

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

**AGENDA ITEM
E-1
JAN. 28, 2009**

BLACKLAKE WATER RATE ADJUSTMENT PROTEST HEARING

ITEM

PROTEST HEARING – conduct Blacklake water rate adjustment protest hearing; determine sufficiency of protest; and if there is not a majority protest, set February 11, 2009 to consider resolution implementing the rate adjustment [DETERMINE SUFFICIENCY AND SET HEARING].

BACKGROUND

On November 26, 2008, your Honorable Board set this Protest Hearing and directed staff to transmit notices to each parcel and non-owner customer in the Blacklake Division service area. Staff mailed the attached notice on December 9, 2008 to the 586 eligible parcels. The threshold for a majority protest is 50% of the 586 parcels or 293 valid protests. As of January 20, 2009, 7 apparent protests had been returned. Protests can be submitted up to the close of the January 28th Protest Hearing. By the time of the Protest Hearing staff expects to review each pre-hearing submitted protest to determine if each such protest complies with the requirements set forth in the State Constitution and if there are any duplications. Staff expects to perform the same inspection of Protests submitted the day of the Protest Hearing after the Protest Hearing.

FISCAL IMPACT – None

RECOMMENDATION

Staff recommends that your Honorable Board receive a staff report on the status of protests received prior to January 28th; Open the Protest Hearing; Receive any new protests; Close the Protest Hearing; Direct the Secretary to tabulate the protests; Provide policy guidance regarding next steps; and continue this item until the February 11, 2009 Board Meeting.

ATTACHMENT

- Notice

TO: BLACKLAKE PROPERTY OWNERS AND TENANTS

DATE: DECEMBER 9, 2008

**NIPOMO COMMUNITY SERVICES DISTRICT
NOTICE OF PROPOSED ACTION TO MERGE THE BLACKLAKE WATER DIVISION WITH THE TOWN
WATER DIVISION AND ADOPT CORRESPONDING WATER RATE ADJUSTMENT AND BUY-IN
SURCHARGE WITHIN THE CURRENT BLACKLAKE WATER DIVISION.**

The Nipomo Community Services District Board of Directors ("District") has introduced Ordinance 2008-109 that, if adopted, would merge the District Blacklake Water Division with the District Town Water Division effective July 1, 2009. The merger is conditioned on Blacklake Water Customers and Property Owners approving a rate adjustment that would correspond with the Town Division's existing water rates and further approving a Buy-In Surcharge, as herein described.

NOTICE OF PUBLIC HEARING

A Public Hearing for the Proposed Merger and Proposed Rate Adjustment/Buy-In Surcharge within the Blacklake Water Division will be held on:

Date: January 28, 2009

Time: 9:00 a.m.

Place: Nipomo Community Services District Board Room, 148 South Wilson Street, Nipomo, CA

At the Public Hearing the Nipomo Community Services District Board of Directors will consider all public comment in support and in opposition of the Proposed Merger and Proposed Rate Adjustment/Buy-In Surcharge and whether or not a Majority Protest exists (see Page 5). If approved, the Proposed Merger and Rate Adjustment/Buy-In Surcharge would become effective July 1, 2009.

After the close of the Public Hearing, the Board of Directors may direct the District Secretary, or designee, to begin tabulation of the protests and to continue the agenda item to the Board of Directors meeting of February 11, 2009, to announce the protest outcome and to consider the adoption of resolutions and ordinances consistent with the District Secretary's determination.

MERGER OF THE TWO WATER DIVISIONS

The District operates two (2) water divisions commonly referred to as the Blacklake Water Division and the Town Water Division. The Blacklake Water Division, by design, uses a hydro-pneumatic pump station that includes tanks and variable speed pumps to provide water pressure for potable water and fire protection. The Town Water Division, by design, uses water tanks and a gravity water system to provide water pressure for potable water and fire protection. Each water division has a separate water-rate structure. For example, currently (2008), a Town Division water customer pays one hundred two dollars and seventy-eight cents (\$102.78) bi-monthly for 45 hundred cubic feet ("HCF") of water, while a Blacklake Water Division customer pays one hundred fourteen dollars and twenty-eight cents (\$114.28) bi-monthly for 45 HCF of water.

