

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

**AGENDA ITEM
E-2
OCT. 28, 2009**

WIP JPA WITH SLO COUNTY

ITEM

Review Proposed Criteria for formation of JPA with County of SLO for Waterline Intertie Project Funding and approve Cost Re-imbusement Agreement [Review Criteria and Approve Agreement]

BACKGROUND

Your Honorable Board, on August 26th, submitted a request to Supervisor Achadjian and the Board of Supervisors discussed this matter at its Sept. 22, 2009 Board Meeting.. At the Sept. 22nd Meeting the Board of Supervisors unanimously directed County Staff to develop JPA criteria for Board review by the end of October and to bring back a draft JPA by the end of December.

Attached is County Staff's initial listing of criteria.

Also attached is District Legal Counsel's red-lined version of the Cost Reimbursement Agreement.

It is staff's understanding that the Criteria will be considered by the Board of Supervisors on November 3, 2009 along with a reimbursement agreement to cover the County's actual cost of forming the JPA.

FISCAL IMPACT

Negotiation of the criteria and the JPA will involve a commitment of previously budgeted staff time and legal consulting cost. Ultimate adoption of the JPA will obligate NCSD to the responsibilities set forth in the JPA.

RECOMMENDATION

Staff recommends that the Board review and comment on the Criteria and approve the Reimbursement Agreement in concept subject to final edits by the County. A final version will be returned to the Board for ratification.

ATTACHMENTS

- County Staff's Initial Listing of Criteria
- Red-Lined Cost Reimbursement Agreement

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Bruce Buel

From: wclemens@co.slo.ca.us
Sent: Thursday, October 22, 2009 3:33 PM
To: Bruce Buel
Cc: Jon S. Seitz; pogren@co.slo.ca.us
Subject: Re: WIP JPA Criteria

Bruce

Please provide me with the date the EIR for the project was certified.

Here are the criteria we are including for discussion only. No board action on criteria.

- 100% of the costs incurred by the County shall be paid by NCSD.
- Parties to the agreement(s) will include the County, NCSD, Golden State Water, Rural Water Company, and Woodlands Mutual Water Company.
- The agreements shall address Operations and Maintenance with:
 - o NCSD as the operator
 - o Standards and assurances that facilities are maintained in good working condition
- NCSD and other agencies shall post notices of all hearings conducted by the County in addition to the County's legal requirements.
- Parties shall fully indemnify, defend, and hold harmless the County.
- Parties that pay up-front costs shall be eligible to be reimbursed through assessment bond sales to the extent allowable by law.
- Any enforcement required under agreement(s) shall be the primary responsibility of NCSD with the County reserving all rights to enforce.
- Proposed assessments to all properties shall be based on special benefits. Bond Counsel will evaluate feasibility of allowing parties to substitute other revenue to secure the financing.

From: "Bruce Buel" <buel@ncsd.ca.gov>
To: <pogren@co.slo.ca.us>
Cc: <wclemens@co.slo.ca.us>, "Jon S. Seitz" <Jon@shipseyandseitz.com>
Date: 10/22/2009 02:29 PM
Subject: WIP JPA Criteria

Paavo

Do you have any draft criteria to share?? If not, can you provide them to me by COB on Tuesday??

REIMBURSEMENT AGREEMENT
By and Between
the County of San Luis Obispo
and Nipomo Community Services District

THIS REIMBURSEMENT AGREEMENT ("Agreement") is made and effective this _____ day of _____, 2009, by and between the **NIPOMO COMMUNITY SERVICES DISTRICT**, a community services district, hereinafter referred to as "District," and the **COUNTY OF SAN LUIS OBISPO**, a political subdivision of the State of California, hereinafter referred to as "County."

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WHEREAS, the District desires to have the County participate in a joint powers, or other appropriate agreement with the District and/or other entities which would allow for the creation of an assessment district to fund costs and capital improvements for the District's Santa Maria Intertie Project (herein after referred to the Assessment Agreement); and

Deleted: evaluate the feasibility of the County entering into

Deleted: (hereinafter referred to as the "Feasibility Analysis")

WHEREAS, the Parties enter into this Agreement for the limited purposes of reimbursing the County's costs for analyzing the feasibility of entering into the Assessment Agreement and thereafter the drafting of such Assessment Agreement (herein after collectively referred to as the "Feasibility Analysis").

