

TO: BOARD OF DIRECTORS

FROM: MICHAEL S. LEBRUN *msl*  
GENERAL MANAGER

DATE: SEPTEMBER 20, 2013

**AGENDA ITEM**

**D**

**SEPTEMBER 25, 2013**

## **CONSENT AGENDA**

The following items are considered routine and non-controversial by staff and may be approved by one motion if no member of the Board wishes an item removed. If discussion is desired, the item may be removed from the Consent Agenda by a Board member and will be considered separately at the conclusion of the Administrative Items. Individual items on the Consent Agenda are approved by the same vote that approves the Consent Agenda, unless an item is pulled for separate consideration. The recommendations for each item are noted in bracket. Members of the public may comment on the Consent Agenda items.

**Questions or clarification may be made by the Board members  
without removal from the Consent Agenda.**

- D-1) WARRANTS [RECOMMEND APPROVAL]
- D-2) APPROVE SEPTEMBER 11, 2013 REGULAR BOARD MEETING MINUTES  
[RECOMMEND APPROVAL]
- D-3) ADOPT RESOLUTION ACCEPTING DEED RESTRICTION AND WATER LINE AND  
SEWER LINE EASEMENT FOR 697 WEST TEFFT STREET, APN 092-577-008  
[RECOMMEND ADOPT RESOLUTION ACCEPTING EASEMENT]

TO: BOARD OF DIRECTORS  
 FROM: MICHAEL S. LEBRUN *MSL*  
 GENERAL MANAGER  
 DATE: SEPTEMBER 20, 2013

**AGENDA ITEM  
 D-1  
 SEPTEMBER 25, 2013**

**HAND WRITTEN CHECKS**

09-09-13	10186	DIANE ADAMS
09-16-13	10187	COUNTY CLERK RECORDER
09-25-13	10188	MARY KAY SWORDS
09-25-13	10189	ARMANDO DUNCAN

