

Harold Snyder
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Nipomo, CA 93444
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Monday, December 16, 2002 10:17 AM

Nipomo Community Services District
148 Wilson Street
P.O. Box 326
Nipomo, CA 93444

(805) 929-1133 Phone
(805) 929-1932 Fax

Dear Doug Jones:

I am requesting a copy of the proposed memorandum or any preliminary or draft versions that is referred in the following agenda.

NIPOMO COMMUNITY SERVICES DISTRICT

AGENDA

SPECIAL MEETING

DECEMBER 16, 2002 MONDAY 7:00 P. M.

BOARD ROOM 148 S. WILSON STREET NIPOMO, CA

BOARD MEMBERS

MICHAEL WINN, VICE PRESIDENT

ROBERT BLAIR, DIRECTOR

JUDITH WIRSING, DIRECTOR

CLIFFORD TROTTER, DIRECTOR

LARRY VIERHEILIG, DIRECTOR

STAFF

DOUGLAS JONES, GENERAL MANAGER

DONNA JOHNSON, SECRETARY TO THE BOARD

JON SEITZ, GENERAL COUNSEL

CALL TO ORDER AND FLAG SALUTE

ROLL CALL

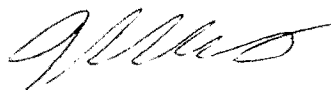
Public Comment on Agenda Items

The public has the right to comment on any item on the Special Meeting Agenda. Comments are limited to 3 minutes or otherwise at the discretion of the Chair.

ADMINISTRATIVE ITEM

Review and consider approving Memorandum of Understanding with Woodlands Project related to well interference and supplemental water.

Thank You



Harold Snyder

Hand Delivered.

**MEMORANDUM OF UNDERSTANDING
FOR RESOURCE PRESERVATION AND MANAGEMENT**

This Memorandum of Understanding for Resource Preservation and Management ("MOU") is made and entered into this ___ day of December, 2002, by and between the **Nipomo Community Services District** ("District") and **Woodlands Ventures, LLC**, a Delaware Limited Liability Company ("Woodlands").

RECITALS

A. Woodlands is the owner of that certain real property located in the unincorporated area of the County of San Luis Obispo ("County") consisting of 957 acres on the Nipomo Mesa west of the community of Nipomo on the east side of Highway One ("Property"). The Property is proposed to be developed in four phases ("Phase") as a mixed-use project pursuant to the adopted Woodlands Specific Plan ("WSP"), hereinafter referred to as the "Project";

B. Woodlands is currently processing with the County applications for a vesting tentative map and two development plans, including a request for a water supply verification pursuant to Government Code §66473.7 ("Applications");

C. The District has opposed the Applications pending before the County and the District and the Woodlands are in litigation with each other in the case entitled Santa Maria Valley Water Conservation District v. City of Santa Maria, Civil Action No.770214 ("Santa Maria Litigation"); and

D. Woodlands and the District are desirous of cooperating and working together to resolve the differences between them and to create a program for the preservation and management of water resources that will benefit ratepayers of both the NCS and the Woodlands over the long term.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises hereinafter set forth, the parties hereto agree as follows:

1. **Term.** This MOU shall become effective on the date first above written and shall remain in effect until terminated by the mutual consent of the parties or as

otherwise provided in this MOU. Notwithstanding anything to the contrary herein, in the event the District fails to approve, sign and return this MOU to the Woodlands on or before 11:00 p.m. on December 16, 2002, or the Woodlands fails to approve and sign this MOU by 9:00 a.m. on December 17, 2002, then this MOU shall be deemed withdrawn by the Woodlands and of no further force and effect between the Woodlands and District; in such event, neither party shall be bound by any of the terms herein in any way whatsoever.

2. Ratepayer Parity. In the event that the District or the Woodlands is required as a result of any settlement or judgment in the Santa Maria Litigation to pay any fee (other than their own attorney's fees) or take any action, including without limitation payment for the restoration and maintenance of the Twitchell Reservoir or importation of supplemental water, or either party in good faith reasonably believes that for the preservation of water resources necessary to serve the NCS D and Woodland's ratepayers certain action needs to be taken ("Resource Preservation"), the cost of such Resource Preservation shall be shared equally among the NCS D and Woodlands ratepayers. For example, if the cost of Resource Preservation as covered hereunder is \$ 150,000 per quarter and there are 2,000 NCS D ratepayers and 1,000 Woodlands ratepayers, then the Woodland's would be responsible for 1/3 of the Resource Preservation cost and the NCS D would be responsible for 2/3 thereof. Each water service connection or party metered for water by the NCS D or the Woodlands shall constitute a ratepayer for purposes of this MOU.