NOW, THEREFORE, the parties hereto agree as follows:

A. District is Responsible for County's Feasibility Analysis Costs.

1. The District shall reimburse the County for all reasonable costs incurred by the County (including County staff time) related to Feasibility Analysis activities performed by County personnel or its independent contractors, including, but not limited to:
 - a. Any and all legal, fiscal, accounting, administrative and engineering analysis and research that the County determines is relevant to the Feasibility Analysis;
 - b. Any and all legal, fiscal, accounting, administrative and engineering analysis and research that the County determines is relevant to the drafting of a joint powers and/or other appropriate agreement(s) that would allow for the

creation of an assessment district to fund costs and capital improvements for the District's Santa Maria Intertie Project;

2. The District shall advance to the County the amount of \$10,000 as a deposit for the cost of Feasibility Analysis activities. Said deposit shall be paid to the County within five (5) business days of the approval of this Agreement by the County's Board of Supervisors. The County is hereby authorized to reimburse itself for all Feasibility Analysis costs incurred by the County by withdrawing said costs from said deposit. In the event any Feasibility Analysis costs incurred by the County exceed the remaining balance of the deposit, District shall reimburse the County for all Feasibility Analysis costs within ten (10) business days of being invoiced by the County for said costs.
3. If the County's reasonable estimate of the remaining Feasibility Analysis costs ever exceeds the remaining balance of the deposit, the District shall make a supplemental deposit payment to the County in the amount of said difference within ten (10) business days of the County's written notification. District shall be entitled to a return from the County of any surplus remaining balance of the deposit that exceeds the Feasibility Analysis costs incurred of the County.
4. The County shall provide to the District a detailed invoice of the County's Feasibility Analysis costs within a reasonable time of when the costs are incurred. The County shall not be required to provide any greater detail in said invoice that that received by the County from a third party providing the work.

B. General Provisions.

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1. County staff shall include the participation of the District' staff and consultants as well as other interested entities in developing the Feasibility Analysis and the Assessment Agreement.

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2. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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3. This Agreement contains the entire Agreement between the parties hereto with respect to the subject matter hereof. This Agreement may not be altered, modified or amended except by an instrument in writing executed by all of the parties.

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4. This Agreement has been executed in and shall be governed by the laws of the State of California.

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

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6. All notices and demands shall be given in writing by personal delivery or first-class mail, postage prepaid. Notices shall be addressed as appears below for the respective party; provided that, if any party gives notice of a change of name of address, notices to the giver of that notice shall thereafter be given as demanded in that notice. Notices shall be deemed received seventy-two (72) hours after deposit in the United States mail.

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5.

County: County of San Luis Obispo
Public Works Department
County Government Center, Room 207
San Luis Obispo, CA 93408
Attention: Will Clemens

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

7. The wavier by one party of the performance of any covenant, condition or provision shall not invalidate this Agreement, nor shall it be considered a waiver by of any other covenant, condition or provision. The wavier by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and any provision of this agreement for any remedy shall not exclude other consistent remedies unless they are expressly excluded.

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8. No provision of this Agreement may be modified, waived, amended, or added to, unless authorized in writing and signed by both parties.

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9. The District shall defend, indemnify and save harmless the County, its agents and employees from any and all claims, demands, damages, costs, expenses, or liability (hereafter, collectively "Claims") arising from any act or omission of the County, the District or any other person relating to the performance or attempted performance of the provisions hereof, or in any way arising out of this Agreement, including, but not limited to, inverse condemnation, equitable relief, willful conduct, violation of statute (including, but not limited to, violation of any assessment district laws, CEQA, or other environmental laws) or negligence.

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The District shall defend, indemnify and save harmless the County, its agents, and employees from any and all said Claims, regardless of whether the demand or claim is made by the County (or its employees and agents), the District (or its employees and agents), or any other person. The District's foregoing duty to defend, indemnify, and save harmless the County includes any Claims arising from any passively negligent acts or omissions to act committed by the County, its agents, or employees. Nothing contained in the foregoing indemnity provisions shall be construed to require the District to indemnify the County against any responsibility or liability in contravention of Section 2782 of the Civil Code.

