

NIPOMO COMMUNITY SERVICES DISTRICT

Serving the Community Since 1965

REGULAR MINUTES

FEBRUARY 13, 2013, AT 9:00 A.M.

BOARD ROOM 148 SOUTH WILSON STREET, NIPOMO, CA

BOARD of DIRECTORS

JAMES HARRISON, **PRESIDENT**
LARRY VIERHEILIG, **VICE PRESIDENT**
DAN GADDIS, **DIRECTOR**
BOB BLAIR, **DIRECTOR**
CRAIG ARMSTRONG, **DIRECTOR**

PRINCIPAL STAFF

MICHAEL S. LEBRUN, **GENERAL MANAGER**
LISA BOGNUDA, **FINANCE DIRECTOR**
MERRIE WALLRAVIN, **SECRETARY/CLERK**
JON SEITZ, **GENERAL COUNSEL**
PETER SEVCIK, **DISTRICT ENGINEER**

Mission Statement: The Nipomo Community Services District's mission is to provide its customers with reliable, quality, and cost-effective services now and in the future.

00:00:00

A. CALL TO ORDER AND FLAG SALUTE

President Harrison called the Regular Meeting of February 13, 2013, to order at 9:00 a.m. and led the flag salute.

00:00:36

B. ROLL CALL AND PUBLIC COMMENT FOR ITEMS NOT ON AGENDA

At Roll Call, all Board members were present.

00:01:51

C. PRESENTATIONS AND PUBLIC COMMENT

C-1) REPORT ON JANUARY 23, 2013 REGULAR MEETING CLOSED SESSION Announcement of actions, if any, taken in Closed Session

Mike Seitz, District Deputy Legal Counsel, announced that the Board heard a report from the General Manager for Item One (Conference with District Legal Counsel re: pending litigation pursuant to GC §54956.9 SMVWCD VS. NCSD) in closed session, but took no reportable action.

The Board heard and update from Legal Counsel for Item Two (Conference with District Legal Counsel re: pending litigation pursuant to GC §54956.9, Whitlow/NCSD) in closed session, but took no reportable action.

The Board heard an update from Legal Counsel for Item Three (Conference with Legal Counsel pursuant to GC §54956.9, Anticipated litigation) in closed session, but took no reportable action.

The Board heard an update from Legal Counsel and provided direction for staff for Item 4 (Conference with Legal Counsel re: pending litigation pursuant to GC Section 54956.9; NCSD vs. County SLO, ET AL) in closed session, but there was no reportable action.

C-2) SUPPLEMENTAL WATER ALTERNATIVES REVIEW COMMITTEE PROGRESS UPDATE AND PRELIMINARY REPORT OF FINDINGS Receive Update from Citizen's Committee

Sam Saltoun, SWAEC voting member and spokesperson, handed out draft worksheets (See Exhibit A) and gave an update on the SWAEC recent activities. Michael LeBrun, General Manager, and Mr. Saltoun answered questions from the Board. The Board thanked Mr. Saltoun for his report.

Nipomo Community Services District
REGULAR MEETING
MINUTES

Item C-2 Continued

The following members of the public spoke:

Bill Petrick, NCSD customer, commented on the SWAEC's scoring matrix and rating categories.

Kenneth Gilder, NCSD customer, questioned the community wells.

Director Harrison commented on Mr. Gilder's question.

Erik Benham, commented on Maria Vista Estates and Supplemental Water.

Mike Winn, NCSD customer, commented on past Maria Vista litigation and the costs and quality of an alternative source for Supplemental Water.

- C-3) DISTRICT ENGINEER PETER SEVCIK
Receive Update Report regarding recent activities.

Peter Sevcik, District Engineer, reviewed the report as presented in the Board packet. Mr. Sevcik answered questions from the Board. The Board thanked Mr. Sevcik for his report.

- C-4) DIRECTORS' ANNOUNCEMENTS OF DISTRICT & COMMUNITY INTEREST AND REPORTS ON ATTENDANCE AT PUBLIC MEETINGS, TRAINING PROGRAMS, CONFERENCES, AND SEMINARS.
Receive Announcements and Reports from Directors

Director Gaddis

- ◇ *February 25, South County Advisory Council will meet at NCSD at 6:30 p.m.*
- ◇ *March 4, Application deadline for candidates for SCAC election and Town Hall meeting at NCSD to meet the candidates.*
- ◇ *March 18, SCAC Election, open for voters from 5:00 to 8:00 p.m. at NCSD.*

Director Vierheilig

- ◇ *February 6, Attended the Water Resources Advisory Committee meeting.*
- ◇ *February 12, Attended the Blacklake Management Association meeting on the Blacklake Wastewater Treatment Facility Master Plan.*
- ◇ *February 14, Nipomo Chamber of Commerce mixer at Shabby Chic from 5:00 to 7:00 p.m.*
- ◇ *March 6, WRAC will meet at 12:30 p.m. at the San Luis Obispo Library.*

- C-5) RECEIVE PUBLIC COMMENT ON PRESENTATIONS AND REPORTS PRESENTED UNDER ITEM C AND BY MOTION RECEIVE and FILE PRESENTATIONS AND REPORTS

There was no public comment.

Upon the motion of Director Vierheilig and seconded by Director Armstrong, the Board unanimously approved to receive and file the presentations and reports as submitted. Vote 5-0.

