

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BB*  
DATE: NOVEMBER 23, 2007

**AGENDA ITEM**  
**E-5**  
**NOV. 28, 2007**

**CONSIDER TRACT 2611 VARIANCE APPLICATION**

**ITEM**

Consider Shapiro Tract 2611(South Frontage at Hill Mixed Use Project) Variance Application to Extend Intent-To-Serve Approval Term [APPROVE OR DENY APPLICATION].

**BACKGROUND**

Attached is a request from EDA on behalf of Ed Shapiro for your Honorable Board to extend the Nipomo Commons Tract 2611 ITS Letter term by four months from November 19, 2007 to March 19, 2008, pursuant to NCSD Code Section 1.04.030.

Your Honorable Board approved the issuance of an Intent-To-Serve letter to this project in November 2004 for an initial term of two years and staff, in 2006, extended the term of the Letter for one year. The project involves the subdivision of the underlying property into nine lots in two phases and construction of approximately 120,000 square feet of commercial, residential improvements, and approximately 20,000 square feet of open space.

According to EDA, development of the complex has been delayed by the discussions between the County and Caltrans regarding the alignment of South Frontage Road and the location of the southbound on-ramp onto US 101.

Attached is a draft resolution prepared by staff, should the Board wish to grant this application. Should your Honorable Board wish to deny the application, all that is needed is a motion. Should your Honorable Board deny the extension, the applicant would have standing to re-apply for a new Intent-To-Serve Letter but 100% of the multi-family allocation has been committed for this allocation year.

**RECOMMENDATION**

Staff recommends that your Honorable Board hear from the applicant and then the public. Following closure of public input, staff requests that your Honorable Board either adopt the attached resolution approving the extension or deny the application, by motion. As set forth in the draft resolution, staff does believe that there are unusual circumstances in this case that justify the requested time extension.

**ATTACHMENTS**

- 11/13/2007 Application Letter
- Draft Resolution prepared by staff

November 13, 2007

Nipomo Community Services District  
Bruce Buel, General Manager  
148 South Wilson Street  
Nipomo, CA 93444

Re: Nipomo Commons, Tract 2611  
County File No. SUB2004-00169  
**[eda Job #2-2989-000]**

Dear Mr. Buel,

In accordance with Nipomo Community Service District policies, the proponents of the above-referenced project would like to proceed with a Variance Request for the purpose of achieving a time extension to meet the identified "Intent to Serve" requirements, made necessary by circumstances out of their control.

Attached please find the following:

- Variance Request
- Fee Analysis
- Check #34575 in the amount of \$900.00
- Vesting Tentative Tract Map 2611

Please do not hesitate to contact me should something further be required.

Sincerely,



Paul Reichardt  
President

Attachments: As identified above

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SERVICES DISTRICT



# **Nipomo Commons (SUB2004-00169)**

## **Vesting Tentative Tract Map 2611**

### **Variance Request**

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#### **References:**

#### **Nipomo Community Service District Code**

#### **Title 3 - Water Service System**

#### **3.05.060 Application for intent-to-serve letters, will-serve letters and termination.**

The following procedures are in addition to other district rules and regulations relating to intent-to-serve letters and will-serve letters, and shall apply to all applications for intent-to-serve letters and will-serve letters approved by the district:

- A. Application shall be made on district's application for intent-to-serve letter or will-serve letter form. In order to be considered for an intent-to-serve letter or will-serve letter, applications shall contain a verification that applicant has submitted the proposed project for initial review to the county planning and building department.
- B. Intent-to-serve letters shall automatically terminate on the first to occur:
  - 1. Failure of the applicant to provide district with written verification that county application for the project has been deemed complete within two hundred forty calendar days of the date the intent-to-serve letter is issued; or
  - 2. Two Years. However, applicant shall be entitled to a one-year *extension* upon proof of reasonable due diligence in processing the project. (Ord. 2004-100 § 1 Exh. A (part), 2004).

#### **Chapter 1.04 – General Provision**

#### **1.04.030 Appeals.**

Variances may be granted only when, because of special circumstances applicable to the property including its size, shape, topography, location or surroundings, the strict application of the provisions referenced in subsection A of this section would create practical difficulties or unnecessary hardship.

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## **Project Description**

The Nipomo Commons development, Vesting Tentative Tract Map 2611, was accepted for processing by San Luis Obispo Planning and Building Department on April 5, 2005 and subsequently approved on September 8, 2005. The project is situated within the Commercial Retail Land Use category and is located at 170 South Frontage Road at the southwest corner of Hill Street and South Frontage Road. Sewer and water service are provided by the Nipomo Community Service District.