10. Nothing in this agreement constitutes a warranty or representation that any joint powers or other agreement(s) drafted with funds covered by this agreement will actually allow for the creation of an assessment district to fund costs and capital improvements for the District's Santa Maria Intertie Project. The District is obligated to review any and all such agreement(s) with its own independent counsel, and has no right to rely upon any oral or written statements made by the County at anytime regarding whether any such agreement(s) will actually allow for the creation of an assessment district to fund costs and capital improvements for the District's Santa Maria Intertie Project. District further understands that even if any such agreement(s) would actually allow for the creation of an assessment district to fund costs and capital improvements for the District's Santa Maria Intertie Project, no assessment district will be created if the procedures required for the creation of an assessment district are not successfully completed.

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

COUNTY

BY: _____
Chairperson of the Board of Supervisors
County of San Luis Obispo
State of California

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO FORM

Warren R. Jensen
County Counsel

BY: _____
Deputy County Counsel

Dated: _____

DISTRICT COUNSEL

BY: _____
Jon Seitz
District Counsel

Dated: _____

DISTRICT

BY: _____
President

ATTEST:

Secretary to the Board

TO: BOARD OF DIRECTORS
FROM: BRUCE BUEL *BSB*
DATE: OCT. 23, 2009

**AGENDA ITEM
E-3
OCT. 28, 2009**

GUIDELINES FOR CONDUCTING ASSESSMENT PROCEEDING

ITEM

Adopt guidelines for conducting assessment proceeding [ADOPT]

BACKGROUND

Attached is a resolution and guidelines prepared by District Legal Counsel.

FISCAL IMPACT

Development of this draft did use previously budgeted staff time and legal consulting cost.

RECOMMENDATION

Staff recommends that the Board adopt the attached resolution.

ATTACHMENTS

- Resolution and Guidelines

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RESOLUTION NO. 2009 - XXX

A RESOLUTION OF THE NIPOMO COMMUNITY SERVICES DISTRICT ADOPTING PROCEDURES APPLICABLE TO THE COMPLETION, RETURN AND TABULATION OF ASSESSMENT BALLOTS FOR THE NIPOMO COMMUNITY SERVICES DISTRICT MAINTENANCE DISTRICT NO. 1

WHEREAS, Proposition 218 was adopted on November 6, 1996, adding Articles XIIC and XIID to the California Constitution; and

WHEREAS, Articles XIIC and XIID of the California Constitution impose certain procedural and substantive requirements relating to assessments (as defined therein); and

WHEREAS, the Nipomo Community Services District Board of Directors finds it to be in the interest of the community to record its decisions regarding the procedures for the completion, return and tabulation of Assessment Ballots for the Nipomo Community Services District Maintenance District No. 1.

NOW, THEREFORE, the Board of Directors of the Nipomo Community Services District does hereby resolve, determine and order as follows:

SECTION 1. Statement of Legislative Intent. It is the Board of Director's intent in adopting this resolution, to adopt procedures applicable to the completion, return and tabulation of Assessment Ballots which are consistent with, and in compliance with, Articles XIIC and XIID of the California Constitution and with the Proposition 218 Omnibus Implementation Act. It is not the intent of the Board of Directors to vary in any way from the requirements of Articles XIIC and XIID or the Proposition 218 Omnibus Implementation Act and the provisions of this Resolution shall be interpreted in accordance therewith.

SECTION 2. Assessment Procedures. The procedures applicable to the completion, return and tabulation of assessment ballots for the Nipomo Community Services District Maintenance District No. 1, attached hereto as Exhibit "A" (incorporated herein by this reference) are hereby approved and adopted.

SECTION 3. Severability. If any provisions of the guidelines and procedures referenced in Exhibit "A" or the application thereof to any person or circumstances is held invalid, the remainder of the guidelines and procedures or application of such provision to other persons or circumstances shall not be affected.

SECTION 4. Conflict with Existing Law. If any provision in the guidelines and procedures referenced in Exhibit "A" conflicts with the provisions of the California Constitution, Streets and Highways Code, Government Code, or other California Codes then such provision shall automatically be superseded by the provisions of said Constitution and/or Code until such time as the attached guidelines and procedures can be revised.

