

TO: BOARD OF DIRECTOR
REVIEWED: MARIO IGLESIAS
GENERAL MANAGER
FROM: WHITNEY G. MCDONALD
GENERAL COUNSEL
DATE: AUGUST 15, 2017

**AGENDA ITEM
E-3
AUGUST 23, 2017**

**CONSIDER ADOPTION OF A MODIFIED POLICY ON
THE USE OF EMAIL AND OTHER TECHNOLOGY RESOURCES**

ITEM

Consider adopting a modified policy that provides guidance for Board Members and District staff on the use of email and other technology resources [RECOMMEND REVIEW OF POLICY ON THE USE OF EMAIL AND OTHER TECHNOLOGY RESOURCES AND ADOPT THE MODIFIED POLICY BY RESOLUTION]

BACKGROUND

On July 26, 2017, your Board adopted a policy guiding Board and staff use of email and other technology resources as they relate to doing the business of the District. Included in the policy is an acknowledgement form intended to document receipt of the policy by Board Members and District staff and the signator's commitment to following the policy. It is this acknowledgement form language that is being considered for modification.

The Board can consider taking one of three options to advance the policy.

1. Adopt the policy with the requested language modifications to the acknowledgement form.
2. Adopt the policy that excludes the acknowledgement form.
3. Take no action and maintain the current policy.

The option to adopt the policy that excludes the acknowledgement form, option 2, was evaluated and is the recommended option if your Honorable Board comes to the conclusion that the language in the currently acknowledgeable form is unacceptable. It is the opinion of our General Counsel that option 1, modifying the acknowledgement language, would be less productive and calls into question the value of the acknowledgement form.

Option 3 is not recommended as there is some dissension and the possibility that not all Board Members would agree to sign the acknowledgement. With the use of a form being developed by District staff to be used in responding to each specific public records request, Board Members and District staff will be acknowledging a complete response to any public records request on a case by case basis.

FISCAL IMPACT

There is no fiscal impact.

STRATEGIC PLAN

Goal 6. GOVERNANCE AND ADMINISTRATION. Conduct District activities in an efficient, equitable and cost-effective manner.

- 6.2 Utilize technology to maximize productivity and communications.
- 6.4 Periodically review, update and reaffirm District policies and procedures.

RECOMMENDATION

Recommend your Board repeal Resolution 2017-1452 and adopt a resolution to modify the policy on the use of email and other technology resources that excludes the acknowledgement form.

ATTACHMENT

- A. Resolution 2017-1452
- B. Resolution 2017-XXXX, and modified Policy on the Use of Email and Other Technology Resources

August 23, 2017

ITEM E-3

ATTACHMENT A

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2017-1452**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT
ADOPTING POLICY ON THE USE OF
EMAIL AND OTHER TECHNOLOGY RESOURCES**

WHEREAS, in 1999, the Board of Directors ("Board") of the Nipomo Community Services District ("District") previously adopted an Electronic Mail / Internet Use Policy and Guidelines through Resolution 1999-713; and

WHEREAS, in 2014, the Board approved, through Resolution 2014-1344, the District's Employee Handbook, which contains certain provisions concerning use of District email and technology resources; and

WHEREAS, following the California Supreme Court's decision in *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, the Board determined to revise its policies concerning the use of email and other technology resources to conduct District business; and

WHEREAS, the Board desires to establish a new Policy on the Use of Email and Other Technology Resources, as set forth herein.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT AS FOLLOWS:

Section 1. The Board finds that the Recitals set forth above are true, correct, and incorporated herein by reference.

Section 2. The Board hereby adopts the Policy on the Use of Email and Other Technology Resources attached hereto and incorporated herein by reference as Exhibit A.

Section 3. The Board hereby rescinds and replaces Resolution 1999-713 in its entirety.

Section 4. To the extent that any provisions contained herein or contained in the Policy on the Use of Email and Other Technology Resources attached hereto as Exhibit A conflict with any of the provisions contained in Resolution 2014-1344 or in the Employee Handbook, including but not limited to Section 4020.C thereof, the provisions of this Resolution and Exhibit A hereto shall prevail. This Resolution shall not otherwise affect the validity or construction of Resolution 2014-1344 or the Employee Handbook, which shall remain in full force and effect.

Section 5. If any section, subsection, sentence, clause or phrase of this Resolution or the attached Exhibit A is for any reason held to be unconstitutional, ineffective, invalid, or in any manner in conflict with the laws of the United States or of the State of California, such decision shall not affect the validity of the remaining portions

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of this Resolution and attached Exhibit A. The Board hereby declares that it would have adopted this Resolution and the attached Exhibit A, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases is declared unconstitutional, ineffective, invalid, or in any manner in conflict with the laws of the United States or of the State of California.

Section 6. This Resolution shall take effect immediately.

On the motion Director Armstrong, seconded by Director Blair and on the following roll call vote, to wit:

AYES: Directors Armstrong, Blair, Woodson, and Gaddis
NOES: Director Eby
ABSENT: None
ABSTAIN: None

the foregoing resolution is hereby adopted this 26th day of July, 2017.