In accordance with District requirements, the applicant prepared and submitted a Will Serve Application, paid associated processing fees, entered into a Plan Check and Inspection Agreement, and proceeded through the Design Review process to achieve acceptance of the proposed improvement plans. It is our understanding that the District is now satisfied with the improvements plans as revised, and that upon payment of the associated fees will perfect the Will Serve and issue the Notice to Proceed.

This prime retail location is critically impacted by the ongoing discussions related to the Hill Street on ramp improvements. The applicant has provided representation at numerous public hearings, as well as meetings with various advisory agencies, to assist stakeholders in understanding the implications of the interchange design options. In addition, coordination with adjacent developments has necessitated additional engineering and coordination relative to access, utility and easement locations. This resulted in a significantly higher cost for design and longer time periods for administration than originally anticipated.

Subsequent to project approval, the District adopted supplemental water fees, as well as multiple fee increases. The end result was an overall fee increase of almost 5 times, or \$647,069 being applied to this project.

The magnitude of these changes was only conveyed to the project proponents on November 9, 2007, six days before these fees are due. Nipomo Commons understands the necessity of these fees, but will need additional time to secure the financing required to pay these significant and unanticipated costs, as they will be tied to construction activities.

While significant progress has been made, there remain critical components to be resolved in order to satisfy the conditions of the final map, which will also impact funding. The applicant has obtained County approval extending the Vesting Tentative Tract Map to September 8, 2008.

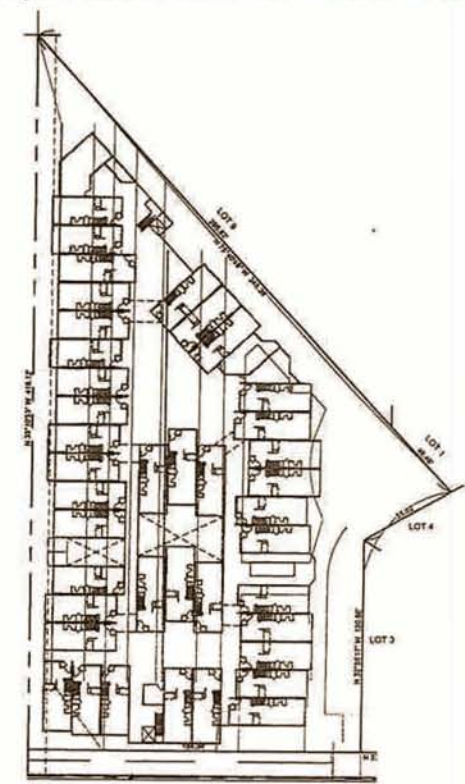
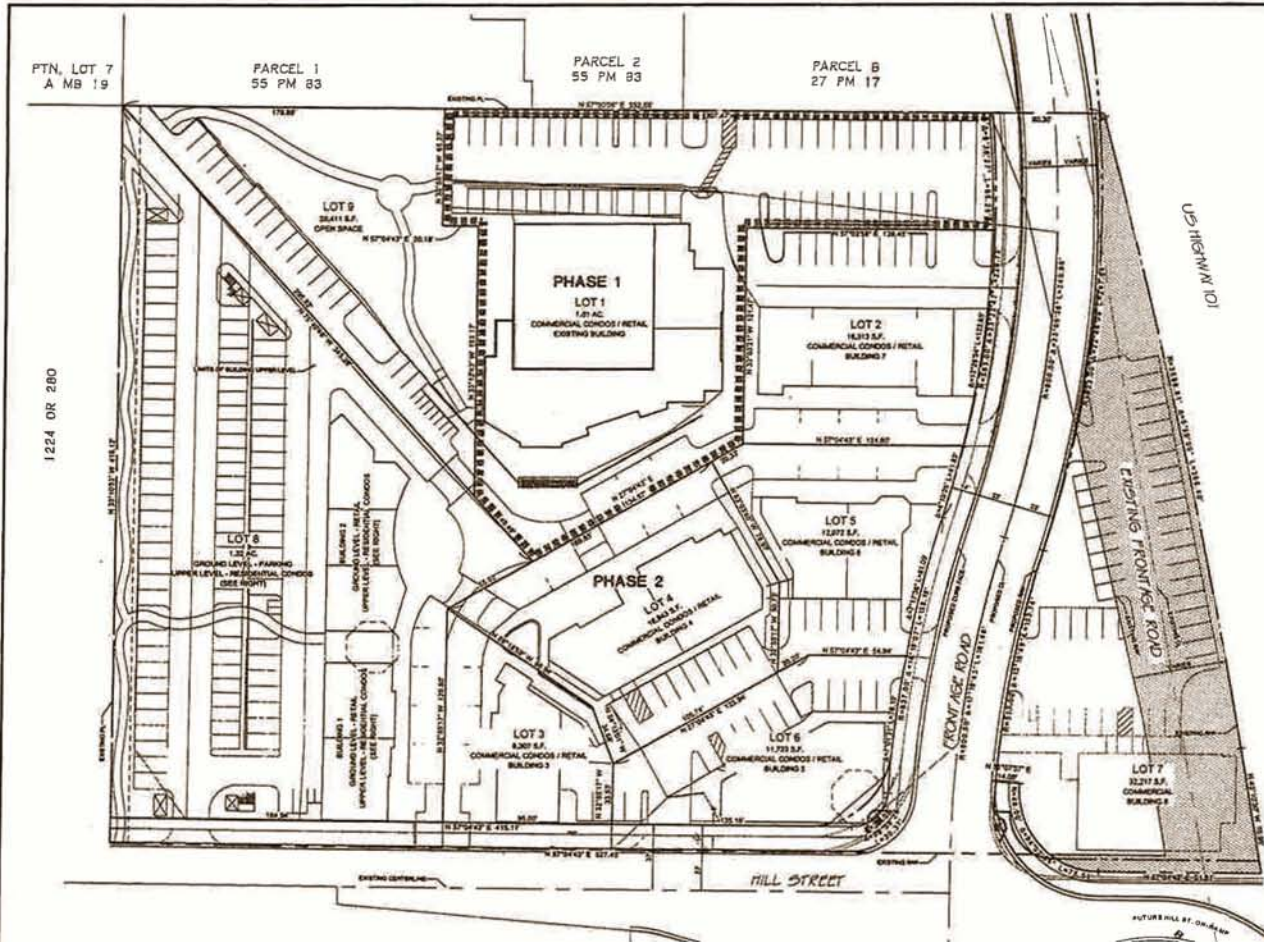
The Nipomo Community Services District Code allows the applicant a single one year extension, an option previously exercised. The applicant respectfully requests a variance to Title 3, Section 3.05.060, B(2) be granted, based upon special circumstances related to the Hill Street circulation and additional fees, which have made it impractical and a hardship to meet the entitlement and funding requirements within the time provided. An extension of not less than 120 days is also requested in order to satisfy these requirements.