**TOTAL COMPUTER CHECKS  
 \$366,391.45**

REIMBURSEMENT	\$105.00
DOCUMENT RECORDING FEE	12.00
WASHER REBATE	75.00
WASHER REBATE	75.00

VOIDS - NONE

**COMPUTER GENERATED CHECKS**

22277	09/13/13	EMP01	EMPLOYMENT DEVELOP DEPT	1309.98	.00	1309.98	B30909	STATE INCOME TAX
22278	09/13/13	MID01	RABOBANK-PAYROLL TAX DEPO	3902.39 976.06	.00 .00	3902.39 976.06	B30909 1B30909	FEDERAL INCOME TAX MEDICARE (FICA)
			Check Total.....:	4878.45	.00	4878.45		
22279	09/13/13	MID02	RABOBANK-DIRECT DEPOSIT	25004.26	.00	25004.26	B30909	NET PAY
22280	09/13/13	PER01	PERS RETIREMENT	8700.04	.00	8700.04	B30909	PERS PAYROLL REMITTANCE
22281	09/13/13	STA01	CALPERS 457 DEFERRED COMP	2205.00	.00	2205.00	B30909	457 DEFERRED COMP
022282	09/25/13	AME03	AMERI PRIDE	153.27 137.09	.00 .00	153.27 137.09	959731 963817	UNIFORMS UNIFORMS
			Check Total.....:	290.36	.00	290.36		
022283	09/25/13	AME08	AMERICAN SOCIETY OF CIVIL	280.00	.00	280.00	B30919	P. SEVCIK-MEMBERSHIP RENE
022284	09/25/13	ATT02	AT&T	186.72	.00	186.72	4676310	TELEPHONE
022285	09/25/13	BAB01	BABE' FARMS INC	3000.00	.00	3000.00	B30920	SHORT TERM PROPERTY USE A
022286	09/25/13	BRE02	BRENNTAG PACIFIC INC.	2417.90 740.44 451.09 740.44	.00 .00 .00 .00	2417.90 740.44 451.09 740.44	BPI341762 BPI341763 BPI344557 BPI344558	CITRIC ACID/SODIUM HYPOCH SODIUM HYPOCHLORITE SODIUM HYPOCHLORITE SODIUM HYPOCHLORITE
			Check Total.....:	4349.87	.00	4349.87		
022287	09/25/13	CAN02	CANNON CORPORATION	4982.50	.00	4982.50	55068	STANDPIPE BID SUPPORT
022288	09/25/13	CAR04	CAR QUEST AUTO PARTS	272.75 -34.00	.00 .00	272.75 -34.00	653618 13575875C	BATTERIES/MICRO-V-BELT CORE FOR BATTERIES
			Check Total.....:	238.75	.00	238.75		
022289	09/25/13	CEN08	CENTER FOR HEARING HEALTH	485.00	.00	485.00	11649	ANNUAL ON SITE HEARING TE
022290	09/25/13	CLE06	CNSSLO INC	2119.00	.00	2119.00	17025	COMPUTER SUPPORT
022291	09/25/13	CRY01	CRYSTAL SPRINGS	39.05	.00	39.05	AUG 2013	LAB-DISTILLED WATER
022292	09/25/13	FAR01	FARM SUPPLY COMPANY	175.13	.00	175.13	9990	ELEC VALVE IIRI/ADAPTER/B
022293	09/25/13	MOR02	MORE OFFICE SOLUTIONS	675.56 108.83	.00 .00	675.56 108.83	492273 494100	COPIER MAINTENANCE B&W/COLORED COPIES
			Check Total.....:	784.39	.00	784.39		
022294	09/25/13	MUN03	MUNICIPAL MAINTENANCE EQU	1706.78 583.17	.00 .00	1706.78 583.17	84788-IN 84794-IN	SWAGE MACHINE W/WHEELS/ME PENDANT REPAIR-BROKEN WIR
			Check Total.....:	2289.95	.00	2289.95		
022295	09/25/13	NIP08	NIPOMO CSD	636.02	.00	636.02	8/31/13	LANDSCAPE MAINTENANCE
022296	09/25/13	NUT01	NU TECH PEST MGMT	265.00 45.00 45.00 75.00 -112.00	.00 .00 .00 .00 .00	265.00 45.00 45.00 75.00 -112.00	100442 100443 100444 100445 C100035C	PEST CONTROL PEST CONTROL-CHEYENNE PEST CONTROL RODENT CONTROL PEST CONTROL
			Check Total.....:	318.00	.00	318.00		

TO: BOARD OF DIRECTORS  
 FROM: MICHAEL S. LEBRUN  
 GENERAL MANAGER  
 DATE: SEPTEMBER 20, 2013

**AGENDA ITEM**  
**D-1**  
**SEPTEMBER 25, 2013**  
**PAGE TWO**

022297	09/25/13	OFF01	OFFICE DEPOT	23.64	.00	23.64	846037001	OFFICE SUPPLIES
				100.44	.00	100.44	847346001	OFFICE SUPPLIES
			Check Total.....:	124.08	.00	124.08		
022298	09/25/13	POO01	POOR RICHARD'S <b>PRESS</b>	31.01	.00	31.01	255072A	MAIL-LATE NOTICES
				126.04	.00	126.04	255072B	POSTAGE-LATE NOTICES
				499.49	.00	499.49	255134A	MAIL-BILLS
				1224.06	.00	1224.06	255134B	POSTAGE-BILLS
			Check Total.....:	1880.60	.00	1880.60		
022299	09/25/13	SHI01	SHIPSEY & SEITZ, INC	9846.00	.00	9846.00	AUG 2013	LEGAL SERVICES
022300	09/25/13	STA03	STATEWIDE SAFETY & SIGNS	87.20	.00	87.20	5681/3	BLUE/WHITE ALL PURP MARKI
022301	09/25/13	TEC01	TECHNOFLO SYSTEMS	55.91	.00	55.91	11797	GEAR ASSY A & B
022302	09/25/13	VEN01	VENCO POWER SWEEPING, INC	90.00	.00	90.00	0002003IN	MARY & TEFET ST SWEEPING
022303	09/25/13	WAL01	WALLACE GROUP	1200.00	.00	1200.00	35666	VIA CONCHA WELL
022304	09/25/13	WSC01	WSC	216.56	.00	216.56	745	CUWCC SUPPORT SERVICES
022305	09/25/13	YOU01	YOUR PEOPLE PROFESSIONALS	2500.00	.00	2500.00	OCT 2013	OCT DEPOSIT-EMPLOYMENT AG
022306	09/25/13	\C009	CONNER, CHARLES & PHILLIS	114.04	.00	114.04	000B30801	MQ CUSTOMER REFUND FOR CO
022307	09/25/13	\M009	MARTIN, ALICE	1685.02	.00	1685.02	000B30801	MQ CUSTOMER REFUND FOR MA

