

TO: BOARD OF DIRECTORS
FROM: MICHAEL LEBRUN
DATE: MAY 21, 2010

AGENDA ITEM
E-4
MAY 26, 2010

FEE COLLECTION POLICY REVIEW DRAFT ORDINANCE

ITEM

Fee Collection Policy review draft Ordinance. [PROVIDE DIRECTION TO STAFF]

BACKGROUND

Your Honorable Board directed staff to provide an opportunity for review and discussion of District procedure for collection of supplemental water capacity charges. On December 16, 2009, your Board discussed fee collection and directed staff review the District's schedule of fee collection with consideration for delaying development-related fee collection across all categories of development.

On January 4, 2010, staff met with representatives of San Luis Obispo County Home Builders Association. HBA outlined the financial difficulties developers are experiencing paying District development fees due to changes in lending institution practices particular to development projects. District Policy requires a 100% payment of fees upon issuance of the Will-Serve Letter. The County requires a Will-Serve letter prior to filing a Final Tract Map. Recent changes in the lending and banking industry result in developers being unable to obtain building loans prior to the Tract Map filing.

The Home Builders Association of SLO County asked the District to consider issuing a Will-Serve Letter with a fee deposit and delaying the collection of fees until the issuance of a building permit by the County. On January 21, 2010, District staff and Legal Counsel met with County senior planning staff to discuss the potential for County verification of District fee payment prior to the issuance of a building permit. County staff indicated such a process would be possible by the inclusion of a District-wide 'flag' on all parcels that would trigger District fee verification prior to building permit issuance. The County currently performs a similar service of fee collection for school districts.

District fees include connection and capacity charges and are set to represent a buy-in to existing infrastructure and cost of developing additional resources and infrastructure to serve the new development. Delaying fee collection, or a portion of fee collection, on new development, in the current financial climate, is not expected to have a significant fiscal impact on the District. However, during aggressive development climates, a delay in fee collection over a prolonged period could substantially limit the District's ability to pursue new resources and capacity. Typically, sewer treatment and water resource projects take much longer to develop than do commercial and residential projects.

Additional concerns staff has identified include:

- Issuance of a Will-Serve letter, which commits the District - with very little recourse and no expiration - to supplying a future development without the collection of fees is problematic and could result in legal challenge to the District.
- Relying on another agency, in this case the County, to insure those fees are collected is problematic. If County resource constraints lead to significantly reduced staffing, would confirmation of District fee payment remain a priority to the County?
- The change in procedure could lead to a request for service prior to the District's acceptance of development infrastructure.
- The change in procedure could lead to an unaware buyer purchasing a lot where substantial fees are due.

These issues were discussed at your January 27, 2010 Regular Board Meeting. At that time, your Board expressed concern with relying on action by another agency to trigger collection of District fees. Your Board directed staff to conduct further investigation and attempt to provide a proposal to meet the HBA request without relinquishing District control of its fee collection process.

At the February 24, 2010 Board Meeting, staff identified a process whereby the District could delay fee collection to after the Will-Serve Letter yet prior to the District's acceptance of project improvements. The process would allow the developer to file a Final Map and obtain construction loans based on the development map. It would also allow the District to maintain control over the trigger for collection of connection fees (trigger would be District issuing a Ready-to-Serve Letter – which the County requires prior to issuing building permits).

At the February meeting, your Board heard additional testimony from representatives of Coast National Bank indicating construction loan funding is not available until project building permits are being sought and, therefore, a requirement to pay fees prior to that point would not provide the building industry with relief. (See attached Coast National letter.) Your Board directed staff to research a fee schedule whereby 20% of the fees are collected when the District issues a Will-Serve Letter and the remainder of fees are collected when the building permits are drawn.

Staff worked to resolve the conflicting needs and desires of the District and building industry – namely pushing fee collection out to the point where building loans are available, requires the District to rely on a fee-payment trigger administered by others (building permit issuance by the County). Staff developed a concept procedure, which could be applied to subdivision projects that require Board approval.

At the April 28, 2010 Board Meeting, Staff presented a flow chart of the process to facilitate the discussion of the concept. The Board of Directors agreed in concept to the process of fee collection depicted in the flow chart with the exception of the "due on sale" clause a.k.a. "the red box" on the flow chart. Staff included the "due on sale" clause which is similar in concept to the "due on sale" clause in Ordinance 2009-112, Section 3.04.052 (B)(2)(a) adopted on April 22, 2009 (copy attached). At the Board's direction, Staff has removed the due upon sale clause and drafted an Ordinance.

