

NIPOMO COMMUNITY SERVICES DISTRICT

MONDAY, JANUARY 26, 2009

1:00 P. M.

SPECIAL MEETING NOTICE & AGENDA **SUPPLEMENTAL WATER PROJECT DESIGN & CONSTRUCTION** **COMMITTEE**

COMMITTEE MEMBERS

ED EBY, CHAIR
CLIFFORD TROTTER, MEMBER

PRINCIPAL STAFF

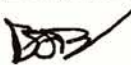
BRUCE BUEL, GENERAL MANAGER
LISA BOGNUDA, ASSIST. GENERAL MANAGER
DONNA JOHNSON, BOARD SECRETARY
JON SEITZ, GENERAL COUNSEL
PETER SEVCIK, DISTRICT ENGINEER

MEETING LOCATION

District Board Room
148 S. Wilson Street
Nipomo, California

1. **CALL TO ORDER, ROLL CALL AND FLAG SALUTE**
ACTION RECOMMENDED: None
2. **REVIEW STATUS OF SUPPLEMENTAL WATER DEVELOPMENT**
ACTION RECOMMENDED: Forward Recommendations to Board
3. **REVIEW DRAFT "HDD GEOPHYSICAL" TECHNICAL MEMORANDUM**
ACTION RECOMMENDED: Forward Recommendation to Board
4. **DISCUSS POLICY ISSUES RAISED BY WIP DEIR COMMENTS**
ACTION RECOMMENDED: Forward Recommendations to Board
5. **CONSIDER WALLACE GROUP PROPOSAL RE ASSESSMENT DATA**
ACTION RECOMMENDED: Forward Recommendations to Board
6. **SET NEXT COMMITTEE MEETING**
ACTION RECOMMENDED: Set Time/Date for Next Committee Meeting
7. **ADJOURN**

*** End Special Meeting Notice ***

TO: COMMITTEE MEMBERS
FROM: BRUCE BUEL 
DATE: JANUARY 23, 2009

AGENDA ITEM

2

JAN. 26, 2009

REVIEW SUPPLEMENTAL WATER DEVELOPMENT STATUS

ITEM

Review status of supplemental water development [Forward Recommendations to Board].

BACKGROUND – WATERLINE INTERTIE PROJECT

Mike Nunley from AECOM (Boyle Engineering) is scheduled to present his monthly update at the Committee Meeting (See 1/28 Agenda Packet for November & December Reports).

AECOM has submitted its draft of the “HDD Geophysical” Technical Memorandum for Committee Review (See agenda item 3 in this packet).

Nine comment submittals were received Staff submitted in regards to the Draft Waterline Intertie Project EIR (See Agenda Item 4 in this packet).

The Board on November 26, 2008 discussed the Assessment District Feasibility Study by Wallace Group and agreed in concept to use assessments to fund the capital cost of the project. The Board also indicated that it was not comfortable with the Basis of Assessment set forth in the Feasibility Study (See Agenda Item 5 in this packet).

Staff has initiated the appraisal process for purchase of easements and real property. Staff, District Legal Counsel and Special Counsel are negotiating with the City of Santa Maria to finalize the Water Purchase Agreement.

BACKGROUND – DESALINATION

Staff is monitoring the progress of the South County Sanitation District regarding their desalination project. SCSD has yet to set a meeting to discuss their preliminary results.

RECOMMENDATION

Staff recommends that the Committee receive the staff updates and provide feedback and recommendations to the Board regarding provision of project information to the Community.

ATTACHMENT- NONE

T:\BOARD MATTERS\BOARD MEETINGS\BOARD LETTER\2009\COMMITTEES\SWP\090126 MEETING\090126ITEM2.DOC

TO: COMMITTEE MEMBERS
FROM: BRUCE BUEL *BBB*
DATE: JAN. 23, 2009



REVIEW DRAFT "HDD GEOPHYSICAL" TECHNICAL MEMORANDUM
ITEM

Review Draft "HDD GEOPHYSICAL" Technical Memorandum [Forward Recommendations to Board].

BACKGROUND

Attached is a copy of AECOM's draft "HDD GEOPHYSICAL" Technical Memorandum.

RECOMMENDATION

Staff recommends that the Committee discuss the Technical Memorandum, provide feedback, and forward a copy to MNS Engineers (our Construction Manager) for review and feedback. A revised version of this TM will be incorporated into the 30% design report that will be reviewed by the Committee and the Board in early 2009.

ATTACHMENT –

- DRAFT TECHNICAL MEMORANDUM

T:\BOARD MATTERS\BOARD MEETINGS\BOARD LETTER\2009\COMMITTEES\SWP\090126 MEETING\090126ITEM3.DOC

AECOM

1194 Pacific Street, Suite #204, San Luis Obispo, CA 93401
 T 805.542.9840 F 805.542.9990 www.aecom.com

Memorandum

Date: January 22, 2009
To: Peter Sevcik, PE, Nipomo CSD
From: Cesar Romero, PE
 Mike Nunley, PE
Subject: **DRAFT**
 Technical Memorandum 1 – Geotechnical Report for HDD

Background

The Waterline Intertie Project Preliminary Engineering Memorandum (Boyle, May 2008), recommended construction of a 24-inch nominal diameter Santa Maria River crossing via horizontal directional drilling (HDD) along the Western Alignment No. 1. The 2008 Memorandum also recommended that a site-specific evaluation of soils and soil suitability be performed to further investigate subsurface conditions and to evaluate HDD geotechnical considerations including potential to encounter adverse conditions during drilling operations.

This Technical Memorandum summarizes the site specific evaluation performed by Fugro West, Inc., and presented in the document "DRAFT Geotechnical Report, Nipomo – Santa Maria Intertie, Blosser Road to Tefft Street (January 2009)". This Memorandum focuses on the following topics:

- (1) Geotechnical evaluation performed along the proposed 2800-lf HDD River Crossing;
- (2) Evaluation of subsurface conditions and HDD design considerations; and
- (3) Direction for the HDD River Crossing

Geotechnical Evaluation along the proposed HDD River Crossing:

Fugro's scope of services for the HDD portion of the alignment included field exploration, laboratory testing of select samples, review of previous studies, geotechnical analysis of data, and preparation of HDD geotechnical opinions and recommendations to be included in the project-specific geotechnical report. Field exploration along the HDD alignment included three (3) hollow stem auger borings, one (1) mud rotary boring, and five (5) cone penetration test (CPT) soundings as summarized in Table 1 below and as depicted graphically on Plates 2d and 2e of the 2009 Fugro report:

Table 1. Summary of Field Exploration for HDD River Crossing.

| Boring/CPT ID | Location | Type | Completion Depth (ft) |
|---------------|----------------------|--------------------------------|-----------------------|
| B-6 | South end near levee | Hollow stem auger boring | 41 |
| C-14 | -- | Cone penetration testing (CPT) | 100.5 |

| Boring/CPT ID | Location | Type | Completion Depth (ft) |
|---------------|---|--------------------------|-----------------------|
| B-7 | Active Santa Maria River Channel | Mud rotary boring | 115.5 |
| C-12 | -- | CPT | 98.0 |
| C-13 | Active Santa Maria River Channel, Base of bluff | CPT | 94.2 |
| C-7 | Edge of bluff | CPT | 80.7 |
| B-501 | -- | Hollow stem auger boring | 26.0 |
| C-6 | North end at mesa | CPT | 56.2 |
| B-502 | -- | Hollow stem auger boring | 26.0 |

Fugro performed laboratory tests on select soil samples retrieved from the borings including tests for moisture content and unit weight, grain size analysis, Atterburg limits, direct shear, and sand equivalent. Laboratory test results are summarized on Plate B-1a of the 2009 Fugro Report. Fugro's CPT tests were performed using an electric cone penetrometer. CPT data provided a near-continuous profile of the soil conditions encountered at each CPT location. The CPT logs are presented in Plates C-1 thru C-15.

Evaluation of Subsurface Soil Conditions and Design Considerations for HDD:

The field exploration and laboratory testing program provided data that was used to evaluate geotechnical considerations for the HDD installation below the Santa Maria River including: variable subsurface geologic conditions that may affect HDD alignment, groundwater conditions, permeable soil layers that may result in fluid losses, borehole stability at HDD entry and exit locations, and the need for a prototype HDD program in advance of construction. Fugro also provided opinions regarding geologic hazards such as faults and the potential for liquefaction along the alignment.

The anticipated subsurface conditions along the HDD alignment are depicted graphically on the Boring Location Plan and Subsurface Profile Plates 2d and 2e. These Plates include data for each exploratory boring and CPT performed along the river crossing.

The following conclusions regarding the HDD river crossing are based on the Draft Geotechnical Report:

- C1. The presence of seismic faults does not pose a significant fault rupture hazard to the pipeline project.
- C2. There is a low potential for liquefaction to impact the pipe along the proposed river crossing.
- C3. The potential exists for caving ground near the HDD entrance and exit locations.
- C4. Groundwater was encountered at a depth of approximately 38 feet below the existing ground surface at the Santa Maria River Bed explorations. The groundwater conditions along the HDD alignment are likely to fluctuate seasonally.
- C5. The HDD alignment transitions from Older Alluvium "OA" into Paso Robles Formation (QTp) near the vicinity of Boring B-7 and CPT C-12 (see Plate 2d) resulting in a potential tendency for the alignment to deflect at the QTp contact.

- C6. HDD pipe installation at the Santa Maria River crossing will likely be relatively difficult as a result of variable subsurface conditions encountered. These conditions may include: shallow groundwater, wet soil conditions, coarse sand and gravel layers, cobbles, possible boulders, and firm to hard silt and clay layers.

The following recommendations regarding the HDD river crossing are based on the Draft Geotechnical Report. The following recommendations will be addressed during the detailed design phase and in the HDD Performance Technical Specification where appropriate.

- R1. The design of the pipeline should consider the potential for the site to be subject to strong ground motion in response to nearby or regional earthquakes.
- R2. Surface casings are likely needed to maintain HDD alignment, support boreholes, and to prevent ground caving near entry/exit locations.
- R3. Shallow clearances and drilling pressures should be considered to prevent blowout during HDD operations.
- R4. Variable groundwater conditions and the potential to encounter perched groundwater when drilling through the base of dune sand deposits below the Nipomo Mesa (just beyond the bluff) should be considered.
- R5. Reconditioning of drilling fluid may be needed to address changing ground and groundwater conditions.
- R6. The HDD heading, alignment, and drilling fluids should be monitored during the HDD installation. Adjustment of HDD heading may be needed to maintain alignment.
- R7. The pipe profile should be designed to at least 10 degrees from horizontal when advancing the pipe into rock.
- R8. In order to mitigate the potential for lost circulation of drilling mud when drilling through coarse and permeable soils, pre-grouting or cementing of the formation in advance of drilling may be beneficial although costly.