YES VOTES	NO VOTES	ABSENT
<i>Directors Vierheilig, Armstrong, Blair, Gaddis, and Harrison</i>	<i>None</i>	<i>None</i>

00:24:30

00:47:52

D. CONSENT AGENDA

D-1) WARRANTS

D-2) APPROVE JANUARY 23, 2013 REGULAR BOARD MEETING MINUTES

D-3) SECOND QUARTER FINANCIAL REPORT

D-4) AWARD THREE YEAR AUDITING SERVICE CONTRACT TO THE CROSBY COMPANY IN AMOUNT OF \$7,800 PER YEAR

Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Lisa Bognuda, Finance Director, Peter Sevcik, District Engineer, and Mr. LeBrun answered questions from the Board.

The following member of the public spoke:

Erik Benham, Trincon Inc., commented on Maria Vista Estates and stated that Trincon Inc. formally requested proper notice of an agenda item but did not receive it.

Mike Seitz, Deputy District Legal Counsel, stated that he reviewed the audio recording and minutes from January 9, 2013, Regular Board meeting, and the minutes and the recording do not reflect any such request.

Upon the motion of Director Armstrong and seconded by Director Vierheilig, the Board unanimously approved the Consent Agenda as submitted.

Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Armstrong, Vierheilig, Blair, Gaddis, and Harrison	None	None

E. ADMINISTRATIVE ITEMS

00:59:37

E-1) CONDUCT PROTEST HEARING, DETERMINE PROTEST STATUS, AND IF THERE IS NOT A MAJORITY PROTEST CONSIDER ADOPT A RESOLUTION INCREASING DISTRICT SOLID WASTE FEES

Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Mike Seitz, Deputy District Legal Counsel and Mr. LeBrun answered questions from the Board.

President Harrison opened the public hearing.

The following member of the public spoke:

Jeanne Taylor, NCSD customer, spoke in opposition of the proposed rate increase.

President Harrison closed the public hearing.

Michael LeBrun, General Manager, announced that 23 written protests were received and that a majority protest did not exist.

Item E-1 (Continued)

Upon the motion of Director Vierheilig and seconded by Director Armstrong, the Board adopted Resolution 2013-1288, A Resolution determining sufficiency of written protests related to fees and charges for solid waste collection within the Nipomo Community Services District, and approved increase in solid waste rates.

Vote 4-1.

YES VOTES	NO VOTES	ABSENT
<i>Directors Vierheilig, Armstrong, Gaddis, and Harrison</i>	<i>Director Blair</i>	<i>None</i>

RESOLUTION NO. 2013-1288

**A RESOLUTION OF THE BOARD OF DIRECTORS
 OF THE NIPOMO COMMUNITY SERVICES DISTRICT
 DETERMINING SUFFICIENCY OF WRITTEN PROTESTS
 RELATED TO FEES AND CHARGES FOR SOLID WASTE
 COLLECTION WITHIN THE NIPOMO COMMUNITY SERVICES DISTRICT**

The Board took a break from 10:10 to 10:20 a.m.

01:10:59

E-2) CONSIDER SUPPLEMENTAL WATER PROJECT PHASE 1 FINANCING PLAN

Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Mike Seitz, Deputy District Legal Counsel, and Mr. LeBrun answered questions from the Board.

The following members of the public spoke:

John Snyder, Nipomo resident, spoke against the proposed funding plan.

Bill Petrick, NCSD customer, spoke against the proposed funding plan.

Greg Nester, NCSD customer, spoke in support of the proposed funding plan.

Mike Winn, NCSD customer, spoke in support of the proposed funding plan.

Jeanne Taylor, NCSD customer, spoke on the solid waste increase.

Bill Kengle, NCSD customer, spoke in support of the proposed funding plan.

Pavvo Orgen, San Luis Obispo County Public Works Director, stated the facts of the District receiving the \$2.2 million dollar grant.

Erik Benham, Trincon Inc., commented on Maria Vista Estates and handed the board documents (See Exhibit "B").

Upon the motion of Director Armstrong and seconded by Director Vierheilig, the Board approved the proposed funding plan for Supplemental Water Project Phase 1 as submitted.

Vote 4-1.

YES VOTES	NO VOTES	ABSENT
<i>Directors Armstrong, Vierheilig, Gaddis, and Harrison</i>	<i>Director Blair</i>	<i>None</i>

01:47:46

E-3) SUPPLEMENTAL WATER PROJECT PHASE 1 AUTHORIZATION TO BID

Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Mr. LeBrun answered questions from the Board.

The following members of the public spoke:

Ed Eby, NCSD customer, spoke in support of soliciting bids for the Supplemental Water Project Phase I.

Greg Nester, NCSD customer, spoke in support of soliciting bids for the Supplemental Water Project Phase I.

Bill Kengle, NCSD customer, questioned when the SWAEC will update the Board.

Upon the motion of Director Armstrong and seconded by Director Vierheilg, the Board adopted Resolution 2013-1289, a Resolution authorizing staff to solicit bids for Supplemental Water Project Phase 1.

Vote 4-1.

YES VOTES	NO VOTES	ABSENT
Directors Armstrong, Vierheilg, Gaddis, and Harrison	Director Blair	None

RESOLUTION NO. 2013-1289

**A RESOLUTION OF THE BOARD OF DIRECTORS
 OF THE NIPOMO COMMUNITY SERVICES DISTRICT
 AUTHORIZING STAFF TO SOLICIT BIDS FOR SUPPLEMENTAL
 WATER PROJECT PHASE I**

The Board considered Item E-7 next.

E-7) CONSIDER RESCINDING DISTRICT POLICY WHICH SUSPENDS PROCESSING OF APPLICATIONS FOR NEW WATER SERVICE

Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Mike Seitz, District Deputy Legal Counsel, and Mr. LeBrun answered questions from the Board.

The following members of the public spoke:

Mike Winn, NCSD customer, spoke in opposition of lifting the water moratorium.