FISCAL IMPACT

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

RECOMMENDATION

Staff recommends that the Board review the draft Ordinance and provide direction to Staff.

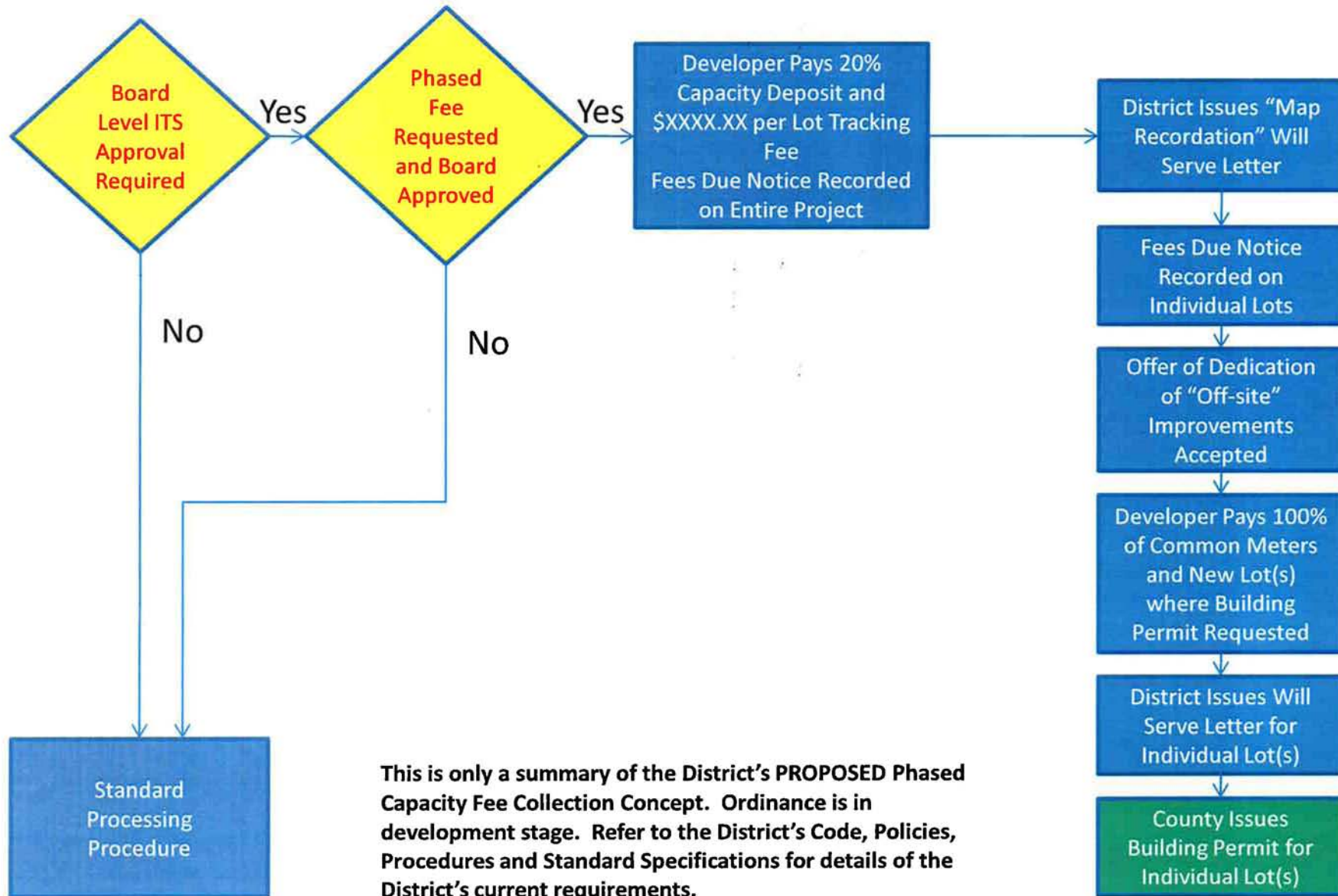
ATTACHMENTS

- Simplified Flow Chart of Development Process
- District Code Chapter 3.04
- Draft Ordinance