Plate 8 – Geotechnical Considerations for HDD Crossing, graphically summarizes pertinent conclusions and recommendations where relevant along the HDD alignment.

Direction for River Crossing:

HDD is inherently difficult and unforeseen conditions may arise in the field during construction. As a result HDD and underground construction, in general, carry many risks which can impact the success of the project. The risks typically include impacts to schedule, cost, environment, system operations, and safety. An HDD Contingency Plan (or HDD Risk Registry) can be used to track, manage, and mitigate project specific risks.

The Draft Geotechnical Report did not identify any "fatal flaws" with the proposed HDD river crossing, however, mitigation measures were identified as summarized above in the recommendations.

HDD pipe installation at the Santa Maria River crossing will likely be relatively difficult as a result of variable subsurface conditions encountered. As discussed above, there are multiple geotechnical considerations to be evaluated and/or mitigated during the design and construction of the HDD Santa Maria River crossing. As a mitigation approach, AECOM recommends that an HDD Contingency Plan be implemented as part of the drilling program to systematically identify and mitigate known risks to

the HDD installation. In addition, surface casings will be included in the design documents to mitigate the potential for ground caving near HDD entry/exit locations per recommendation no. R2.

In accordance with Task 303 – Geotechnical Baseline Report (GBR), a GBR will be prepared by Jacobs Associates to identify the geotechnical baseline anticipated during the HDD. The Geotechnical Report prepared by Fugro West, Inc., will be the basis for the GBR. The purpose of the GBR will be to establish a contractual basis for the anticipated ground conditions and ground responses during the HDD installation. This document will: 1) facilitate resolution of potential disputes regarding underground conditions and 2) provide clear indications of the risks associated with actual ground conditions and ground response. Changes from the baselines will be handled in accordance with provisions stated in the Contract Documents. The GBR will be included with the Contract Documents.

In accordance with Task 201 – Permit Applications of the authorized Scope of Work, an HDD Frac-Out Monitoring, Response, and Clean-Up Plan will also be prepared and included with the Contract Documents.

Yours Sincerely,

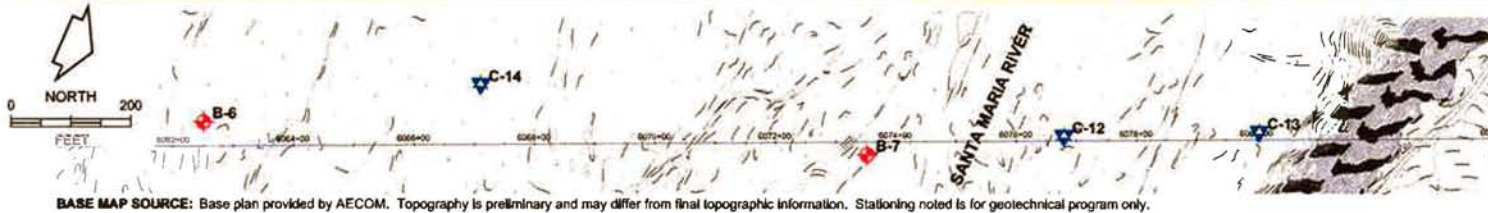
Cesar Romero, PE

Attachments:

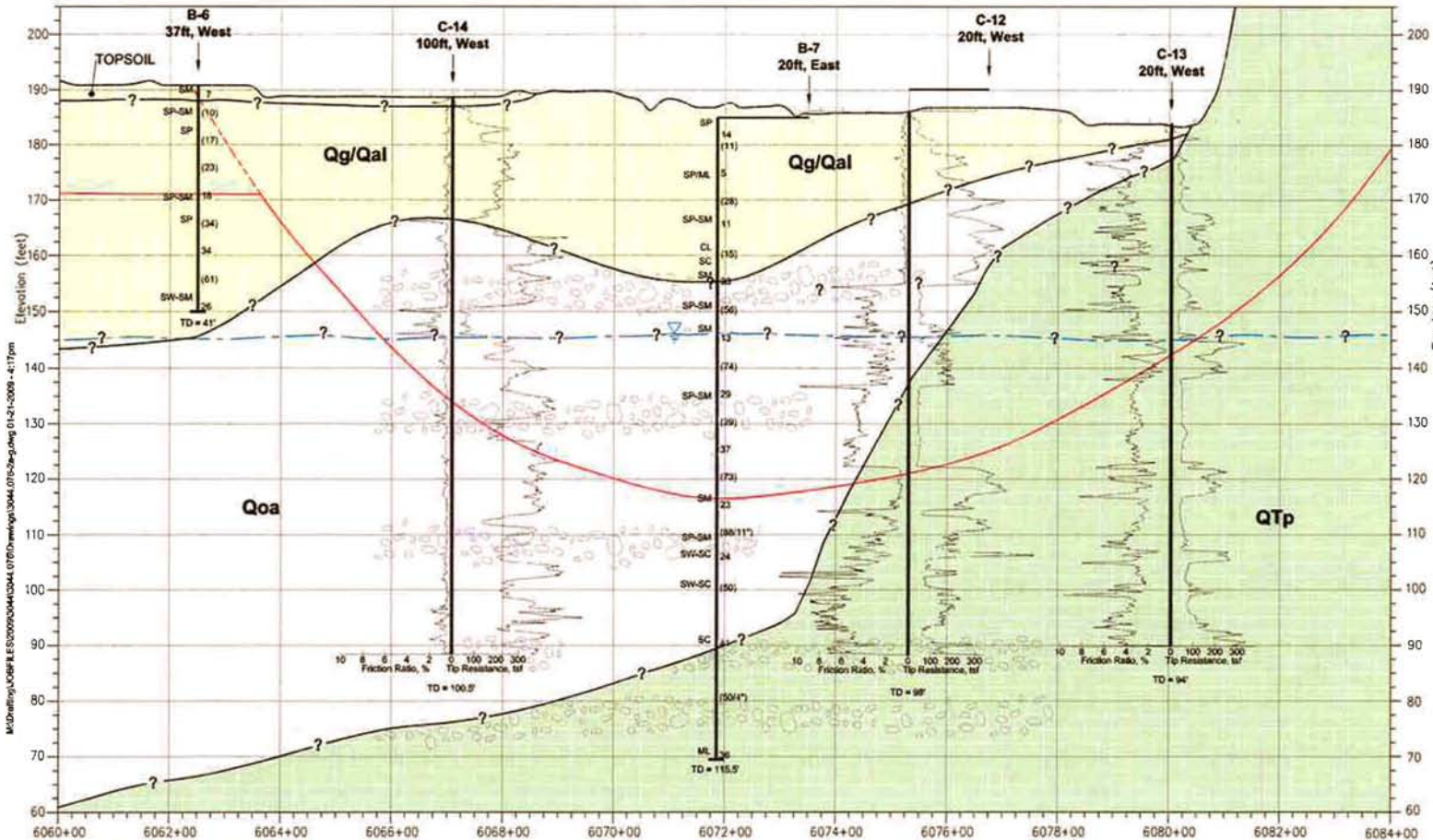
Plate 2d - Boring Location Plan and Subsurface Profile (Fugro West, Inc.)

Plate 2e - Boring Location Plan and Subsurface Profile (Fugro West, Inc.)

Plate 8 - Geotechnical Considerations for HDD Crossing (Fugro West, Inc.)

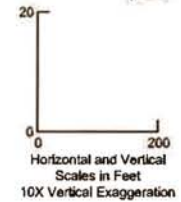


BASE MAP SOURCE: Base plan provided by AECOM. Topography is preliminary and may differ from final topographic information. Stationing noted is for geotechnical program only.

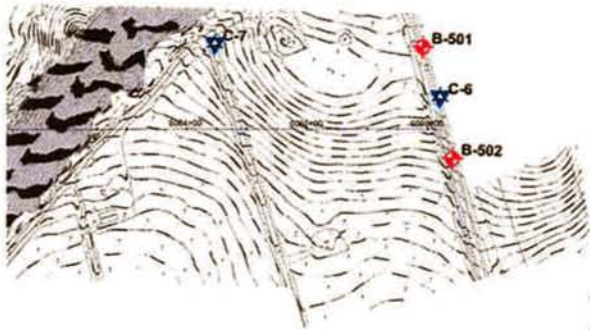
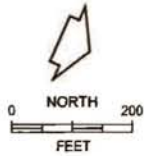