Ed Eby, NCSD customer, spoke in opposition of lifting the water moratorium.

Greg Nester, NCSD customer, spoke in support of lifting the water moratorium.

Jeanne Taylor, NCSD customer, spoke on the water moratorium.

Bill Kengle, NCSD customer, spoke in support of lifting the water moratorium.

Valerie Williams, NCSD customer, read aloud a letter in support of lifting the water moratorium.

01:50:26

Item E-7 (Continued)

*Upon the motion of Director Blair and seconded by Director Armstrong, the Board directed staff to draft a revised District policy to lift the suspension on the processing of applications for new water service and bring it back to the Board at the next regular Board meeting.
 Vote 3-2.*

YES VOTES	NO VOTES	ABSENT
Directors Blair, Armstrong, and Harrison	Directors Vierheilig and Gaddis	None

02:01:02

E-4) AUTHORIZE AGREEMENTS WITH FULBRIGHT & JAWORSKI LLP AND C.M. DE CRINIS & CO., INC. FOR BOND AND DISCLOSURE COUNSEL AND FINANCIAL ADVISORY SERVICES DIRECT STAFF TO PROCEED WITH CERTIFICATES OF PARTICIPATION ISSUE

Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Mr. LeBrun answered questions from the Board.

There was no public comment.

*Upon the motion of Director Armstrong and seconded by Director Vierheilig, the Board unanimously authorized staff to execute agreements for Bond and Disclosure Counsel and Financial Advisory Services with Fulbright & Jaworski L.L.P. and C.M. deCrisis & Co., Inc.; and directed staff to proceed with issuing new COPs to both refinance 2003 COPs and generate new funds to support the Supplemental Water Project Phase I financing plan.
 Vote 5-0.*

YES VOTES	NO VOTES	ABSENT
Directors Armstrong, Vierheilig, Blair, Gaddis, and Harrison	None	None

The Board took a break from 11:30 to 11:40 a.m.

E-5) APPROVE CHANGES TO DISTRICT ORGANIZATION STRUCTURE, APPROVE REVISED AND NEW JOB DESCRIPTIONS AND SALARY RANGES, AUTHORIZE RECRUITMENT OF WASTEWATER SUPERVISOR POSITION

Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Mr. LeBrun answered questions from the Board.

There was no public comment.

Nipomo Community Services District
**REGULAR MEETING
 MINUTES**

02:23:47

Item E-5 (Continued)

Upon the motion of Director Armstrong and seconded by Director Vierheilg, the Board unanimously approved the organizational change, approved salary range changes, adopted Resolutions approving changes to job descriptions, and authorized staff to recruit a Wastewater Supervisor.

Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Armstrong, Vierheilg, Blair, Gaddis, and Harrison	None	None

RESOLUTION NO. 2013-1290

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT AMENDING THE DISTRICT PERSONNEL POLICY TO INCORPORATE A DIRECTOR OF ENGINEERING AND OPERATIONS JOB DESCRIPTION

RESOLUTION NO. 2013-1291

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT AMENDING THE DISTRICT PERSONNEL POLICY TO REPLACE THE UTILITIES FIELD SUPERVISOR JOB DESCRIPTION WITH AN UPDATED WASTEWATER SUPERVISOR JOB DESCRIPTION

RESOLUTION NO. 2013-1292

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT AMENDING THE DISTRICT PERSONNEL POLICY TO REPLACE THE PREVENTIVE MAINTENANCE SUPERVISOR JOB DESCRIPTION WITH AN UPDATED WATER SUPERVISOR JOB DESCRIPTION

I. CLOSED SESSION ANNOUNCEMENTS

1. CONFERENCE WITH DISTRICT LEGAL COUNSEL RE: PENDING LITIGATION PURSUANT TO GC §54956.9 SMVWCD VS. NCSD (SANTA CLARA COUNTY CASE NO. CV 770214, SIXTH APPELLATE COURT CASE NO. H032750 AND ALL CONSOLIDATED CASES).
2. CONFERENCE WITH LEGAL COUNSEL RE: PENDING LITIGATION PURSUANT TO GC SECTION 54956.9, WHITLOW/NCSD (CASE # E20112E1116-00-APS FILED WITH THE DEPARTMENT OF FAIR HOUSING AND EMPLOYMENT)
3. CONFERENCE WITH LEGAL COUNSEL PURSUANT TO GOVT. CODE §54956.9(b):
 Anticipated litigation - 1 case
4. CONFERENCE WITH LEGAL COUNSEL RE: PENDING LITIGATION PURSUANT TO GC SECTION 54956.9; NCSD VS. COUNTY SLO, ET AL. (CASE #CV090010)
5. CONFERENCE WITH LEGAL COUNSEL RE: LIABILITY CLAIM PURSUANT TO GC SECTION 54956.95; ROBERT VERBREE CLAIM AGAINST NCSD

J. PUBLIC COMMENT ON CLOSED SESSION ITEMS

There was no public comment.

02:39:50

K. ADJOURN TO CLOSED SESSION

President Harrison adjourned to closed session at 12:00 p.m.

L. OPEN SESSION
ANNOUNCEMENT OF ACTIONS, IF ANY, TAKEN IN CLOSED SESSION

The Board came back into Open Session at 1:05 p.m.

Mike Seitz, District Deputy Legal Counsel, announced that the Board discussed Item One listed above for closed session and authorized staff to engage Todd Amspoker to assist the District in regards to potential eminent domain actions associated with the case.

The Board discussed Item Two listed above for closed session, but took no reportable action.

The Board discussed Item Three listed above for closed session, but took no reportable action.

The Board discussed Item Four listed above for closed session, but took no reportable action.

