors other than applicant.

B. Approval of excess costs: district shall have the right to audit the excess costs submitted by applicant, and to approve for reimbursement only so much thereof it determines to be just and reasonable. Such excess cost, if any, shall be computed when such facilities are completed by applicant and accepted by district, and such shall be

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paid as provided in the reimbursement agreement.

C. Proration of Costs.

1. The district's engineer shall prorate the approved excess costs against all lots or parcels which in the future may be served by direct connection thereto. The district shall send written notice of the prorated amount to the person shown on the latest county assessor's roll as the owner or agent of record for assessment purposes for each parcel. Such person may protest the prorations in writing within fourteen days after the notice is mailed. If not protested within the fourteen days, the proration shall become final for the purposes of this section.

2. A protest shall be concerned only with the division or spread of the actual and necessary construction costs between or among the builder's property and all other properties to be included in the area subject to the proration procedure. A protest shall not be concerned with the actual construction costs unless the protester can demonstrate fraud or wilful concealment of actual cost information as presented by the applicant or his agent to the district's engineer.

3. The district's board of directors shall hold a public hearing to consider all such written protests. All evidence in support of the protest shall be submitted in writing to the district at least ten days before the meeting. The engineer shall prepare a written report and recommendation to the board on each protest. A copy of the engineer's report shall be mailed, or otherwise delivered, to the concerned protester at least five days before the board meeting to consider the protest.

4. The board's decision on the protest shall be in writing, and shall be final. If the board's decision results in an increased proration amount for properties owned by

anyone other than the protester or the applicant, a new notice and a new fourteen-day period shall be given for each such property.

5. If no protest is filed for a property within the fourteen-day period after the first or any subsequent notice of prorated amount is mailed for that property, the proration shall be come final as to the property. (Ord. 98-87 § 38 (part), 1998)

5.01.031 Applications for reimbursement.

A. In order to qualify for reimbursement of excess costs, pursuant to this chapter, applicant shall, within ninety days of district's acceptance of district facilities, deliver to district the following:

- 1. Written application requesting reimbursement of excess costs; and
- 2. A certified statement showing the applicant's actual costs in constructing district facilities.

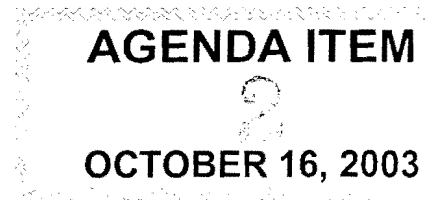
B. The applicant shall cooperate with the district engineer in reviewing costs. If applicant does not submit the request and the certified statement of costs within ninety days of district's acceptance, applicant shall have waived all right to reimbursement. (Ord. 99-88 § 8, 1999)

5.01.040 Ten-year repayment obligation.

For a period of ten years from the date of official acceptance of any such sewer facility, the subdivider shall be eligible for reimbursement of the foregoing prorated amount from each parcel as the parcel, or portion thereof, connects to the facility. (Ord. 98-87 § 38 (part), 1998)

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TO: BOARD OF DIRECTORS  
FROM: DOUG JONES *D*  
DATE: OCTOBER 16, 2003



BRACKEN LANE  
ROAD REPAIR

**ITEM**

Appropriate funds from reserves to repair water damage to Bracken Lane

**BACKGROUND**

On October 6, 2003, while the Gas Company's contractor, ARB, Inc., was installing a gas service to a property hit the District's water line, splitting the water main and flooding Bracken Lane. Damage to the road includes buckling in numerous places and undermining the road due to road material losses. It is estimated that it will cost approximately \$20,000 to repair the road. This is not a budgeted item, therefore, staff is requesting that your Honorable Board authorize \$20,000 expenditures from reserves to make these repairs.

**RECOMMENDATION**

Staff recommends that your Honorable Board approve the necessary expenditures (up to \$20,000) for road repair to Bracken Lane and seek reimbursement from ARB, Inc.