DAN GADDIS
President of the Board

ATTEST:

APPROVED AS TO FORM AND
LEGAL EFFECT:

MARIO IGLESIAS
General Manager and Secretary to the Board

WHITNEY G. McDONALD
District Legal Counsel

NIPOMO COMMUNITY SERVICES DISTRICT

POLICY ON THE USE OF EMAIL AND OTHER TECHNOLOGY RESOURCES

PURPOSE:

This Policy governs the appropriate use and retention of electronic mail (“email”) and other technology resources for written communications used in carrying out Nipomo Community Services District (“District”) functions, activities, and other business, and the retention of emails and other electronic communications that are made public records. The District Board of Directors (“Board of Directors”) affirms the public’s right to access public records maintained by the District and the right to set forth the procedures by which such District records will be made available to the public. The Board of Directors is mindful of the constitutional right of privacy afforded to individuals and it is the intent of the Board of Directors to promulgate a process that strikes an appropriate balance between the objectives of open government, the individual's right of privacy, and the District’s legitimate interest in maintaining the confidentiality of certain public records.

APPLICABILITY:

This Policy applies to all District employees, elected and appointed District officials, and District consultants and other non-employees utilizing email and other technology resources for the purpose of conducting District business, regardless of the user’s location when accessing the email system, network, or other technology resource.

DEFINITIONS:

“District records” includes include any writing containing information relating to the conduct of the public’s business that is prepared, owned, used, or retained by the District, regardless of the physical form and characteristics. “District records” also includes any recorded and retained communications regarding official District business sent or received by any elected or appointed District official, employee, or consultant, via a personal email system or other personal technology resource of a District official, employee, consultant or third party or other personal technology resource not owned by the District or connected to a District computer network. The records do not have to be written but may be in another format that contains information such as computer tape or disc, video or audio recording, or email or text message. For the purposes of this definition, “District” shall mean any entity controlled by the Board of Directors.

“Personal email account” includes all email accounts, systems, servers, or services that are not maintained or controlled by the District, including but not limited to any such account maintained or controlled by a business, consultant, individual, or other agency or public entity.

“Technology resources” includes all electronic media and storage devices, software, and means of electronic communication including any of the following: personal computers and workstations; laptop computers; mini and mainframe computers; tablets; computer hardware such as disk drives, tape drives, external hard drives and flash/thumb drives; peripheral equipment such as printers, modems, fax machines, and copiers; computer software applications and associated files and data,

including software that grants access to external services, such as the Internet or cloud storage accounts; electronic mail (or email); telephones; mobile phones; smart phones; personal organizers and other handheld devices; pagers; voicemail systems; and instant messaging systems. "Technology resources" is also intended to broadly include new or emerging devices, technology, software and means of communications that may be developed or implemented in the future.

"Writing" includes any handwriting, typewriting, printing, photostating, photocopying, photographing, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation including letters, words, pictures, sounds, or symbols, or combinations thereof, as well as all papers, maps, magnetic or paper tapes, photographic films and prints, and text messages, and as otherwise defined in the California Public Records Act, Cal. Gov. Code Section 6250 et seq., as amended from time to time.

POLICY:

1. Emails and other electronic communications on District accounts, services, servers and other District technology resources are intended for District-related business purposes only. All electronic communications and other writings regarding District business are the property of the District, just as are hard copies of District records. The District reserves the right to retrieve and make proper and lawful use and/or disclosure of any and all communications transmitted through the District's email system or any other District technology resource.
2. Use of personal email systems, accounts, services, or servers to conduct District business is discouraged. If any District records are sent, received, or maintained on personal email systems, accounts, services, servers and other personal technology resources, they are the property of the District, just as are hard copies of District records. The District has a responsibility to request any and all District records that are transmitted or maintained through the user's personal email system or any other personal technology resource.
3. The District respects the individual privacy of its officials, employees and consultants. However, the privacy rights of a District official, employee or consultant do not extend to (a) work-related communications, (b) the use of District-owned equipment, accounts, or services, including District email systems and other technology resources, or (c) emails and other District records relating to District business transmitted or maintained using personal email systems or other personal technology resources.
 - District officials, employees, and consultants have no reasonable expectation of privacy in communications transmitted over the District's email network or other District technology resources. Such communications are not confidential, notwithstanding any password and/or login credentials.
 - It is recommended that District officials, employees, and consultants not send, or store District records on a personal email account. Any District-related communications held in personal email accounts would be public records subject

to disclosure under the Public Records Act, and may also be subject to record retention requirements under state or federal law.

- District records, even when stored on a home or personal email device or other personal technology resource, may also be recovered and discoverable in litigation.

REQUIREMENTS

These requirements apply to all District technology resources, and to all personal technology resources used for District business, except as otherwise expressly stated.