PASSED AND ADOPTED by the Board of Directors of the Nipomo Community Services this ____ day of _____ 2009 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

JAMES HARRISON , PRESIDENT
NIPOMO COMMUNITY SERVICES DISTRICT

ATTEST:

Donna K. Johnson, Secretary
to the Board of Directors
Nipomo Community Services District

**PROCEDURES APPLICABLE TO THE COMPLETION, RETURN AND
TABULATION OF ASSESSMENT BALLOTS
NIPOMO COMMUNITY SERVICES DISTRICT MAINTENANCE
DISTRICT NO. 1**

SECTION 1. Intent. It is the Board of Director's intent to adopt guidelines and procedures applicable to the completion, return and tabulation of assessment ballots that are in addition to, consistent with, and in compliance with Article XIIC and XIID of the California Constitution and with the Proposition 218 Omnibus Implementation Act.

SECTION 2. Severability. If any provision of these guidelines and procedures or the application thereof to any person or circumstances is held invalid, the remainder of these guidelines and procedures or application of such provision to other persons or circumstances shall not be affected.

SECTION 3. Conflict with Existing Law. If any provision in these guidelines and procedures conflicts with the provisions of the California Constitution, Streets and Highways Code, Government Code, or other California Codes, then such provision shall automatically be superseded by the provisions of said Constitution and/or Code until such time as these guidelines and procedures can be revised.

SECTION 4. Procedures. The following guidelines and procedures are applicable to the completion, return and tabulation of assessment ballots required by Article XIID section 4 of the California Constitution:

A. Notice. The following guidelines shall apply to giving notice of the assessment and hearing to property owners:

- 1 The record owner(s) of each parcel to be assessed shall be determined from the last equalized secured property tax assessment roll as of the date the District sets the assessment hearing. If the assessment roll indicates more than one owner, then each owner shall receive notice.
- 2 The notice shall be sent to the record owner(s), at the address that appears on the assessment roll, at least forty-five (45) days prior to the date set for the public hearing on the assessment. The notice shall be sent through a mailing, postage prepaid, deposited in the United States Postal Service and shall be deemed given when so deposited.
- 3 If the U.S. Postal Service returns any notice to the District as undeliverable and provides the District with a forwarding address, the District shall mail the notice to the forwarding address.

- 4 The notice provided by this section shall be in accordance with Government Code section 53753(b) and (c) and shall supersede and be in lieu of any other statutes requiring notice to levy or increase an assessment, including but not limited to, the notice required by the state statute authorizing the assessment and Government Code section 54954.6.
- 5 Failure of any person to receive notice shall not invalidate the proceedings.
- 6 The cost of providing notice may be included as a cost of the assessment district.
- 7 On the face of the envelope mailed to the record owner(s), in which the notice and ballot are enclosed, there shall appear in substantially the following form in no smaller than 16-point bold type: "OFFICIAL BALLOT ENCLOSED".

B. Assessment Ballot. The following guidelines shall apply to the assessment ballot:

1. The ballot required by Article XIIIID, section 4(d) of the California Constitution shall be included in the forty-five (45) day notice referenced in section 4A above. The ballot shall comply with the requirements of Government Code section 53753(b) and (c).
2. All assessment ballots must be returned either by mail or by hand delivery prior to the conclusion of the public input portion of the public hearing. Regardless of the method of delivery, assessment ballots must be received either by mail or by hand delivery prior to the conclusion of the public input portion of the public hearing.
3. The Assessment Engineer shall issue additional assessment ballots to "additional property owners" whose name(s) does not appear on the last equalized secured property tax assessment roll, for the County of San Luis Obispo. These additional assessment ballots shall be clearly marked as "additional ballots" and shall be issued upon presentation of adequate information to the satisfaction of the Assessment Engineer that the requesting party is an additional owner of record. The Assessment Engineer shall keep records of additional ballots issued to property owners.
4. Each assessment ballots shall be in a form which conceals its contents once it is sealed by the person submitting the assessment ballot.
5. Each ballot must be signed under penalty of perjury. In the event that more than one of the record owners of a parcel submits an assessment ballot, the amount of the proposed assessment to be imposed upon the parcel shall be allocated to each ballot submitted in proportion to the respective record ownership

interest or, if the ownership interests are not shown on the record, as established to the satisfaction of the Assessment Engineer by documentation provided by the record owners. However, if only one owner of record votes, the District shall tabulate that vote on behalf of the entire parcel.

6. Because assessments are levied on property and tenants are not directly liable to the District for payment of assessments, a tenant of real property shall not have the power or authority to submit an assessment ballot.

7. Only ballots with original signatures, not photocopies, will be accepted. Ballots will not be accepted via e-mail or fax.

