TO: BOARD OF DIRECTORS

FROM: DON SPAGNOLO

DATE: JUNE 16, 2010

AGENDA ITEM
E-1
JUNE 23, 2010

ADOPT AMENDED CONNECTION FEE ORDINANCE

ITEM

Adopt Ordinance amending Title 3 of the Nipomo Community Services District Code to establish new procedures for payment of District fees for connection for residential and mixed use development projects creating four or more parcels under a single application for a final map that require the dedication of any water and sewer improvements pursuant to a District plan check and inspection agreement.
[ADOPT AND PUBLISH]

BACKGROUND

Your Honorable Board, on June 9, 2010, introduced and edited the attached ordinance and set this hearing to consider adoption.

FISCAL IMPACT

Development of this draft did use previously budgeted staff time and legal consulting cost. Adoption of the ordinance is expected to be revenue neutral in regards to future development.

RECOMMENDATION

Staff recommends that the Board review the proposed final ordinance, move to read by title, and then move to adopt with directions to staff to publish.

ATTACHMENTS

- Final Ordinance

ORDINANCE NO. 2010-115

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 MIXED USE PROJECTS UNDER A SINGLE APPLICATION FOR A FINAL MAP THAT REQUIRE THE DEDICATION OF ANY 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 any 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 parcels and mixed use developments, developed under a single application for a final map, where the Applicant is required to construct and dedicate any water and sewer improvements to the District pursuant to a Plan Check and Inspection Agreement.

A. For residential projects and mixed use projects that do not meet the requirements of subparagraphs B, C and D below, or at the option of Applicant, the payment provisions of Section 3.04.051 shall apply.

B. Residential projects creating four or more parcels, under a single application for a final map and mixed use projects, where the Applicant is required to construct

and dedicate any water and sewer improvements to the District pursuant to a Plan Check and Inspection Agreement the following procedures shall apply:

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:

1. Evidence that the Applicant's Plan Check and Inspection Agreement deposit is current as of the date of the written request.
2. Applicant, at Applicant's cost, submits a current title report for each assessor parcel number under the application for final map.
3. 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 will defer payment of fees not-to-exceed eighty (80%) percent of the then owed 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 Applicant's 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 B and C above, and upon satisfaction of the following conditions, the District will issue Applicant a "Map Recordation" Will-Serve Letter: :

1. Payment in full for all Fees for Connection associated with common irrigation, drainage basin meters and fire system fees that may provide benefit to more than one parcel within the development.
2. 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.
3. The Applicant shall pay one hundred percent (100%) of Reimbursement Charges, if applicable.
4. Proof that all water and sewer improvements are separately 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 further delay in the processing.

F. Upon the satisfaction of the conditions referenced in 3.04.053 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 numbers nor set a water meter on any parcel within Applicant's project until the following have occurred:

a) Payment of all outstanding project Fees for Connection and other District associated costs for individual assessor parcel numbers; and
b) The 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 June 9, 2010, and passed and adopted by the Board of Directors of the Nipomo Community Services District on the 23 day of June, 2010, by the following roll call vote, to wit:

AYES:
NOES:
ABSENT:
CONFLICTS:

_____
James Harrison, President
Nipomo Community Services District Board of Directors

ATTEST:

_____
DONNA K. JOHNSON
Secretary to the Board

APPROVED AS TO FORM:

_____
JON S. SEITZ
District Legal Counsel