In 2006, the District determined that the Blacklake booster pump station and hydro-pneumatic tank were unreliable and required major reconstruction. To address the immediate need to provide Blacklake residents with potable water and fire protection, the District constructed a second, temporary intertie between the Town Water Division and the Blacklake Water Division. This intertie provides a temporary bypass of the booster pump station and hydro-pneumatic tank.

The District is considering the merger of the Blacklake Water Division with the Town Water Division whereby:

- The temporary bypass intertie constructed in October, 2006, and the four-inch emergency water intertie that was previously constructed would be declared permanent connections.
- A new intertie would be budgeted for construction by December 31, 2009, at Misty Glen. This intertie would provide redundancy and looping within Blacklake.
- A new intertie would be budgeted at Augusta Drive and constructed within one year after the District's

Pomeroy Road water line is extended past Augusta Drive. This intertie would provide additional redundancy and looping within Blacklake.

- The Blacklake Water Division projects, known as the Blacklake Booster Station and Blacklake hydro-pneumatic tank, would no longer be required to provide fire service and potable water within the Blacklake Water Division and would be abandoned.
- Town Water Division and the Blacklake Water Division would be merged into a single water division known as the Nipomo Community Services District Water System or District Water System.
- The Town Division water rates adopted by Ordinance 2005-103 would be the initial District Water System user rates commencing on July 1, 2009, subject to a Buy-In Surcharge to be paid by Blacklake water customers.
- Blacklake water customers would be given the opportunity to make a lump sum payment of the Buy-In Surcharge during the month of April 2009, or to pay the Buy-In Surcharge over a period of ten (10) years on their water bills as a surcharge.

HOW WILL RATES BE AFFECTED?

The adopted 2009 Blacklake water rates will remain in effect until July 1, 2009. The 2009 Blacklake water rates exceed the Town Division's water rates. Therefore, it is likely that, commencing July 1, 2009, water rates within the Blacklake Division will decrease as a result of the merger, even after considering the Buying surcharge (see Chart D on Page 2).

The following charts depict and compare the proposed water rates (including the Buy-In Surcharge) that are being considered for approval at the above-referenced hearing.

**CHART A
COMPARISON OF 2009 TOWN DIVISION AND BLACKLAKE DIVISION WATER RATES FOR
A ONE-INCH WATER METER**

	LOW USE (24 Units)*	MEDIUM USE (34 Units)*	HIGH USE (64 Units)*	VERY HIGH USE (120 Units)*
2009 Blacklake adopted bi-monthly rates	\$84.59	\$104.39	\$199.55	\$393.87
2009 Town adopted bi-monthly rates	\$70.20	\$ 86.60	\$163.64	\$320.44
Difference	(\$14.39)	(\$17.79)	(\$35.91)	(\$73.43)

*One unit equals 748 gallons = 100 CUBIC FEET = 1HCF

**CHART B
PROPOSED BLACKLAKE LUMP SUM BUY-IN SURCHARGE**

1-inch equivalent water meter	\$437
1½-inch water meter	\$1,311
2-inch water meter	\$2,098

**CHART C
PROPOSED BLACKLAKE BI-MONTHLY SURCHARGE
(IN LIEU OF LUMP SUM BUY-IN SURCHARGE)***

1-inch equivalent water meter	\$8.44
1½-inch water meter	\$25.32
2-inch water meter	\$40.51

*Includes 3% interest rate

**CHART D
COMPARISON OF ADOPTED BLACKLAKE WATER RATES WITH PROPOSED WATER RATES
INCLUDING TEN-YEAR PAYMENT OF BUY-IN OR SURCHARGE FOR A ONE-INCH WATER METER**