T:\BOARD MATTERS\BOARD MEETINGS\BOARD LETTER\2010\100526 FEE COLLECTION POLICY DISCUSSION.DOC

CONCEPTUAL NCSD PHASED CAPACITY FEE COLLECTION

FOR 4 OR MORE PARCEL RESIDENTIAL OR MIXED USE DEVELOPMENTS



This is only a summary of the District's PROPOSED Phased Capacity Fee Collection Concept. Ordinance is in development stage. Refer to the District's Code, Policies, Procedures and Standard Specifications for details of the District's current requirements.

EXISTING NCSD STANDARD PROCESSING PROCEDURE

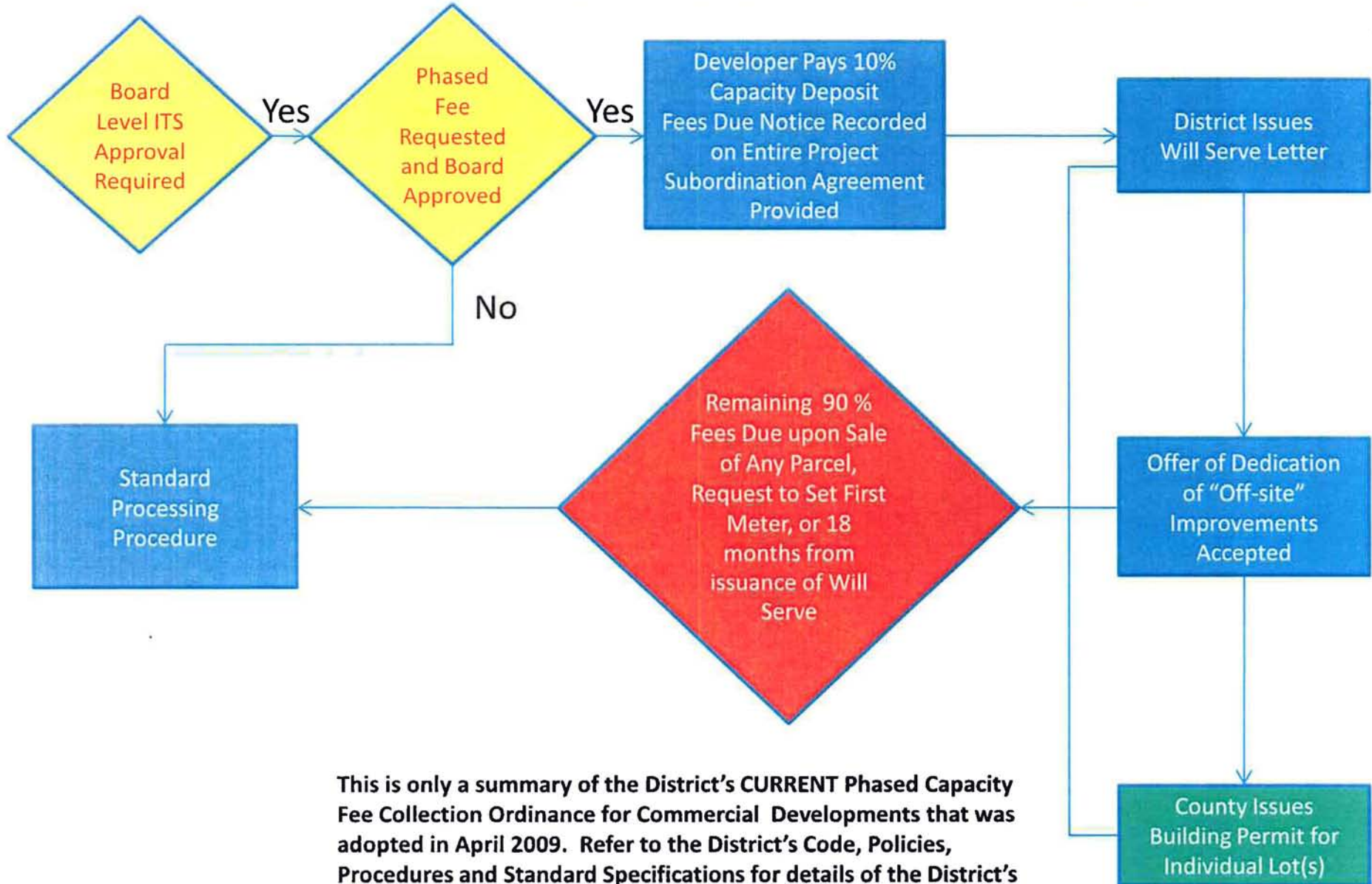
FOR ALL DEVELOPMENT PROJECTS



This is only a summary. Refer to the District's Code, Policies, Procedures and Standard Specifications for details of the District's current requirements.