1. **District Technology Resources Limited to District Business.** All messages transmitted over the District's email system or any other District technology resource should be limited to those which involve District functions, activities, or other business, or that contain information essential to its officials, employees, and consultants for the accomplishment of District-related tasks.
2. **Transitory Nature of Email and Other Electronic Messages.** Email messages and other electronic messages relating to District business are temporary communications that shall not be retained, either electronically or in hard copy, unless retention is required by law or where retention of a particular message would serve a useful purpose for the District. Emails and other electronic messages do not become public records under the Public Records Act when they are intended for a temporary purpose and are discarded after that purpose is achieved unless they are subject to a litigation hold letter from the District Counsel's Office or a pending request made pursuant to the Public Records Act. Care should be taken that no emails or other electronic messages are retained for longer than the temporary period specified in this Policy unless they are meant to be official records. Emails and other electronic messages intended to be permanent records should be filed as such, and kept under the District's records retention policy, either electronically or in hard copy, to signify the permanent or long-term status of the record. However, temporary communications, drafts, and intra-agency notes and memoranda are not public records.
 - Emails and other electronic messages requiring retention and which should be filed as permanent records either electronically or in hard copy, may include, but are not limited to:
 - * General correspondence and/or interoffice messages regarding management, financial, operating procedures or policy matters;
 - * Messages regarding District policy or the policy process;
 - * Messages regarding vital public information (for example, critical environmental data and reports); and
 - * Messages that otherwise are necessary to conduct the District's business.

3. **Retention Schedule.** Please note that emails or other electronic messages retained in electronic folders or in hard copy may be public records and should follow the District's retention schedule in terms of how long any such public records must be kept pursuant to legal requirements. It is the responsibility of each District official, employee, and consultant to determine if an email or other electronic message should be made an official public record and/or if it is covered within the scope of the District's records retention schedule regardless of whether the email or electronic message is sent, received, or stored using a District email system or technology resource, or a personal email account or technology resource. Emails and other electronic messages that are public records will be retained as specified in the District's retention schedule. It is important to organize these records chronologically to easily determine which records have reached their legal retention and should be destroyed. When in doubt as to if an email or other electronic message should be made an official public record and retained, each user should consult his/her supervisor, or in the case of elected or appointed officials, the District Manager and/or the District Counsel. Each individual should consult the District's retention schedule for the appropriate legal retention requirements for categories of District records. Upon termination of an individual's status as an official, employee, or consultant of the District, each individual shall transmit to the District any District records sent, received, or stored within a personal email account or personal technology resource.

4. **Litigation Holds and Pending Public Records Requests.**
 - Notwithstanding any other provision of this Policy, no District official, employee, or consultant shall knowingly destroy emails or other electronic messages that may be subject to a litigation hold letter issued by the District Counsel's Office. A litigation hold places a freeze on the authorized destruction of a particular record or type of record due to a reasonably anticipated or ongoing claim, a pending regulatory or governmental investigation, a pending subpoena, or any litigation proceedings.
 - No District official, employee, or consultant should knowingly delete any email message or other electronic message that may be responsive to a pending Public Records Act request that the District has received.
 - Destruction of emails and other electronic messages under this section may resume after notice is provided by the District Counsel.

5. **Management of Email and Other Technology Resources.** District officials, employees, and consultants who utilize the District email system or other District technology resource, or who use personal technology resources, are solely responsible for the management of their electronic mailboxes and other technology resource accounts. All technology resource users must periodically review email and other electronic messages to determine when specific emails or other electronic messages are needed for District business, and take appropriate action to store necessary emails and other electronic messages in a separate email folder or network location, or printed out and filed in an appropriate subject file to ensure the content of the email or electronic message is preserved. Such stored emails or other electronic messages constitute public records unless otherwise exempt under the Public Records Act.

All District officials, employees, and consultants who use personal email accounts and other personal technology resources for District business must manage such accounts and resources to be consistent with this Policy.

6. Non-District Record Materials. Email messages or other electronic messages that do not meet the District's public record criteria should be deleted on a regular basis. These types of messages may include but are not limited to:

- Personal correspondence (e.g., "Let's do lunch," "Can I have a ride home?"); calendar confirmations; voice mails; other incidental communication.
- Transient communications that serve to convey information of temporary importance in lieu of oral communication.
- Unsolicited promotional materials.
- Information and/or reference items (e.g., something the receiver already knows and does not need to save, or can be printed out and it is not needed as a support file as part of a District project).

Questionable emails should be retained or referred to a supervisor or the District Manager or District Counsel for determination.

7. District Technical Limitations and Requirements.

- All emails in "Deleted Items" or "Trash" folders in District user accounts that are older than 30 days will be deleted AUTOMATICALLY from the District's email system on a daily basis. The District may retain an email past its minimum retention period for operational purposes where it determines the email meets an administrative or fiscal need.
- Electronic mail is not backed-up on a permanent basis. The District stores electronic mail only to the degree that allows the District to restore current electronic mail in the event of a systems failure.