Board 2003/Bracken Lane repair

# Memorandum

To: DOUG  
CC: LISA  
From: DAN  
Date: 10/07/03  
Re: BRACKEN REPAIR AFTER PIPE BLOW OUT

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A.R.B. WAS BORING TO INSTALL A GAS SERVICE FOR 812 BRACKEN LANE. THEIR U.S.A. TICKET CAME IN 10/2/03, WHICH IS THE CORRECT AMOUNT OF LEAD TIME. WE HAD MARKED THE AREA FOR A JOB THAT HAD BEEN DONE PREVIOUSLY AND OUR MARKS WERE STILL VISIBLE BUT INACCURATE. OUR MARKS WERE OFF BY APPROXIMATELY FOUR OR FIVE FEET. A.R.B. CREW POTHOLED BUT WERE UNABLE TO FIND OUR WATERLINE. A RESIDENT HAD TOLD THE A.R.B. CREW THAT THE WATERLINE WAS FIVE FEET DEEP IN ADDITION TO WHERE IT WAS WITHIN THE STREET. A.R.B. FOREMAN TOOK THAT INFORMATION AND OUR MARKS FOR HIS GUIDE TO THE PIPELINE LOCATION, WHICH WERE BOTH INACCURATE. THEIR CREW WOULD HAVE BEEN PRUDENT TO CALL OUR OFFICE FOR A RE-MARK WHEN THE LINE WAS NOT FOUND.

**(STATED WITHIN THE U.S.A. GUIDELINES SECTION 4216.4**

**SUBSECTION (b), "if the exact location of the subsurface installation cannot be determined by hand excavating in accordance with subsection (a), the excavator shall request the operator to provide additional information to the excavator, to the extent that information is available to the operator, to enable the excavator to determine the exact location of the installation.**

A.R.B. WAS USING A PNEUMATIC TOOL FOR THE BORING. THEIR TOOL HIT OUR LINE AND A 20-FOOT SECTION OF PIPE CRACKED AND UNDERMINED THE STREET. WE MADE THE REPAIRS TO OUR LINE AND CLEANED UP MOST OF THE MUD AND PAVEMENT.



# NIPOMO COMMUNITY

## BOARD MEMBERS

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



# SERVICES DISTRICT

## STAFF

DOUGLAS JONES, GENERAL MANAGER  
JON SEITZ, GENERAL COUNSEL  
DAN MIGLIAZZO, UTILITY SUPERVISOR

---

148 SOUTH WILSON STREET POST OFFICE BOX 326 NIPOMO, CA 93444 - 0326  
(805) 929-1133 FAX (805) 929-1932 Email address gm@nipomocsd.com

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October 8, 2003

VIA FAX AND 1<sup>ST</sup> CLASS MAIL

Dave Cox  
ARB Inc.  
2235 A North Ventura Avenue  
Ventura, CA 93001

COPY

812 BRACKEN LANE, NIPOMO, CA

Dear Mr. Cox:

On October 6, 2003, Nipomo Community Services District's water main on Bracken Lane in Nipomo was hit by a boring tool that was being operated by your company. A twenty-foot section of water main cracked, causing large amounts of water to flood the street which in turn caused significant damage to the paving as well as damage to landscaping to near by homes.

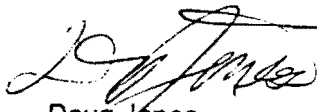
Nipomo Community Services District responded to the emergency and performed the necessary emergency repairs to shut off the water, repair the water main, clean the streets and private property to allow access to the near by homes. NCSD intends to seek reimbursement for these costs. Additional repairs to the street and paving need to be made as soon as possible.

Due to public safety, Nipomo Community Services District requests that the repairs to the street and paving be completed immediately. Please notify NCSD no later than 12:00 p.m. on Thursday, October 9, 2003, of your intentions to proceed with repairs. If a response is not received, NCSD will proceed with all of the necessary repairs with the intent of seeking reimbursement. . If NCSD does proceed, please be aware that as a government agency, NCSD is subject to the Public Contracts Code and will be required to pay prevailing wages.

