

TO: BOARD OF DIRECTORS
FROM: MARIO IGLESIAS *LSB*
GENERAL MANAGER
DATE: AUGUST 7, 2019



**CONDUCT PROTEST HEARING, DETERMINE PROTEST STATUS,
AND, IF THERE IS NOT A MAJORITY PROTEST, CONSIDER ADOPTING
A RESOLUTION INCREASING DISTRICT SOLID WASTE
RATES AND CHARGES**

ITEM

Conduct protest hearing, determine protest status, and, if there is not a majority protest, consider adopting a resolution increasing District solid waste rates and charges [RECOMMEND CONDUCT PROTEST HEARING AND ADOPT RESOLUTION IF NO MAJORITY PROTEST EXISTS]

BACKGROUND

South County Sanitary Services (SCSS) provides solid waste collection services to homes and businesses throughout southern San Luis Obispo County. SCSS provides these services to Nipomo Community Services District ("District") customers under a Franchise Agreement with the District.

On May 8, 2019, and June 12, 2019, your Board considered SCSS's application for a base year rate increase and discussed options for addressing the rate application. Your Board approved the rate study supporting a proposed 15.08% increase in solid waste rates and initiated the public hearing process pursuant to Proposition 218.

On or about June 21, 2019, at the direction of the District, SCSS mailed the Notice of Public Hearing on the proposed solid waste rate increase (Attachment B) to all owners of record and customers of record, meeting the 45-day noticing requirement under Proposition 218.

The Notice of Public Hearing states the proposed rate increase would become effective on August 15, 2019 in two places. However, one location in the table describing the proposed rates that is included in the Notice states that the proposed rate increase would become effective September 15, 2019. Due to the discrepancy in dates in the Notice, it is recommended that the later date be the effective date, i.e. September 15, 2019.

USE OF SOLID WASTE REVENUES

The District solid waste franchise is operated as a separate enterprise. The revenues derived from the solid waste rate increase do not exceed the funds required to provide solid waste service because the rates are calculated to provide:

- Provide sufficient funds for on-going operation and maintenance.
- Rehabilitate, replace and upgrade facilities or equipment needed to provide services for the District solid waste customers.
- Establish reserves to reduce risk and prudently manage the District's solid waste services.

Solid waste revenues collected from solid waste customers are deposited into designated accounts and cannot be used for any purpose other than that for which the charge is imposed as outlined above.

FISCAL IMPACT

With the adopted rate, the District will collect approximately \$159,000 in franchise fees annually to pay for solid waste activities within the community.

STRATEGIC PLAN

Strategic Plan Goal 4.B.1 - Evaluate, plan for and maintain finances that are adequate for all needs, stable, and reliable over the long-term.

Strategic Plan Goal 8.A.1 – Seek to maximize solid waste services for community and build understanding of services like hazardous waste, recycling, etc. and District's role.

RECOMMENDATION

Staff recommends as follows:

1. Conduct Public Hearing, receive Public Comment & receive Written Protests.
2. Close Public Hearing.
3. Establish number of valid Written Protests that have been submitted per Prop 218\Article XIII D of the California Constitution.
4. If there is no majority protest, by motion and roll-call vote, adopt Resolution Setting Rates for Solid Waste, Recycling, and Green Waste Services; or
5. If there is a Majority Protest, direct staff to develop alternatives.

ATTACHMENT

- A. Resolution 2019 – XXXX Setting Rates for Solid Waste, Recycling, and Green Waste Services
- B. Proposition 218 Notice to owners of record and customers of record

AUGUST 14, 2019

ITEM E-1

ATTACHMENT A

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2019-XXXX**

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
SETTING RATES FOR SOLID WASTE, RECYCLING, AND GREEN WASTE SERVICES
PROVIDED BY SOUTH COUNTY SANITARY SERVICE
WITHIN THE NIPOMO COMMUNITY SERVICES DISTRICT'S SERVICE AREA**

WHEREAS, pursuant to San Luis Obispo County Local Agency Formation Commission Resolution 2001-02 and Government Code section 61100(c), the Nipomo Community Services District ("District") is authorized to provide its residents with services for the collection and disposal of garbage and refuse matter; and

WHEREAS, the District has granted an exclusive franchise to the South County Sanitary Services ("SCSS") to provide solid waste, recycling, and green waste collection services (collectively, "solid waste services") to homes and businesses within the District under the Nipomo Community Services District Amended and Restated Solid Waste Collection Franchise Agreement dated August 27, 2008, as amended by the First Amendment to Amended and Restated Solid Waste Collection Franchise Agreement dated November 12, 2015 (collectively referenced herein as the "Franchise Agreement"); and

WHEREAS, District Code and the Franchise Agreement specify that rates and charges for the provision of solid waste services within the District are subject to Proposition 218, Section 6 of Article XIID of the California Constitution ("Proposition 218"); and

WHEREAS, SCSS has submitted a request to increase its rates and charges for solid waste services within the District, which requires compliance with Proposition 218; and

WHEREAS, to evaluate SCSS's request, the District retained William C. Statler ("Statler") to prepare a rate study and supplement to the April 2019 report entitled "South County Sanitary Service Solid Waste Rate Review for the Communities of Arroyo Grande, Grover Beach, Oceano, and Pismo Beach" ("April 2019 Report"); and

WHEREAS, the April 2019 Report and a draft supplemental report prepared by Statler was presented to the District Board of Directors ("Board") at its regular meeting held on May 8, 2019, where the Board requested that additional information be provided regarding the proposed rate increase; and

WHEREAS, at its regular meeting held on June 12, 2019, the Board considered and approved the Rate Study prepared for the proposed solid waste rate increase, consisting of the memorandum dated June 6, 2019, the memorandum dated May 3, 2019, and the April 2019 Report, all prepared by Statler and collectively referenced and incorporated herein as the "Rate Study," initiated the Proposition 218 process to increase solid waste rates and charges within the District by 15.08% as supported by the Rate Study, and set the public hearing on the proposed rate increase for August 14, 2019; and

WHEREAS, the District, pursuant to Article XIID, §6(a) of the California Constitution, has provided written notice to record owners of identified parcels within the District upon which the fee or charge is proposed for solid waste collection services, which notice is incorporated herein by reference; and

NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2019-XXXX

A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
SETTING RATES FOR SOLID WASTE, RECYCLING, AND GREEN WASTE SERVICES
PROVIDED BY SOUTH COUNTY SANITARY SERVICE
WITHIN THE NIPOMO COMMUNITY SERVICES DISTRICT'S SERVICE AREA

WHEREAS, on August 14, 2019, the District conducted a duly noticed public hearing wherein the Board of Directors considered public comments in support and in opposition to the proposed rate increase and whether or not a majority protest to the proposed rate increase exists pursuant to Section 6 of Article XIII D of the California Constitution. A total of 4,264 parcels would be subject to the proposed rate increase; therefore, 2,133 protests would be needed to constitute a majority protest. At the conclusion of the public hearing, the Board found that _____ written protests were received and that a majority protest did not exist; and

WHEREAS, based on facts and analysis presented in and relied on by the Rate Study, the facts and information provided in the rate adjustment application submitted by SCSS, the written protests received prior to the close of the August 14, 2019 public hearing, the Staff Reports, Staff Presentations, and public testimony received during the hearings and public meetings held on May 8, 2019, June 12, 2019, and August 14, 2019, the Board of Directors finds:

A. The District identified the parcels upon which the new rates and charges will be imposed, calculated the amount of the rates, and mailed notices to all Owners of Record and Customers of Record of properties responsible for the solid waste services rates and charges, which notices provided information on the proposed rates and charges, the basis for the calculation, the reason for the rates and charges, and the date, time, and location for a public hearing ,which was not less than 45 days after the date of mailing.