	LOW USE (24 Units)*	MEDIUM USE (34 Units)*	HIGH USE (64 Units)*	VERY HIGH USE (120 Units)*
2009 Blacklake adopted bi-monthly rates	\$84.59	\$104.39	\$199.55	\$393.87
2009 proposed bi-monthly rates with Buy-in Surcharge (effective July 1, 2009)	\$78.64	\$ 95.04	\$172.08	\$328.88
Decrease	(\$5.95)	(\$9.35)	(\$27.47)	(\$64.99)

*One unit equals 748 gallons = 100 CUBIC FEET = 1HCF

NIPOMO COMMUNITY SERVICES DISTRICT
 NOTICE OF PROPOSED ACTION TO MERGE THE BLACKLAKE WATER DIVISION WITH THE TOWN WATER DIVISION AND
 ADOPT CORRESPONDING WATER RATE ADJUSTMENT AND BUY-IN SURCHARGE WITHIN THE CURRENT BLACKLAKE
 WATER DIVISION

In the future, the District will likely propose additional water-rate increases consistent with the procedures of Article XIII D of the California Constitution. If the two systems are merged, future rate increases will be District-wide. Subject to the Blacklake customers making the one-time payment (as described below) the Buy-in Surcharge will constitute a separate surcharge on individual water bills within Blacklake until paid in full, approximately July 1, 2019 (see Chart C, on page 2). The Surcharge, once established, will not be considered or adjusted in future rate adjustments for the merged water divisions (District Water System). Lastly, if the water-rate adjustments are approved, the new rates would commence July 1, 2009.

The District recognizes that some water customers within the Blacklake Water Division would prefer to prepay the Buy-in Surcharge and avoid the three percent (3%) interest rate. Therefore, if adopted, water customers within Blacklake Water Division will have the opportunity to prepay the Buy-in Surcharge with a lump sum payment (see Chart B, on page 2), and thereafter pay the Town Division water rates (see Chart A, on Page 2). This choice will be offered to Blacklake water customers during the month of April 2009.

CALCULATION OF PROPOSED RATES AND CHARGES

The overall concept for the merger is for District customers in Blacklake to pay the same user fees and water rates as all other District customers within the Town Water Division plus either a one-time buy-in charge or a bi-monthly buy-in surcharge over a ten year period (see Charts B & C, on Page 2). The 2009 water rates for the Blacklake and Town Water Divisions were set by Ordinance 2005-103 on June 8, 2005. It is anticipated that the District will consider revising these water rates sometime in 2009 for a new rate period starting in 2010.

BI-MONTHLY WATER RATES

Ordinance 2005-103 establishes the following rates within the Town Division for 2009:

**CHART E
 BI-MONTHLY FIXED CHARGES**

SIZE OF METER	AVAILABILITY CHARGE	LITIGATION CHARGE*
1" or Less	\$24.52	\$6.32
1 1/2"	\$69.61	\$14.36
2"	\$110.25	\$19.92

*Ordinance 2005-103 establishes identical litigation charges within both the Blacklake and Town Divisions to meet the District's financial obligations relating to the lawsuit entitled Santa Maria Valley Water Conservation District vs. the City of Santa Maria, the Nipomo Community Services District, et al. When the District's financial obligation regarding this lawsuit has been satisfied, the above litigation charge will be removed.

The following chart illustrates the 2009 Bi-Monthly Residential Usage Rates or commodity charges for all units of water consumed:

**CHART F
 BI-MONTHLY RESIDENTIAL USAGE RATES OR COMMODITY CHARGES**

	USAGE RATE
Tier 1 (0-40 units)	\$1.64 per unit*
Tier 2 (>40 units)	\$2.80 per unit*

* One unit equals 748 Gallons = 100 CUBIC FEET = 1HCF

The following chart illustrates the 2009 Bi-Monthly Non-Residential Usage Rates or commodity charges for all units of water consumed:

**CHART G
 BI-MONTHLY NON-RESIDENTIAL USAGE RATES OR COMMODITY CHARGES
 (Multi-family, Commercial Irrigation, Agriculture, Industry and Construction)**

	USAGE RATE
All water use	\$2.06 per unit*

* One unit equals 748 Gallons = 100 CUBIC FEET = 1HCF

The fixed or availability charges (see Chart E, on Page 3) include:

- Costs such as meter reading, billing and customer service that tend to vary as a function of the number of customers served. Customer costs are allocated equally to all customers based on the total number of accounts.
- Fixed operating costs, water system maintenance and debt service costs. These are generally referred to capacity costs. Capacity costs tend to vary in relation to the capacity of the water system. Customers who have placed greater or lesser demands on the water system should bear a greater or lesser share of these costs. The demand that each customer could potentially place on the water system is reflected in the size and capacity of the customer's water meter.