LEGEND

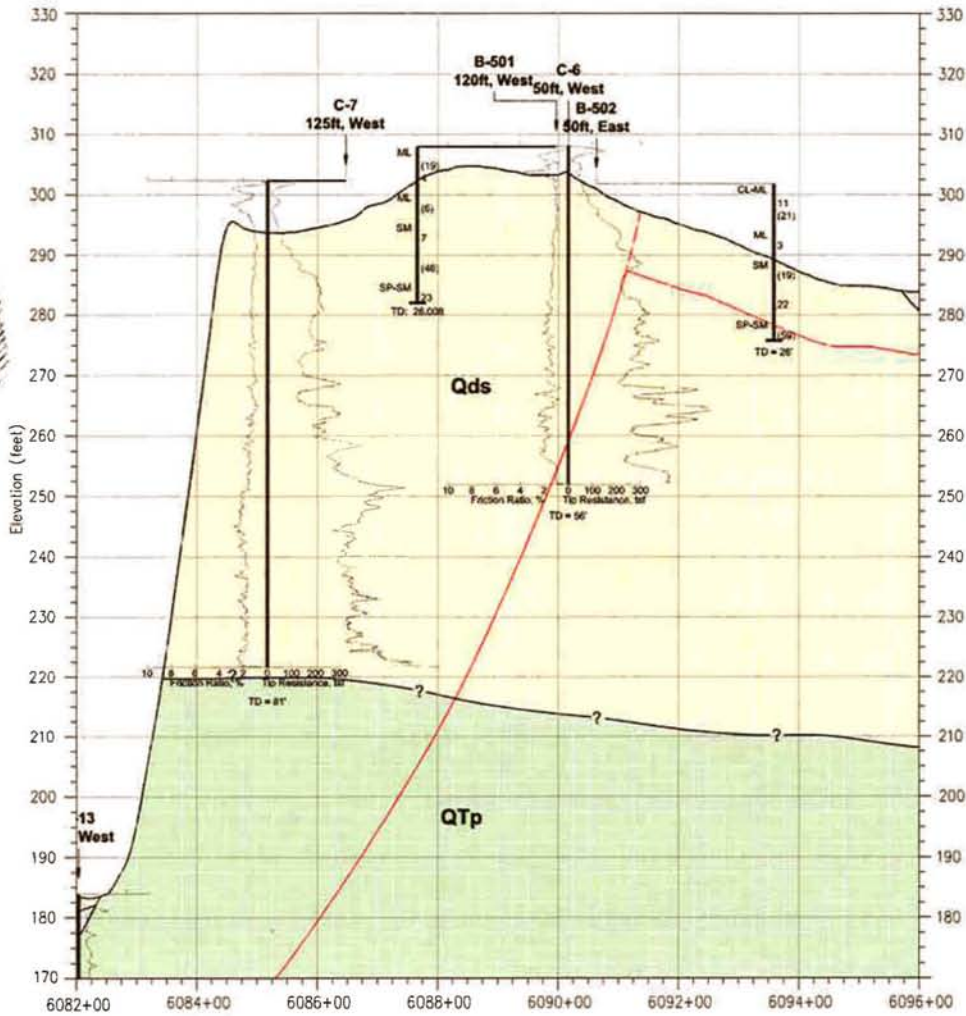
- af Artificial fill
- Qg/Qal Alluvium - channel deposits
- Qds Sand dune deposits
- Qoa Older Alluvium
- QTp Paso Robles Formation
- Approximate location of pipeline alignment
- ◆ B-7 Approximate Fugro boring location
- ▼ C-14 Approximate Fugro CPT location
- Boring stick diagram
- (7) Blows per foot (Modified California Sampler)
- 34 Blows per foot (SPT Sampler)
- TD = 41' Total Depth of exploration
- Offset to actual test location
- Groundwater level
- Approximate HDD alignment (Jacobs Associates, 2006)
- Likely gravel, cobbles, and occasional boulders



**BORING LOCATION PLAN AND
SUBSURFACE PROFILE
Nipomo - Santa Maria Intertie
Nipomo, California**

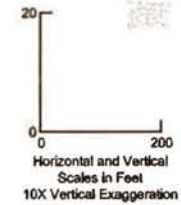


BASE MAP SOURCE: Base plan provided by AECOM. Topography is preliminary and may differ from final topographic information. Stationing noted is for geotechnical program only.

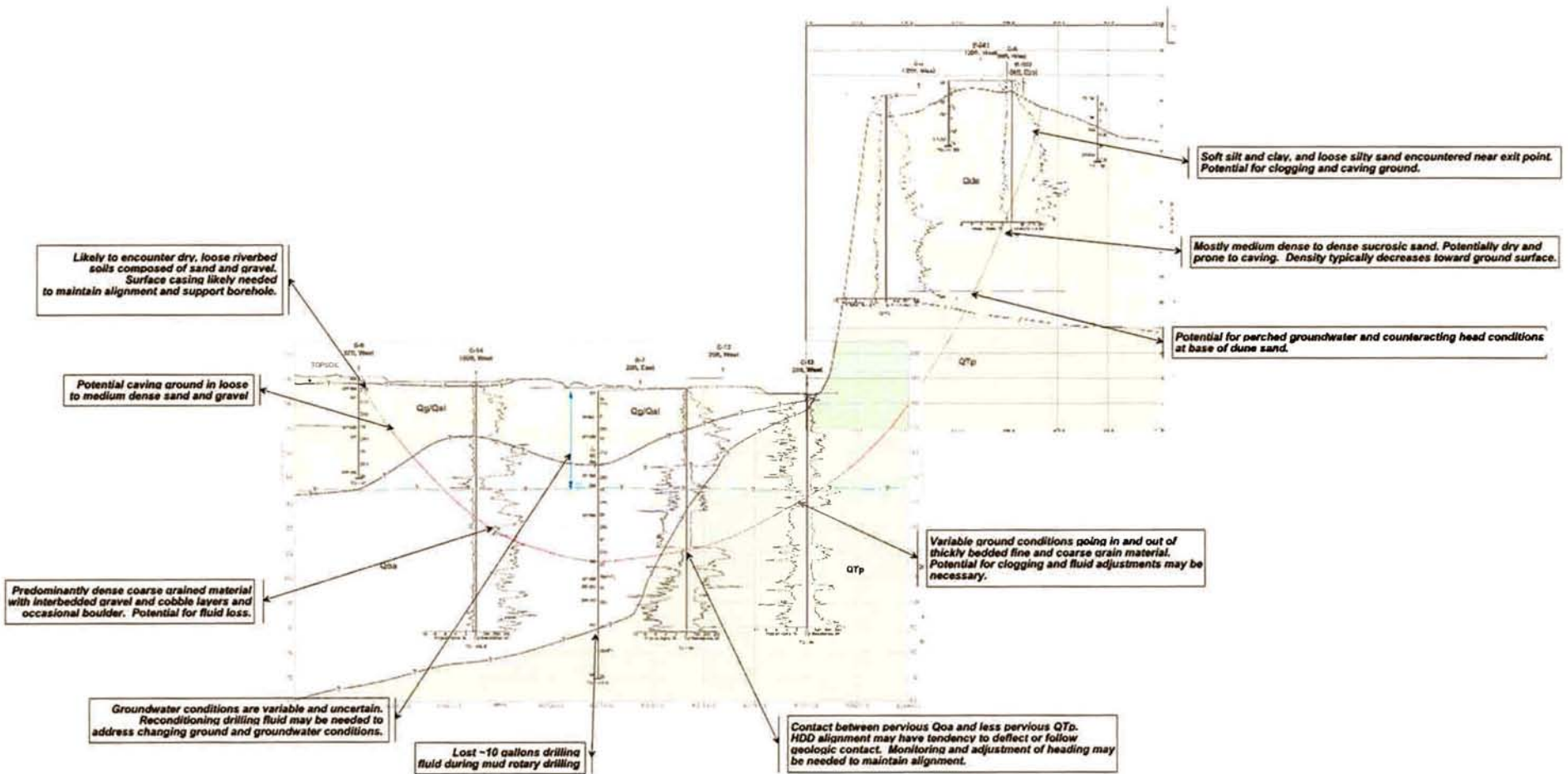


LEGEND

- Artificial fill
- Alluvium - channel deposits
- Sand dune deposits
- Older Alluvium
- Paso Robles Formation
- Approximate location of pipeline alignment
- B-502** Approximate Fugro boring location
- C-7** Approximate Fugro CPT location
- B-502** Boring stick diagram
 - (7) Blows per foot (Modified California Sampler)
 - 34 Blows per foot (SPT Sampler)
 - TD = 41' Total Depth of exploration
- Offset to actual test location
- Groundwater level
- Approximate HDD alignment (Jacobs Associates, 2006)
- Likely gravel, cobbles, and occasional boulders



**BORING LOCATION PLAN AND
SUBSURFACE PROFILE
Nipomo - Santa Maria Interlie
Nipomo, California**



TYPICAL PROFILE VIEW of HDD CROSSING LOOKING WEST

Approximate Scale: 1 in. = 40 ft. vertical
1 in. = 400 ft. horizontal
(see profile and legend on Plates 2c and 2d)

**GEOTECHNICAL CONSIDERATIONS
FOR HDD CROSSING**
Nipomo-Santa Maria Intertie
Santa Maria, California

TO: COMMITTEE MEMBERS
FROM: BRUCE BUEL *BBB*
DATE: JAN. 23, 2009

AGENDA ITEM
4
JAN. 26, 2009

DISCUSS POLICY ISSUES RAISED BY WIP DEIR COMMENTS

ITEM

Discuss policy issues raised by WIP DEIR comments [Forward Recommendations to Board].

BACKGROUND

Attached is a copy of the comment letters from LAFCO and SLO County Agricultural Dept. There are seven additional comment submittals, but the issues raised in those submittals are either technical or legal.

RECOMMENDATION

In regards to the LAFCO Letter, staff agrees that the Board should revise the Objectives to clarify that none of the initial 3,000 acre feet will be available to properties outside NCSD's current boundaries.

In regards to the Ad Dept letter, staff does not believe that it is practical to relocate the transmission line, but several of the requested mitigations could be incorporated into the design. Staff and AECOM will provide recommendations on each of the proposed mitigations at the Committee Meeting.

Staff is prepared to discuss the other seven letters should the Committee wish to do so.

ATTACHMENT –

- COMMENT LETTER FROM LAFCO
- COMMENT LETTER FROM AG DEPT.

T:\BOARD MATTERS\BOARD MEETINGS\BOARD LETTER\2009\COMMITTEES\SWP\090126 MEETING\090126\ITEM4.DOC

NOTE: PLEASE BRING YOUR DRAFT EIR TO THE MEETING



COUNTY OF SAN LUIS OBISPO

Department of Agriculture/Measurement Standards

2156 SIERRA WAY, SUITE A • SAN LUIS OBISPO, CALIFORNIA 93401-4556

ROBERT F. LILLEY

AGRICULTURAL COMMISSIONER/SEALER

(805) 781-5910

FAX (805) 781-1035

AgCommSLO@co.slo.ca.us

DATE: January 9, 2009

TO: Nipomo Community Services District

FROM: Michael Isensee, San Luis Obispo County Agriculture Department

SUBJECT: NCSD Waterline Intertie Draft EIR

The County Agriculture Department thanks you for the opportunity to review and comment on the Draft Environmental Impact Report (DEIR) for the proposed installation of new water infrastructure to deliver water from the City of Santa Maria to the Nipomo Community Services District (NCSD). The project as proposed would deliver up to an additional 6,200 acre feet of water annually. The initial 2,500 acre feet would offset existing groundwater production and the remainder is intended to serve future development within and beyond the NCSD's boundaries.

The Agriculture Department agrees that the project as proposed has significant impacts, including potentially significant impacts to agricultural resources and operations. The growth inducing, long-term and cumulative impacts are adequately noted in the DEIR, although no discussion regarding potential mitigation is included. There is also no discussion or identification of mitigation measures for either the permanent conversion of agricultural soils to nonagricultural uses or the temporary construction related impacts associated with the proposal. The DEIR does not quantify the impacted agricultural resources and does not include adequate discussion about or proposed mitigation measures to address potentially significant impacts identified during the initial study.