B. The public hearing adopting this Resolution has been properly noticed pursuant to the Section 6 of Article XIII D of the California Constitution, the Proposition 218 Omnibus Implementation Act (Government Code §53750, et. seq.), and the Brown Act (Government Code §54950, et seq.).

C. The rates and charges adopted by this Resolution:

1. Are for the purposes of meeting operation, maintenance, and capital replacement expenses required to provide safe, environmentally sound, and reliable solid waste, recycling, and green waste collection, transportation and disposal or processing services to District customers.
2. Do not exceed the funds required to provide solid waste services to District customers.
3. Do not exceed the proportional cost of services attributable to those parcels receiving solid waste service.

D. The revenues derived from the solid waste rates and charges will not be used for any purpose other than that for which the charge is imposed; and

WHEREAS, Government Code §61115 authorizes the District to adopt rates and charges by resolution.

NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2019-XXXX

A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
SETTING RATES FOR SOLID WASTE, RECYCLING, AND GREEN WASTE SERVICES
PROVIDED BY SOUTH COUNTY SANITARY SERVICE
WITHIN THE NIPOMO COMMUNITY SERVICES DISTRICT'S SERVICE AREA

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED, by the Board of Directors of the District as follows:

Section 1. Incorporation of Recitals

The Recitals are true and correct and incorporated herein by this reference. The Recitals and referenced reports and studies contained therein constitute and support the findings of the District in support of this Resolution.

Section 2. Solid Waste Rates and Charges

The rates and charges for the provision of solid waste services to customers within the District shall be as set forth in Exhibit "A" hereto, which is incorporated herein by reference.

Section 3. Effective Date

This Resolution shall take effect immediately. The rates and charges adopted by this Resolution shall take effect on September 15, 2019.

Section 4. Repeal of Prior Resolutions

To the extent that any prior District resolutions and sections of resolutions are inconsistent with this Resolution, they are hereby repealed, effective September 15, 2019.

Section 5. Effect of Repeal on Past Actions and Obligations

This Resolution does not affect prosecutions for violations of any District code or resolution committed prior to the effective date of this Resolution, does not waive any fee or penalty due and unpaid on the effective date of this Resolution, and does not affect the validity of any amounts owed, posted, filed, or deposited pursuant to the requirements of any prior resolution or ordinance.

Section 6. CEQA Findings

The Board of Directors of the District finds that the rates and charges adopted by this Resolution are for the purpose of meeting operating expenses, purchasing or leasing supplies, equipment, or materials, meeting financial reserve needs and requirements, and obtaining funds for capital projects that are necessary to maintain service within existing service areas, as set forth in detail in the Rate Study. Therefore, this action is exempt from the California Environmental Quality Act pursuant to Public Resources Code section 21080(b)(8) and CEQA Guidelines section 15273. The District General Manager is directed to prepare and file appropriate notices.

Section 7. Severance Clause

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

NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2019-XXXX

A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
SETTING RATES FOR SOLID WASTE, RECYCLING, AND GREEN WASTE SERVICES
PROVIDED BY SOUTH COUNTY SANITARY SERVICE
WITHIN THE NIPOMO COMMUNITY SERVICES DISTRICT'S SERVICE AREA

that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

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

AYES:
NOES:
ABSENT:
CONFLICTS:

the foregoing resolution is hereby adopted this 14th day of August, 2019.

ED EBY, President
Nipomo Community Services District
Board of Directors

ATTEST:

APPROVED AS TO FORM AND EFFECT:

Mario Iglesias
General Manager and
Secretary to the Board

Whitney G. McDonald
District Legal Counsel

NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2019-XXXX

A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
SETTING RATES FOR SOLID WASTE, RECYCLING, AND GREEN WASTE SERVICES
PROVIDED BY SOUTH COUNTY SANITARY SERVICE
WITHIN THE NIPOMO COMMUNITY SERVICES DISTRICT'S SERVICE AREA

EXHIBIT "A"

SOUTH COUNTY SANITARY SERVICE			
EFFECTIVE September 15, 2019			
NIPOMO CSD			
Service Description	Pickups Per Week	Rate Adjustment %	Monthly Rate Effective 9/15/2019
RESIDENTIAL:			
32 Gallon Waste Wheeler	1	15.08%	\$19.77
64 Gallon Waste Wheeler	1	15.08%	\$28.32
96 Gallon Waste Wheeler	1	15.08%	\$37.11
TWO-64 Gallon Waste Wheelers	1	15.08%	\$44.18
ONE 64 & ONE 96 Gallon	1	15.08%	\$51.27
TWO-96 Gallon Waste Wheelers	1	15.08%	\$58.36
Residential customers must use the waste wheelers provided by the garbage company.			
APARTMENTS, TRIPLEX, DUPLEX			
Rates are the same as commercial rates (below).			
COMMERCIAL DUMPSTERS - ALL AREAS:			
1 yd dumpster	1	15.08%	\$75.78
1 yd dumpster	2	15.08%	\$109.03
1 yd dumpster	3	15.08%	\$144.07
1 yd dumpster	4	15.08%	\$177.34
1 yd dumpster	5	15.08%	\$214.24
1 yd dumpster	6	15.08%	\$249.36
1 yd dumpster	7	15.08%	\$332.47
1.5 yd dumpster	1	15.08%	\$90.49
1.5 yd dumpster	2	15.08%	\$138.45
1.5 yd dumpster	3	15.08%	\$186.59
1.5 yd dumpster	4	15.08%	\$260.41
1.5 yd dumpster	5	15.08%	\$317.66
1.5 yd dumpster	6	15.08%	\$378.65
1.5 yd dumpster	7	15.08%	\$500.61
2 yd dumpster	1	15.08%	\$97.90

NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2019-XXXX

A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
SETTING RATES FOR SOLID WASTE, RECYCLING, AND GREEN WASTE SERVICES
PROVIDED BY SOUTH COUNTY SANITARY SERVICE
WITHIN THE NIPOMO COMMUNITY SERVICES DISTRICT'S SERVICE AREA