The commodity or usage rates (see Charts F and G, on Page 3) include those costs that vary with the amount of actual water usage. Water treatment and pumping costs are the most significant examples. Commodity costs are allocated to each customer based on the actual amount of water used.

A comparison of 2009 adopted Blacklake water rates and the proposed water rates is reflected in Chart D, on Page 2.

BUY-IN OR SURCHARGE

The District formed an ad hoc committee that met with a committee of Blacklake residents to analyze capital improvements required to finalize the merger of the two divisions and to develop a formula to establish Blacklake water customers' contributions to the combined operating reserve account. The improvements and contributions include:

- The Blacklake Water Tank Rehabilitation;
- The new Misty Glen Interconnection;
- The new Augusta Drive Interconnection; and
- The contribution of Blacklake water customers to achieve a fifteen percent (15%) match to the projected District Water Fund FY08-09 Year-End Operating Reserves.

The Blacklake Water Division's contribution to the District FY08-09 Year-End Operating Reserves is calculated at \$182,192.00. The Blacklake Water Division's share of the improvements is calculated at \$95,550.00. The Buy-in Charge is calculated by adding the improvement contribution of \$95,550.00 and the contribution to the Year-End Operating Reserves account of \$182,192.00 for a total contribution of \$277,742.00. The \$437.00 Buy-in amount per one-inch equivalent meter (see Chart B, on Page 2) is calculated by dividing the \$277,742.00 (total contribution) by the 636 equivalent one-inch meters.

A detailed analysis of the cost of the improvements and Blacklake water customers' contribution to those improvements as well as the contribution to the FY08-09 Year-End Operating Reserves is detailed in a report titled "Blacklake Water Merger with Town Water Fund Financial Plan and User Rates Final Study" (herein "District Final Report").

AVAILABILITY OF REPORTS

The District Final Report and prior Reed Reports related to the calculation of water rates for the merged water systems are on file with the District and are available for inspection at the District office located at 148 S. Wilson, Nipomo, California or online at www.ncsd.ca.gov.

Subject to the procedures of Section 6 of the Article XIII D of the California Constitution, the District Board of Directors tentatively approved the new water rate structure effective July 1, 2009, based on the Town Water Division bi-monthly rates and charges and the Buy-in Charge established at its meeting of November 26, 2008.

NIPOMO COMMUNITY SERVICES DISTRICT
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WATER DIVISION

USE OF WATER RATES

Each District utility service (water and sewer) is operated as a separate enterprise and is required to provide services primarily through bi-monthly user rates. The proposed combined water system rates would be used to:

- Provide sufficient funds for on-going operation and maintenance for the District Water System.
- Rehabilitate, replace and upgrade facilities needed to provide services for the District Water System.
- Establish reserves to reduce risk and prudently manage the District's delivery of water resources.

MAJORITY PROTEST:

Pursuant to Section 6 of Article XIII D of the California Constitution, tenants and owners of property receiving water service within the Blacklake Water Division may submit a written protest against the proposed rate adjustment/Buy-in Surcharge. To be valid, a protest must be in writing with original signature and received by the District Secretary before the close of the Public Hearing referenced on page one of this Notice. Additionally, a valid written protest must contain a statement that you protest the proposed adjustment and/or Buy-in Surcharge, the address and Assessor's Parcel Number (APN) of the parcel or parcels which receive water service, and must be signed by either the owner or the tenant of the parcel or parcels that receive water service. If the person signing the protest is not shown on the last equalized assessment roll as the owner of the parcel(s), then the protest must contain or be accompanied by written evidence that such person signing the protest is either the owner or a tenant of the parcel receiving water service. One written protest per parcel shall be counted in calculating a majority protest to the proposed water rate adjustment/Buy-in Surcharge subject to the requirements of Section 6 of Article XIII D of the California Constitution. Written protests will not be accepted by e-mail or by facsimile. Verbal protests will not be counted in determining the existence of a majority protest.