8. District Right of Access. The District may access any messages in the District's email system or other District technology resources at any time regardless of content. Access may occur for reasons of, but not be limited to, random review, situations indicating impropriety, violation of District policy, legal requirements, suspected criminal activities, breach of electronic mail security or other security, locating substantive information that is not more readily available by some other means, or for the performance of routine maintenance.

9. Disclosure. The contents of electronic mail or other technology resources may be disclosed within or outside of the District without the permission or knowledge of the official, employee, or consultant.

10. **Use of Private Email Accounts.** District officials, employees, and consultants are discouraged from using his/her private email account or server to conduct District business. All electronic files on personal technology devices pertaining to District business may be subject to public disclosure under the Public Records Act, cooperation with law enforcement, or litigation. All District business-related emails received or sent by District employees or elected or appointed District officials in or from their private email accounts or servers should be forwarded to the individual's District email address. The District's email address should not be used in the "From" field when a District employee, elected or appointed official of the District, or District consultant is sending email from a private email account.

11. **Responding to Public Records Requests.** In the case of a Public Records Act request or subpoena for emails or other electronic messages that may be in the District email account, District technology resources, personal email account, or other personal technology resource of a District official, employee, or consultant, the District Secretary or his or her designee will request, in writing, that the user search that user's District email account, District technology resources, and any applicable personal email accounts, devices, and other technology resources, for any responsive District records. The District Secretary will request that the user turn over all District records that might be responsive for review by the District Secretary and, as applicable, by the District Counsel. In transmitting the request for records, the District Secretary will identify the search terms that the District employee, official, or consultant will use in conducting a search for District records based on the Public Records Act request or subpoena. Upon request of the District Secretary, and in full compliance with the Public Records Act, each official, employee, and consultant is required to turn over all potentially responsive communications and other District records in his/her possession, in any personal email account, on any other personal technology resource generated, or obtained during his/her term(s) of service, employment, or performance of contract with the District. Any determination regarding privilege or exemption, as well as the final determination of responsiveness, shall be made by the District Secretary and/or District Counsel.

By signing the Acknowledgment attached hereto as Exhibit "A," each District official, employee, and consultant agrees and understands his/her obligation to comply with this provision.

CONFIDENTIALITY

1. While the District's electronic mail system and other technology resources may provide for the sending of material referred to as PRIVATE, users must be aware that such communications are accessible to certain employees of the District who have the responsibility to monitor and control the computer programs of the District. As with all computer systems, there is also the possibility of unauthorized access by people for whom the communication was not intended. Therefore, use of this capability must be exercised with appropriate caution.

2. It is a violation of this Policy, and an abuse of authority, for any District official, employee, or consultant, including system administrators, supervisors, or programmers, to use the District's email, computers or other technology resources for purposes of satisfying idle

curiosity about the affairs of others, with no substantial business purpose for obtaining access to the files or communications of others. Officials, employees, or consultants found to have engaged in such “snooping” or other prohibited actions may be subject to discipline and/or other sanction consistent with District policies and procedures. In addition to any other sanction imposed, the District may restrict or remove an official’s, employee’s, or consultant’s access to the District email system or other technology resource upon determination of violation of this Policy.

TRAINING

Training on the District’s email system and other technology resources will be administered by the Assistant General Manager. Officials, employees and consultants should contact Assistant General Manager or their point of contact person if they have any questions.

PROHIBITED USES OF DISTRICT EMAIL AND OTHER TECHNOLOGY RESOURCES

The following uses of the District’s email system and other technology resources are not District-related business and are prohibited. A determination by the District that a District official, employee, or consultant has engaged in any prohibited conduct listed below may subject that individual to disciplinary action or other sanction, including but not limited to, termination; restriction on his/her use or access to the District’s technology resources, or such other remedies as may be authorized by District policies and procedures or applicable law.

1. Any use for or in connection with the establishment or conduct of outside employment, private, profit-making activity such as “for sale” notices and wanted ads or other, or for other personal or pecuniary gain or solicitation.
2. Support or opposition to, or fundraising for campaigns, for candidates running for elected office or for ballot measures.
3. Messages of a religious nature or promoting or opposing of religious beliefs.
4. Transmitting pictures, information, comments or other text that is insulting, offensive, disrespectful, discriminatory, demeaning, defamatory, pornographic, sexually suggestive, or sexually explicit.
5. Violates the District’s policies against discrimination, harassment or retaliation based on sex or gender, pregnancy, childbirth (or related medical conditions), race, color, religion, national origin, ethnicity, ancestry, age, physical disability, mental disability, medical condition, marital status, sexual orientation, family care or medical leave status, military status, veteran status, or any other status protected by state and federal laws.
6. Threats of violence or abusive conduct, sexual or ethnic slurs, obscenities, or any representation of obscenities.
7. Libel, slander, or defamation.