TO: BOARD OF DIRECTORS  
FROM: MICHAEL S. LEBRUN *MSL*  
GENERAL MANAGER  
DATE: SEPTEMBER 20, 2013



## APPROVE MINUTES OF PREVIOUS BOARD MEETINGS

### ITEM

Approve action minutes from previous Board meetings. [RECOMMENDED APPROVE MINUTES]

### BACKGROUND

The draft minutes are a written record of the previous Board Meeting action.

### RECOMMENDATION

Approve minutes as part of Consent Agenda.

### ATTACHMENT

- A. September 11, 2013 draft Regular Board Meeting Minutes

SEPTEMBER 25, 2013

ITEM D-2

ATTACHMENT A

# NIPOMO COMMUNITY SERVICES DISTRICT

*Serving the Community Since 1965*

## REGULAR MINUTES

SEPTEMBER 11, 2013, AT 9:00 A.M.

BOARD ROOM 148 SOUTH WILSON STREET, NIPOMO, CA

### **BOARD of DIRECTORS**

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

### **PRINCIPAL STAFF**

MICHAEL S. LEBRUN, **GENERAL MANAGER**  
LISA BOGNUDA, **FINANCE DIRECTOR**  
MIKE SEITZ, **GENERAL COUNSEL**  
PETER SEVCIK, **DIRECTOR OF ENG. & OPS.**  
MERRIE WALLRAVIN, **BOARD CLERK**

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

00:00:00

#### A. CALL TO ORDER AND FLAG SALUTE

*President Harrison called the Regular Meeting of September 11, 2013, to order at 9:00 a.m. and led the flag salute.*

*President Harrison announced a moment of silence in memory of the victims of 9-11-2001.*

00:01:53

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

*At roll call, Directors Armstrong, Gaddis Vierheilig, and Harrison were present. Director Blair was not present.*

*There was no public comment.*

00:02:04

#### C. PRESENTATIONS AND PUBLIC COMMENT

C-2) DIRECTORS' ANNOUNCEMENTS OF DISTRICT & COMMUNITY INTEREST AND REPORTS ON ATTENDANCE AT PUBLIC MEETINGS, TRAINING PROGRAMS, CONFERENCES, AND SEMINARS.

Receive Announcements and Reports from Directors

##### Director Armstrong

- ◇ *August 26, Attended the South County Advisory Council meeting. The Council met and discussed the Laetitia recirculated revised draft EIR and the proposed project at Phillips 66 Refinery.*

##### Director Gaddis

- ◇ *September 23, South County Advisory Council will meet.*

##### Director Vierheilig

- ◇ *September 4, Attended the Water Resources Advisory Council meeting and discussed the Paso Robles Ground Water Basin and reviewed the Integrated Regional Water Management Plan.*
- ◇ *September 9, Attended the NCSW Water Resources Committee Meeting.*
- ◇ *September 12, Finance and Audit Committee will meet at 9:00 a.m. at NCSW.*
- ◇ *September 17, Blacklake Management Association will meet and discuss drought tolerant plants.*
- ◇ *Commented on the Cambria Community water situation.*

Nipomo Community Services District  
**REGULAR MEETING  
 MINUTES**

**Item C-2 (Continued)**

Director Harrison

- ◇ August 21, Attended the Olde Towne Nipomo Association.
- ◇ August 22, Attended the Fire Safe Council Meeting.
- ◇ August 24, Attended the Dana Adobe fundraiser, the outcome was outstanding.
- ◇ September 14, the Rotary club of Nipomo and Five Cities Eco Club will be maintaining and cleaning the center divider on Tefft Street in front of Vons.
- ◇ September 28, Ride Nipomo will host a fundraiser for the preservation of trails on the Mesa. Tickets are sold out.
- ◇ November 16, Thanksgiving in November, sponsored by local service clubs, Turkey dinner at St. Joseph's Catholic Church and delivering of dinners for those who are disabled.