Written protests regarding the water rate adjustment/Buy-in Surcharge may be mailed to:

Nipomo Community Services District
Attn: District Secretary
P.O. Box 326
Nipomo, CA 93444-0326

Written protests may also be personally delivered to the Board Secretary at the Nipomo Community Service District office located at 148 S. Wilson Street, Nipomo, California.

If written protests are presented by a majority of owners and/or tenants of identified parcels receiving water service within the Blacklake Water Division, the District will not adjust the water rates or impose a Buy-in Surcharge and the proposed merger Ordinance will not be adopted by the District. Thereafter, the District will explore its options in providing water service and fire protection to the Blacklake Water Division as an independent system.

CHANGE IN PROTEST

Up to the close of the above referenced Public Hearing of January 28, 2009, owners and tenants occupying parcels within the Blacklake Water Division can change or cancel prior letters of protest by written notification to the District. To be valid, the change in protest must state that the prior protest is withdrawn, must be signed by the person or persons who signed the original protest, must contain the address and APN number of the parcel or parcels that receive water service, must be dated and must be received by the District by the close of the Public Hearing referenced in this Notice.

If you should have questions, please contact **Bruce Buel, General Manager** at (805) 929-1133.

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

AGENDA ITEM
E-2
JANUARY 28, 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. As 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

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- 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 NCSO. 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 NCSO, 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 NCSO 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 NCSO GIS 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 NCSO GIS parcel base map (ESRI Geodatabase)
- Memorandum describing the process used to correct the County Assessor Database and NCSO 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, construction 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: BOARD OF DIRECTORS
FROM: BRUCE BUEL *BB*
DATE: JANUARY 23, 2009



CONSIDER ADOPTION OF RESOLUTION ESTABLISHING GUIDELINES FOR IMPLEMENTATION OF SLO COUNTY RETROFIT ORDINANCES

ITEM

Consider adoption of resolution establishing guidelines for implementation of SLO County Retrofit Ordinances [EDIT/ADOPT RESOLUTION].

BACKGROUND

On November 20, 2008, the County of San Luis Obispo (County) adopted Ordinance 3160 (the Conservation Ordinance), codified in County Codes at Section 19.07.042. Among other things, this ordinance established retrofit requirements for new construction within the Nipomo Mesa Water Conservation Area (NMWCA) to offset the water requirements of new development. In lieu of the developer retrofitting plumbing fixtures in existing structures, the developer of a new structure may elect to pay to the Nipomo Community Services District (NCSD) \$750.00 per toilet to be installed in the new structure. The developer is required to present to the Department of Planning and Building, prior to the issuance of a building permit for the new structure, a receipt for the payment to the NCSD. NCSD may then use the in lieu fees for programs that will result in water conservation in the NMWCA.

NCSD will administer the program. The funding from new construction within the NCSD boundaries will go for water-saving measures NCSD customers, and the funding from new construction outside of the NCSD boundaries will go for water-saving measures for non-NCSD residents. For NCSD overhead expenses in administering the program, the NCSD will charge 15% of the funds collected.

FISCAL IMPACT It is anticipated that funding for NCSD's Water Conservation Program will be saved because the County's ordinance provides for developers to fund certain water conservation measures. The resolution also provides for a 15% contribution to NCSD overhead to cover some of NCSD's costs to administer.

RECOMMENDATION

Staff recommends that the Board edit/adopt the proposed resolution and direct staff to implement.