8. The purchase of applications, programs or other items from the internet, through the use of a District email account or other technology resource, unless permission is granted by the District Manager.
9. Personal access to any type of social media, including but not limited to Facebook, Snapchat, Twitter, chat rooms, blogs, etc., except for District-run Web pages and blogs.
10. Use of software not required for District business or other official activities, use of software for games, or any other entertainment software.
11. Attempting to circumvent security and data protection policies.
12. Any violation of any District ordinance, resolution, policy, or procedure or any other action contrary to the best interests of the District.
13. Any use related to promoting, planning or participating in personal activities, hobbies, or private events.
14. Any unlawful or illegal purpose.
15. For broadcast purposes District-wide, without the District Manager's approval.

Violations of this Policy shall be reviewed on a case-by-case basis. Violation of this Policy may result in loss of or restriction of a user's privileges to the District's technology systems at any time without prior notice. In addition, a District email user who violates this Policy may be subject to disciplinary or legal action up to and including termination from employment and/or criminal or civil penalties or other legal action.

ACKNOWLEDGMENT OF RECEIPT

Each District official, employee, and consultant shall, prior to commencement of work or services, shall sign an Acknowledgment of Receipt of this Policy, as set forth in Exhibit "A", attached to this Policy. However, this Policy applies to all District officials, employees, and consultants regardless of whether he or she has signed an Acknowledgment of Receipt of this Policy, as set forth in Exhibit "A" or otherwise.

EXHIBIT "A"

**ACKNOWLEDGEMENT OF RECEIPT FORM REGARDING THE NIPOMO
COMMUNITY SERVICES DISTRICT'S DISTRICT POLICY ON USE OF EMAIL AND
OTHER TECHNOLOGY RESOURCES**

I, _____, certify:

1. I have received and read a copy of the Email and Other Technology Resources Policy of the Nipomo Community Services District ("District"). I acknowledge and understand the terms of this Policy and agree to abide by them at all times.

2. I understand that violation of this Policy may result in result in loss of or restriction upon my privilege to use District email or other technology resources at any time without prior notice.

(If District Employee)

3. Please check box: I further understand that my violation of this Policy may subject me to disciplinary or legal action up to and including termination from employment and/or criminal or civil penalties or other legal action.

4. Please check box: I further acknowledge that this document will be placed in my personnel file.

Dated _____

By: _____
(Signature)

Print Name: _____

Title: _____

August 23, 2017

ITEM E-3

ATTACHMENT B

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2017-_____**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT
REPEALING RESOLUTION 2017-1452 AND
ADOPTING POLICY ON THE USE OF
EMAIL AND OTHER TECHNOLOGY RESOURCES**

WHEREAS, in 1999, the Board of Directors ("Board") of the Nipomo Community Services District ("District") previously adopted an Electronic Mail / Internet Use Policy and Guidelines through Resolution 1999-713; and

WHEREAS, in 2014, the Board approved, through Resolution 2014-1344, the District's Employee Handbook, which contains certain provisions concerning use of District email and technology resources; and

WHEREAS, following the California Supreme Court's decision in *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, the Board determined to revise its policies concerning the use of email and other technology resources to conduct District business; and

WHEREAS, on July 27, 2017, the Board considered and adopted a new Policy on the Use of Email and Other Technology Resources by way of Resolution 2017-1452; and

WHEREAS, the Board desires to make certain changes to the Policy on the Use of Email and Other Technology Resources adopted on July 27, 2017, and to adopt the revised policy attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT AS FOLLOWS:

Section 1. The Board finds that the Recitals set forth above are true, correct, and incorporated herein by reference.

Section 2. The Board hereby rescinds Resolution 2017-1452 in its entirety.

Section 3. The Board hereby adopts the Policy on the Use of Email and Other Technology Resources attached hereto and incorporated herein by reference as Exhibit A.

Section 4. To the extent that any provisions contained herein or contained in the Policy on the Use of Email and Other Technology Resources attached hereto as Exhibit A conflict with any of the provisions contained in Resolution 2014-1344 or in the Employee Handbook, including but not limited to Section 4020.C thereof, the provisions of this Resolution and Exhibit A hereto shall prevail. This Resolution shall not otherwise affect the validity or construction of Resolution 2014-1344 or the Employee Handbook, which shall remain in full force and effect.

NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2017-_____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT
REPEALING RESOLUTION 2017-1452 AND
ADOPTING POLICY ON THE USE OF
EMAIL AND OTHER TECHNOLOGY RESOURCES

Section 5. If any section, subsection, sentence, clause or phrase of this Resolution or the attached Exhibit A is for any reason held to be unconstitutional, ineffective, invalid, or in any manner in conflict with the laws of the United States or of the State of California, such decision shall not affect the validity of the remaining portions of this Resolution and attached Exhibit A. The Board hereby declares that it would have adopted this Resolution and the attached Exhibit A, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases is declared unconstitutional, ineffective, invalid, or in any manner in conflict with the laws of the United States or of the State of California.

Section 6. This Resolution shall take effect immediately.

On the motion Director _____, seconded by Director _____ and on the following roll call vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

the foregoing resolution is hereby adopted this 23rd day of August, 2017.