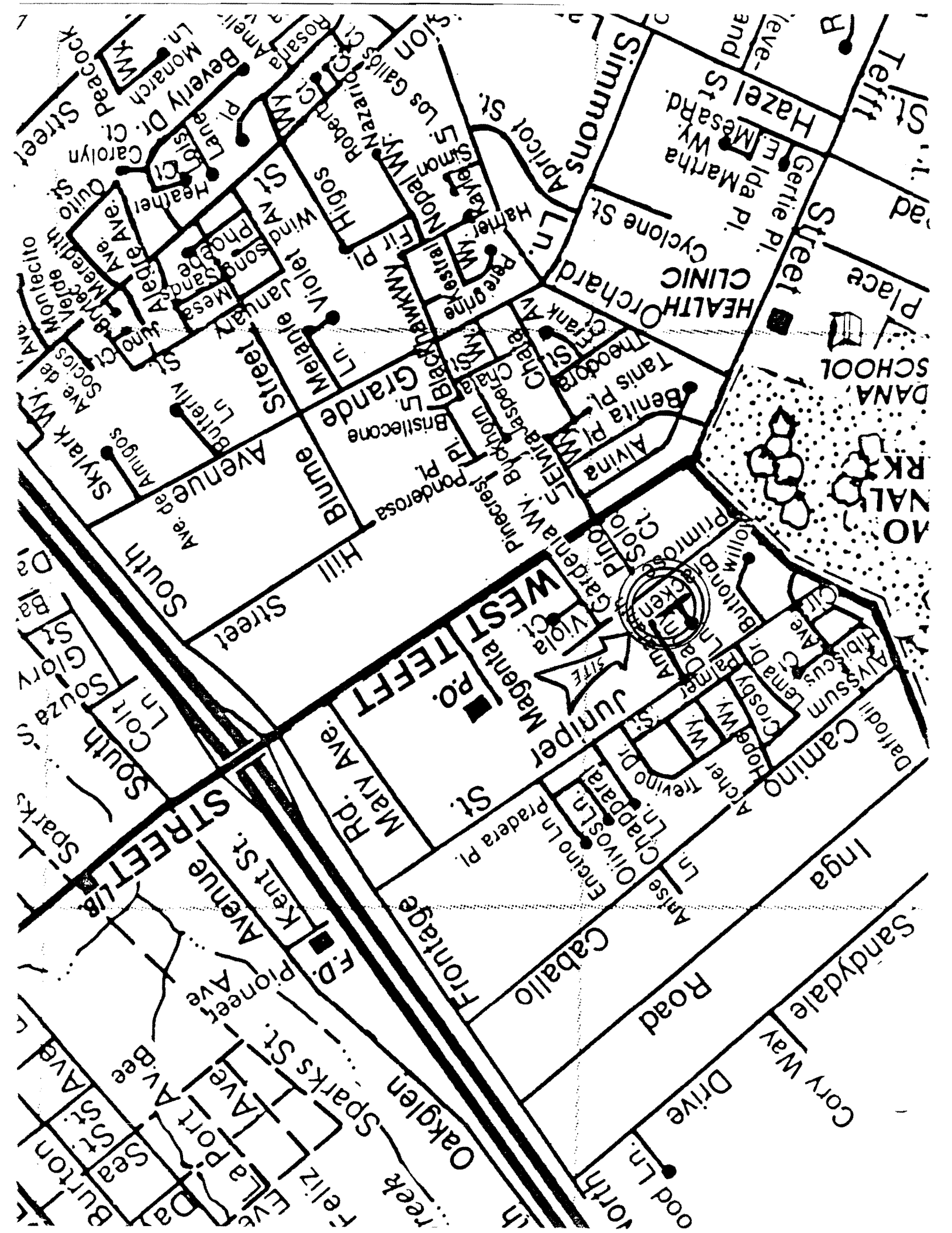
It is our hope that we can resolve this matter quickly.