00:07:57

C-3) RECEIVE PUBLIC COMMENT ON PRESENTATIONS AND REPORTS PRESENTED UNDER ITEM C AND BY MOTION RECEIVE and FILE PRESENTATIONS AND REPORTS

*Director Vierheilig left the meeting from 9:10 to 9:12 for a personal call.*

*There was no public comment.*

*Upon the motion of Director Vierheilig and seconded by Director Armstrong, the Board unanimously approved to receive and file the presentations and reports as submitted. Vote 4-0.*

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

*Michael LeBrun, General Manager, announced that supplemental materials to the packet were placed at the back of the room.*

00:11:19

D. CONSENT AGENDA

D-1) WARRANTS

D-2) APPROVE BOARD MEETING MINUTES:  
 AUGUST 14, 2013 REGULAR MEETING

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

*There was no public comment.*

*Upon the motion of Director Armstrong and seconded by Director Gaddis, the Board unanimously approved the Consent Agenda as submitted. Vote 4-0.*

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

E. ADMINISTRATIVE ITEMS

00:14:54

E-1) CONSIDER RAMCO ENTERPRISES' REQUEST FOR OUTSIDE DISTRICT WATER SALES VIA HYDRANT METER

*Michael LeBrun, General Manager, reviewed the report as presented in the Board Packet.*

*The following members of the public spoke:*

*Mike Winn, NCSD customer, spoke in opposition of the request for outside District water sales via a hydrant meter.*

*Ed Eby, NCSD customer, spoke in opposition of the request for outside District water sales via a hydrant meter and handed the Board a memorandum from District Legal Counsel on the District's options in addressing water shortage (See Exhibit "A").*

*Upon the motion of Director Vierheilig and seconded by Director Gaddis, the Board unanimously denied the Ramco Enterprises' request for outside District water sales via a hydrant meter.*

*Vote 4-0.*

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

00:28:03

E-2) APPROVE SUPPORT SERVICES CONTRACT FOR NOT TO EXCEED \$17,940 FOR WATER SYSTEMS CONSULTING (WSC) TO PROVIDE ON GOING CONSULTING SERVICES

*Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Spencer Waterman, WSC Staff Planner, and Mr. LeBrun answered questions from the Board.*

*There was no public comment.*

*Upon the motion of Director Gaddis and seconded by Director Armstrong, the Board unanimously approved WSC providing ongoing support services and directed staff to issue WSC a Task Order with a not to exceed value of \$17,940 for these services.*

*Vote 4-0.*

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

00:37:51

E-3) RECEIVE UPDATE ON JIM O. MILLER PARK DEVELOPMENT

*Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Mike Seitz, Legal Counsel, Kathy Kubiak, Olde Towne Nipomo Association President, and Mr. LeBrun answered questions from the Board.*

*The following member of the public spoke:*

*Mike Winn, NCSD customer, commented on the Board receiving a written letter from the County regarding the soils for the new location, language of the MOU, and questioned who will pay for water used at the park.*

*The Board gave direction to staff, but took no action.*

SUBJECT TO BOARD APPROVAL



00:56:26

E-4) CONSIDER LOCAL AREA FORMATION COMMISSION REQUEST FOR NOMINATIONS FOR SPECIAL DISTRICT ALTERNATE MEMBER

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

*The following members of the public spoke:*

*Ed Eby, NCSD customer, commented on who makes up LAFCO, spoke in support of NCSD's nomination for one of their own Board members, and urged the Nominee to campaign and mail resumes to all voting parties.*

*Mike Winn, NCSD customer, commented on the importance of NCSD's involvement in LAFCO and commented on the importance of the Alternate seat attending LAFCO meetings regularly.*

*Upon the motion of Director Harrison and seconded by Director Vierheilig, the Board unanimously nominated Director Gaddis for the Alternate Special District seat on LAFCO. Vote 4-0.*

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

01:04:52

F. GENERAL MANAGER'S REPORT

*Michael LeBrun, General Manager, reviewed the report as presented in the Board packet. Peter Sevcik, Director of Engineering and Operations, reviewed the Southland Wastewater Treatment Facility Improvements Phase I Project Monthly Progress Report dated July 2013 and answered questions from the Board. Michael LeBrun, General Manager, reviewed the remaining Manager's report as presented in the Board packet and answered questions from the Board.*