2.1 The NCS D shall calculate and provide the billing to the Woodlands and the NCS D for their respective share of the Resource Preservation as provided hereunder, subject to review and approval of the Woodlands, said approval not to be unreasonably withheld or delayed. Each party, on a quarterly basis, shall provide the other party with the number of ratepayers that it has at that time. The NCS D, in calculating each party's share, shall use the new ratepayer numbers in their next billing statement. Billing shall be no more often than once every two months (bi-monthly). Upon written request, each party hereto shall be entitled to review any documentation relating to the billing calculation, including but not limited to bills from third parties for the Resource Preservation. The parties agree to exercise good faith in implementing the billing system as provided hereunder. The NCS D shall be required to provide a bill to the Woodlands only, and not to the Woodland's ratepayers. Any bill provided

to the Woodland's hereunder shall be due and payable within 30 days from the date of the bill.

2.2 It is the intent of this section that the ratepayers of both the District and Woodlands should bear equally the burden of Resource Preservation. Not less than 120 days prior to either party taking action for Resource Preservation as allowed hereunder, the party proposing such action ("Obtaining Party") shall notify the other party ("Noticed Party") of its intent thereof, the terms thereof, and the reasonable and good faith basis therefor. The Obtaining Party shall exercise its best efforts to find the most cost effective method for taking such proposed action. In the event the Noticed Party does not agree that the proposed Resource Preservation action is needed (except in the case where a court of law mandates the Obtaining Party to take such action, in which case it shall be deemed an adequate basis for Resource Preservation), the cost of such action is excessive, or the billing is inappropriate, then the parties agree to handle the dispute through dispute resolution as set forth in Section 8 hereof.

3. Termination of MOU. Upon the occurrence of any of the following events, then this MOU shall be automatically terminated and of no further force or effect:

3.1 Failure of both parties to execute this MOU by 9:00 am (PST) on December 17, 2002; or

3.2 The date that any action or proceeding is filed by the NCSO to attack, review or set aside the County's decision to approve the Applications made on December 17, 2002, or the NCSO breaches Section 6 hereof.

4. Santa Maria Water Basin Litigation. The parties understand and agree that this MOU is not intended by either party hereto to constitute the intentional relinquishment of any rights or waiver of any rights to or in connection with the Santa Maria Litigation. Notwithstanding the foregoing sentence, the parties hereto agree that this MOU shall bind the parties hereto no matter what the outcome or decision of the court in said litigation. The parties further agree that to the extent allowed by law (or the Court interpreting such law), each party shall receive credit for its respective contribution hereunder towards any settlement or judgment in

the Santa Maria Litigation. The parties also agree to act in good faith to resolve any disputes between them under the above-referenced litigation.

5. Joint Well Management Program: The parties agree to have a professional water consultant or engineer (jointly chosen by the parties) commence preparation of a written report setting forth recommendations for the best use of each party's wells within 90 days of approval by the Board of Supervisors of the Applications. The written study will look at the well locations, and the best practical means of obtaining the required water from the wells with the least impact to the NCS D and Woodland's wells or to the groundwater. Every two years thereafter, the consultant (or another jointly chosen by the Woodlands and NCS D) shall update in writing the report. The parties shall, to the extent practicably feasible, consider the written report and recommendations therein in good faith, including pumping recommendations that will reduce impacts on the other party's wells. The parties shall not be obligated to implement any recommendation that would require the NCS D to move any of its wells, or would impede, slow down, or affect the development of the Woodland's Project, require CEQA approval by either party, or is cost prohibitive to either party. The Woodlands shall, prior to the commencement of the first study hereunder, contribute \$ 100,000 to a Nipomo Mesa Water Management Fund, which shall be comprised of a representative of the NCS D and the Woodlands. The parties shall use the \$ 100,000 for the initial and subsequent written studies until the funds are depleted, after which the parties shall share the costs equally for the updated studies (each 2 years or as otherwise agreed by the parties). Notwithstanding anything stated hereinbefore in this Section 5, each party retains all of its rights and remedies pertaining to the protection of its water production facilities against interference caused by the operation of any other water production facility or facilities.