Sincerely,

NIPOMO COMMUNITY SERVICES DISTRICT



Doug Jones  
General Manager



**WARRANTS OCTOBER 16, 2003**

**AGENDA ITEM  
3  
OCTOBER 16, 2003**

**HAND WRITTEN CHECKS**

18670                      10-06-03      POSTMASTER                      194.00

**COMPUTER GENERATED CHECKS**

Check Number	Check Date	Vendor Number	Name	Gross Amount	Discount Amount	Net Amount	Invoice #	Payment Information Description
8658	10/10/03	EMP01	EMPLOYMENT DEVELOP DEPT	430.40	.00	430.40	A31006	STATE INCOME TAX
8659	10/10/03	MID01	MIDSTATE BANK-PR TAX DEP	1496.57 461.96	.00 .00	1496.57 461.96	A31006 1A31006	FEDERAL INCOME TAX MEDICARE (FICA)
			Check Total.....	1958.53	.00	1958.53		
8660	10/10/03	MID02	MIDSTATE BANK - DIRECT DP	14336.99	.00	14336.99	A31006	NET PAY DEDUCTION
8661	10/10/03	PER01	PERS RETIREMENT	2953.05 69.03	.00 .00	2953.05 69.03	A31006 1A31006	PERS PAYROLL REMITTANCE MILITARY SERVICE CR
			Check Total.....	3022.08	.00	3022.08		
8662	10/10/03	SIM01	SIMMONS, DEBRA	150.00	.00	150.00	A31006	WAGE ASSIGNMENT
8663	10/10/03	STA01	STATE STREET GLOBAL	735.00	.00	735.00	A31006	DEFERRED COMP
008664	10/16/03	BCS01	BASIC CHEMICAL SOLUTIONS	324.35 703.08	.00 .00	324.35 703.08	SI388595 SI388602	SODIUM HYPOCHLORITE SODIUM HYPOCHLORITE
			Check Total.....	1027.43	.00	1027.43		
008665	10/16/03	COM01	COMPUTER NETWORK SERVICES	912.69	.00	912.69	12933	COMPUTER SUPPORT
008666	10/16/03	CRE01	CREEK ENVIRONMENTAL LABS	30.00 30.00 30.00 50.00 30.00	.00 .00 .00 .00 .00	30.00 30.00 30.00 50.00 30.00	K3711 K3739 K3816 K3850 K3851	BL WWTP LAB BL WWTP LAB BL WWTP LAB ORCHARD 12" MAIN LAB BL WWTP LAB
			Check Total.....	170.00	.00	170.00		
008667	10/16/03	FER01	FERGUSON ENTERPRISES INC	523.79 -259.55	.00 .00	523.79 -259.55	563338 CM04007SC	CHECK VALVE FOR VIA BONER TEFFT ST REPAIR RETURNED
			Check Total.....	264.24	.00	264.24		
008668	10/16/03	FGL01	FGL ENVIRONMENTAL	44.80 44.80 44.80 44.80 44.80 44.80	.00 .00 .00 .00 .00 .00	44.80 44.80 44.80 44.80 44.80 44.80	309522A 309523A 309711A 309712A 310008A 310009A	NIPOMO WWTP LAB BL WWTP LAB BL WWTP LAB NIPOMO WWTP LAB NIPOMO WWTP LAB BL WWTP LAB
			Check Total.....	268.80	.00	268.80		
008669	10/16/03	GAR01	GARING TAYLOR & ASSOC	559.25 773.00	.00 .00	559.25 773.00	3735 3736	TEFFT ST LIFT STATION PLAN CHECK-MARIA VISTA SE
			Check Total.....	1332.25	.00	1332.25		
008670	10/16/03	GRA01	GRANDFLOW, INC.	175.64 238.53	.00 .00	175.64 238.53	70972 71005	LASER P/R CHECKS LASER CHECKS
			Check Total.....	414.17	.00	414.17		
008671	10/16/03	GRO01	GROENIGER & CO	127.79	.00	127.79	60202T	GASKETS/MISC SUPPLIES
008672	10/16/03	JOH01	JOHNSON, DONNA	78.39	.00	78.39	100603	MISC SUPPLIES
008673	10/16/03	MID05	MID STATE BANK PETTY CASH	38.60 102.21 41.94	.00 .00 .00	38.60 102.21 41.94	101403 A31014 101403A	CA-NEV AWWA SEMINAR OPERATING SUPPLIES POSTAGE
			Check Total.....	182.75	.00	182.75		
008674	10/16/03	MIS01	MISSION UNIFORM SERVICE	250.00	.00	250.00	1972026	UNIFORMS