EXISTING NCSD PHASED CAPACITY FEE COLLECTION (Ordinance 2009-112)

FOR 2 OR MORE PARCEL COMMERCIAL DEVELOPMENTS WITH 1.5 INCH OR LARGER METERS



This is only a summary of the District's **CURRENT** Phased Capacity Fee Collection Ordinance for Commercial Developments that was adopted in April 2009. Refer to the District's Code, Policies, Procedures and Standard Specifications for details of the District's current requirements.

3.04.050 - Connection fees.

A.
New connections shall be subject to water connection fee/capacity charges based on the estimated reasonable cost of the district facilities to provide the service. These fees shall consist of the following component parts: capacity charges (including a supplemental water charge), meter fee, account set-up fee, and reimbursement charge, if applicable. These fees are established in Appendix A to this chapter.

B.
Reimbursement Charges.

1.
When a new service is connected to a district installed water line, the applicant shall be charged a front footage fee of twenty-one dollars per foot to each parcel fronting the improvements or one-half this amount when district service can be provided on both sides of the water line. Where the frontage has been subdivided, rear and front parcels are to share on a per parcel basis the frontage of the subdivision creating the parcels.

2.
When a new service is connected to a developer-installed water line pursuant to Title 5, the applicant shall pay a supplemental charge pursuant to that reimbursement agreement.

C.
The meter fee and account set-up fee shall be established and amended by resolution of the board of directors with reference to this code section.

(Ord. 2005-101 §§ 5, 6, 2005; Ord. 2003-95 § 7, 2003; Ord. 98-87 § 11, 1998)

(Ord. No. 2005-105, § 4, 10-26-2005)

3.04.051 - Payment of connection fees and capacity charges.

Except as provided in Section 3.04.052, below, the applicant shall pay the water capacity charges (including supplemental water capacity charges), sewer capacity charges, reimbursement charges (if applicable), meter fee and account set-up fee, collectively "Fees for Connection" as follows:

A.
The applicant shall make a non-refundable deposit ("Deposit") at the time the district issues a will-serve letter in an amount equal to the then calculated fees for connection.

B.
The fees for connection shall be calculated and owing as of the date the district sets the water meter(s) to serve the affected property from which the amount of the deposit shall be deducted.

C.
The district will set water meter(s) upon proof of a building permit from the County of San Luis Obispo and that the District has accepted improvements to be dedicated to the district, if applicable.

"Except where the applicant has either completed well improvements to be dedicated to the district and has development plans that have been approved by the district, paid all fees and charges based on said approved development plans, and has been issued a will-serve letter, or has development plans that have been approved by the district, paid all fees and charges based on said approved development plans, and has been issued a will-serve letter, the calculation of payment of "fees for connection" referenced in Section B, above, shall apply to all properties where a water meter has not been set by the district."

(Ord. No. 2005-105, § 4, 10-26-2005; Ord. No. 2009-112, § 2, 4-22-2009)

3.04.052 - Payment of connection fees and capacity charges for commercial development.

For commercial projects developed on commercially-zoned properties within the district, the applicant shall pay the water capacity charges (including supplemental water capacity charges), sewer capacity charges, reimbursement charges (if applicable), meter fee and account set-up fee (collectively "Fees for Connection") as follows:

A.

For commercial projects that do not meet the requirements of subparagraph B, below, the payment provisions of Section 3.04.051 shall apply.

B.

For commercial projects under a single application for a final map, developed on two or more parcels, where one or more of the parcels requires a 1.5 inch or larger water meter, the following payment provisions shall apply.

1.

The applicant shall make a non-refundable deposit ("Deposit") at the time the district issues a will-serve letter in an amount equal to the total project fees for connection minus ninety percent of the water capacity charges attributed to supplemental water.