2 yd dumpster	2	15.08%	\$160.66
2 yd dumpster	3	15.08%	\$228.94
2 yd dumpster	4	15.08%	\$334.34
2 yd dumpster	5	15.08%	\$410.12
2 yd dumpster	6	15.08%	\$489.46
2 yd dumpster	7	15.08%	\$670.44
3 yd dumpster	1	15.08%	\$116.36
3 yd dumpster	2	15.08%	\$217.89
3 yd dumpster	3	15.08%	\$304.74
3 yd dumpster	4	15.08%	\$542.96
3 yd dumpster	5	15.08%	\$644.61
3 yd dumpster	6	15.08%	\$753.56
3 yd dumpster	7	15.08%	\$1,037.94
4 yd dumpster	1	15.08%	\$168.05
4 yd dumpster	2	15.08%	\$253.11
4 yd dumpster	3	15.08%	\$363.83
4 yd dumpster	4	15.08%	\$570.77
4 yd dumpster	5	15.08%	\$707.35
4 yd dumpster	6	15.08%	\$803.45
4 yd dumpster	7	15.08%	\$1,248.53
6 yd dumpster	1	15.08%	\$252.08
The rates shown above include the monthly container rental fee and a semi-annual dumpster cleaning.			
The rates are the same for bins and garwoods, when volume is identical. Bins and garwoods are types of containers used for recycling.			
COMMERCIAL GARBAGE CANS - ALL AREAS:			
1 Can *	1	15.08%	\$21.85
1 Can *	2	15.08%	\$36.56
2 Cans *	1	15.08%	\$43.70
2 Cans *	2	15.08%	\$73.12
3 Cans *	1	15.08%	\$67.00
3 Cans *	2	15.08%	\$109.67
* Maximum volume and weight per garbage can : 33 gallons / 80 pounds			

NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2019-XXXX

A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
SETTING RATES FOR SOLID WASTE, RECYCLING, AND GREEN WASTE SERVICES
PROVIDED BY SOUTH COUNTY SANITARY SERVICE
WITHIN THE NIPOMO COMMUNITY SERVICES DISTRICT'S SERVICE AREA

COMMERCIAL - OTHER CHARGES:			
All commercial customers are eligible for one standard 96-gallon recycling and one 64-gallon food waste cart serviced one time a week with no additional service charge. If you need more frequent recycling service, it can be provided at a 50% discount from the garbage service rates for the specified level of service required.			
MISCELLANEOUS CHARGES - ALL CUSTOMERS:			
Over stacked Garbage & extra bags Minimum/unit	each	15.08%	\$5.34
Over stacked Green waste & extra bags Minimum/unit	each	15.08%	\$2.67
Over stacked Recycle & extra bags Minimum/unit	each	15.08%	\$2.67
In yard service (per can or commodity) IN ADDITION TO STANDARD GARBAGE RATES	per month	15.08%	\$13.34
Extended Vacation Service	per month	15.08%	\$12.43
Vacant Rate	per month	15.08%	\$12.43
Waste wheeler cleaning	each time	15.08%	\$19.87
Trip charge	each time	15.08%	\$13.33
Non-payment downsize service	each time	15.08%	\$32.04
Non-payment redeliver waste wheeler	each time	15.08%	\$13.33
MISCELLANEOUS CHARGES - ALL CUSTOMERS (Con't):			
Non-payment reconnect service	each time	15.08%	\$32.04
Small item pickup (TV, toilet)	each	15.08%	\$31.27
Appliance pickup-residential	each	15.08%	\$44.08
Larger than residential appliance or glass, glass doors, or plate glass	by quote only		
Garbage extras on your scheduled pickup day	per yard	15.08%	\$11.25
Garbage extras -NOT ON YOUR SCHEDULED PICKUP DAY	per yard	15.08%	\$31.05
Commercial Waste Wheeler rent	per month	15.08%	\$2.82
Re-deliver bin on stopped acct	each time	15.08%	\$38.23
Compactor	per ton	15.08%	\$49.56
Sunday Service (in additional to garbage service level)	per month	15.08%	\$66.73
Tax Lien Cert. Mail Fee		15.08%	\$4.45
Recycle bin rental	per month	15.08%	\$7.41
Stand by time	per hour	15.08%	\$66.98
Extra bin cleaning		15.08%	\$59.65
Damage/Destruction of bins or waste wheelers	replacement/repair at market price		
Lock Charge	per month	15.08%	\$7.40
City Clean Up	per item	15.08%	\$11.51
Extra 32, 64, 96 Gal Waste Wheeler - Recycle	per month	15.08%	\$2.77

NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2019-XXXX

A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
SETTING RATES FOR SOLID WASTE, RECYCLING, AND GREEN WASTE SERVICES
PROVIDED BY SOUTH COUNTY SANITARY SERVICE
WITHIN THE NIPOMO COMMUNITY SERVICES DISTRICT'S SERVICE AREA

Extra 32, 64, 96 Gal Waste Wheeler - Green Waste	per month	15.08%	\$3.69
Short Term Dumpsters:			
Delivery & Pickup-Bin		15.08%	\$38.23
Delivery & Pickup-Waste Wheeler		15.08%	\$13.33
Rental	Per Day	15.08%	\$2.82
Empties	Per Yard	15.08%	\$31.05
Mattress:			
Twin	Each	15.08%	\$17.71
Double	Each	15.08%	\$17.71
Queen	Each	15.08%	\$17.71
King	Each	15.08%	\$17.71
ADDITIONAL INFORMATION ALL CUSTOMERS:			
<p>Late Fees are imposed for residential customers over 30 days delinquent and commercial customers over 30 days delinquent. The fee is 1.5% per month of the outstanding charge, with a minimum fee of \$5.00. No prior notice is required, as this late fee policy is stated at the bottom of every bill.</p>			
<p>Any additional recycling services are charged at 50% of the garbage rate.</p>			

AUGUST 14, 2019

ITEM E-1

ATTACHMENT B

Notice of Public Hearing Regarding Proposed Solid Waste Rate Increase

Property Owners and Tenants - Customers:

This notice is intended to inform you that the Nipomo Community Services District (the "Nipomo CSD" or "District") will hold a public hearing regarding rate increases (the "Proposed Rate Increase") proposed by South County Sanitary Service (the "Garbage Company") for properties and customers receiving solid waste, recycling, and green waste services within the Nipomo CSD's service area. The Proposed Rate Increase will be considered for adoption by the Nipomo CSD Board of Directors at the date, time, and location specified below. Consistent with the requirements of Proposition 218, this notice also provides you with the following information:

- The Date, Time, and Place of the Public Hearing;
- The Reason for the Proposed Rate Increase; and
- The Basis for the Proposed Rate Increase; and
- The Majority Protest Procedures.

NOTICE OF PUBLIC HEARING

The Public Hearing for the Proposed Rate Increase within the Nipomo CSD service area will be held on:

Date: August 14, 2019

Time: 9:00 am

Place: JON S. SEITZ BOARD ROOM, 148 SOUTH WILSON STREET, NIPOMO, CA

At the Public Hearing, the Nipomo CSD will consider all public comment in support of and in opposition to the Proposed Rate Increase and whether or not a Majority Protest exists pursuant to the California Constitution (as described below). If approved, the Proposed Rate Increase would become effective on August 15, 2019.

Reason for the Proposed Rate Increase

The Proposed Rate Increase (amounting to an increase of 15.08 percent for solid waste, recycling, and green waste services) is necessary for the Garbage Company to continue to provide safe, environmentally sound, and reliable solid waste, recycling, and green waste collection, transportation and disposal or processing services to the citizens of the District. Several factors have contributed to these increased costs, including, but not limited to: the rising costs associated with the processing of recycling material, increased costs associated with purchase, operation and fuel for vehicles, increased labor costs, and costs associated with the implementation of an Organics Program mandated by California Assembly Bill 1826 (AB 1826). AB 1826 requires local jurisdictions to develop a program to divert organic waste from landfills to an authorized composting facility. Organic waste is food waste, green waste, landscape and pruning waste, and nonhazardous wood waste.