COMPUTER GENERATED CHECKS

Check Number	Check Date	Vendor Number	Name	Gross Amount	Discount Amount	Net Amount	Invoice #	Payment Information Description
008675	10/16/03	NIC01	NICKSON'S MACHINE SHOP	494.82	.00	494.82	68677	DIESEL MOTOR ANNUAL SERVI
008676	10/16/03	PAC01	SBC/MCI	43.30	.00	43.30	T1746810	LONG DISTANCE
				109.88	.00	109.88	T1746812	LONG DISTANCE
				60.92	.00	60.92	T1746813	LONG DISTANCE
			Check Total.....	214.10	.00	214.10		
008677	10/16/03	PER05	PERFORMANCE METER, INC	1009.02	.00	1009.02	6799	1 1/2" METERS FOR ASHWOOD
008678	10/16/03	PGE01	P G & E	18237.18	.00	18237.18	100203	ELECTRICITY & DWR CREDIT
008679	10/16/03	RIC01	RICHARDS, WATSON, GERSHON	6559.98	.00	6559.98	100103	SM ADJUDICATION DEPOSITIO
008680	10/16/03	SAI01	SAIC	19215.02	.00	19215.02	399456	GROUNDWATER LITIGATION
008681	10/16/03	SLOC2	DIV OF ENVIRON HEALTH	441.00	.00	441.00	27330	LAB TESTS
008682	10/16/03	SOUR1	SOUTH COUNTY SANITARY	14.58	.00	14.58	440353	TRASH COLLECTION
008683	10/16/03	SFE01	SPECIAL DISTRICT RISK	50.00	.00	50.00	4136	LMUSD GENERAL LIABILITY I
008684	10/16/03	STAR2	STATE WORKERS' COMP FUND	1804.56	.00	1804.56	A31014	W/C INSURANCE DEPOSIT/SUR
008685	10/16/03	STA03	STATEWIDE SAFETY & SIGNS	25.31	.00	25.31	32836	BARRICADES, ETC.
008686	10/16/03	THE01	THE GAS COMPANY	6959.19	.00	6959.19	092903	SUNDALE WELL GAS 05008175
008687	10/16/03	THE02	THE TRIBUNE	495.00	.00	495.00	492191	AD FOR UTILITY WORKER
008688	10/16/03	TRO01	TROTTER, CLIFFORD	100.00	.00	100.00	101603	SPECIAL BD MEETING
008689	10/16/03	VAL01	VALLEY SEPTIC SERVICE	821.70	.00	821.70	1293	JETTING 51 SEWER LINES
008690	10/16/03	VIE01	VIERHEILIG, LARRY	100.00	.00	100.00	101603	SPECIAL BD MEETING
008691	10/16/03	WIN01	WINN, MICHAEL	100.00	.00	100.00	101603	SPECIAL BD MEETING
008692	10/16/03	WIR02	WIRSING, JUDY	100.00	.00	100.00	101603	SPECIAL BD MEETING
008693	10/16/03	XER01	XEROX CORPORATION	80.17	.00	80.17	982010279	COPIER MAINT