2.

The remaining ninety percent of the project's supplemental water deposit shall be due and payable on the first of the following to occur:

a.

Sale of any one of the parcels;

b.

Applicant's request to set the first water meter at any one parcel; or

c.

Eighteen months from the date the will-serve letter is issued.

3.

Prior to issuing the will serve letter, applicant shall provide district, to the satisfaction of district legal counsel, the following:

a.

A recordable document referencing Applicant's obligation for payment of Fees for Connection as outlined in this subparagraph B; and

b.

A subordination agreement.

C.

The fees for connection shall be calculated and owing as of the date the district sets the first water meter(s) to serve the project from which the amount of the deposit shall be deducted.

D.

The district will set water meter(s) upon proof of a building permit from the County of San Luis Obispo and that the district has accepted improvements to be dedicated to the district, if applicable.

(Ord. No. 2009-112, § 3, 4-22-2009)

ORDINANCE NO. 2010-XXX

**AN ORDINANCE OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
AMENDING TITLE 3 OF THE NIPOMO COMMUNITY SERVICES DISTRICT
CODE TO ESTABLISH NEW PROCEDURES FOR PAYMENT OF
DISTRICT FEES FOR CONNECTION FOR
RESIDENTIAL PROJECTS CREATING FOUR OR MORE PARCELS AND ALL
MIXED USE PROJECTS UNDER A SINGLE APPLICATION FOR A FINAL MAP
THAT REQUIRE THE DEDICATION OF WATER AND SEWER IMPROVEMENTS
PURSUANT TO A DISTRICT PLAN CHECK AND INSPECTION AGREEMENT**

WHEREAS, it is a major responsibility of the Nipomo Community Services District (“District”) to:

Operate and maintain its water production and distribution facilities so as to provide adequate water service and fire protection to District water customers; and

Maintain adequate levels of revenue, equitably collected from District water customers and future customers, to meet the District’s financial commitments including acquiring supplemental water to augment the District’s current water production facilities to prevent impairment to the Groundwater Basin.

WHEREAS, pursuant to District Code Section 3.04.051, the District currently requires the initial deposit for “Fees for Connections” to be paid prior to issuance of District Will-Serve Letter; and

WHEREAS, San Luis Obispo County (“County”) requires a District Will-Serve Letter prior to recording final maps; and

WHEREAS, on December 16, 2009, January 27, 2010, February 24, 2010 and April 28, 2010, the District Board of Directors received testimony from the Homeowners Association of San Luis Obispo County, Coast National Bank and the public regarding the impacts of the current credit crunch on the ability of developers to borrow money to pay the costs of development including local agency impact fees for water and sewer. The testimony is summarized in a April 02, 2010, letter from Coast National Bank.

WHEREAS, based upon the Staff Report, this Ordinance, Staff Presentation and public testimony, including testimony received on February 24, 2010 and April 28, 2010, the Board of Directors finds:

- A. The public meetings adopting this Ordinance have been properly noticed pursuant to Government Code Section 54954.2 (The Brown Act);
- B. The purpose of this Ordinance is to provide temporary relief for residential and mixed use projects where the developer is required to construct offsite water and sewer improvements to be dedicated to the District pursuant to a District Plan Check Inspection Agreement, by deferring payment of a portion of the Fees for Connection as provided in Section 3.04.053, below.

NOW, THEREFORE, BE IT ORDAINED, by the Board of Directors of the Nipomo

Community Services District as follows:

Section 1. Authority.

This Ordinance is enacted pursuant to Government Code Sections 61600(a), 61060 (a) and (b) and 6115(a)(2).

Section 2. Section 3.04.051 of the District Code is hereby amended and restated as follows:

Section 3.04.051 Payment of Connection Fees and Capacity Charges.

Except as provided in Section 3.04.052 and 3.04.053, below, the Applicant shall pay the water capacity charges (including supplemental water capacity charges), sewer capacity charges, reimbursement charges (if applicable), meter fee and account set-up fee, collectively "Fees for Connection" as follows:

- A. The Applicant shall make a non-refundable deposit ("Deposit") at the time the District issues a Will-Serve Letter in an amount equal to the then calculated Fees for Connection.
- B. The Fees for Connection shall be calculated and owing as of the date the District sets the water meter(s) to serve the affected property from which the amount of the Deposit shall be deducted.
- C. The District will set water meter(s) upon proof of a building permit from the County of San Luis Obispo and that the District has accepted improvements to be dedicated to the District, if applicable.
- D. All water and sewer improvements shall be bonded for or otherwise secured in the District's name to the satisfaction of the District.