Basis of the Proposed Rate Increase

The total Proposed Rate Increase of 15.08 percent is based on the following cost increases/decreases incurred by the Garbage Company:

1. 4.4 percent of the Proposed Rate Increase is based on increased vehicle costs that include costs for new equipment, maintenance of vehicle fleets to stay current with the California Air Resources Board rules and regulations, fuel, and increased labor costs.
2. 3.1 percent of the Proposed Rate Increase is based on the implementation of an Organics Program mandated by the State of California.
3. 6.48 percent of the Proposed Rate Increase is related to the cost to process recyclable materials.
4. 6.19 percent of the Proposed Rate Increase is related to restoring the District's Franchise Fees to 10% as allowed by the Franchise Agreement. Nipomo CSD had used reductions in Franchise Fee to partially offset rate increases in 2007, 2014, and 2015.
5. -5.09 decrease in rate as a result of improvements in the cost of operations.

In addition, commencing on January 1, 2020, and January 1, 2021, rates will be increased based on the following:

1. Increases, if any, in the Consumer Price Index (CPI) for Bureau of Labor Statistics' Consumer Price Index for Urban Consumers based on the All U.S. City Average, Bureau of Labor Statistics for the month of June 2019 for January 1, 2020 and June 2020 for January 1, 2021.
2. In addition to any CPI increase, increases of 0.85 percent on January 1, 2020 and 0.82 percent on January 1, 2021 for increases in the cost of landfill disposal.

A copy of the 2019 Base Year Rate Adjustment Application, which provides additional information on the proposed rate increases, is available at the Nipomo CSD office located at 148 South Wilson Street, Nipomo, CA 93444, and on the Nipomo CSD website: ncsd.ca.gov.

How Do I Protest the Proposed Rate Increase?

Pursuant to Section 6 of Article XIII D of the California Constitution, the following persons may submit a written protest against the Proposed Rate Increase to the Clerk of the Board before the close of the Public Hearing referenced above.

- An owner(s) of property (“owner of record”) within the District’s boundaries. If the person(s) signing the protest is not shown on the last equalized assessment roll as the owner of the parcel(s) then the protest must contain or be accompanied by written evidence that such person signing the protest is the owner of the parcel(s) receiving solid waste, recycling, or green waste service from the Garbage Company; OR
- “Customer of record” (tenant(s)) whose name appears on the Garbage Company’s records as the customer of record for the corresponding parcel receiving solid waste, recycling, or green waste service from the Garbage Company within the District’s boundaries.

A written protest must:

- 1) State that the identified property owner or customer of record is in opposition to the proposed solid waste, recycling, or green waste rate change;
- 2) Provide the identity of the affected parcel by assessor’s parcel number or street address;
- 3) Include the name and original signature (not a photocopy, email or fax copy) of the property owner or customer submitting the protest; **AND**
- 4) Include the date that the protest was signed.

One written protest per parcel will be counted in calculating a majority protest to the Proposed Rate Increase subject to the requirements of Section 6 of Article XIII D of the California Constitution. Written protests will not be accepted by e-mail or by facsimile. Verbal protests will not be counted in determining the existence of a majority protest. To be counted, a protest must be received in writing by the Clerk of the Board before the close of the Public Hearing referenced above.

Written protests may be mailed to:

Nipomo CSD, P.O. Box 326, Nipomo, CA 93444-0326

Written protests may be personally delivered to:

The Nipomo CSD administrative office (“Office”) is located at 148 S. Wilson Street, Nipomo CA. Persons interested in delivering a protest vote in-person can present their vote during normal business hours at the Office or place their protest vote in the drop box located in the parking lot of the Office. Protest votes are counted so long as they are **received** prior to the conclusion of the public hearing set for August 14, 2019, beginning at 9:00 am. Post-marked mailed protests received after conclusion of the public hearing are not counted. Protest votes submitted via e-mail or other electronic means will not be accepted; only protests with original signatures will be counted.

If valid written protests are presented by a majority of owners and/or tenants – customers on parcels receiving solid waste, recycling, and green waste services within the District’s service area – then the District will not adjust/increase the rates for the services.

SOUTH COUNTY SANITARY SERVICE / NIPOMO CSD				
EFFECTIVE August 15, 2019				
Service Description	Pickups Per Week	Current Monthly Rate Effective 1/1/2019	Proposed Rate Adjustment %	Proposed Monthly Rate Effective 9/15/2019
RESIDENTIAL:				
32 Gallon Waste Wheeler	1	\$17.18	15.08%	\$19.77
64 Gallon Waste Wheeler	1	\$24.61	15.08%	\$28.32
96 Gallon Waste Wheeler	1	\$32.25	15.08%	\$37.11
TWO-64 Gallon Waste Wheelers	1	\$38.39	15.08%	\$44.18
ONE 64 & ONE 96 Gallon	1	\$44.55	15.08%	\$51.27
TWO-96 Gallon Waste Wheelers	1	\$50.71	15.08%	\$58.36
Residential customers must use the waste wheelers provided by the garbage company.				
APARTMENTS, TRIPLEX, DUPLEX				
Rates are the same as commercial rates (below).				

COMMERCIAL DUMPSTERS - ALL AREAS:				
1 yd dumpster	1	\$65.85	15.08%	\$75.78
1 yd dumpster	2	\$94.74	15.08%	\$109.03
1 yd dumpster	3	\$125.19	15.08%	\$144.07
1 yd dumpster	4	\$154.10	15.08%	\$177.34
1 yd dumpster	5	\$186.17	15.08%	\$214.24
1 yd dumpster	6	\$216.68	15.08%	\$249.36
1 yd dumpster	7	\$288.90	15.08%	\$332.47
1.5 yd dumpster	1	\$78.63	15.08%	\$90.49
1.5 yd dumpster	2	\$120.31	15.08%	\$138.45
1.5 yd dumpster	3	\$162.14	15.08%	\$186.59
1.5 yd dumpster	4	\$226.29	15.08%	\$260.41
1.5 yd dumpster	5	\$276.03	15.08%	\$317.66
1.5 yd dumpster	6	\$329.03	15.08%	\$378.65
1.5 yd dumpster	7	\$435.01	15.08%	\$500.61
2 yd dumpster	1	\$85.07	15.08%	\$97.90
2 yd dumpster	2	\$139.61	15.08%	\$160.66
2 yd dumpster	3	\$198.94	15.08%	\$228.94
2 yd dumpster	4	\$290.53	15.08%	\$334.34
2 yd dumpster	5	\$356.38	15.08%	\$410.12
2 yd dumpster	6	\$425.32	15.08%	\$489.46
2 yd dumpster	7	\$582.59	15.08%	\$670.44
3 yd dumpster	1	\$101.11	15.08%	\$116.36
3 yd dumpster	2	\$189.34	15.08%	\$217.89
3 yd dumpster	3	\$264.81	15.08%	\$304.74
3 yd dumpster	4	\$471.81	15.08%	\$542.96
3 yd dumpster	5	\$560.14	15.08%	\$644.61
3 yd dumpster	6	\$654.81	15.08%	\$753.56
3 yd dumpster	7	\$901.93	15.08%	\$1,037.94
4 yd dumpster	1	\$146.03	15.08%	\$168.05
4 yd dumpster	2	\$219.94	15.08%	\$253.11
4 yd dumpster	3	\$316.15	15.08%	\$363.83
4 yd dumpster	4	\$495.98	15.08%	\$570.77
4 yd dumpster	5	\$614.66	15.08%	\$707.35
4 yd dumpster	6	\$698.17	15.08%	\$803.45
4 yd dumpster	7	\$1,084.92	15.08%	\$1,248.53
6 yd dumpster	1	\$219.05	15.08%	\$252.08
COMMERCIAL GARBAGE CANS - ALL AREAS:				
1 Can *	1	\$18.99	15.08%	\$21.85
1 Can *	2	\$31.77	15.08%	\$36.56
2 Cans *	1	\$37.97	15.08%	\$43.70
2 Cans *	2	\$63.54	15.08%	\$73.12
3 Cans *	1	\$58.22	15.08%	\$67.00
3 Cans *	2	\$95.30	15.08%	\$109.67
* Maximum volume and weight per garbage can : 33 gallons / 80 pounds				
COMMERCIAL - OTHER CHARGES:				
All commercial customers are eligible for one standard 96-gallon recycling and one 64-gallon food waste cart serviced one time a week with no additional service charge. If you need more frequent recycling service, it can be provided at a 50% discount from the garbage service rates for the specified level of service required.				
MISCELLANEOUS CHARGES - ALL CUSTOMERS:				
Overstacked Garbage & extra bags Minimum/unit	each	\$4.64	15.08%	\$5.34
Overstacked Green waste & extra bags Minimum/unit	each	\$2.32	15.08%	\$2.67
Overstacked Recycle & extra bags Minimum/unit	each	\$2.32	15.08%	\$2.67
In yard service (per can or commodity) IN ADDITION TO STANDARD GARBAGE RATES	per month	\$11.59	15.08%	\$13.34