8. The Assessment Engineer shall issue a duplicate ballots to any property owner; whose original ballot was lost, destroyed, or who desires to withdraw a previously submitted ballot. The duplicate ballot shall be issued upon presentation of adequate information to the satisfaction of the Assessment Engineer that the requesting party is an owner of record of the affected property. Such ballots shall be clearly marked as "duplicate ballots" and shall include sufficient information for the impartial person to verify the location and ownership of the property in question and the identity of the individual casting the ballot in order to verify its authenticity.

9. An assessment ballot proceeding is not an election.

10. Assessment ballots shall remain sealed until the tabulation of ballots commences at the conclusion of the public hearing. An assessment ballot may be submitted, or changed, or withdrawn by the record owner who submitted the ballot prior to the conclusion of the public testimony on the proposed assessment at the public hearing.

11. Prior to the public hearing, neither the assessment ballot nor the envelope in which it is submitted shall be treated as a public record, pursuant to Government Code section 6254(c) and any other applicable law, in order to prevent potential unwarranted invasions of the submitters' privacy and to protect the integrity of the balloting process.

12. During and after the tabulation, the assessment ballots shall be treated as disclosable public records, as defined in Government Code section 6252, and equally available for inspection (e.g., by the proponents or the opponents of the proposed assessment), pursuant to Government Code section 53750(e)(1).

C. Tabulating Ballots. The following guidelines shall apply to tabulating assessment ballots:

1. The District Secretary/Clerk (or an impartial person designated by the Board of Directors pursuant to paragraph 2 below) shall determine the validity of all

ballots. All ballots shall be accepted as valid except those in the following categories:

- a. A photocopy of a ballot which does not contain an original signature;
- b. An unsigned ballot;
- c. A ballot which lacks an identifiable "yes" or "no" vote;
- d. A ballot which appears to be tampered with or otherwise invalid based upon its appearance or method of delivery or other circumstances;
- e. A ballot which is submitted on a form which is different than the form of ballot provided by the District;
- f. A ballot submitted to the District via e-mail or fax;
- g. A ballot not signed under penalty of perjury by a record owner.

The District Secretary/Clerk (or a designated person) decision, after consultation with District Legal Counsel that a ballot is invalid, shall be final and may not be appealed to the District Board of Directors.

2. An impartial person designated by the Board of Directors who does not have a vested interest in the outcome of the proposed assessment shall tabulate the assessment ballots submitted, and not withdrawn, in support or opposition to the proposed assessment. The impartial person may include the District Secretary/Clerk.

3. A property owner's failure to receive an assessment ballot shall not invalidate the proceedings.

4. In the event of a dispute regarding whether the signer of a ballot is the owner of the parcel to which the ballot applies, the Assessment Engineer will make such determination from the official County Assessor records and any evidence of ownership submitted to the District prior to the conclusion of the public hearing. The Assessment Engineer will be under no duty to obtain or consider any other evidence as to ownership of property and its determination of ownership will be final and conclusive.

5. A property owner who has submitted an assessment ballot may withdraw the ballot and submit a new or changed ballot up until the conclusion of the public input portion of the public hearing on the assessment. Assessment ballots may be withdrawn and newer changed ballots submitted up until the conclusion of the public input portion of the public hearing on the assessment.

D. Public Hearing.

1. At the public hearing, the District Board of Directors shall hear all public testimony regarding the proposed assessment and accept ballots until the close of the public hearing, which hearing may be continued from time to time.
2. The Board of Directors may impose reasonable time limits on both the length of the entire hearing and, at the discretion of the presiding officer, the length of each speaker's testimony.
3. At the conclusion of the hearing the impartial person shall complete tabulation of the ballots, including those received during the public hearing.
4. If the District uses District personnel for ballot tabulation, or if the District contracts with a vendor for the ballot tabulation and the vendor or its affiliates participated in the research, design, engineering, public education, or promotion of the assessment, the ballots shall be unsealed and tabulated in public view at the conclusion of the hearing so as to permit all interested persons to meaningfully monitor the accuracy of the tabulation process.
5. The District may, if necessary, continue tabulation to a different time or location accessible to the public provided the District Board announces the time and location at the hearing.
6. If according to the final tabulation of the ballots, ballots submitted against the assessment exceed the ballots submitted in favor of the assessment, weighted according to the proportional financial obligation of each affected property, a "majority protest" exists and the District Board of Directors shall not impose or increase the assessment.