The Board discussed Item Five listed above for closed session and announced a settlement in the case in the amount of \$14,543.62.

02:42:42

E-6) REVIEW BOARD BY-LAWS AND POLICES AND PROPOSE EDITS FOR CONSIDERATION

Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Mike Seitz, Deputy District Legal Counsel, and Mr. LeBrun answered questions from the Board.

There was no public comment.

Upon the motion of Director Armstrong and seconded by Director Blair, the Board unanimously approved proposed edits to sections 2.8, 2.9, 12.1, and 12.2 and directed staff to place this item on the consent calendar for February 27, 2013, Regular Board meeting adoption.

Vote 5-0.

YES VOTES	NO VOTES	ABSENT
<i>Directors Armstrong, Blair, Vierheilig, Gaddis, and Harrison</i>	<i>None</i>	<i>None</i>

02:53:36

F. GENERAL MANAGER'S REPORT

Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Mr. LeBrun answered questions from the Board. There was no public comment.

Nipomo Community Services District
**REGULAR MEETING
 MINUTES**

03:08:01

G. COMMITTEE REPORT

- a. Supplemental Water Alternatives Evaluation Committee
 - i. January 14, 2013
 - ii. January 25, 2013
- b. Finance and Audit Committee
 - i. January 17, 2013
 - ii. January 31, 2013
- c. Personnel Committee
 - i. January 31, 2013
 - ii. February 7, 2013

The reports were as presented. There was no public comment.

H. DIRECTORS' REQUESTS TO STAFF AND SUPPLEMENTAL REPORTS

Director Vierheilig

- ◇ Requested staff to put on a future agenda the use of solid waste franchise fees.

ADJOURN

President Harrison adjourned the meeting at 1:45 p.m.

MEETING SUMMARY	HOURS
Regular Meeting	3.45
Closed Session	1.00
TOTAL HOURS	4.45

FEBRUARY 13, 2013

REGULAR BOARD MEETING MINUTES

EXHIBIT "A"

SWAEC SCORING RUBRIC

2/13/2013

SCORING CATEGORIES	POINT ASSIGNMENT		
	1-3	4-7	8-10
Supply Potential: 1000 AFY	Alternative can deliver up to 350 AFY	Alternative can deliver 350 to 750 AFY	Alternative can deliver 750 to 1000 AFY
Supply Potential: 3000 AFY	Alternative can deliver up to 1050 AFY	Alternative can deliver 1050 to 2250 AFY	Alternative can deliver 2250 to 3000 AFY
Supply Potential: 6200 AFY	Alternative can deliver up to 2170 AFY	Alternative can deliver 2170 to 4650 AFY	Alternative can deliver 4650 to 6200 AFY
Cost Considerations: Capital	Three alternatives with the highest capital costs (most expensive capital costs) to deliver 3000 AFY	"Middle" capital costs to deliver 3000 AFY	Three alternatives with the lowest capital costs to deliver 3000 AFY
Cost Considerations: Operation & Maintenance	Three alternatives with the highest O&M costs (most expensive O&M) for 3000 AFY. Alternatives with energy or chemical costs that are less likely to fluctuate in the future will score higher.	"Middle" O&M costs for 3000 AFY. Alternatives with energy or chemical costs that are less likely to fluctuate in the future will score higher.	Three alternatives with the lowest O&M costs for 3000 AFY. Alternatives with energy or chemical costs that are less likely to fluctuate in the future will score higher.
Court Compliance: Method	1 Point - Does not import water via connection to the City of Santa Maria	--	10 Points - Imports water via connection to the City of Santa Maria
Court Compliance: Source	1 Point - Does not import water to the Mesa	--	10 Points - Imports water to the Mesa
Court Compliance: Quantity	1 Point - Does not deliver 2500 AFY	--	10 Points - Delivers 2500 AFY
Critical Milestones for Delivery: 1000 AFY by 2015	1 Point - Cannot deliver 1000 AFY by Jun 2015	--	10 Points - Can deliver 1000 AFY by Jun 2015
Critical Milestones for Delivery: 3000 AFY by 2020	1 Point - Cannot deliver 3000 AFY by 2020	--	10 Points - Can deliver 3000 AFY by 2020
Critical Milestones for Delivery: 6200 AFY (Future)	1 Point - Cannot ultimately deliver 6200 AFY in future (past 2030)	--	10 Points - Can ultimately deliver 6200 AFY in future (past 2030)