6. Application Processing. Provided that Woodlands is not in default of this MOU, the District agrees to not oppose, directly or indirectly, the approval of the Applications by the County, or any other Woodlands entitlements in the future; except in the event the Woodland's seeks an increase in the Project's density (number of residential units or commercial square footage) beyond that provided in the existing Woodlands Specific Plan and entitlements and such changes will materially increase the use of water by the Project, the NCS D

and Woodlands shall attempt in good faith to agree on a resolution thereof and if they cannot the NCSO may oppose said changes. The District shall also use its best efforts to get the other water purveyors in the area of the Project to also not oppose the Project now or in the future.

7. Attorneys Fees. In the event of any action or proceeding, including arbitration, to enforce a term or condition of this MOU, any alleged disputes, breaches, or defaults in connection with any provision of this MOU or any action or proceeding in any way arising from this MOU, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys fees. The "prevailing party" shall be deemed to mean that party who obtains substantially the result sought whether by settlement, dismissal or judgment. Should either party bring suit in Superior Court arising out of this MOU, such suit shall be filed, maintained, and prosecuted in the San Luis Obispo County Superior Court.

8. Dispute Resolution. In the event of a dispute between the parties under this Agreement or an alleged breach hereunder, including but not limited to disagreement as referenced in Section 2.2 hereof, the parties agree to submit the dispute to the American Arbitration Association under the rules of Commercial Arbitration for binding arbitration. Any decision of the arbitrator shall be final and binding on both parties.

9. No Third Party Beneficiaries. Nothing in this MOU, express or implied, is intended to confer any rights or remedies under or by reason of this MOU on any person or entity other than the parties hereto.

10. Waiver. Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this MOU, shall not be deemed to be a waiver with respect to any other breach, default or matter.

11. Entire Agreement. This MOU is freely and voluntarily entered into by the parties after having the opportunity to consult with their respective attorneys. Any prior agreements, promises, negotiations, or representations not expressly set forth in this MOU are of no force and effect. The parties, in entering into this MOU, do not rely on any inducements, promises, or representations made by each other, their representatives, or any other person, other than those

inducements, promises, and representations contained in this MOU. Any amendment to this MOU shall be of no force and effect unless it is in writing and signed by HBP and the District.

12. Notices. All notices, statements, reports, approvals, requests, bills or other communications that are required either expressly or by implication to be given by either party to the other under this MOU shall be in writing and signed by each party by such officers as each may, from time to time, be authorized in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States Post Office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown below:

District

Attn: General Manager
Nipomo Community Services District
P.O. Box 326
Nipomo, CA 93444

With a copy to:

Jon S. Seitz, Esq.
Shipsey & Seitz, Inc.
1066 Palm Street
San Luis Obispo, CA 93454

Woodlands

Bryan Troxler
Woodlands Ventures, LLC
20750 Ventura Blvd., # 205
Woodland Hills, CA 91364

With a copy to:

Mr. John Scardino
JHS, LLC
31200 Via Colinas
Suite 200
Westlake Village, CA 91362

13. **Headings.** The paragraph headings used in this MOU are for reference only, and shall not in any way limit or amplify the terms and provisions hereof, nor shall they enter into the interpretation of this MOU.

14. **Cooperation.** Each party to this MOU agrees to do all things that may be necessary, including, without limitation, the execution of all documents which may be required hereunder, in order to implement and effectuate this MOU.

15. **Interpretation of this MOU.** The parties acknowledge that each party and its attorney have reviewed, negotiated and revised this MOU and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this MOU or any document executed and delivered by any party in connection with the transactions contemplated by this MOU.

16. **Recitals.** The recitals in this MOU are incorporated herein by this reference and made a part hereof.

17. **Counterparts.** This MOU 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.

18. **Amendments.** This MOU may be modified by subsequent agreement of the parties hereto only by an instrument in writing signed by both of them.

19. **Binding on Successors:** This Agreement shall be binding on the successors to the parties. In the case of the Woodlands, at such time as the Woodlands no longer has an interest in the Property, the successor shall be the Woodlands mutual water company or such other entity operating and providing water to the Woodlands.

20. **Warranty of Authority:** Each party hereby warrants that the party executing this MOU below has been properly authorized and has the full legal right to do so and to bind the entity for which it is signing.

IN WITNESS WHEREOF, District and Woodlands have executed this MOU effective the day and year first above written.

"Woodlands"

Woodlands Ventures, LLC
a Delaware Limited Liability
Company

By: Troxler Residential
Ventures II, LLC
Its Managing Member

By: Troxler Ventures Partners,
Inc., a California
corporation
Its Operating Member

By: _____
Bryan P. Troxler
President

"District":

Nipomo Community Services
District

By _____
_____, President

Attest:

Donna K. Johnson
Secretary to the Board

Approved as to Form:

Jon S. Seitz
District Legal Counsel