The Agriculture Department recommends inclusion of measures to:

- Avoid or minimize the use of prime farmland for staging, storage, or permanent infrastructure associated with the project.
- Avoid or minimize temporary construction-related impacts to farmland and farm operators.
- Coordinate construction schedules to avoid or minimize impacts to growers.
- Compensate growers for any losses due to temporary construction-related impacts.

Details on these measures are included in the enclosed report.

These comments and recommendations are based on policies in the San Luis Obispo County Agriculture and Open Space Element, the Land Use Ordinance, the California Environmental Quality Act (CEQA), and on current departmental policy to conserve agricultural resources and to provide for public health, safety and welfare while mitigating negative impacts of development to agriculture. If I can be of further assistance, please contact me at 781-5753.

Project Review

There is not adequate information presented in the DEIR to determine the quantity of farmland that is being permanently or temporarily impacted. There is also no description of the prime farmland soils potentially impacted by these project components in the DEIR.

Permanent farmland impacts

Permanent impacts within San Luis Obispo County appear to be associated with locating a 500,000 gallon buried water tank, a pump station (Pump Station No. 2), and a pressure reducing valve station (Maria Vista PRV station) on prime farmland.

Temporary farmland impacts

Temporary impacts appear to include an open trench through farm field and prime farmland soils, the northern HDD laydown area plus any necessary access roads or equipment storage areas. The DEIR includes no proposed mitigation measures to avoid, minimize or reduce either permanent or temporary construction impacts to agricultural resources, although such impacts were identified in the initial study as potentially significant unless mitigated (Initial Study, page V-2 and V-3).

County policy conflicts

The DEIR incorrectly states that the proposed project “would not directly conflict with any...[adopted] policies” (DEIR, page V-10). The County has specific policies relating to locating improvements on farmland:

Agriculture Policy 18, *Location of Improvements* specifies that new facilities are to be located so as to protect agricultural land, should not bisect farm fields, and should utilize the minimum amount of farmland possible. This means, to the degree feasible, such facilities should be located off of lands in agricultural production and especially off of prime farmland.

Agriculture Policy 24, *Conversion of Agricultural Land*, states: “avoid locating new public facilities outside urban and village reserve lines unless they serve a rural function or there is no feasible location within the urban or village reserve lines.” The proposed project locates pump stations and tanks in a rural area although these facilities are for urban uses. There does not appear to be any discuss in the Alternatives section whether the permanent project facilities proposed on prime farmland could instead be located within the Nipomo urban reserve line or served by the NCSD.

Significant land use impacts

The Agriculture Department agrees with the conclusion that there will be cumulative and growth inducing impacts associated with the proposed project, especially any project components which are proposed to provide in excess of the 2,500 AFY intended for groundwater offsets. Each additional increment of water will enable continued growth and development in and around Nipomo, including the conversion of prime farmland, farmland of statewide importance, and the potential conversion of existing agricultural operations. Increased urban and rural population growth in proximity to agricultural operations generally leads to increased incompatibilities between agricultural and non-agricultural uses.

Recommended Mitigation

The Agriculture Department recommends measures to mitigate impacts to agricultural resources and operations.

Permanent farmland impacts

The preferred mitigation would be to avoid the placement of the proposed pipeline and associated infrastructure on prime farmland utilized to produce high value crops.

1. Locate the proposed pipeline to avoid impacts to prime farmland soils used for agricultural production of high value crops.
 - 1.1. Place the pipeline in a route that avoids the farm fields south and southwest of Orchard Street and Joshua Street.
 - 1.2. Evaluate the potential for HDD under farm fields to avoid disturbance of prime farmland and agricultural operations.
2. Avoid the placement of any permanent facilities on prime farmland or other lands utilized for agricultural production.
3. Avoid permanent acquisition of rights of way to the extent feasible, instead using access and pipeline easements which allow for continued agricultural production on the south mesa's prime farmland soils.

Temporary farmland impacts

Avoiding the location of the pipeline in an area of prime farmland utilized for high value crop production would largely avoid temporary impacts to farmland and farm operators. If the pipeline location cannot feasibly be moved to the east, the following measures will reduce impacts to farmland and farm operators:

4. Minimize temporary construction impacts to the degree feasible by storing construction materials and staging construction activities off soils mapped as prime farmland by the Natural Resources Conservation Service (NRCS).
5. For any construction staging or storage proposed on prime farmland, avoid permanent impacts to these soil resources with the following mitigation measures:
 - 5.1. Utilize a geotextile membrane atop the native soils prior to the placement of any stockpile, fill, base materials, or construction materials in areas where construction equipment will be utilized or stored, including the HDD laydown area and during the stockpiling of soils associated with open trench pipeline construction. The use of durable, geotextile matting as an underlayment will prevent rock and stone or construction materials from becoming embedded in the native soils. All fill material should be removed upon completion of the project and the native soil should be restored to its previous soil texture, available water holding capacity, and soil permeability.
 - 5.2. Place pipelines at an adequate depth to ensure the ability of both current agricultural practices and future potential practices. Generally, a pipeline depth of 60-72 inches

should be adequate to accommodate agricultural practices, although greater depth may be necessary to minimize impacts to future irrigation infrastructure improvements.

- 5.3. Stockpile all excavated soils during construction in a method that protects the soils' physical, chemical and biological characteristics. Segregate biologically active topsoil (A horizon) from deeper soils during construction and replace the soil horizons upon completion.
 - 5.4. At the conclusion of construction, replace soils in a manner that mimics the pre-construction characteristics of the soils, including compacting soils to the same soil's natural bulk density (soil permeability), soil texture, and available water holding capacity.
6. Coordinate construction with property owners and any farm lessee/operators in order to avoid or minimize impacts to the agricultural utilization of the property.
 - 6.1. Coordinate with growers and/or property owners to locate all irrigation systems in order to avoid damaging buried irrigation lines, wells, risers and other agricultural irrigation infrastructure.
 - 6.2. Include early notice of planned closures and/or detours to area agricultural producers so adequate planning can be made for the movement of agricultural goods and personnel.
 - 6.3. Provide timely and updated information to agricultural users of impacted roads, with regular updates about forthcoming closures or detours.
 7. Prior to commencement of construction, landowner(s) should be compensated for any temporary loss of areas typically utilized for agricultural production.

LAFCO • The Local Agency Formation Commission
Serving the Area of San Luis Obispo County



RECEIVED

JAN 12 2009

NIPOMO COMMUNITY
SERVICES DISTRICT

January 9, 2009

Mr. Bruce Buel
Nipomo Community Services District
148 South Wilson Street
Nipomo, CA 93444

Subject: Draft Environmental Impact Report NCSD Waterline Intertie

Dear Mr. Buel:

Thank you for the opportunity to comment on the Draft Environmental Impact Report being prepared by the Nipomo Community Services District for the Waterline Intertie with the City Santa Maria. LAFCO may use the Final EIR to assist in evaluating future LAFCO actions that may be considered in the area. We offer the following comments regarding the Draft EIR:

1. The Draft EIR appears to provide a comprehensive analysis of all of the issues regarding the waterline intertie project. The District and their Consultant Team are to be commended for having completed such a thorough and well researched document.
2. On page III-2 the EIR discusses LAFCOs Sphere of Influence Update in 2004, the associated Program EIR and the mitigation measures that were implemented as conditions of approval. It should be noted that these were conditions of approval placed on the NCSD's Sphere of Influence using the Program EIR. The conditions are attached for reference.
3. On page III-6, Project Objective #7 should be clarified with regard to when compliance with LAFCO conditions will occur. The existing wording appears to indicate that the supplemental water for annexations will not be available until Phase III of the project is complete. This should be clearly stated in objective 7 since in the EIR it appears that Phases I and II of the project are intended to serve areas already within the NCSD.

1042 Pacific Street, Suite A • San Luis Obispo, California 93401
Tel: 805.781.5795 Fax: 805.788.2072
www.slolafco.com

COMMISSIONERS

RICHARD ROBERTS
CHAIR, Public Member

DAVID BROOKS
Vice-Chair,
Special District Member

K.H. ACHADJIAN
County Member

BRUCE GIBSON
County Member

BARBARA MANN
Special District Member

Duane Picanco
City Member

ALLEN SETTLE
City Member

ALTERNATES

ED EBY
Special District Member

TOM MURRAY
Public Member

VACANT
City Member

JAMES R. PATTERSON
County Member

STAFF

PAUL L. HOOD
Executive Officer

RAYMOND A. BIERING
Legal Counsel

DAVID CHURCH
Deputy Executive Officer

DONNA J. BLOYD
Commission Clerk

4. On page V-9, the EIR states that LAFCO has authority over Land Use matters in the area. LAFCO is specifically precluded by the Cortese/Knox/Hertzberg Act from making any decisions with regard to land use.

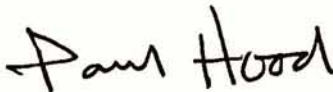
56375(3) A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements. When the development purposes are not made known to the annexing city, the annexation shall be reviewed on the basis of the adopted plans and policies of the annexing city or county. A commission shall require, as a condition to annexation, that a city prezone the territory to be annexed or present evidence satisfactory to the commission that the existing development entitlements on the territory are vested or are already at buildout, and are consistent with the city's general plan. However, the commission shall not specify how, or in what manner, the territory shall be zoned. The decision of the commission with regard to a proposal to annex territory to a city shall be based upon the general plan and zoning of the city.

LAFCO does consider land use information as a factor in its decision making process, however; the decisions made by LAFCO are regarding the boundaries of a jurisdiction. The Cities and County General Plans are used as one factor to be considered in the annexation process.

5. On page VII-2, objective 7., comment number 3 above should be considered.
6. On page VII-7, the last sentence reference LAFCO requirements with regard to the service area and Sphere of Influence. If the requirements being referenced are the conditions of approval, these apply to areas within the Sphere of Influence and proposed for annexation, not areas already within the Service Area. Properties within the service area are subject to decisions and policies made by the NCSA with regard to water service.

Thank you for the opportunity to comment on the Draft EIR. If you have any questions regarding our comments please contact David Church at 781-5795.

Sincerely,



PAUL HOOD
LAFCO Executive Officer

cc. LAFCO Commissioners
Doug Wood, Douglas Wood and Associates

**NIPOMO COMMUNITY SERVICES DISTRICT
CONDITIONS OF APPROVAL**
Sphere of Influence Update and Municipal Service Review
May 20, 2004

LAND USE

1. Prior to providing services to an area or property in the District's Sphere of Influence one or more of the following processes shall be completed:
 - a. Approval by the County of San Luis Obispo of Tract or Parcel Map, Conditional Use Permit, Specific Plan, and/or General Plan Amendment, or
 - b. Approval by LAFCO of an Outside User Agreement or an Annexation.