SWAEC SCORING RUBRIC

2/13/2013

SCORING CATEGORIES	POINT ASSIGNMENT		
	1-3	4-7	8-10
Reliability	Considered not reliable (<80%) on a long-term basis based on historic performance or availability of "design flow". Projects may not be able to produce at least 80% of "design flow" or may not be able to do so reliably.	Considered moderately reliable (80%+) on a long-term basis based on historic performance or availability of "design flow" (ex. only 80% of "design flow" may be available at some times). Subject to seasonal limitations or fluctuations that would impact supplies available to District.	Considered highly reliable on a long-term basis based on historic performance or availability of 80% of "design flow". Not subject to seasonal limitations or fluctuations that would impact supplies available to District
Feasibility	Permitting is expected to represent a significant hurdle - either adding five (5)+ years to project implementation for delivery of "design flow", or may be opposed by resource agencies or in conflict with their policies. May require significant contract negotiations with multiple outside entities that are expected to challenge the project. May have a "fatal flaw".	May require CEQA permitting and some contract negotiation with an outside entity, but negotiation is not expected to be challenged by outside entities or to take longer than 2-5 years.	Can be accomplished without new CEQA or additional "major" resource agency permits (CDFG, NOAA Fisheries, CA Coastal Commission, etc.) or can acquire permits/authorizations within 1-2 years. Can be accomplished with minor effort to update existing contracts or without any contract modifications requiring more than 1-2 years to finalize.
Phasing	Project either cannot be upgraded from 1000 to 3000 AFY or will require more than 100% of the initial (1000 AFY) capital cost	Project can be upgraded from 1000 to 3000 AFY but will require 60 to 80% of the initial (1000 AFY) capital cost	Project can be upgraded from 1000 to 3000 AFY without requiring more than 50% of the initial (1000 AFY) capital cost
Water Quality: Raw	Requires "high" level of treatment - reverse osmosis or similar desalination - for intended use, or has significant health/safety concerns or risks	Requires "moderate" level of treatment - basic filtration & disinfection - for intended use	Requires minor chemical addition (disinfection) or no treatment for intended use
Water Quality: Finished	Total dissolved solids (TDS) concentrations greater than 750 mg/L	TDS concentrations of 500-750 mg/L	TDS concentrations less than 500 mg/L
Sustainability	Significant negative environmental impact due to energy usage, carbon footprint, greenhouse gas emissions, or other similar measures.	Some environmental impact with an increase in carbon footprint, greenhouse gas emissions, or other similar measures.	Positive environmental impact or no increase in carbon footprint, greenhouse gas emissions, or other similar measures.
Public Support	Opposition is anticipated	Indifferent	Positive

FEBRUARY 13, 2013

REGULAR BOARD MEETING MINUTES

EXHIBIT "B"

NIPOMO COMMUNITY



SERVICES DISTRICT

BOARD MEMBERS

MICHAEL WINN, PRESIDENT
JUDITH WIRSING, VICE PRESIDENT
ROBERT BLAIR, DIRECTOR
CLIFFORD TROTTER, DIRECTOR
LARRY VIERHEILIG, DIRECTOR

STAFF

DOUGLAS JONES, GENERAL MANAGER
LISA BOGNUA, ASSISTANT ADMINISTRATOR
JON SEITZ, GENERAL COUNSEL
DAN MIGLIAZZO, UTILITY SUPERVISOR

148 SOUTH WILSON STREET POST OFFICE BOX 326 NIPOMO, CA 93444 - 0326
(805) 929-1133 FAX (805) 929-1932 Email address gm@nipomocsd.com

August 27, 2004

San Luis Obispo County
Government Center
Building and Planning Department
San Luis Obispo, CA 93401

Eric Benham
Trincon, Inc.
124 W. Main St. #C
Santa Maria, CA 93458

SUBJECT: VERIFICATION OF WATER AND SEWER SERVICE TRINCON, INC.
TRACTS 1802 & 1856 (77 LOT DEVELOPMENT) MARIA VISTA ESTATES

As required by Section 19.20.238 Title 19 of the San Luis Obispo County Code, the Nipomo Community Services District certifies that it will provide potable water service and sewer service to Tracts 1802 & 1856, a 77-lot development located in the Maria Vista Estates in Nipomo, and that it has sufficient water resources and system capacity to provide such service. Notwithstanding any other language in this letter, and subject to Applicant complying with conditions contained in various Plan Check and Inspection Agreements for Off Site Improvements, the District certifies that (1) it will provide new service to the parcel(s) within the development on the same basis as it provides new service to any other legal parcel within the District's service area; and (2) once new service is established for a parcel(s) within the development, the District will provide service to said parcel on the same basis as it provides service to other customers within the same land use designation. All fees have been paid or will be paid. Water meters(s) will be set and/or water service provided, after the District has accepted off-site improvements and easements and the Applicant has complied with the other conditions contained in various Plan Check and Inspection Agreements.

Notwithstanding to the above paragraph, notice is provided that Nipomo Community Services District has been made a party to that lawsuit entitled Santa Maria Valley Water Conservation District, et al. v. City of Santa Maria, et al., Santa Clara Superior Court Case No. CV 770214. The case involves competing claims to the right to produce water from and/or store water in the Santa Maria Valley Groundwater Basin, the water source from which Nipomo Community Services District derives the water, which it serves. The District is now unable to predict with any certainty the outcome of the above-referenced litigation. However, the litigation conceivably could result in a limitation on the availability of groundwater for the District's production and/or an increase in the cost of water, which the District serves to its water customers.

This "Will-Serve" letter shall be subject to the current and future rules, regulations, fees, resolutions and ordinances of the Nipomo Community Services District.

San Luis Obispo County
Government Center
Building and Planning Department
August 27, 2004
Page 2



SUBJECT: VERIFICATION OF WATER AND SEWER SERVICE TRINCON, INC.
TRACTS 1802 & 1856 (77 LOT DEVELOPMENT) MARIA VISTA ESTATES

The San Luis Obispo Board of Supervisors has adopted Ordinance 2895, which establishes a 2.3% annual limit on new building permits for the Nipomo Mesa. The Nipomo Community Services District, by issuance of a Will-Serve letter, cannot guarantee that you will receive a project permit from the County of San Luis Obispo.

A handwritten signature in cursive script, appearing to read "Doug Jones", is written over a horizontal line.

Very truly yours,
Nipomo Community Services District

Doug Jones
General Manager

VALID ONLY
WITH DISTRICT
SEAL

Will Serve/Water-sewer/Tr 1856 Trincon

RECEIVED AUG 31 2004

**NIPOMO COMMUNITY SERVICES DISTRICT
PLAN CHECK AND INSPECTION
AGREEMENT**

THIS AGREEMENT is made this 19 day of March, 2001 by and between the Nipomo Community Services District, hereinafter referred to as "District", and Trinco Inc, hereinafter referred to as "Applicant" in reference to the following recitals.