Section 3.

Section 3.04.053 is added to the District Code as follows:

Section 3.04.053 Payment of Fees for Connection for residential projects creating four or more lots and all mixed use development projects developed under a single application for a final map, where the Applicant is required to construct and dedicate water and sewer improvements to the District pursuant to a Plan Check and Inspection Agreement.

- A. For residential projects creating four or more lots and all mixed use projects that do not meet the requirements of subparagraphs A, B, C and D below, or at the option of Applicant, the payment provisions of Section 3.04.051 shall apply.
- B. Residential and mixed use projects creating four or more parcels, under a single

application for a final map, where the Applicant is required to construct and dedicate water and sewer improvements to the District pursuant to a Plan Check And Inspection Agreement the following procedures shall apply:

1. Prior to the District issuing a "Map Recordation" Will Serve Letter, the Applicant may make written request to the District Board of Directors to reduce the Deposit referenced in Section 3.04.051, not-to-exceed eighty (80%) percent of the then calculated Fees for Connection . The written request shall be submitted to the District and shall include the following:

- a) Evidence that the Applicant's Plan Check and Inspection Agreement deposit is current as of the date of the written request.
- b) Applicant, at Applicant's cost, submits a current title report for each assessor parcel number under the application for final map.
- c) Any other information requested by the District prior to consideration of the request.

C. At the hearing where the Board of Directors considers Applicant's request for deferral, and after considering the information provided by Applicant pursuant to paragraph B , above, and information from other interested parties, the District Board of Directors may defer payment of fees not-to-exceed eighty (80%) percent of the then owing Fees for Connection on the following conditions:

1. The project is in compliance with all other District rules, regulations and ordinances.
2. Applicant has timely complied with all terms and conditions of the Plan Check and Inspection Agreement including requests to increase the deposit.
3. Applicant agrees to pay the District's non-refundable administrative costs for processing and tracking the project. The administrative costs shall be established by resolution of the District.
4. Property owner(s), at applicants sole costs, submits a petition and ballot to the satisfaction of District Legal Counsel committing the project and parcels created therein in favor of the Assessment District to finance (in whole or in part) the Santa Maria Waterline Intertie Project.
5. Applicant provides recordable document for the approval of District Legal Counsel, that notifies potential buyers of the entire project or portions of the project (i.e. individual parcels) within Applicant's project of the assessment petition and ballot and the conditions upon which building permits will be issued by the County of San Luis Obispo and the conditions upon which the District will set water meter(s) including the payment of outstanding fees and the developers obligations to complete the off-site improvements and dedicate them to the District.

6. Applicant provides written verification from the San Luis Obispo County Planning Department that each parcel created by the project will be appropriately flagged so that the County will not issue a building permit for project parcels without first receiving written confirmation from the District that District Fees for Connection have been paid in full.

7. Applicant submits an Indemnification Agreement, to the satisfaction of District Legal Counsel wherein Applicant and the owner of the real property agree to hold harmless, defend and indemnify the District from any and all claims related to the District's actions and/or conditions imposed on Applicant or the owner of the property in considering and/or granting the Application for deferral of the payment of Fees for Connection.

D. Upon Applicant satisfying the conditions referenced in Section 3.04.053 A, B and C above, and upon satisfaction of the following conditions, the District will issue Applicant a "Map Recordation" Will Serve Letter :

1. The Applicant makes a deposit of fees not less than twenty percent (20%) of the then owing Fees for Connection. The Deposit shall be applied to the District's standard Fees for Connection for water and sewer service excluding the Santa Maria Waterline Intertie supplemental water capacity charge. The Deposit shall be first applied to sewer capacity charges, if applicable, second to water capacity charges (other than Santa Maria Waterline Intertie supplemental water capacity charge) and third to water meter fees.

2. The applicant shall pay one hundred percent (100%) of Reimbursement Charges, if applicable.

3. Proof that all water and sewer improvements are bonded for or otherwise secured in the name of the District, to the satisfaction of the District.