These processes shall be subject to the environmental review process consistent with the California Environmental Quality Act (CEQA). Any conflicts between the Sphere of Influence and the General Plan shall be resolved through these processes stated above. Impacts associated with premature or "leapfrog" development, development outside the Urban Reserve Line, potential growth-inducing impacts, and the availability of public services shall also be addressed and mitigated to the greatest possible degree through these discretionary approval processes.

2. The proposed Sphere of Influence shall be reduced from the eight Study Areas to exclude all of Study Area #6.

A map identifying the Sphere of Influence is found in the Exhibit A of this resolution.

3. The District shall not provide sewer services to Study Areas #4 (except for the Southland Specific Plan Area and areas zoned Residential Suburban), #5 (Residential Suburban zoning only), #7, and #8. This condition shall be applied by LAFCO to any annexations proposed in those Study Areas as shown in the map found in Exhibit A of this resolution and by the District through any annexation agreements they approve.

WATER

4. Except as provided below, prior to LAFCO approval of any annexation, the District shall:
 - A. Implement a water conservation program that decreases water use by 15% based on per connection water consumption. Annexations shall only be approved if the District provides documentation that certifies a 15% decrease in water use has occurred since the approval date of the Sphere of Influence. Conservation measures shall be implemented at the District's discretion.
 - B. Complete or update the Urban Water Management Plan to reflect the need to provide water service in the amount of 1,000 acre-feet for the expanded Sphere of Influence. The Urban Water Management Plan prepared or updated by the District shall be prepared consistent with the State of California's Urban Water Management Plan Act. A Registered Professional Engineer specializing in water resource planning shall certify that the Plan is consistent with the State's Urban Water Management Plan Act. The Registered Professional Engineer shall be selected from a list of qualified professionals provided by LAFCO.
5. Prior to approval by LAFCO of any annexation, the District shall complete negotiations for a supplemental water source outside the Nipomo Hydrologic Sub-Area and provide documentation that an agreement is in place to deliver such water by January 1, 2009. Documentation shall be consistent with Section 5, Step Two, Documenting Supply, of the SB 610 Guidebook dated October 8, 2003. A Registered Professional Engineer specializing in water planning shall review and certify such documentation. The Registered Professional Engineer shall be selected from a list of qualified professionals provided by LAFCO.
6. Prior to final approval of any annexation that is a "project", as defined under the Water Code 10912, the District shall submit a Water Assessment pursuant to the procedures found in the Guidebook for Implementation of SB 610 and SB 221, using only the steps applicable to SB 610.
7. Conditions 4, 5, and 6 shall not apply to the following proposed annexations:
 - A. **County Service Area 1 Reorganization.** This proposal would dissolve CSA 1 and annex those areas into the District. The District would not be providing water service, but would assume the provision of sewer services and the maintenance of drainage facilities to these areas.

This proposal has no impacts on District water resources since these areas are already served by Cal Cities Water Company.

- B. Patterson Annexation.** This annexation is one single-family residence that was not included in the Robertson Annexation because it was not covered by the County's environmental determination. Mr. Patterson has filed an application with LAFCO. The proposal is being processed. It is reasonable to assume that the impacts on the District's water supply would be insignificant.

- C. Moss Lane Annexation.** These are the six residences that were not a part of the Maria Vista annexation. These residences have failing wells that may create a health and safety problem in the near future. Hookups are readily available through Maria Vista. The impact to the District's water supply would be insignificant.

TO: COMMITTEE MEMBERS
FROM: BRUCE BUEL *BB*
DATE: JAN. 23, 2009

AGENDA ITEM
5
JAN 26, 2009

WIP CAPITAL FUNDING "BASIS OF ASSESSMENT" RESEARCH

ITEM

Consider Wallace Group proposal re assessment data [FORWARD RECOMMENDATION].

BACKGROUND/RECOMMENDATION

See attached Staff Note.

ATTACHMENT – STAFF NOTE

T:\BOARD MATTERS\BOARD MEETINGS\BOARD LETTER\2009\COMMITTEES\SWP\090126 MEETING\090126\ITEM5.DOC

TO: BOARD OF DIRECTORS
FROM: BRUCE BUEL *BB*
DATE: JANUARY 23, 2009



WIP CAPITAL FUNDING "BASIS OF ASSESSMENT" RESEARCH

ITEM

Retain Wallace Group to perform additional research regarding basis of assessment for funding capital portion of Waterline Intertie Project [RECOMMEND APPROVAL].

BACKGROUND

Your Honorable Board reviewed the draft Waterline Intertie Project Assessment District Formation Feasibility Study at your November 26, 2008 meeting; agreed in concept to the use of assessment proceeds as the funding source for the capital portion of the project and directed staff to report back on options for calculation of the assessments (basis of assessment). Staff and the Supplemental Water Project Committee discussed the research necessary to adequately develop these options and to definitively calculate assessments by parcel. Staff then consulted with the Wallace Group to produce the attached proposal. Set forth in the attached proposal, the Wallace Group would develop and field check a detailed data base for all parcels in the District including lot size, zoning, development potential, meter size, and water use so that up to four alternate basis of assessment formulas could be considered by the Committee and the Board. The Wallace Group is willing to perform this research on a time and materials basis with a not-to-exceed expenditure limit of \$66,100.

The SWP Committee is scheduled to review this proposal at its 1/26/09 Meeting.

FISCAL IMPACT

Funding to pay for this work is available in Fund 500 – Supplemental Water.

RECOMMENDATION

Staff believes that the research set forth in the attached proposal is necessary to prepare the Engineer's Assessment Report required for formation of the assessment district. Staff recommends that the Board authorize execution of an agreement with the Wallace Group to perform the research set forth in the proposal on a time and materials basis with a not-to-exceed expenditure limit of \$66,100.

ATTACHMENTS

- Wallace Group Proposal

t:\documents\board matters\board meetings\board letter 2009\WIP Assessment Research.doc

January 5, 2008

Bruce Buel
Nipomo Community Services District
PO Box 326
Nipomo, California 93444-0326

Subject: NCS D Inter-tie Assessment District Data Preparation

Dear Mr. Buel:

Wallace Group appreciates the opportunity to provide you with our proposal for professional engineering, GIS, and planning services for the above referenced project. Based on our discussion, the following Scope of Services has been prepared for your consideration:

PROJECT UNDERSTANDING

The Nipomo Community Services District (NCS D) is embarking on a major capital improvement project, the water line inter-tie between the City of Santa Maria and NCS D. One option for financing the design and construction of this project is for NCS D to form an assessment district. NCS D contracted with Wallace Group to complete Phase 1 of the Assessment District Formation project, which consisted of the following tasks:

- Determining the boundary and number of parcels to be included in the proposed assessment district formation (4,500 parcels).
- Obtaining a current assessor's database from the County of San Luis Obispo of the identified parcels and formatting the database for the requirements of this project
- Reviewing and correcting minor discrepancies in the NCS D GIS parcel base map
- Preparing a draft project report outlining the proposed methodology for assigning benefit units for the 4,500 parcels in the proposed Assessment District.

During Phase 1 of this Assessment Formation Project several key issues were identified and were recommended by Wallace Group to be addressed prior to completing the final Engineer's Report for the formation of the Assessment District. The following Scope of Services addresses those items:

SCOPE OF SERVICES

Task 1: Project Management and Meetings

Wallace Group will provide day-to-day coordination of project activities, including scheduling and budget controls, staffing needs and coordination, Client coordination, monthly status updates, and other related project management activities.

Wallace Group will attend two (2) meetings with District staff to review the database.

Task 2: County Database Review and Correction

Phase 1 of the Assessment Formation Project consisted of Wallace Group developing an assessment project database based on using current assessor information provided by the County of San Luis Obispo. The assessor information for the 4,500 parcels in the project area consisted of the following attributes:

- Assessor Parcel Number (APN)
- Property Owner
- Site address

WALLACE GROUP®

CIVIL ENGINEERING

CONSTRUCTION
MANAGEMENT

LANDSCAPE
ARCHITECTURE

MECHANICAL
ENGINEERING

PLANNING

PUBLIC WORKS
ADMINISTRATION

SURVEYING /
GIS SOLUTIONS

WATER RESOURCES

WALLACE SWANSON
INTERNATIONAL

WALLACE GROUP
A California Corporation

612 CLARION CT
SAN LUIS OBISPO
CALIFORNIA 93401

T 805 544-4011
F 805 544-4294

www.wallacegroup.us

- Property Owners' mailing address
- Area (square feet)
- Zoning
- Land use

WALLACE GROUP

An issue that was identified during the Phase 1 assessment project was that the zoning and land use information provided by the County is not up-to-date or is incorrect for about 20% of the parcels within NCSD. There are currently 405 parcels in the project area that are coded as vacant properties. These properties need to be reviewed to verify their status as vacant or developed parcels. There are also 423 parcels that are missing a zoning designation from the County

Wallace Group recommends specifically reviewing these 828 parcels to correct the current land use and zoning designation and to complete a cursory review of the remaining parcels to verify conformance with the County's zoning and land use maps. Wallace Group will also review and verify the existing number of units on Residential Multi-Family properties to allow parcels to receive the appropriate benefit unit assignments.

Wallace Group will use current (2007) aerial photography, County of San Luis Obispo planning information, and field verification techniques to correct the land use and zoning discrepancies in the project database

Task 3: GIS Parcel Base Map Review and Correction

Another concern that was identified during the Phase 1 assessment project is that a majority of the GIS parcel base map, maintained by the NCSD, does not match the current (2007) County aerial photography and, in some areas, does not accurately represent the current parcel lot line configuration as shown on the County's APN maps. After initial review of the data, approximately 95% of the parcels would require minor adjustments to align the data with the current County aerial photography and the remaining 5% would require reviewing current County APN maps to correct the parcel configuration. Adjustments to the GIS parcel base map are recommended because it will be used as a check against the County Assessor's "area" value and will be used as the base map for the future assessment diagram required for the final Engineer's Report for the formation of the Assessment District.

Task 4: Water Use Analysis of Existing Customers

Wallace Group will review NCSD water use information for the past 18 months to develop a correlation between water use, parcel size, and land use. We will prepare a memorandum with accompanying graphs and maps to document our findings of the water use analysis.

Task 5: Basis of Assessment

Based on the water use analysis, Wallace Group will work with District Staff and Board Members to develop ideas for the Basis for Assessment. These methods will be used for the development of the Engineer's Report.