DAN A. GADDIS
President of the Board

ATTEST:

APPROVED AS TO FORM AND
LEGAL EFFECT:

MARIO IGLESIAS
General Manager and Secretary to the Board

WHITNEY G. McDONALD
District Legal Counsel

NIPOMO COMMUNITY SERVICES DISTRICT

POLICY ON THE USE OF EMAIL AND OTHER TECHNOLOGY RESOURCES

PURPOSE:

This Policy governs the appropriate use and retention of electronic mail (“email”) and other technology resources for written communications used in carrying out Nipomo Community Services District (“District”) functions, activities, and other business, and the retention of emails and other electronic communications that are made public records. The District Board of Directors (“Board of Directors”) affirms the public’s right to access public records maintained by the District and the right to set forth the procedures by which such District records will be made available to the public. The Board of Directors is mindful of the constitutional right of privacy afforded to individuals and it is the intent of the Board of Directors to promulgate a process that strikes an appropriate balance between the objectives of open government, the individual's right of privacy, and the District’s legitimate interest in maintaining the confidentiality of certain public records.

APPLICABILITY:

This Policy applies to all District employees, elected and appointed District officials, and District consultants and other non-employees utilizing email and other technology resources for the purpose of conducting District business, regardless of the user’s location when accessing the email system, network, or other technology resource.

DEFINITIONS:

“District records” includes include any writing containing information relating to the conduct of the public’s business that is prepared, owned, used, or retained by the District, regardless of the physical form and characteristics. “District records” also includes any recorded and retained communications regarding official District business sent or received by any elected or appointed District official, employee, or consultant, via a personal email system or other personal technology resource of a District official, employee, consultant or third party or other personal technology resource not owned by the District or connected to a District computer network. The records do not have to be written but may be in another format that contains information such as computer tape or disc, video or audio recording, or email or text message. For the purposes of this definition, “District” shall mean any entity controlled by the Board of Directors.

“Personal email account” includes all email accounts, systems, servers, or services that are not maintained or controlled by the District, including but not limited to any such account maintained or controlled by a business, consultant, individual, or other agency or public entity.

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equipment such as printers, modems, fax machines, and copiers; computer software applications and associated files and data, including software that grants access to external services, such as the Internet or cloud storage accounts; electronic mail (or email); telephones; mobile phones; smart phones; personal organizers and other handheld devices; pagers; voicemail systems; and instant messaging systems. "Technology resources" is also intended to broadly include new or emerging devices, technology, software and means of communications that may be developed or implemented in the future.

"Writing" includes any handwriting, typewriting, printing, photostating, photocopying, photographing, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation including letters, words, pictures, sounds, or symbols, or combinations thereof, as well as all papers, maps, magnetic or paper tapes, photographic films and prints, and text messages, and as otherwise defined in the California Public Records Act, Cal. Gov. Code Section 6250 et seq., as amended from time to time.

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1. Emails and other electronic communications on District accounts, services, servers and other District technology resources are intended for District-related business purposes only. All electronic communications and other writings regarding District business are the property of the District, just as are hard copies of District records. The District reserves the right to retrieve and make proper and lawful use and/or disclosure of any and all communications transmitted through the District's email system or any other District technology resource.
2. Use of personal email systems, accounts, services, or servers to conduct District business is discouraged. If any District records are sent, received, or maintained on personal email systems, accounts, services, servers and other personal technology resources, they are the property of the District, just as are hard copies of District records. The District has a responsibility to request any and all District records that are transmitted or maintained through the user's personal email system or any other personal technology resource.
3. The District respects the individual privacy of its officials, employees and consultants. However, the privacy rights of a District official, employee or consultant do not extend to (a) work-related communications, (b) the use of District-owned equipment, accounts, or services, including District email systems and other technology resources, or (c) emails and other District records relating to District business transmitted or maintained using personal email systems or other personal technology resources.
 - District officials, employees, and consultants have no reasonable expectation of privacy in communications transmitted over the District's email network or other District technology resources. Such communications are not confidential, notwithstanding any password and/or login credentials.
 - It is recommended that District officials, employees, and consultants not send, or

store District records on a personal email account. Any District-related communications held in personal email accounts would be public records subject to disclosure under the Public Records Act, and may also be subject to record retention requirements under state or federal law.

- District records, even when stored on a home or personal email device or other personal technology resource, may also be recovered and discoverable in litigation.

REQUIREMENTS

These requirements apply to all District technology resources, and to all personal technology resources used for District business, except as otherwise expressly stated.