RECITALS:

A. Applicant is proposing to design and construct the following facilities that are referred to as the "Project" in this Agreement:

Project Description: Water Line to Tracts 1802 & 1856

B. The purpose of this Agreement is to state the obligations of the parties in regard to the Project and the District's acceptance of the Project.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. **Construction**

The applicant, at its sole cost and expense, shall design, prepare plans and specifications, and construct/install the Project. Applicant agrees to construct the project in accordance with District's Standard Improvement Specifications and Drawings. The Project shall be constructed by a licensed contractor. Prior to the start of construction, District shall approve the plans and specifications and Applicant shall deposit with the District:

- A. Two complete sets of the approved plans;
- B. A copy of the contractor's license; and
- C. A copy of the Applicant's contract with the contractor.
- D. Proof of insurance, as required by Paragraph 13, below.

2. **Payment**

The Applicant agrees to pay the District a non-refundable water and sewer Plan Check and Inspection Fee in the amount of \$7093⁰⁰ for District activities related to the Project.

3. **Permits**

Applicant shall obtain all necessary local, County and State permits and approvals, including but not limited to County Encroachments Permits, and shall comply with all requirements thereof.

4. **Project Completion**

The Applicant agrees to complete the Project to the satisfaction of the District within two (2) years from the date of this agreement. If not completed by this time, another Plan Check and Inspection Fee and Agreement shall be required

5. **Right of Entry**

Permission is hereby granted by the Applicant to the District, or its authorized agent, to enter upon the land which is the subject of the Project for the purpose of inspecting the improvements to be constructed under this agreement.

NIPOMO COMMUNITY SERVICES DISTRICT
PLAN CHECK AND INSPECTION
AGREEMENT

6. Final Inspection and Testing

Upon completion of construction of the Project and prior to District acceptance, Applicant shall notify the District thereof and request a final inspection of the Project. All facilities in the Project shall be tested to meet District requirements as required by District Standards and Specifications. The Applicant shall supply and pay for the necessary equipment, services and devices to inspect and test the improvements installed. This shall include TV inspection of sewer lines, pressure testing equipment, cleaning devices, etc.

7. Notice of Acceptance

The District shall not provide service and a written notice of acceptance of the Project until all of the following have occurred:

- (a) The Project is finally inspected, tested and approved by the District as provided in Paragraph 6, above;
- (b) An engineer's certification that the Project is constructed in substantial conformance with the plans and specifications submitted to the District;
- (c) All real property, easements required to provide service through the Project, rights-of-way, permits, licenses, and other approvals to be obtained and delivered to the District have been so obtained and delivered to the District;
- (d) The record drawings (reproducible as-builts), specifications, accounting, operation manuals and instructions, CAD disk and warranties have been provided to the District;
- (e) Applicant has paid the District all applicable fees and charges of the District, all in accordance with the rules and regulations for the District;
- (f) A detailed accounting of amounts expended for improvements (water and sewer improvements accounted for separately); and
- (g) A list of assessor parcel numbers and service addresses to be served by the Project.

8. Transfer of the Project

Upon receipt of the notice of acceptance from the District, the Applicant shall deliver conveyance documents satisfactory in form and content to the District, transferring absolute and unencumbered ownership of the completed Project to the District (Offer of Dedication). The transfer shall not be completed until the conveyance documents transferring the Project have been formally accepted by the District Board of Directors.

9. Ownership

Upon transfer pursuant to Paragraph 8, above, the Project shall become the property of the District. The District shall own and be free in every respect to operate, manage, expand, and improve the Project as it deems appropriate.

10. District Service

The District shall not provide service through the Project until the transfer has been completed in accordance with Paragraph 8, above. All such service shall be supplied in accordance with the District's rates, ordinances, rules and regulations as the same may be amended from time-to-time. The applicant shall not allow any person to use or commence operation of any part of the Project prior to District's acceptance of the transfer without the express written consent of the District.

NIPOMO COMMUNITY SERVICES DISTRICT
PLAN CHECK AND INSPECTION
AGREEMENT

11. Maintenance of Facilities

The District assumes no obligation as to maintenance and operation of the Project until such time as the transfer has been completed pursuant to Paragraph 8, above.

12. Applicant's Guaranty

12.1 Maintenance Applicant warrants and guaranties all materials and workmanship furnished pursuant to this Agreement for a one (1) year period from the date of the transfer of the Project, as provided in Paragraph 8, above. This guarantee does not excuse the Applicant or Applicant's agents from breaches of contract causing defects that occur or are discovered more than one year after the transfer of the Project.

12.2 Applicant's Obligation Applicant shall repair or replace to the satisfaction of the District any or all such work that may prove defective in workmanship or materials, ordinary wear and tear excepted, together with any other work which may be damaged or displaced in so doing.

12.3 District Remedies In the event of the Applicant failing to perform the obligations referenced in Paragraphs 12.1 and 12.2 within a reasonable time, the District is authorized to have the defect repaired and made good. The Applicant shall be liable to the District for such costs of repair, including, but not limited to, management and administrative costs, engineering, legal and other costs incurred relating to the repair.

13. Insurance

The Applicant, or any contractor carrying out the construction of the Project shall carry commercial, general and automobile liability insurance. The insurance shall include but shall not be limited to protection against claims arising from death, bodily or personal injury, or damage to property resulting from operations, equipment or products of Applicant or its contractor, or by their employees, agents, consultants, or anyone directly or indirectly employed by the foregoing. The amount of the insurance shall not be less than \$500,000.00 single limit coverage applying to bodily and personal injury and property damage, or a combination of both. A certificate of insurance shall be lodged with the District and shall designate the District, its Directors, Officers and Employees as additional insureds. The Applicant or its contractor shall furnish the District with certificates of insurance prior to commencing construction.