Wallace Group will attend one (1) committee meeting and one (1) board meeting to discuss and develop the Basis of Assessment.

Task 6: Database Development

Task 6.1: Identify Focus Parcels

Using information provided in the above Tasks 2 and 3, Wallace Group will identify those parcels that are in conformance with County zoning and fully built-out and will, therefore, not need additional evaluation. We estimate that half the parcels (2,300 parcels) will fall into this category.

The remaining parcels will be considered the focus parcels. The four (4) focus parcel types will include:

- Vacant (need to verify vacant status, no construction initiated, see Task 2)
- Non-conforming (lots with existing uses not matching zoning)
- Large-lot residential parcels (determine subdivision potential, if any)
- Residential multi-family (determine density potential, if any)

Task 6.2: Review Focus Parcels

Perform individual review for each focus parcel. This review will be based on the database and mapping information provided from Tasks 2 and 3. As noted above, we will be performing additional analysis on four (4) types of parcels:

- Vacant parcels
- Non-conforming - parcels where the existing use does not conform to County Zoning
- Large-lot – single family parcels that exceed the minimum lot size for the zone
- Residential multi-family - parcels zoned for multi family uses

The purpose of this analysis is to set the stage for the field analysis of Task 5.4. Each of the four (4) conditions will be reviewed as follows:

- Vacant parcels: Cross-check with most recent Google Earth images and record lots showing construction. Make preliminary determination of development potential based on size and County Zoning.
- Parcels not in conformance with current zoning: Cross-check current use against current zoning. Make preliminary estimation of development potential based on lot size and County Zoning
- Single family parcels that exceed the minimum lot size for the zone: Cross-check the size of these parcels with the minimum size as set by the Zoning Code. Make a preliminary determination as to the potential for subdivision and the creation of additional lots.
- Parcels zoned for multi-family uses: Cross-check existing number of units with potential number of units based on parcel size and zoning designation. Make preliminary determination of development potential by lot

We will also identify public facility parcels in existing residential areas to verify use (such as well locations, pump stations, churches, etc.).

Task 6.3: Field Survey Preparation

Based on the information from Task 5.2, we will prepare instructions and a checklist for use in field surveys. This strategy and checklist will provide direction to the field surveyors with specific instructions for each of the four (4) focus parcel types as described above.

Task 6.4: Field Survey

A field survey will be conducted using the information prepared in Task 5.3. This survey will provide information on the focus parcels, will spot check built-out areas, and will check public facilities parcels in residential districts.

During field verification visits, Wallace Group staff will document existing land use conditions by noting it in the project database and documenting parcels via digital photos, which will be linked to the NCSGIS parcel base map.

Task 6.5: Estimate Development Potential

Based on the information from the previous tasks, Wallace Group will estimate the development potential of each of the focus parcels. This information will be transmitted for inclusion into the GIS data base. We anticipate that 40 to 50 parcels will require one (1) additional field check to provide additional clarity and/or information. Estimates for those parcels will be completed after the one (1) additional check.

Task 6.6: Tentative Maps in Progress

We will contact the County of San Luis Obispo to determine the status of any approved Tentative Tracts Map within the current boundaries of the District

Task 7: Develop Draft Language for Letters to Property Owners

Wallace Group will develop "templates" for up to four (4) letters to the owners of parcels that fall into the four (4) types of focus parcels. We will develop sample "insert paragraphs" to describe specific situations of specific focus parcels.

We will work with District staff to prepare and mail the letters, and respond to and track telephone calls. This task will be completed on a time and materials basis.

Deliverables:

- Corrected assessment project database (Access and Excel spreadsheets)
- Corrected GIS parcel base map (ESRI Geodatabase)
- Zoning layer based on the County's Zoning Information and NCSD GIS parcel base map (ESRI Geodatabase)
- Memorandum describing the process used to correct the County Assessor Database and NCSD GIS parcel data (PDF)
- Memorandum describing the results of the water use analysis (PDF)
- Database designating development potential (Access and Excel spreadsheets)
- Memorandum discussing the findings of Database Development in Task 5 (PDF)
- Distribution of letters to the public about parcel development potential (PDF and hard copy)

SCHEDULE

Upon receipt of a signed notice to proceed, Wallace Group can provide the District with the above mentioned deliverables within eight (8) weeks.

TO BE PROVIDED BY THE CLIENT

- Additional meter database information
- Water use information for the past 18 months by customer/account

ITEMS NOT INCLUDED IN SCOPE OF SERVICES

The following services are not included in this Scope of Services or estimate of fees for this project. However, Wallace Group can provide these services at the request of the District.

- Field survey of properties
- Engineer's Report
- Assessment Diagram
- Assessment Roll

PROJECT FEES

Wallace Group will perform the services denoted in Tasks 1 through 6 of the proposed Scope of Services in accordance with the attached Schedule of Fees (Exhibit A). These services will be invoiced monthly on an accrued cost basis, and our total fees, including reimbursables, will not exceed our estimated fee of \$56,100 without receiving written authorization from the Client

WALLACE GROUP

Wallace Group will perform the services denoted in Task 7 of the proposed Scope of Services on a time and materials basis. For budgeting purposes, our preliminary estimate is that our fees will be approximately \$10,000. These services will be invoiced monthly on an accrued basis in accordance with the attached Schedule of Fees (Exhibit A). Reimbursables are included in the time and materials estimated fee amount stated above

At your request, additional services to the Scope of Services will be performed by Wallace Group following the signature of our Contract Amendment or the initiation of a new contract.

TERMS AND CONDITIONS

In order to convey a clear understanding of the matters related to our mutual responsibilities regarding this proposal, the attached Standard Terms and Conditions (Exhibit B) are considered a part of our proposal agreement. If this proposal meets with your approval, please sign where indicated and return one original to our office, which will serve as our notice-to-proceed.

We want to thank you for this opportunity to present our proposal for professional services. If you would like to discuss this proposal in greater detail, please feel free to contact me.

Sincerely,

WALLACE GROUP, a California Corporation

TERMS AND CONDITIONS ACCEPTED:

57474

Principal
612 Clarion Court
San Luis Obispo
California 93401
T 805 544-4011
F 805 544-4294
www.wallacegroup.us

Signature
Printed Name
Title
Date

Attachments
mtb: P008-3522a, 80, std
Exhibit A
Exhibit B

THIS PROPOSAL IS VALID FOR 60 DAYS FROM THE DATE OF THIS DOCUMENT

"Exhibit A"
Schedule of Fees
Personnel Hourly Compensation

Engineering Services:

| | |
|---|---------------|
| Principal..... | \$168 |
| Principal Engineer | \$158 |
| Director of Civil Engineering | \$147 |
| Director of Mechanical Engineering..... | \$147 |
| Director of Water Resources..... | \$147 |
| Wetlands Specialist..... | \$152 |
| Senior Civil Engineer I - II | \$137 - \$142 |
| Senior Environmental Resource Engineer I - II | \$137 - \$142 |
| Senior Mechanical Engineer I - II..... | \$137 - \$142 |
| Civil Engineer I - III..... | \$116 - \$126 |
| Senior Civil Designer I - II | \$126 - \$131 |
| Engineering Associate I - V..... | \$ 95 - \$121 |
| Project Analyst I - III | \$ 79 - \$116 |
| Engineering Assistant I - III..... | \$ 63 - \$ 79 |
| Administrative Assistant I - III..... | \$ 61 - \$ 66 |

GIS Services

| | |
|----------------------|-------|
| GIS Specialist | \$116 |
| GIS Tech..... | \$ 74 |

Planning Services:

| | |
|---------------------------------|---------------|
| Director of Planning | \$147 |
| Consulting Planner | \$147 |
| Supervising Planner..... | \$142 |
| Senior Planner I - II | \$137 - \$142 |
| Associate Planner I - III..... | \$ 95 - \$121 |
| Planning Designer I - II..... | \$ 74 - \$ 89 |
| Planning Assistant I - III..... | \$ 63 - \$ 79 |

Administrative Services

| | |
|---------------------------------------|--------------|
| Senior Financial Analyst..... | \$116 |
| Financial Analyst I - II..... | \$ 79- \$100 |
| Administrative Assistant I - III..... | \$ 61- \$ 66 |

Additional Professional Services

Fees for expert witness preparation, testimony, court appearances, or depositions will be billed at the rate of \$265 an hour.

Direct Expenses:

Reimbursement of direct expenses incurred in connection with the project scope of work will be invoiced to the client. A handling charge of 15% may be added to the direct expenses listed below. Direct expenses include, but are not limited to the following:

- travel expenses (automobile/
lodging/ meals)
- professional sub-consultants
- county/city fees
- document copies
- long distance telephone/fax
- postage/delivery service
- special materials
- blueprints
- photographs

Invoicing and Interest Charges:

Invoices are submitted monthly on an accrued cost basis in accordance with this Fee Schedule. A finance charge of 1.5% per month (18% per annum) will be assessed on all balances that are thirty days past due.

Fee Revisions:

Wallace Group reserves the right to revise our Schedule of Fees on a semi-annual basis, and also to adjust hourly prevailing wage rates (up or down) as the State establishes rate changes. As authorized in advance by the client, overtime on a project will be billed at 1.3 times the normal employee's hourly rate.

Personnel Classifications:

Wallace Group may find it necessary to occasionally add new personnel classifications to our Schedule of Fees.

Mileage:

Wallace Group charges \$0.60 per mile.

"Exhibit B"
Standard Terms and Conditions
Project No. P008-3522a
Contract Agreement Date: January 5, 2009

Client: **NIPOMO COMMUNITY SERVICES DISTRICT**
PO Box 326, Nipomo, California 93444-0326

Consultant: **WALLACE GROUP, A CALIFORNIA CORPORATION**
612 Clarion Court, San Luis Obispo, California 93401

Client and Consultant agree that this Agreement, comprising pages 1 through 6, is the entire Agreement between the Client and the Consultant. It supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by both the Client and the Consultant.

ARTICLE 1. GENERAL PROVISIONS

1.1 Preamble

This Agreement is based upon a mutual obligation of good faith and fair dealing between the parties in its performance and enforcement. Accordingly, the CLIENT and the CONSULTANT, with a positive commitment to honesty and integrity, agree to the following:

That each will function within the laws and statutes that apply to its duties and responsibilities; that each will assist in the other's performance; that each will avoid hindering the other's performance; that each will work diligently to fulfill its obligations; and each will cooperate in the common endeavor of the contract.