E. Upon map recordation, the Applicant shall supply the District with newly created assessor parcel numbers as soon as they are made available by SLO County. Failure of Applicant to supply the District with the assessor parcel numbers may cause delay in processing.

F. Upon the satisfaction of the conditions referenced in 3.04.053 A, B, C, D and E above, and upon the following, the District will accept improvements to be offered and dedicated to the District:

1. Applicant has complied with the Plan Check and Inspection Agreement and other District Code Sections related thereto.

2. Applicant has supplied, to the satisfaction of District, a Title Report for each of the created parcels identified in final map.

3. Applicant provides a recordable document to be recorded on each newly created assessor parcel number for approval of District Legal Counsel, to notify potential buyers of parcels of the assessment petition and ballot and the conditions upon which building permits will be issued by the County of San Luis Obispo and the conditions upon which the District will set water meter(s) including the payment of fees and the developers obligations to complete the off-site improvements and dedicate them to the District.

G. The District will not issue a Will Serve Letter for an individual assessor parcel number nor set a water meter on any parcel within Applicant's project until the following have occurred:

1. Payment of all outstanding project Fees for Connection and other District associated costs for individual assessor parcel number, including, but not limited to, payment in full of all common irrigation and drainage basin meters and fire system fees that may provide benefit to more than one parcel within the development.
2. District has accepted improvements to be dedicated to the District.

H. Unless extended by Resolution by the District Board of Directors Section 3.04.053 shall automatically be repealed (sunseted) upon the first of the following to occur: 1) anytime by District Resolution, or 2) a determination by the District or other designated Governmental Agency that a majority protest exists to the Assessment District to finance the Santa Maria Waterline Intertie Project or, 3) twenty-four months (24) from the effective date of this Ordinance.

Section 4. Section 5.02.010 of the district code is hereby amended to add:

Section 5.02.010 (4)

All water and sewer improvements shall be bonded for or otherwise secured in the District's name, to the satisfaction of the District.

Section 5. Section 4.03.010 of the district code is hereby amended to add:

Section 4.03.010 title Chapter 3.03 and 3.04 incorporated by reference

Chapter 3.03 and 3.04 of this code is incorporated herein by reference as though set forth at length.

Section 6. Incorporation of Recitals

The Recitals are true and correct and incorporated herein by this reference.

Section 7. Effect of Repeal on Past Actions and Obligations.

This Ordinance does not affect prosecutions for Ordinance violations committed prior to

the effective date of this Ordinance, does not waive any fee or penalty due and unpaid on the effective date of this Ordinance, and does not affect the validity of any bond or cash deposit posted, filed or deposited pursuant to the requirements of any Ordinance.

Section 8. CEQA Findings

The Board of Directors of the District finds that the revisions of the policies and procedures adopted by this Ordinance are exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15378 (b) (2) because such amendments constitute general policy and procedure making. The Board of Directors further finds that the adoption of the rules and regulations established by this Ordinance is not a project as defined in CEQA Guideline Section 15378, because it can be seen with certainty that the revisions will not result in either a direct physical change in the environment, nor is there a reasonable indirect physical change in the environment. The District General Manager is directed to prepare and file an appropriate notice of exemption.

Section 9. Severance Clause.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Ordinance. The Governing Board of the District hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsection, sentence, clause or phrase be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

Section 10. Effect of Headings in Ordinance.

Title, division, part, chapter, article, and section headings contained herein do not in any manner affect the scope, meaning, or intent of the provisions of this Ordinance.

Section 11. Effective Date.

This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage. Before the expiration of fifteen (15) days after passage it shall be posted in three (3) public places with the names of the members voting for and against the Ordinance and shall remain posted thereafter for at least one (1) week. The Ordinance shall be published once with the names of the members of the Board of Directors voting for and against the Ordinance in the Santa Maria Times.

Introduced at its regular meeting of the Board of Directors held on _____, 2010, and passed and adopted by the Board of Directors of the Nipomo Community Services District on the ____ day of _____, 2010, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

CONFLICTS:

James Harrison, President
Nipomo Community Services District Board
of Directors

ATTEST:

APPROVED AS TO FORM:

DONNA K. JOHNSON
Secretary to the Board

JON S. SEITZ
District Legal Counsel

DRAFT