The Garbage Company
 4388 Old Santa Fe Road
 San Luis Obispo, CA 93401

PRESORTED
 STANDARD
 U.S. POSTAGE PAID
 CENTRAL COAST
 PRINTING

Extended Vacation Service	per month	\$10.80	15.08%	\$12.43
Vacant Rate	per month	\$10.80	15.08%	\$12.43
Waste wheeler cleaning	each time	\$17.27	15.08%	\$19.87
Trip charge	each time	\$11.58	15.08%	\$13.33
Non-payment downsize service	each time	\$27.84	15.08%	\$32.04
Non-payment redeliver waste wheeler	each time	\$11.58	15.08%	\$13.33
Non-payment reconnect service	each time	\$27.84	15.08%	\$32.04
Small item pickup (TV, toilet)	each	\$27.17	15.08%	\$31.27
Appliance pickup-residential	each	\$38.30	15.08%	\$44.08
Larger than residential appliance or glass, glass doors, or plate glass	by quote only			
Garbage extras on your scheduled pickup day	per yard	\$9.78	15.08%	\$11.25
Garbage extras -NOT ON YOUR SCHEDULED PICKUP DAY	per yard	\$26.98	15.08%	\$31.05
Commercial Waste Wheeler rent	per month	\$2.45	15.08%	\$2.82
Re-deliver bin on stopped acct	each time	\$33.22	15.08%	\$38.23
Compactor	per ton	\$43.07	15.08%	\$49.56
Sunday Service (in additional to garbage service level)	per month	\$57.99	15.08%	\$66.73
Tax Lien Cert. Mail Fee		\$3.87	15.08%	\$4.45
Recycle bin rental	per month	\$6.44	15.08%	\$7.41
Stand by time	per hour	\$58.20	15.08%	\$66.98
Extra bin cleaning		\$51.83	15.08%	\$59.65
Damage/Destruction of bins or waste wheelers	replacement/repair at market price			
Lock Charge	per month	\$6.43	15.08%	\$7.40
City Clean Up	per item	\$10.00	15.08%	\$11.51
Extra 32, 64, 96 Gal Waste Wheeler - Recycle	per month	\$2.41	15.08%	\$2.77
Extra 32, 64, 96 Gal Waste Wheeler - Green Waste	per month	\$3.21	15.08%	\$3.69
Short Term Dumpsters:				
Delivery & Pickup-Bin		\$33.22	15.08%	\$38.23
Delivery & Pickup-Waste Wheeler		\$11.58	15.08%	\$13.33
Rental	Per Day	\$2.45	15.08%	\$2.82
Empties	Per Yard	\$26.98	15.08%	\$31.05
Mattress:				
Twin	Each	\$15.39	15.08%	\$17.71
Double	Each	\$15.39	15.08%	\$17.71
Queen	Each	\$15.39	15.08%	\$17.71
King	Each	\$15.39	15.08%	\$17.71

ADDITIONAL INFORMATION ALL CUSTOMERS:

Late Fees are imposed for residential customers over 30 days delinquent and commercial customers over 30 days delinquent. The fee is 1.5% per month of the outstanding charge, with a minimum fee of \$5.00. No prior notice is required, as this late fee policy is stated at the bottom of every bill.

Any additional recycling services are charged at 50% of the garbage rate.

TO: BOARD OF DIRECTORS

From: MARIO IGLESIAS *LSB*
GENERAL MANAGER

AGENDA ITEM
E-2
AUGUST 14, 2019

DATE: AUGUST 9, 2019

APPROVE AND ACCEPT A TEMPORARY EASEMENT AGREEMENT WITH MURPHY SANTA MARIA 1, LLC, AS PART OF THE EUREKA WELL REPLACEMENT PROJECT

ITEM

Approve and Accept a Temporary Easement Agreement with Murphy Santa Maria 1, LLC, as Part of the Eureka Well Replacement Project [RECOMMEND ADOPT RESOLUTION APPROVING AND ACCEPTING TEMPORARY EASEMENT].

BACKGROUND

The Nipomo Community Services District ("District") is preparing to drill a replacement well at the District's Eureka Well site. The Eureka Well was originally drilled in 1979. The well casing has degraded to the extent that the Eureka Well is no longer serviceable and needs to be replaced.

As part of the Eureka Well replacement project, the District will require a spray field area to enable the District to discharge the water produced during reconstruction of the well. An approximately 14.76 acre parcel suitable for this need is located immediately west of Highway 1, adjacent to the Eureka Well site. The property is used as cropland and it is bisected by Highway 1 at the point where it curves at Willow Road. However, it remains as one legal parcel owned in its entirety by Murphy Santa Maria 1, LLC ("Murphy"). Murphy has agreed to lease the land to the District for use as an irrigation spray field for a term of one year, beginning September 1, 2019, at its appraised value of \$66,500.

FISCAL IMPACT

The cost of the temporary easement (\$66,500) and of the appraisal (\$11,000) are included in the budget for the Eureka Well Replacement Project, Fund 805.

STRATEGIC PLAN

Goal 1 – WATER SUPPLY – Actively plan to provide reliable water supply of sufficient quality and quantity to serve both current customers and those in the long-term future.

Goal 2. FACILITIES THAT ARE RELIABLE, ENVIRONMENTALLY SENSIBLE AND EFFICIENT. Plan, provide for and maintain District facilities and other physical assets to achieve reliable, environmentally sensible, and efficient District operations.

RECOMMENDATION

It is recommended that your Board adopt the attached Resolution authorizing the General Manager to execute the Temporary Easement Agreement and accepting the easement.