1. **District Technology Resources Limited to District Business.** All messages transmitted over the District's email system or any other District technology resource should be limited to those which involve District functions, activities, or other business, or that contain information essential to its officials, employees, and consultants for the accomplishment of District-related tasks.
2. **Transitory Nature of Email and Other Electronic Messages.** Email messages and other electronic messages relating to District business are temporary communications that shall not be retained, either electronically or in hard copy, unless retention is required by law or where retention of a particular message would serve a useful purpose for the District. Emails and other electronic messages do not become public records under the Public Records Act when they are intended for a temporary purpose and are discarded after that purpose is achieved unless they are subject to a litigation hold letter from the District Counsel's Office or a pending request made pursuant to the Public Records Act. Care should be taken that no emails or other electronic messages are retained for longer than the temporary period specified in this Policy unless they are meant to be official records. Emails and other electronic messages intended to be permanent records should be filed as such, and kept under the District's records retention policy, either electronically or in hard copy, to signify the permanent or long-term status of the record. However, temporary communications, drafts, and intra-agency notes and memoranda are not public records.
 - Emails and other electronic messages requiring retention and which should be filed as permanent records either electronically or in hard copy, may include, but are not limited to:
 - * General correspondence and/or interoffice messages regarding management, financial, operating procedures or policy matters;
 - * Messages regarding District policy or the policy process;
 - * Messages regarding vital public information (for example, critical environmental data and reports); and

* Messages that otherwise are necessary to conduct the District's business.

3. **Retention Schedule.** Please note that emails or other electronic messages retained in electronic folders or in hard copy may be public records and should follow the District's retention schedule in terms of how long any such public records must be kept pursuant to legal requirements. It is the responsibility of each District official, employee, and consultant to determine if an email or other electronic message should be made an official public record and/or if it is covered within the scope of the District's records retention schedule regardless of whether the email or electronic message is sent, received, or stored using a District email system or technology resource, or a personal email account or technology resource. Emails and other electronic messages that are public records will be retained as specified in the District's retention schedule. It is important to organize these records chronologically to easily determine which records have reached their legal retention and should be destroyed. When in doubt as to if an email or other electronic message should be made an official public record and retained, each user should consult his/her supervisor, or in the case of elected or appointed officials, the District Manager and/or the District Counsel. Each individual should consult the District's retention schedule for the appropriate legal retention requirements for categories of District records. Upon termination of an individual's status as an official, employee, or consultant of the District, each individual shall transmit to the District any District records sent, received, or stored within a personal email account or personal technology resource.

4. **Litigation Holds and Pending Public Records Requests.**

- Notwithstanding any other provision of this Policy, no District official, employee, or consultant shall knowingly destroy emails or other electronic messages that may be subject to a litigation hold letter issued by the District Counsel's Office. A litigation hold places a freeze on the authorized destruction of a particular record or type of record due to a reasonably anticipated or ongoing claim, a pending regulatory or governmental investigation, a pending subpoena, or any litigation proceedings.
- No District official, employee, or consultant should knowingly delete any email message or other electronic message that may be responsive to a pending Public Records Act request that the District has received.
- Destruction of emails and other electronic messages under this section may resume after notice is provided by the District Counsel.

5. **Management of Email and Other Technology Resources.** District officials, employees, and consultants who utilize the District email system or other District technology resource, or who use personal technology resources, are solely responsible for the management of their electronic mailboxes and other technology resource accounts. All technology resource users must periodically review email and other electronic messages to determine when specific emails or other electronic messages are needed for District business, and take appropriate action to store necessary emails and other electronic messages in a separate

email folder or network location, or printed out and filed in an appropriate subject file to ensure the content of the email or electronic message is preserved. Such stored emails or other electronic messages constitute public records unless otherwise exempt under the Public Records Act. All District officials, employees, and consultants who use personal email accounts and other personal technology resources for District business must manage such accounts and resources to be consistent with this Policy.

6. Non-District Record Materials. Email messages or other electronic messages that do not meet the District's public record criteria should be deleted on a regular basis. These types of messages may include but are not limited to:

- Personal correspondence (e.g., "Let's do lunch," "Can I have a ride home?"); calendar confirmations; voice mails; other incidental communication.
- Transient communications that serve to convey information of temporary importance in lieu of oral communication.
- Unsolicited promotional materials.
- Information and/or reference items (e.g., something the receiver already knows and does not need to save, or can be printed out and it is not needed as a support file as part of a District project).

Questionable emails should be retained or referred to a supervisor or the District Manager or District Counsel for determination.

7. District Technical Limitations and Requirements.

- All emails in "Deleted Items" or "Trash" folders in District user accounts that are older than 30 days will be deleted AUTOMATICALLY from the District's email system on a daily basis. The District may retain an email past its minimum retention period for operational purposes where it determines the email meets an administrative or fiscal need.
- Electronic mail is not backed-up on a permanent basis. The District stores electronic mail only to the degree that allows the District to restore current electronic mail in the event of a systems failure.

8. District Right of Access. The District may access any messages in the District's email system or other District technology resources at any time regardless of content. Access may occur for reasons of, but not be limited to, random review, situations indicating impropriety, violation of District policy, legal requirements, suspected criminal activities, breach of electronic mail security or other security, locating substantive information that is not more readily available by some other means, or for the performance of routine maintenance.

9. Disclosure. The contents of electronic mail or other technology resources may be disclosed

within or outside of the District without the permission or knowledge of the official, employee, or consultant.