**Nipomo Commons, Tract 2611**  
**Fee Analysis**

Description	Qty	Fee	7/1/2005 Total Prior to Supplemental	Fee	7/1/2007 Current Fees
1" Water	7	\$ 2,501.00	\$ 17,507.00	\$ 2,713.00	\$ 18,991.00
4" Water	1	\$ 37,519.00	\$ 37,519.00	\$ 40,694.00	\$ 40,694.00
1" Supplemental	7			\$ 12,062.00	\$ 84,434.00
4" Supplemental	1			\$ 180,973.00	\$ 180,973.00
1" Irrigation	8	\$ 2,501.00	\$ 20,008.00	\$ 2,713.00	\$ 21,704.00
1" Supplemental	8			\$ 12,062.00	\$ 96,496.00
6" Fire System	3	\$ 18,754.00	\$ 56,262.00	\$ 20,340.75	\$ 61,022.25
6" Supplemental	3			\$ 90,459.50	\$ 271,378.50
1" Sewer	7	\$ 3,977.00	\$ 27,839.00	\$ 4,314.00	\$ 30,198.00
4" Sewer	1	\$ 59,669.00	\$ 59,669.00	\$ 64,718.00	\$ 64,718.00
1" Meter	7	\$ 285.00	\$ 1,995.00	\$ 285.00	\$ 1,995.00
4" Meter	1	\$ 7,510.00	\$ 7,510.00	\$ 7,510.00	\$ 7,510.00
			\$ 228,309.00		\$ 880,113.75
<b>Credits</b>					
1.5" Water Capacity			\$ (7,479.00)	\$ (8,129.00)	\$ (8,129.00)
1.5" Supplemental Water			\$ (35,099.00)	\$ (38,151.00)	\$ (38,151.00)
1.5" Sewer Capacity			\$ (11,893.00)	\$ (12,927.00)	\$ (12,927.00)
			\$ (54,471.00)		\$ (59,207.00)
		<b>Total</b>	<b>\$ 173,838.00</b>	<b>Total</b>	<b>\$ 820,906.75</b>

<b>Variance</b>	<b>\$ 647,068.75</b>
<b>Increase</b>	<b>472%</b>



LOT 8 - BUILDING UPPER LEVEL DETAIL

VESTING TENTATIVE TRACT 2611  
 FOR  
**NIPOMO COMMONS**  
 RESIDENTIAL AND COMMERCIAL CONDOS / RETAIL / OFFICE SPACE  
 IN THE UNINCORPORATED TERRITORY OF THE  
 COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA  
 BEING A SUBDIVISION OF A PORTION OF LOT 10 OF THE DP OF THE RESUBDIVISION OF  
 THE WESTERLY PART OF LOT 25 OF AC, WARD'S SUBDIVISION OF THE NIPOMO  
 RANCHO, ACCORDING TO MAP RECORDED NOVEMBER 12, 1987 IN BOOK A OF MAPS AT  
 PAGE 19, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY

Prepared For:  
 Owner/Applicant:  
 Ed Sivalde  
 576 Chemo Way  
 Nipomo, CA 93444  
 Contact Person:  
 Robert Richmond  
 RZL Architects  
 (805) 541-6084

PREPARED BY:  
  
 eda  
 1945 San Luis Obispo St. Suite 100, Santa Barbara, CA 93101  
 PH: 805-964-0022 • FAX: 805-964-0023



**PROJECT DATA**

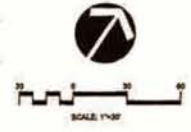
- |                           |   |
|---------------------------|---|
| 1. PROJECT ADDRESS:       | 170 SOUTH FRONTAGE ROAD<br>NIPOMO, CA 93444 |
| 2. PROJECT SIZE:          | 3.3 ACRES (GR055)                           |
| 3. ASSESSED LOT NO.:      | 081-00-023                                  |
| 4. ZONING:                | CA COMMERCIAL RETAIL                        |
| 5. COMMUNITY DESIGNATION: | NONE  |
| 6. AREA PLAN:             | SOUTH COUNTY                                |
| 7. WATER SUPPLY:          | NIPOMO COMMUNITY SERVICES DISTRICT          |
| 8. SEWERAGE (SEWERAGE):   | NIPOMO COMMUNITY SERVICES DISTRICT          |
| 9. GAS:                   | SOUTHERN CALIFORNIA GAS CO                  |
| 10. ELECTRICITY:          | PG&E  |
| 11. TELEPHONE:            | SRG COMMUNICATIONS                          |
| 12. FLOOD HAZARD:         | NONE  |

**LEGEND**

- |           |                            |
|-----------|----------------------------|
| ---       | BOUNDARY                   |
| - - - - - | PROPOSED INTERIOR LOT LINE |
| ---       | EXISTING RIGHT OF WAY      |
| ---       | AREA OF ROAD ABANDONMENT   |
| =====     | PHASE 1 BOUNDARY           |

**PHASE AND AREA DATA**

PHASE	LOT #	AREA	USE
PHASE 1	1	1.81 AC.	EXISTING - COMMERCIAL / RETAIL
	2	16,213 S.F.	COMMERCIAL CONDO / RETAIL / OFFICE
PHASE 2	3	8,302 S.F.	COMMERCIAL CONDO / RETAIL / OFFICE
	4	18,843 S.F.	COMMERCIAL CONDO / RETAIL / OFFICE
	5	12,523 S.F.	COMMERCIAL CONDO / RETAIL / OFFICE
	6	11,733 S.F.	COMMERCIAL CONDO / RETAIL / OFFICE
	7	32,217 S.F.	COMMERCIAL / RETAIL
	8	32,217 S.F.	RESIDENTIAL CONDO / RETAIL
	9	32,217 S.F.	OPEN SPACE





**RESOLUTION NO. 2007-xxxx**

**A RESOLUTION OF THE  
BOARD OF DIRECTORS OF THE  
NIPOMO COMMUNITY SERVICES DISTRICT  
EXTENDING THE TERM OF THE TRACT 2611 INTENT-TO-SERVE LETTER TO MARCH 19, 2008**

**WHEREAS**, Ed Shapiro has applied to extend the term of the Tract 2611 Intent-To-Serve Letter through March 19, 2008 pursuant to Section 1.04 of the District Code;

**WHEREAS**, development of Tract 2611 has been delayed by difficulties experienced by the County of San Luis Obispo in defining the alignment of South Frontage Road;

**WHEREAS**, the allocation fund for multi-family housing has been exhausted for AF07-08;

**WHEREAS**, the Board of Directors of the Nipomo Community Services District ("District") held a noticed public hearing on Wednesday November 28, 2007 to receive feedback on the proposed variance as required by Section 1.04 of the District Code, and

**WHEREAS**, the Board has conditioned approval of the variance with the requirement that no additional extensions of this Intent-To-Serve Letter will be granted; and

**WHEREAS**, The Board finds that:

- It is not practical for the applicant to re-apply for a new intent-to-serve letter since the allocation fund for multi-family housing has been exhausted for AF07-08; and
- Granting of this Variance will not tend to defeat the purpose of the time limit requirement because of the unusual circumstances that have delayed this project.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Nipomo Community Services District as follows:

1. The District hereby approves the requested variance with the following conditions:
  - A. This Intent-To-Serve Letter can not be extended beyond March 19, 2008.

**PASSED AND ADOPTED** by the Board of Directors of the Nipomo Community Services District this 28<sup>th</sup> day of November, 2008 on the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTEST:

APPROVED AS TO FORM:

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

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