ATTACHMENTS

- A. Resolution with Exhibit "A" - Temporary Easement Agreement

AUGUST 14, 2019

ITEM E-2

ATTACHMENT A

RESOLUTION 2019-XXXX

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
APPROVING AND ACCEPTING TEMPORARY EASEMENT
AGREEMENT WITH MURPHY SANTA MARIA 1, LLC**

WHEREAS, the Nipomo Community Services District ("District") intends to undertake a project to re-drill a groundwater well known as the Eureka Well located at 795 Guadalupe Road in Nipomo, California ("Project");

WHEREAS, as part of the Project, the District will require an irrigation spray field area to receive groundwater produced during reconstruction of the Eureka Well; and

WHEREAS, Murphy Santa Maria 1, LLC ("Murphy"), is the record fee owner of property located at the intersection of Willow Road and Highway 1 in Nipomo, identified as San Luis Obispo County Tax Assessor's Parcel Numbers 091-192-044 and 091-192-053 ("Property"), which is adjacent to the Eureka Well site; and

WHEREAS, the Property is used as cropland and, given its location, unimproved condition, and historic use as cropland, the District has determined that it is ideally suited to receive the groundwater produced during reconstruction of the Eureka Well; and

WHEREAS, the District obtained a preliminary appraisal of the Property from Todd O Murphy, MAI, ARA, of Schenberger, Taylor, McCormick & Jecker, Inc., which concluded that the appraised value of the District's potential use of the Property for a period of one year as an irrigation spray field is \$66,500; and

WHEREAS, Murphy has agreed to grant a Temporary Easement to the District to allow its use of the Property as an irrigation spray field at its appraised value and under the terms identified in the Temporary Easement Agreement attached hereto; and

WHEREAS, the District Board of Directors has reviewed and desires to approve and accept the Temporary Easement Agreement.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED by the Board of Directors of the Nipomo Community Services District, San Luis Obispo County, California, as follows:

1. That the District Board of Directors finds that this action is not subject to and is exempt from the California Environmental Quality Act, Public Resources Code section 21000, et seq. ("CEQA"), because it is not a project undertaken or authorized by the District that will have a reasonably foreseeable impact on the environment and it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. (Pub. Res. Code § 21065 ; 14 Cal. Code Regs. § 15061(b)(3).) In addition, reconstruction of the Eureka Well qualifies as repair, maintenance, minor alteration, reconstruction, and replacement of an existing public facility and its associated equipment, where the new facility will be located on the same site and have the same purpose and capacity as the replaced facility, and that involves negligible or no expansion of existing or former use. Therefore, the project is exempt from CEQA under CEQA Guidelines sections 15301 and 15302 (Class 1, Existing Facilities; Class 2, Replacement or Reconstruction). In

RESOLUTION 2019-XXXX

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
APPROVING AND ACCEPTING TEMPORARY EASEMENT
AGREEMENT WITH MURPHY SANTA MARIA 1, LLC**

addition, the installation or use of any new irrigation lines or equipment necessary for use of the Property as contemplated in the Temporary Easement Agreement constitutes a minor alteration of land in support of irrigation and agricultural use of the Property, which will not require the removal of healthy, mature, scenic trees and which is additionally exempt under CEQA Guidelines section 15304 (Class 4, Minor Alteration to Land).

2. That the Temporary Easement Agreement, attached hereto as Exhibit A, is hereby approved and accepted.
3. That the General Manager is hereby authorized and directed to execute and record the Temporary Easement Agreement, attached hereto as Exhibit A.

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

AYES:

NOES:

ABSENT:

CONFLICTS:

The foregoing resolution is hereby adopted this 14th day of August 2019.

ED EBY

President, Board of Directors

ATTEST:

APPROVED AS TO FORM:

MARIO IGLESIAS

General Manager and Secretary to the Board

WHITNEY MCDONALD

District Legal Counsel

RESOLUTION 2019-XXXX

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
APPROVING AND ACCEPTING TEMPORARY EASEMENT
AGREEMENT WITH MURPHY SANTA MARIA 1, LLC**

EXHIBIT 'A' ATTACHED

TEMPORARY EASEMENT AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Nipomo Community Services District
P.O. Box 326
Nipomo, CA 93444-0326
Attention: General Manager

APN: 091-192-044, 091-192-053

SPACE ABOVE FOR RECORDER'S USE

This Instrument is for the benefit of the Nipomo Community Services District and is exempt from Recording Fees (Govt. Code § 27383), Filing Fees (Govt. Code § 6103), and Documentary Transfer Tax (Rev & Tax Code § 11922).

TEMPORARY EASEMENT AGREEMENT

This Temporary Easement Agreement ("Agreement") is entered into by and between Murphy Santa Maria 1, LLC, a California limited liability company ("Grantor") and the Nipomo Community Services District, a California special district ("NCSD" or "Grantee"), and is effective as of the date it is fully executed by the Parties.

This Agreement is based on the following facts, which are incorporated herein by this reference:

A. Grantor is the record fee owner of that certain real property located in the community of Nipomo, California, identified as San Luis Obispo County Tax Assessor's Parcel Numbers 091-192-044 and 091-192-053, more particularly described in the legal description attached hereto and incorporated herein as Exhibit A ("Parcel") and depicted in Exhibit B. The Parcel is approximately 14.76 acres in size and is used as cropland. It is located at the intersection of Willow Road and Highway 1 in Nipomo, California. Aside from any crops and improvements supporting crop production, the Parcel is unimproved.

B. NCSD intends to undertake a project to re-drill a groundwater well on an adjacent property located at 795 Guadalupe Road in Nipomo, California ("Project"). NCSD wishes to provide, and Grantor wishes to receive, groundwater produced during construction of the Project for use as irrigation water on the Parcel. This Agreement sets forth the terms by which the Parties will provide and receive said water.

NOW THEREFORE, for a valuable consideration receipt and sufficiency of which is hereby acknowledged, Grantor and NCSD agree to the following:

1. **Temporary Easement.** Grantor hereby grants to NCSD, its successors and assigns, for use by NCSD, its contractors, subcontractors, employees, and agents ("NCSD's Designees"), a Temporary Easement in, over, under, and across the Parcel for a term of one year, from September 1, 2019, through August 31, 2020 ("Term"), for the purpose of placing,

depositing, and leaving groundwater produced during construction of the Project on the Parcel, including the placement of any and all temporary irrigation facilities necessary to enable use of the water to irrigate the entire Parcel. At the request of NCSD and upon the consent of Grantor, the Term may commence prior to September 1, 2019, in which case the Term will begin on the date agreed upon by the parties and will terminate on August 31, 2020.

2. **Payment.** NCSD will pay Grantor a total of \$66,500 no later than September 1, 2019, as full and complete compensation for the use of the Temporary Easement during the Term, except that, if the Term commences prior to September 1, 2019, NCSD will pay Grantor an additional \$5,542 per month.

3. **Obligations of Grantor.** Grantor shall remove from the Parcel all items in conflict with the Grantee's use of the Temporary Easement prior to commencement of the Term and shall ensure the Parcel is in a state of bare dirt at the time of commencement of the Term. If Grantor fails to remove any such items as provided herein, Grantor shall indemnify NCSD for any claims, damages, and costs incurred by NCSD in connection with NCSD's removal of such items, including reasonable attorneys' fees. Grantor shall mark all underground irrigation and utility lines at the request of NCSD.