14. Indemnification and Hold Harmless.

The Applicant recognizes and hereby agrees that the District and its directors, officers, employees and agents shall not be liable for any injury or death to any person or damage to any property arising from the performance of any work required hereunder by the Applicant, its officers, employees, independent contractors or agents. The Applicant shall protect, indemnify and hold the District harmless from any and all claims, causes of actions, demands or charges and from any loss or liability, including all costs, penalties, expenses, attorney's fees, litigation costs, and other fees arising out of or in any way connected with the performance or with the failure to perform under this Agreement by Applicant, its officers, employees, independent contractors or agents, including, but not limited to, the construction of the Project. In addition, if the District, its directors, officers, employees or agents should be sued as a result of such performance, the District may notify the Applicant which then shall have the duty to defend the District, its directors, officers, employees or agents, or, at the District's option, pay for such defense including, but not limited to, payment of all reasonable attorney's fees and expenses incurred by the District, its directors, officers, employees or agents. This Indemnity and hold harmless shall survive the transfer of the Project.

NIPOMO COMMUNITY SERVICES DISTRICT
PLAN CHECK AND INSPECTION
AGREEMENT

15. Amendments

Any amendments to this Agreement shall be of no force and effect unless it is in writing and signed by the Applicant and the District.

16. 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 Agreement shall be in writing and signed for 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

Nipomo Community Services District
P O Box 326
Nipomo, CA 93444

Applicant

Erik Benham
Trincom Inc
124 W Main St # C
Santa Maria CA 93458

17. Venue

This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

18. Agreement Binding

This Agreement shall apply to and be binding upon the successors, grantees, and assigns of the respective parties, provided, however, that Applicant may not assign any of its rights or obligations under this Agreement without the prior written consent of District.

19. Authority to Execute Agreement.

The parties hereby represent that the parties executing this agreement are expressly authorized to do so for and on behalf of the parties.

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

NIPOMO COMMUNITY SERVICES DISTRICT
PLAN CHECK AND INSPECTION
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APPLICANT:


(Signature)

ERIK BENHAM
(Name typed)

General Manager
(Title)

3-19-02
(Date)

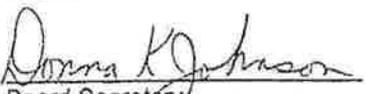
NIPOMO COMMUNITY SERVICES DISTRICT

By: 

NCSD Board President
(Title)

April 3, 2002
(Date)

Attest:



Board Secretary

COPY

ORIGINAL FOR SIGNATURE

**NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITY CONSTRUCTION
PLAN CHECK AND INSPECTION AGREEMENT
FOR MARIA VISTA OFF-SITE IMPROVEMENTS**

THIS AGREEMENT is made this 8th day of April, 2003, by and between the Nipomo Community Services District, hereinafter referred to as "District", and **Trincon, Inc., a California Corporation**, hereinafter referred to as "Applicant" or "Trincon" in reference to the following recitals.

RECITALS:

A. Pursuant to an Annexation Agreement, and in accordance with the District's Plan Check and Inspection Agreement, Applicant is required to construct and provide water and sewer service to the Area of Annexation.

B. Applicant proposes to design and construct the following off-site improvements that are referred to as the "Project" in this Agreement:

1. Develop and construct water improvements;
2. Develop and construct sewer improvements;
3. Develop and construct other improvements that are accepted by the District for operation and maintenance

C. The District is willing to accept the transfer, operation and maintenance of the Project and to provide service therefrom through the District's water system, on the terms and conditions hereinafter provided.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Construction

(a) The applicant, at its sole cost and expense, shall design, prepare plans and specifications, develop and construct/install the Project. Applicant agrees to construct the Project in accordance with District's Engineering Standards and District Standard Improvement Specifications and Drawings. The Project shall be constructed by a contractor who is licensed under the Business and Professions Code of the State of California to do the type of work called for in the approved Plans and Specifications. Prior to the start of construction, District shall approve the plans and specifications and Applicant shall deposit with the District:

1. Two complete sets of the approved plans;
2. A copy of the contractor's license; and

NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITY CONSTRUCTION
PLAN CHECK AND INSPECTION AGREEMENT
FOR MARIA VISTA OFF-SITE IMPROVEMENTS

3. A copy of the Applicant's contract with the contractor.
 4. Proof of insurance, as required by Paragraph 14, below.
- (b) Applicant shall be responsible for determining whether the construction of the Project requires the payment of prevailing wages and if so, Applicant shall to the extent required by the California Labor Code, pay no less than the applicable prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the wage determination are on file at the District's office or are otherwise available on the Web at www.csib.ca.gov.

2. Deposit for District Services

At the time of execution of this Agreement, Applicant shall advance to the District the sum of \$10,000.00 for engineering, legal and administrative services in connection with plan review, inspection of construction, and other costs incurred by the District in the performance of its duties under this Agreement. The Applicant authorizes District to withdraw from the deposit to pay for services pursuant to this Agreement as they are incurred by District.

District will notify Applicant whenever the deposit is reduced to \$1,000.00 or less. Within 15 days after such notification is mailed, Applicant will make an additional deposit in the same amount as the initial one as follows:

- (a) Request for additional deposit received by the 1st day of the month shall be deposited with District by the 15th day of that month; and
- (b) Request for additional deposit received by District by the 15th day of the month shall be deposited by the 30th day of that month.

Upon completion of construction and acceptance of the Project by the District, any funds so deposited by the Applicant in excess of the District's actual costs shall be refunded to the Applicant.