1.2 Governing Law and Jurisdiction

The CLIENT and the CONSULTANT agree that this Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the State of California. It is further agreed that any legal action between the CLIENT and the CONSULTANT arising out of this Agreement or the performance of the services shall be brought in a court of competent jurisdiction in San Luis Obispo, California.

1.3 Precedence of Conditions

Should any conflict exist between the terms herein and the form of any purchase order or confirmation issued, the Terms and Conditions herein shall prevail in the absence of CONSULTANT'S express written conditions.

1.4 Standard of Care

In providing services under this Agreement, the CONSULTANT will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

1.5 Corporate Protection

It is intended by the parties to this Agreement that the CONSULTANT'S services in connection with the Project shall not subject the CONSULTANT'S individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the CLIENT agrees that as the CLIENT'S sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the

CONSULTANT, a California corporation, and not against any of the CONSULTANT'S individual employees, officers or directors.

1.6 Confidentiality

The CONSULTANT agrees to keep confidential and not to disclose to any person or entity, other than the CONSULTANT'S employees, subconsultants and the general contractor and subcontractors, if appropriate, any data or information not previously known to and generated by the CONSULTANT or furnished to the CONSULTANT and marked CONFIDENTIAL by the CLIENT. These provisions shall not apply to information in whatever form that is in the public domain, nor shall it restrict the CONSULTANT from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other legitimate authority, or if disclosure is reasonably necessary for the CONSULTANT to defend itself from any legal action or claim.

1.7 Third-Party Beneficiaries

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or the CONSULTANT. The CONSULTANT'S services under this Agreement are being performed solely for the CLIENT'S benefit, and no other party or entity shall have any claim against the CONSULTANT because of this Agreement or the performance or nonperformance of services hereunder. The CLIENT and CONSULTANT agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

1.8 Timeliness of Performance

The CLIENT and CONSULTANT are aware that many factors outside the CONSULTANT'S control may affect the CONSULTANT'S ability to complete the services to be provided under this Agreement. The CONSULTANT will perform these services with reasonable diligence and expediency consistent with sound professional practices.

1.9 Severability

Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

1.10 Survival

Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties to this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

1.11 Statutes of Repose and Limitation

All legal causes of action between the parties to this Agreement shall accrue and any applicable statutes of repose or limitation shall begin to run not later than the date of Substantial Completion. If the act or failure to act complained of occurs after the date of Substantial Completion, then the date of final completion shall be used, but in no event shall any statute of repose or limitation begin to run any later than the date the CONSULTANT'S services are completed or terminated.

1.12 Defects in Service

The CLIENT shall promptly report to the CONSULTANT any defects or suspected defects in the CONSULTANT'S services of which the CLIENT becomes aware, so that the CONSULTANT may take measures to minimize the consequences of such a defect. The CLIENT further agrees to impose a similar notification requirement on all contractors in its CLIENT/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Failure by the CLIENT and the CLIENT'S contractors or subcontractors to notify the CONSULTANT shall relieve the CONSULTANT of the costs or remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

1.13 Jobsite Safety

Neither the professional activities of the CONSULTANT, nor the presence of the CONSULTANT or its employees and subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, constructions means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with contract documents and any health or safety precautions required by any regulatory agencies. The CONSULTANT and its personnel have no authority to exercise any control with their work or any health or safety programs or procedures. The CLIENT agrees that the General Contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the CLIENT'S contract with the General Contractor. The CLIENT also agrees that the CLIENT, the CONSULTANT and the CONSULTANT'S subconsultants shall be indemnified by the General Contractor and shall be made additional insured under the General Contractor's policies of general liability insurance.

1.14 Assignment: Subcontracting

Neither CLIENT nor CONSULTANT shall assign its interest in this agreement without the written consent of the other. CONSULTANT may not subcontract any portion of the work to be performed hereunder without such consent.

1.15 Force Majeure

Any delay or default in the performance of any obligation

of CONSULTANT under this agreement resulting from any cause(s) beyond CONSULTANT'S reasonable control shall not be deemed a breach of this agreement. The occurrence of any such event shall suspend the obligations of CONSULTANT as long as performance is delayed or prevented thereby, and the fees due hereunder shall be equitably adjusted.

1.16 Disputes

(a) Notwithstanding any other provision of this Agreement and except for the provisions of (b) and (c), if a dispute arises regarding CONSULTANT'S fees pursuant to this contract, and if the fee dispute cannot be settled by discussions between CLIENT and CONSULTANT, both the CLIENT and CONSULTANT agree to attempt to settle the fee dispute by mediation through the American Arbitration Association (or other mediation service) before recourse to arbitration. If mediation does not resolve the fee dispute, such dispute shall be settled by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

(b) Subdivision (a) does not preclude or limit CONSULTANT'S right to elect to file an action for collection of fees if the amount in dispute is within the jurisdiction of the small claims court.

(c) Subdivision (a) does not preclude or limit CONSULTANT'S right to elect to perfect or enforce applicable mechanics lien remedies.

1.17 Attorneys' Fees

In the event of any litigation arising from or related to this Agreement or the services provided under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred, including staff time, court costs, attorneys' fees and all other related expenses in such litigation.

1.18 Merger: Waiver: Survival

Except as set forth in Article 3.6 above, this agreement constitutes the entire and integrated Agreement between the Parties hereto and supersedes all prior negotiations, representations, and/or agreement, written or oral. One or more waiver of any term, condition, or other provision of this Agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provisions. Any provision hereof which is legally deemed void or unenforceable shall not void this entire Agreement and all remaining provisions shall survive and be enforceable.

1.19 Services by CLIENT

CLIENT will provide access to site of work, obtain all permits, and provide all legal services in connection with the Project; CLIENT shall furnish, at the CLIENT'S expense, all information, requirements, reports, data, surveys and instructions required by this Agreement, unless specifically included in the Scope of Work. The CONSULTANT may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. CLIENT shall pay the costs of

checking and inspection fees, zoning application fees, soil engineering fees, testing fees, surveying fees and all other fees, permits, bond premiums and all other changes not specifically covered by the terms of this agreement. The CLIENT shall furnish, at the CLIENT'S expense, all information, requirements, reports, data, surveys and instructions required by this Agreement, unless specifically included in the Scope of Work. The CONSULTANT may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof.

1.20 Retention

If any portion of CONSULTANT'S fee is held in retention, such amount shall be released within thirty days after invoicing for completion of corresponding services. Interest shall be paid at the rate of 1.5% per month on any retention amounts not paid within this thirty-day period.

ARTICLE 2. DEFINITIONS

2.1 Salary Costs

The direct salaries of all CONSULTANT'S personnel engaged on the project. Salary costs include the actual direct pay of personnel assigned to the project (except for routine secretarial and accounting services) plus payroll taxes, insurance, sick leave, holidays, vacation, and other direct fringe benefits.

2.2 Direct Expenses

Expenditures made by the CONSULTANT, its employees or its subconsultants in the interest of the Project. Applicable reimbursable direct expenses are defined on the attached Schedule of Fees.

ARTICLE 3. COMPENSATION

3.1 Payment Due

Invoices shall be submitted by the CONSULTANT monthly, are due upon presentation and shall be considered past due if not paid in full within thirty (30) days of the invoice date.

3.2 Interest

If payment in full is not received by the CONSULTANT within thirty (30) calendar days of the invoice date, the invoices shall bear interest at one-and-one-half (1.5) percent (or the maximum rate allowable by law, whichever is less) of the past due amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.

3.3 Collection Costs

If the CLIENT fails to make payments when due and the CONSULTANT incurs any costs in order to collect overdue sums from the CLIENT, the CLIENT agrees that all such collection costs incurred shall immediately become due and payable to the CONSULTANT. Collection costs shall include, without limitation, legal fees, collection agency fees and expenses, court costs, collection bonds and reasonable CONSULTANT staff costs at standard billing rates for the CONSULTANT'S time spent in efforts to collect. This obligation of the CLIENT to pay the

CONSULTANT'S collection costs shall survive the term of this Agreement or any earlier termination by either party.

3.4 Suspension of Services

If the CLIENT fails to make payments when due or otherwise is in breach of this Agreement, the CONSULTANT may suspend performance of services upon thirty (30) calendar days' notice to the CLIENT. CONSULTANT shall have no liability whatsoever to the CLIENT for any costs or damages as a result of such suspension caused by any breach of this Agreement by the CLIENT. Upon payment-in-full by the CLIENT, CONSULTANT shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any reasonable time and expense necessary for the CONSULTANT to resume performance.

3.5 Termination of Services

If the CLIENT fails to make payment to the CONSULTANT in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by the CONSULTANT.

3.6 Set-Offs, Backcharges, Discounts

Payment of invoices shall not be subject to any discounts or set-offs by the CLIENT, unless agreed to in writing by the CONSULTANT. Payment to the CONSULTANT for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.

3.7 Satisfaction with Services

Payment of any invoice by the CLIENT to the CONSULTANT shall be taken to mean that the CLIENT is satisfied with the CONSULTANT'S services to the date of payment and is not aware of any deficiencies in those services.

3.8 Disputed Invoices

If the CLIENT objects to any portion of any invoice, the CLIENT shall so notify the CONSULTANT in writing within fifteen (15) days of receipt of the invoice. The CLIENT shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with the other payment terms of this Agreement. Any dispute over invoiced amounts due which cannot be resolved within thirty (30) calendar days after presentation of invoice by direct negotiation between the parties shall be resolved within forty-five (45) calendar days in accordance with the Dispute Resolution provision of this Agreement. Interest as stated above shall be paid by the CLIENT on all disputed invoice amounts that are subsequently resolved in the CONSULTANT'S favor and shall be calculated on the unpaid balance from the invoice date.

3.9 Payments to the CONSULTANT

Payments to the CONSULTANT shall not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the CLIENT of offsetting reimbursement or credit from other parties who may have caused additional services or expenses. No withholdings, deductions or offsets shall be made from the CONSULTANT'S compensation for any

reason unless the CONSULTANT has been found to be legally liable for such amounts.

3.10 Advance Payment: Withholding Work Product
CONSULTANT reserves the right to require payment in advance for work estimated to be done during a given billing period. CONSULTANT, without any liability to CLIENT, reserves the right to withhold any services and work products herein contemplated pending payment of CLIENT'S outstanding indebtedness or advance payment as required by CONSULTANT. Where work is performed on a reimbursable basis, budget may be increased by amendment to complete the Scope of Work. CONSULTANT is not obligated to provide services in excess of the authorized budget.