4. **Maintenance and Use.** NCSD shall maintain the Parcel in a manner that is free of weeds, debris, and rodents, to the extent reasonably possible, during the Term and any Extension Term. NCSD's use of the Temporary Easement shall not disrupt neighboring properties and shall not interfere with the use of the groundwater well located on the Parcel by Grantor or by any party having a legal right to use or access the well. Grantor shall provide NCSD contact information for any party seeking access to the groundwater well or any associated irrigation lines in order to coordinate access during the Term of this Agreement. NCSD shall not damage the groundwater well or any properly marked irrigation or utility lines. In the event that NCSD or its contractors cause any damage to the groundwater well or any properly marked irrigation or utility lines, Grantor shall have the right to make immediate necessary repairs to restore the damage to its pre-existing condition, and NCSD shall be responsible for the reasonable costs of any such repairs. NCSD shall control dust caused by its use of the Temporary Easement.

5. **Prevention of Escape of Irrigation Water.** NCSD agrees to irrigate the Parcel in such a manner as to prevent water from escaping onto lands of other adjoining land owners or upon public highways. In the event that NCSD's activities on the Parcel cause irrigation water to enter adjoining parcels and such water causes damage to those parcels, NCSD shall be deemed responsible for that damage in accordance with all applicable laws.

6. **No Liens.** NCSD agrees to keep the Parcel free of any liens, including without limitation, liens by contractors, subcontractors, or suppliers, engineers, architects, surveyors, or others that may have lien rights for work arising out of NCSD's use of the Temporary Easement in connection with the construction of the Project. If any such lien is filed on the Parcel (or any portion thereof) in connection with NCSD's use of the Temporary Easement, NCSD will, at its sole cost and expense, have the lien released and discharged of record in a matter satisfactory to Grantor within thirty (30) calendar days of receiving notice of the lien. If NCSD fails to remove the lien within such thirty (30) day period, Grantor will have the right to remove or bond over the

lien, and NCSD, upon demand, will reimburse Grantor for all reasonable costs and expenses, including without limitation reasonable attorneys' fees incurred by Grantor in connection with such removal or bond.

7. **Early Termination.** Upon completion of NCSD's Project and written notice thereof given to Grantor from NCSD, NCSD may choose to terminate the Temporary Easement and this Agreement prior to expiration of the Term. In the event of such unilateral termination by NCSD, NCSD shall not be entitled to repayment of any portion of the compensation paid to Grantor pursuant to Section 2 above. This Agreement and the Temporary Easement may also be terminated at the written request of Grantor if such termination is mutually agreeable to the NCSD, subject to NCSD's discretion and confirmed in writing from NCSD's General Manager. In the event of such termination requested by Grantor and mutually agreed upon by NCSD, Grantor shall repay NCSD \$5,542 per month for each month remaining in the term of this Agreement at the time of termination.

8. **NCSD's Obligations At End of Term or Early Termination.** NCSD's only obligations at the expiration or early termination of the Temporary Easement are to leave the Temporary Easement area in a condition at similar elevations and grades as existed in said Temporary Easement area prior to NCSD's use of said Temporary Easement, to remove any irrigation lines or equipment used by NCSD to irrigate the Parcel during the Term of the Temporary Easement, except for the irrigation line which will be installed on the Parcel running from the east side of Highway 1 to the west side of Highway 1 and will remain and become the property of Grantor. Further, upon the expiration of the Term or early termination of the Temporary Easement, NCSD agrees to take such actions as reasonably necessary to evidence and give effect to the extinguishment of the easement and the relinquishment of NCSD's rights and interests in the Temporary Easement pursuant to this Agreement, including, without limitation, NCSD will record, at the NCSD's expense, such termination or extinguishment as is in form and substance sufficient to remove this Agreement as an encumbrance against title.

9. **Warranties.** NCSD warrants that on the completion of its use of the Temporary Easement, and following any activity required by Section 7, it shall cause its contractor to leave the Temporary Easement area in a neat manner conforming to the appearance of the Temporary Easement area prior to NCSD's use of said area.

10. **Grantor's Obligations at End of Term.** Grantor expressly acknowledges and agrees that Grantor is solely responsible for replacing, in its sole discretion and at its sole cost, any improvements, landscaping, irrigation, and related items in the Temporary Easement area at the expiration or early termination of the Temporary Easement.

11. **Insurance.** Prior to entry onto the Temporary Easement area, NCSD will procure and maintain (and cause NCSD's contractor for the Project to procure and maintain) a policy of commercial general liability insurance covering the use by and activities of NCSD and NCSD's Designees with a single limit of liability (per occurrence and aggregate) of not less than \$2,000,000, and to deliver to Grantor a certificate of insurance and copy of additional insured endorsement naming Grantor as named additional insured, evidencing that such insurance is in force and effect, and evidencing that Grantor has been named as an additional insured thereunder

with respect to the use by NCS D and NCS D's Designees of the Temporary Easement. Such insurance will be maintained in force throughout the Term of this Temporary Easement. Notwithstanding any other provision herein to the contrary, NCS D reserves the right to self-insure for the NCS D's insurance obligations under this Agreement.

12. **NCS D's Agreement to Indemnify.** NCS D will, and will cause its contractor for the proposed Project to, indemnify, defend, and hold Grantor harmless from any and all liability for loss, damages, costs, expenses, demands, causes of action, claims or judgments, arising from or arising out of or in any way connected with the entry, access and use of the Temporary Easement by said contractor and its designees in connection with the exercise of the rights of the contractor and its designees under this Agreement or any breach of NCS D's or NCS D's contractor's obligations under this Agreement, and will reimburse Grantor for all reasonable costs, expenses and losses, including reasonable attorneys' fees, incurred by Grantor in consequence of any claims, demands and causes of action that may be made or brought against Grantor arising out of the entry on and use of the area comprising the Temporary Easement by the said contractor and/or its designees in connection with the Project or any breach of NCS D's or its contractor's obligations under this Agreement.

13. **Notices.** All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Federal Express. Notices will be considered given upon the earlier of (a) personal delivery, (b) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one (1) business day following deposit with Federal Express. The Parties will address such notices as provided below or as may be amended by written notice:

GRANTEE: Nipomo Community Services District
148 South Wilson Street
Nipomo, California 93444
Attention: General Manager

GRANTOR: Murphy Santa Maria 1, LLC
135 North Halcyon, Suite D
Arroyo Grande, CA 93420
Attention: Tim Murphy

14. **Miscellaneous Provisions.**

a. *Governing Law and Venue.* This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein shall not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, shall be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Any action or proceeding

seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of San Luis Obispo.

b. *Entire Agreement.* This Agreement contains the entire agreement between Grantor and Grantee regarding the Temporary Easement. No person is authorized to make, and by execution hereof Grantor and Grantee acknowledge that no person has made, any representation, warranty, guaranty or promise except as set forth herein; and no such agreement, statement, representation or promise not contained in this Agreement.

c. *Amendments.* Any amendments to this Agreement will be effective only by a writing executed by all Parties to this Agreement.

d. *Successors and Assigns.* This Agreement will be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Parties hereto.

e. *Counterparts.* This Agreement may be executed in whole or in counterparts, which together shall constitute the entire Agreement.

f. *Legal Representation.* Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent and informed decision and election of any of the Parties not so represented. The Parties further acknowledge that, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of said Agreement.

g. *Attorneys' Fees.* If either of the Parties hereto incurs attorneys' fees in order to enforce, defend, or interpret any of the terms, provisions, or conditions of this Agreement or because of a breach of this Agreement by the other Party, the prevailing Party, whether by suit, negotiation, arbitration, or settlement will be entitled to recover reasonable attorneys' fees from the other Party.