3. Permits

Applicant, at its sole cost, shall obtain all necessary local, County and State permits and approvals, including but not limited to County Encroachments Permits, and shall comply with all requirements thereof.

4. Project Completion

The Applicant agrees to complete the Project to the satisfaction of the District within two (2) years from the date of this agreement. If not completed by this time, another Plan Check and Inspection Fee and Agreement shall be required

**NIPOMO COMMUNITY SERVICES DISTRICT
PLAN CHECK AND INSPECTION
AGREEMENT**

THIS AGREEMENT is made this 17 day of March, 2001 by and between the Nipomo Community Services District, hereinafter referred to as "District", and Trinco Inc, hereinafter referred to as "Applicant" in reference to the following recitals.

RECITALS:

A. Applicant is proposing to design and construct the following facilities that are referred to as the "Project" in this Agreement:

Project Description: Water Line to Tracts 1802 & 1856

B. The purpose of this Agreement is to state the obligations of the parties in regard to the Project and the District's acceptance of the Project.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. **Construction**

The applicant, at its sole cost and expense, shall design, prepare plans and specifications, and construct/install the Project. Applicant agrees to construct the project in accordance with District's Standard Improvement Specifications and Drawings. The Project shall be constructed by a licensed contractor. Prior to the start of construction, District shall approve the plans and specifications and Applicant shall deposit with the District:

- A. Two complete sets of the approved plans;
- B. A copy of the contractor's license; and
- C. A copy of the Applicant's contract with the contractor.
- D. Proof of insurance, as required by Paragraph 13, below.

2. **Payment**

The Applicant agrees to pay the District a non-refundable water and sewer Plan Check and Inspection Fee in the amount of \$ 7093⁰⁰ for District activities related to the Project.

3. **Permits**

Applicant shall obtain all necessary local, County and State permits and approvals, including but not limited to County Encroachments Permits, and shall comply with all requirements thereof.

4. **Project Completion**

The Applicant agrees to complete the Project to the satisfaction of the District within two (2) years from the date of this agreement. If not completed by this time, another Plan Check and Inspection Fee and Agreement shall be required

5. **Right of Entry**

Permission is hereby granted by the Applicant to the District, or its authorized agent, to enter upon the land which is the subject of the Project for the purpose of inspecting the improvements to be constructed under this agreement.

COPY ORIGINAL FOR SIGNATURE

**NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITY CONSTRUCTION
PLAN CHECK AND INSPECTION AGREEMENT
DANA WELL CONSTRUCTION AND CONNECTION**

THIS AGREEMENT is made this 8th day of April, 2003, by and between the Nipomo Community Services District, hereinafter referred to as "District", and **Trincon, Inc., a California Corporation**, hereinafter referred to as "Applicant" or "Trincon" in reference to the following recitals.

RECITALS:

A. Pursuant to an Annexation Agreement, and in accordance with the District's Plan Check and Inspection Agreement, Applicant is required to construct and provide water and sewer service to the Area of Annexation.

B. Applicant proposes to design and construct the following facilities that are referred to as the "Project" in this Agreement:

1. Develop and construct two (2) wells known as the Dana Wells; and
2. Construct inter-tie facilities to connect the Dana Wells to the District's water system located within Camino Caballo.

C. The District is willing to accept the transfer, operation and maintenance of the Project and to provide service therefrom through the District's water system, on the terms and conditions hereinafter provided.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Construction

(a) The applicant, at its sole cost and expense, shall design, prepare plans and specifications, develop and construct/install the Project. Applicant agrees to construct the Project in accordance with District's Engineering Standards. The Project shall be constructed by a contractor who is licensed under the Business and Professions Code of the State of California to do the type of work called for in the approved Plans and Specifications. Prior to the start of construction, District shall approve the plans and specifications and Applicant shall deposit with the District:

1. Two complete sets of the approved plans;
2. A copy of the contractor's license; and
3. A copy of the Applicant's contract with the contractor.

NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITY CONSTRUCTION
PLAN CHECK AND INSPECTION AGREEMENT
DANA WELL CONSTRUCTION AND CONNECTION

4. Proof of insurance, as required by Paragraph 14, below.

- (b) Applicant shall be responsible for determining whether the construction of the Project requires the payment of prevailing wages and if so, Applicant shall to the extent required by the California Labor Code, pay no less than the applicable prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the wage determination are on file at the District's office or are otherwise available on the Web at www.csib.ca.gov.

2. Deposit for District Services

At the time of execution of this Agreement, Applicant shall advance to the District the sum of \$8,000.00 for engineering, legal and administrative services in connection with plan review, inspection of construction, and other costs incurred by the District in the performance of its duties under this Agreement. The Applicant authorizes District to withdraw from the deposit to pay for services pursuant to this Agreement as they are incurred by District.

District will notify Applicant whenever the deposit is reduced to \$1,000.00 or less. Within 15 days after such notification is mailed, Applicant will make an additional deposit in the same amount as the initial one as follows:

- (a) Request for additional deposit received by the 1st day of the month shall be deposited with District by the 15th day of that month; and
- (b) Request for additional deposit received by District by the 15th day of the month shall be deposited by the 30th day of that month.

Upon completion of construction and acceptance of the Project by the District, any funds so deposited by the Applicant in excess of the District's actual costs shall be refunded to the Applicant.

3. Permits

Applicant, at its sole cost, shall obtain all necessary local, County and State permits and approvals, including but not limited to County Encroachments Permits, and shall comply with all requirements thereof.

4. Project Completion

The Applicant agrees to complete the Project to the satisfaction of the District within two (2) years from the date of this agreement. If not completed by this time, another Plan Check and Inspection Fee and Agreement shall be required