ARTICLE 4. SERVICES, ADDITIONAL SERVICES, AND AMENDMENTS

4.1 Definitions

Services and work products not expressly or implicitly included with those specified in this agreement, as determined by CONSULTANT, are not covered by this agreement. Such services and work products will be provided only upon compliance with the procedures set forth in paragraphs 3.5 and 3.6 below.

4.2 Services During Construction

Any construction inspection or testing provided by CONSULTANT is for the purpose of determining the contractor's compliance with the functional provisions of the project specifications only. CONSULTANT in no way guarantees or insures contractor's work nor assumes responsibility for methods or appliances used by the contractor for job site safety or for contractor's compliance with laws and regulations. CLIENT agrees that in accordance with generally accepted construction practices the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project including safety of all persons and property and that this responsibility shall be continuous and not be limited to normal working hours.

4.3 Soil Testing

CONSULTANT makes no representations concerning soil conditions, and he is not responsible for any liability that may arise out of the making or failure to make soil surveys, or sub-surface soil tests, or general soil testing. It is the CLIENT'S responsibility to obtain a soils report upon which report CONSULTANT can rely.

4.4 Opinion of Probable Construction Costs

In providing opinions of probable construction cost, the CLIENT understands that the CONSULTANT has no control over cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that the CONSULTANT'S opinions of probable construction costs are made on the basis of the CONSULTANT'S professional judgment and experience. CONSULTANT makes no warranty, express or implied, that bids or negotiated cost of the Work will not vary from the CONSULTANT'S opinion of probable construction cost.

4.5 Adjustment

Additional services or work products resulting in an adjustment of CONSULTANT'S original estimated budget or fixed fee will be provided at CLIENT'S request upon execution of a written amendment to this agreement expressly referring to the same and signed by both parties.

ARTICLE 5. TERMINATION OF AGREEMENT

5.1 Due to Default

This agreement may be terminated by either party upon seven (7) days written notice should the other party fail substantially to perform in accordance with this agreement through no fault of the party initiating the termination.

5.2 Without Cause

This agreement may be terminated by CLIENT upon at least fourteen (14) days written notice to CONSULTANT in the event that the project is abandoned.

5.3 Termination Adjustment : Payment

If this agreement is terminated through no fault of the CONSULTANT, CONSULTANT shall be paid for services performed and costs incurred to the termination notice date, including reimbursable expenses due, plus an additional amount not to exceed ten percent (10%) of charges incurred to the termination notice date to cover services to orderly close the work and prepare project files and documentation, plus any additional direct expenses incurred by CONSULTANT including but limited to cancellation of fees or charges. CONSULTANT will use reasonable efforts to minimize such additional charges.

ARTICLE 6. LIMITATION OF LIABILITY: WAIVER: WARRANTY

6.1 Limitation of Liability

In recognition of the relative risks and benefits of the project to both the CLIENT and the CONSULTANT, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law, to limit the liability of the CONSULTANT to the CLIENT for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the CONSULTANT to the CLIENT shall not exceed \$50,000.00, or the CONSULTANT'S total fee for services rendered on this project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

6.2 Contractor and Subcontractor Claims

The Client further agrees, to the fullest extent permitted by law, to limit the liability of the Consultant and the Consultant's officers, directors, partners, employees and subconsultants to all construction contractors and subcontractors on the Project for any and all claims, losses, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of the Consultant and the Consultant's subconsultants to all those named shall not

exceed \$50,000.00, or the Consultant's total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

6.3 Warranty

CONSULTANT makes no warranty, either express or implied, as to his findings, recommendations, specifications, or professional advice, except that the work was performed pursuant to generally accepted standards of practice in effect at the time of performance.

If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the CONSULTANT are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, the CONSULTANT may call for renegotiation of appropriate portions of this Agreement. The CONSULTANT shall notify the CLIENT of the changed conditions necessitating renegotiation, and the CONSULTANT and the CLIENT shall promptly and in good faith enter into renegotiations of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement, in accordance with the Termination Provision hereof.

If the scope of services pursuant to this agreement does not include on-site construction review, construction management, supervision of construction of engineering structures, or other construction supervision for this project, or if subsequent to this agreement CLIENT retains other persons or entities to provide such services, CLIENT acknowledges that such services will be performed by others and CLIENT will defend, indemnify and hold CONSULTANT harmless from any and all claims arising from or resulting from the performance of such services by other persons or entities except claims caused by the sole negligence or willful misconduct of CONSULTANT; and from any and all claims arising from or resulting from clarifications, adjustments, modifications, discrepancies or other changes necessary to reflect changed field or other conditions, except claims caused by the sole negligence or willful misconduct of CONSULTANT.

6.4 Interpretation

Limitations on liability, waivers and indemnities in this Agreement are business understandings between the parties and shall apply to all legal theories of recovery, including breach of contract or warranty, breach of fiduciary responsibility, tort (including negligence), strict or statutory liability, or any other cause of action, provided that these limitations on liability, waivers and indemnities will not apply to any losses or damages that may be found by a trier of fact to have been caused by the CONSULTANT'S sole or gross negligence or the CONSULTANT'S willful misconduct. The parties also agree that the CLIENT will not seek damages in excess of the contractually agreed-upon limitations directly or indirectly through suites against other parties who may join the CONSULTANT as a third-party defendant. "Parties" means the CLIENT and the CONSULTANT, and their officers, directors, partners, employees, subcontractors and subconsultants.

6.5 Delays

The CLIENT agrees that the CONSULTANT is not responsible for damages arising directly or indirectly from any delays for causes beyond the CONSULTANT'S control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters; fires, riots, war or other emergencies or acts of God; failure of any government agency to act in a timely manner; failure of performance by the CLIENT of the CLIENT'S contractors or CONSULTANT'S; or discovery of any hazardous substances or differing site conditions.

ARTICLE 7. HAZARDOUS WASTE MATERIALS

7.1 Liability

CONSULTANT hereby states and CLIENT hereby acknowledges that CONSULTANT has no professional liability insurance for claims arising out of the performance of or failure to perform professional services, including, but not limited to the preparation of reports, designs, drawings and specifications, related to the investigation, detection, abatement, replacement, use or specification, or removal of products, materials or processes containing substances including, but not limited to asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site. Accordingly, the CLIENT hereby agrees to bring no claim for negligence, breach of contract indemnity or otherwise against the CONSULTANT, its principals, employees, and agents if such claim, in any way, would involve the CONSULTANT'S services for the investigation, detection, abatement, replacement, use or specification, or removal of products, materials or processes containing asbestos, asbestos cement pipe, and/or hazardous waste materials. CLIENT further agrees to defend, indemnify and hold harmless CONSULTANT, its officers, directors, principals, employees and agents from any asbestos and/or hazardous waste material related claims that may be brought by third parties as a result of the services provided by the CONSULTANT pursuant to this agreement except claims caused by the sole negligence or willful misconduct of the CONSULTANT.

ARTICLE 8. OWNERSHIP AND REUSE OF DOCUMENTS

8.1 CONSULTANT Ownership

All original papers, documents, drawings, electronic media and other work product of CONSULTANT, and copies thereof, produced by CONSULTANT pursuant to this agreement shall remain the property of CONSULTANT and may be used by CONSULTANT without the consent of CLIENT. Upon request and payment of the costs involved, CLIENT is entitled to a copy of all papers, documents and drawings provided CLIENT'S account is paid current.

8.2 Document Reuse

In the event the CLIENT, the CLIENT'S contractors or subcontractors, or anyone for whom the CLIENT is legally liable makes or permits to be made any changes to any

reports, plans specifications or other construction documents prepared by the CONSULTANT without obtaining the CONSULTANT'S prior written consent, the CLIENT shall assume full responsibility for the results of such changes. Therefore the CLIENT agrees to waive any claim against the CONSULTANT and to release the CONSULTANT from any liability arising directly or indirectly from such changes. In addition, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT from any damages, liabilities or costs, including reasonable attorneys' fees and costs of defense, arising from such changes. In addition, the CLIENT agrees to include in any contracts for construction appropriate language that prohibits the contractor or any subcontractors of any tier from making any changes or modifications to the CONSULTANT'S construction documents without the prior written approval of the CONSULTANT and further requires the contractor to indemnify both the CONSULTANT and the CLIENT from any liability or cost arising from such changes made without proper authorization.

8.3 Electronic Media Alteration and Reuse

Because CADD information stored in electronic form can be modified by other parties, intentionally or otherwise, without notice or indication of said modifications, CONSULTANT reserves the right to remove all indicia of its ownership and/or involvement in the material from each electronic medium not held in its possession. CLIENT shall retain copies of the work performed by CONSULTANT in CADD form only for information and use by CLIENT for the specific purpose for which CONSULTANT was engaged. Said materials shall not be used by CLIENT, or transferred to any other party, for use in other projects, additions to the current project, or any other purpose for which the material was not strictly intended by CONSULTANT without CONSULTANT'S express written permission. Unauthorized modification or reuse of the materials shall be at CLIENT'S sole risk, and CLIENT agrees to defend, indemnify, and hold CONSULTANT harmless, from all claims, injuries, damages, losses, expenses, and attorney's fees arising out of the unauthorized modification or use of these materials.

ARTICLE 9. CONDOMINIUM PROJECTS

9.1 Condominium Conversion

The CLIENT does not now expect this project will be converted into condominiums. Because this project will not be designed for condominium ownership, the CLIENT agrees that if, the CLIENT decides to convert the project into condominiums in the future, the CLIENT will, to the fullest extent permitted by law, indemnify and hold harmless the CONSULTANT, its officers, directors, employees, and subconsultants (collectively, CONSULTANT) against all damages, liabilities or costs, including reasonable attorneys fees and defense costs, arising out of or in any way connected with the conversion to condominium ownership, except for the sole negligence or willful misconduct of the CONSULTANT.

TO: COMMITTEE MEMBERS
FROM: BRUCE BUEL *BB*
DATE: JAN. 23, 2009

AGENDA ITEM
6
JAN 26, 2009

SET NEXT COMMITTEE MEETING

ITEM

Set next committee meeting [Set Date/Time].

BACKGROUND

The Committee generally meets at 1pm on the Monday prior to the Board's second meeting. In February, that date would be February 23, 2009.

RECOMMENDATION

Staff recommends that the Committee set 1pm on February 23, 2009 as the date for the next Committee Meeting.

ATTACHMENT – NONE

T:\BOARD MATTERS\BOARD MEETINGS\BOARD LETTER\2009\COMMITTEES\SWP\090126 MEETING\090126ITEM6.DOC