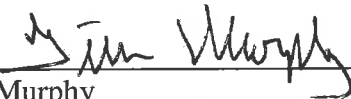
h. *Severability.* If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid.

IN WITNESS WHEREOF, Grantor and NCSD have entered into this Agreement as of the date it is fully executed by the Parties.

[Signatures on Following Page]

GRANTOR:

Murphy Santa Maria 1, LLC

By: 
Name: Tim Murphy
Title: Manager

Date: 7/30/19

GRANTEE:

NIPOMO COMMUNITY SERVICES
DISTRICT, a California special district

By: _____
Mario Iglesias, General Manager

Date: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Luis Obispo)

On July 20 2019, before me, J Solis,
(insert name and title of the officer)

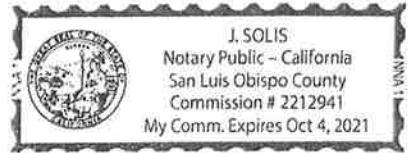
Notary Public, personally appeared Vin Murphy,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

(Seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Luis Obispo)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A

Temporary Easement Legal Description

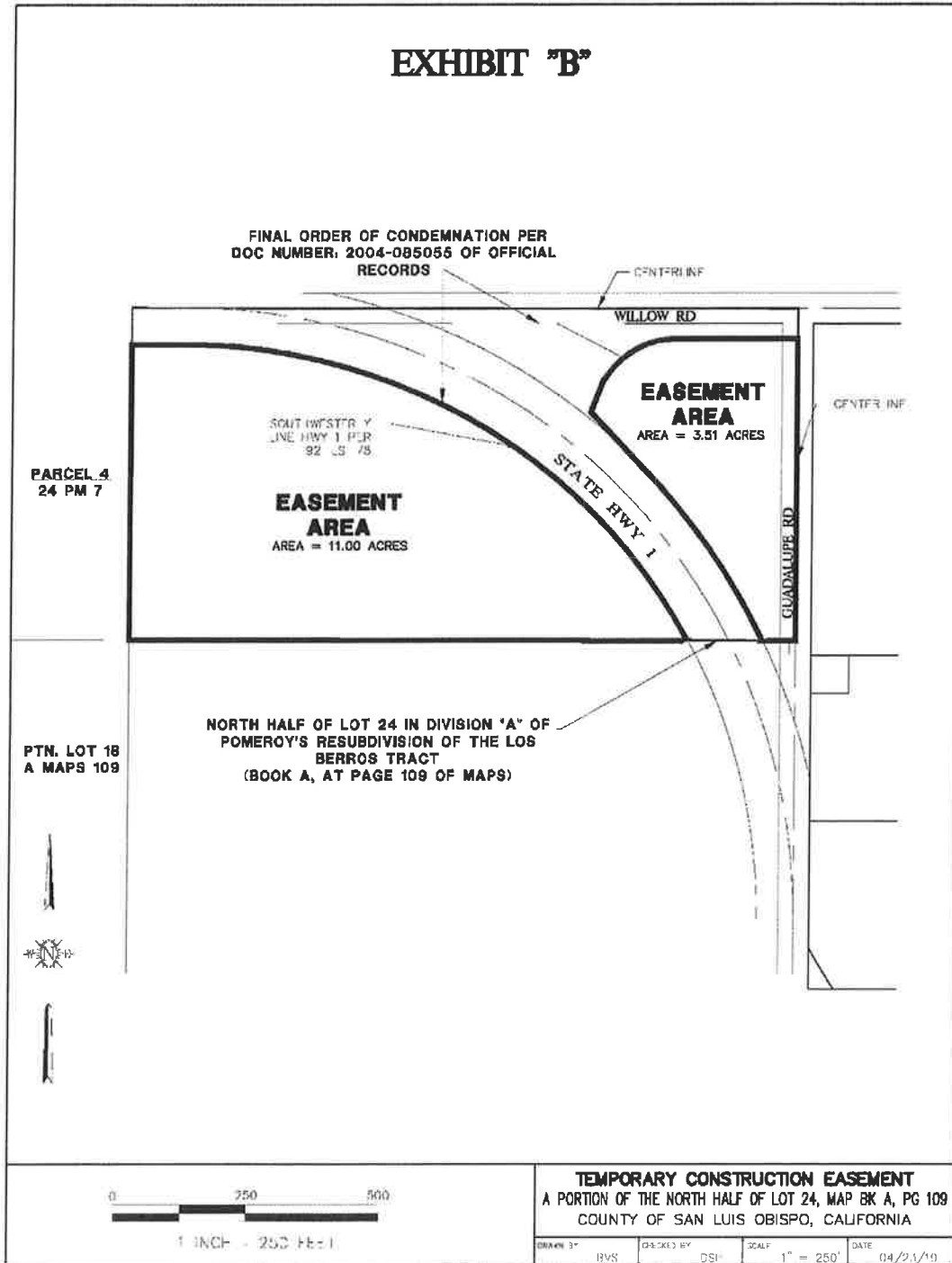
The North half of Lot 24 in Division "A" of Pomeroy's Resubdivision of the Los Berros Tract, in the County of San Luis Obispo, State of California, according to map filed for record September 26, 1903 in Book A, Page 109 of Maps, in the Office of the County Recorder of said County.

Excepting therefrom that portion condemned by the State of California for State highway purposes in Final Order of Condemnation, a certified copy of which recorded September 27, 2004 as Document No. 2004-085055 of Official Records.

Together with any portion contained within the Vacation of Superseded State Highway in the County of San Luis Obispo, Road 05-SLO-1-PM 5.0 Request No. 11511 recorded February 7, 2012 as Instrument No. 2012007087 of Official Records.

A.P.N. 091-192-044 and 091-192-053

Exhibit B
 Depiction of Temporary Easement Area



CERTIFICATE OF ACCEPTANCE

(Government Code §27281)

This is to certify that the interest in real property conveyed by Temporary Easement Agreement dated _____, 2019, from Grantor Murphy Santa Maria 1, LLC, to Nipomo Community Services District, a political corporation (“District”) and Grantee herein, is hereby accepted by order of the District Board of Directors of the Nipomo Community Services District on _____, and Grantee consents to the recordation thereof by its duly authorized officer.

NIPOMO COMMUNITY SERVICES DISTRICT

By: _____

Name: Ed Eby

Title: President, Nipomo Community Services
District Board of Directors

ATTEST:

By: _____

Mario Iglesias, District General Manager and
Board Secretary

TO: BOARD OF DIRECTORS
FROM: MARIO IGLESIAS *LSB*
GENERAL MANAGER
DATE: AUGUST 9, 2019

AGENDA ITEM
F
AUGUST 14, 2019

GENERAL MANAGER'S REPORT

TO BE DISTRIBUTED TUESDAY, AUGUST 13, 2019