ATTACHMENT -

- DRAFT RESOLUTION

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**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2009-XXXX**

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
ESTABLISHING GUIDELINES FOR THE USE OF IN LIEU FEES AUTHORIZED BY COUNTY
ORDINANCE 3160**

WHEREAS, on November 20, 2008, the County of San Luis Obispo (County) adopted Ordinance 3160 (the Conservation Ordinance) that, among other things, established retrofit requirements for new construction within the Nipomo Mesa Water Conservation Area (NMWCA); and

WHEREAS, the Conservation Ordinance is codified in County Codes at Section 19.07.042; and

WHEREAS, Section 19.07.042(d)(4) and (5) provide:

(4) In lieu of retrofitting plumbing fixtures in existing structures as specified in subsection d(3), a developer of a new structure may instead pay to the Nipomo Community Services District (hereinafter referred to as the "District") the amount of \$750.00 per toilet to be installed in the new structure. Prior to issuance of a building permit for the new structure specified in subsection d(3), a receipt for the payment to the District shall be submitted to the Department of Planning and Building.

(5) The District shall use the in lieu fees specified in subsection d(4) for programs that result in measurable water conservation in the Nipomo Mesa Water Conservation Area, including but not limited to the following:

- i. Subsidize toilet/showerhead retrofits.
- ii. Subsidize interior water audits.
- iii. Subsidize exterior water audits.
- iv. Subsidize irrigation system changes that will save water pursuant to the results of a District-sponsored water audit.
- v. Subsidize removal of high water-using turf and landscape materials and replacement with low water-using landscape material.
- vi. Provide repairs to irrigation systems at a cost not to exceed \$100.00 per parcel.

Fees collected from new development located within the District boundaries shall only be used for water conservation projects within the District. Fees collected from new development that is located outside of the District boundaries shall be used for water conservation projects outside of the District boundaries; and

WHEREAS, consistent with Section 19.07.042(d)(4) and (5), the Nipomo Community Services District (District), by this Resolution, adopts guidelines for the expenditure and processing of the "in lieu fees" received by the District pursuant to Section 19.07.042(d)(5).

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

Section 1: Guidelines

The following guidelines will be applied to collected in lieu fees:

- A) Definitions
1. "In lieu fee" means monies deposited with District pursuant to Section 19.07.042(d) of the County Code.
 2. "measurable water conservation" means those programs referenced in Paragraph F, below, and other programs approved by the District Board of Directors.
 3. "Projects" means new structures as referenced in County Code Section 19.07.042(d).
- B) Certification. All deposits of in lieu fees shall include a certification by a licensed plumber or contractor verifying the number of toilet fixtures installed in each new structure.
- C) Accounting. The District will maintain separate accounts for in lieu fees collected from developers whose projects are within the District's boundaries and those projects that are outside the District boundary.
- D) Administrative Fee. The District shall deduct 15% from all deposits of in lieu fees to administer these guidelines and programs referenced in Paragraphs A through F of this Resolution.
- E) Use of In Lieu Fees. Fees collected from new development located within the District boundaries shall only be used for water conservation programs within the District. Fees collected from new development that is located outside of the District boundaries shall be used for water conservation programs outside of the District boundaries.
- F) Programs. The District shall use the in lieu fees for programs that result in measurable water conservation in the Nipomo Mesa Water Conservation Area, including but not limited to:
1. Subsidize toilet/showerhead retrofits.
 2. Subsidize interior water audits.
 3. Subsidize exterior water audits.
 4. Subsidize irrigation system changes that will save water pursuant to the results of a District-sponsored water audit.
 5. Subsidize educational programs.
- G) Program Management. The District General Manager or his/her designee shall administer these guidelines and programs.

Section 2: Severability

If any section, subsection, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portion of this Resolution. The District Board of Directors hereby declares that it would have passed this Resolution and each section, subsection, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared unconstitutional.

Section 3: Incorporation of Recitals

The above-referenced recitals are true and correct and incorporated herein by this reference.

Section 4: Effective Date

This Resolution shall be in full force and effect on the date of its passage.

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

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

the foregoing resolution is hereby adopted this ____ day of _____, 2009.

Jim Harrison, President
Nipomo Community Services District

ATTEST:

APPROVED AS TO FORM:

Donna K. Johnson
Secretary to the Board

Jon S. Seitz
General Counsel