10. **Use of Private Email Accounts.** District officials, employees, and consultants are discouraged from using his/her private email account or server to conduct District business. All electronic files on personal technology devices pertaining to District business may be subject to public disclosure under the Public Records Act, cooperation with law enforcement, or litigation. All District business-related emails received or sent by District employees or elected or appointed District officials in or from their private email accounts or servers should be forwarded to the individual's District email address. The District's email address should not be used in the "From" field when a District employee, elected or appointed official of the District, or District consultant is sending email from a private email account.
11. **Responding to Public Records Requests.** In the case of a Public Records Act request or subpoena for emails or other electronic messages that may be in the District email account, District technology resources, personal email account, or other personal technology resource of a District official, employee, or consultant, the District Secretary or his or her designee will request, in writing, that the user search that user's District email account, District technology resources, and any applicable personal email accounts, devices, and other technology resources, for any responsive District records. The District Secretary will request that the user turn over all District records that might be responsive for review by the District Secretary and, as applicable, by the District Counsel. In transmitting the request for records, the District Secretary will identify the search terms that the District employee, official, or consultant will use in conducting a search for District records based on the Public Records Act request or subpoena. Upon request of the District Secretary, and in full compliance with the Public Records Act, each official, employee, and consultant is required to turn over all potentially responsive communications and other District records in his/her possession, in any personal email account, on any other personal technology resource generated, or obtained during his/her term(s) of service, employment, or performance of contract with the District. Any determination regarding privilege or exemption, as well as the final determination of responsiveness, shall be made by the District Secretary and/or District Counsel.

CONFIDENTIALITY

1. While the District's electronic mail system and other technology resources may provide for the sending of material referred to as PRIVATE, users must be aware that such communications are accessible to certain employees of the District who have the responsibility to monitor and control the computer programs of the District. As with all computer systems, there is also the possibility of unauthorized access by people for whom the communication was not intended. Therefore, use of this capability must be exercised with appropriate caution.
2. It is a violation of this Policy, and an abuse of authority, for any District official, employee, or consultant, including system administrators, supervisors, or programmers, to use the

District's email, computers or other technology resources for purposes of satisfying idle curiosity about the affairs of others, with no substantial business purpose for obtaining access to the files or communications of others. Officials, employees, or consultants found to have engaged in such "snooping" or other prohibited actions may be subject to discipline and/or other sanction consistent with District policies and procedures. In addition to any other sanction imposed, the District may restrict or remove an official's, employee's, or consultant's access to the District email system or other technology resource upon determination of violation of this Policy.

TRAINING

Training on the District's email system and other technology resources will be administered by the Assistant General Manager. Officials, employees and consultants should contact Assistant General Manager or their point of contact person if they have any questions.

PROHIBITED USES OF DISTRICT EMAIL AND OTHER TECHNOLOGY RESOURCES

The following uses of the District's email system and other technology resources are not District-related business and are prohibited. A determination by the District that a District official, employee, or consultant has engaged in any prohibited conduct listed below may subject that individual to disciplinary action or other sanction, including but not limited to, termination; restriction on his/her use or access to the District's technology resources, or such other remedies as may be authorized by District policies and procedures or applicable law.

1. Any use for or in connection with the establishment or conduct of outside employment, private, profit-making activity such as "for sale" notices and wanted ads or other, or for other personal or pecuniary gain or solicitation.
2. Support or opposition to, or fundraising for campaigns, for candidates running for elected office or for ballot measures.
3. Messages of a religious nature or promoting or opposing of religious beliefs.
4. Transmitting pictures, information, comments or other text that is insulting, offensive, disrespectful, discriminatory, demeaning, defamatory, pornographic, sexually suggestive, or sexually explicit.
5. Violates the District's policies against discrimination, harassment or retaliation based on sex or gender, pregnancy, childbirth (or related medical conditions), race, color, religion, national origin, ethnicity, ancestry, age, physical disability, mental disability, medical condition, marital status, sexual orientation, family care or medical leave status, military status, veteran status, or any other status protected by state and federal laws.
6. Threats of violence or abusive conduct, sexual or ethnic slurs, obscenities, or any representation of obscenities.

7. Libel, slander, or defamation.
8. The purchase of applications, programs or other items from the internet, through the use of a District email account or other technology resource, unless permission is granted by the District Manager.
9. Personal access to any type of social media, including but not limited to Facebook, Snapchat, Twitter, chat rooms, blogs, etc., except for District-run Web pages and blogs.
10. Use of software not required for District business or other official activities, use of software for games, or any other entertainment software.
11. Attempting to circumvent security and data protection policies.
12. Any violation of any District ordinance, resolution, policy, or procedure or any other action contrary to the best interests of the District.
13. Any use related to promoting, planning or participating in personal activities, hobbies, or private events.
14. Any unlawful or illegal purpose.
15. For broadcast purposes District-wide, without the District Manager's approval.

Violations of this Policy shall be reviewed on a case-by-case basis. Violation of this Policy may result in loss of or restriction of a user's privileges to the District's technology systems at any time without prior notice. In addition, a District email user who violates this Policy may be subject to disciplinary or legal action up to and including termination from employment and/or criminal or civil penalties or other legal action.