*There was no public comment.*

01:28:11

I. CLOSED SESSION ANNOUNCEMENTS

1. CONFERENCE WITH DISTRICT LEGAL COUNSEL RE: PENDING LITIGATION PURSUANT TO GC §54956.9 SMVWCD VS. NCSD (SANTA CLARA COUNTY CASE NO. CV 770214, SIXTH APPELLATE COURT CASE NO. H032750 AND ALL CONSOLIDATED CASES).
2. CONFERENCE WITH LEGAL COUNSEL PURSUANT TO GOVT. CODE §54956.9(a):  
Existing litigation - 1 case: Mesa Community Alliance Vs. District, Case No. CV 130222

J. PUBLIC COMMENT ON CLOSED SESSION ITEMS

There was no public comment.

K. ADJOURN TO CLOSED SESSION

*President Harrison adjourned to closed session at 10:30 a.m.*

Nipomo Community Services District  
REGULAR MEETING  
MINUTES

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

*The Board came back into Open Session at 11:15 a.m.*

*Mike Seitz, District Legal Counsel, announced that the Board discussed Items One and Two listed above under closed session announcements, but took no reportable action.*

G. COMMITTEE REPORT

*There were no committee reports.*

H. DIRECTORS' REQUESTS TO STAFF AND SUPPLEMENTAL REPORTS

Director Vierheilig

- ◇ *Requested an update on the Blacklake Sewer Master Plan.*

*There was no public comment.*

ADJOURN

*President Harrison adjourned the meeting at 11:20 a.m.*

MEETING SUMMARY	HOURS & MINUTES
Regular Meeting	1 hours 35 minutes
Closed Session	0 hour 45 minutes
TOTAL HOURS	2 hours 20 minutes

SEPTEMBER 11, 2013

REGULAR BOARD MEETING MINUTES

EXHIBIT "A"

JON S. SEITZ  
MICHAEL W. SEITZ

SHIPSEY & SEITZ, INC.  
A LAW CORPORATION  
1066 PALM STREET  
POST OFFICE BOX 953  
SAN LUIS OBISPO, CALIFORNIA 93406  
(805) 543-7272 FAX (805) 543-7281  
JON S. SEITZ  
District Legal Counsel  
Nipomo Community Services District

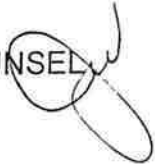
JOHN L. SEITZ  
(1924-1986)  
GERALD W. SHIPSEY  
(RETIRED)

## MEMORANDUM

2 of 2

TO: DOUG JONES, GENERAL MANAGER  
NIPOMO COMMUNITY SERVICES DISTRICT BOARD OF  
DIRECTORS

RE: ADDRESSING WATER SHORTAGES

FROM: JON S. SEITZ, DISTRICT LEGAL COUNSEL 

DATE: February 28, 2002

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At the District's Board meeting of February 20, 2002, I was directed to review and present to the District Board of Directors the District's options in addressing water shortages.

### BACKGROUND

By way of background, the Board has discussed the limitations of approving new water connections under the authority of §64568 of Title 22 of the California Administrative Codes. That memorandum is included in the Staff Report.

### DISTRICT'S OPTIONS IN ADDRESSING WATER SHORTAGES

The exception to the general rule that the District must provide water upon request, under reasonable rules and regulations, occurs when the District has declared a water shortage emergency pursuant to Water Code §350. Which provides as follows:

"The governing body of a distributor of a public water supply, whether publicly or privately owned and including a mutual water company, may declare a water shortage emergency condition to prevail within the area

served by such distributor **whenever it finds and determines that the ordinary demands and requirements of water consumers cannot be satisfied without depleting the water supply of the distributor to the extent that there would be insufficient water for human consumption, sanitation, and fire protection.**" (Emphasis added)

Absent an immediate interruption in service by a water system failure, the Water Shortage Emergency Declaration may only be adopted after the District has conducted a duly noticed public hearing that provides the District's customers with an opportunity to be heard and to protest that declaration. (Water Code §351 and 352.)

§353 of the Water Code addresses regulations and restrictions that the District must adopt if a Declaration of a Water Shortage Emergency is approved and provides in relevant part:

"When the governing body has so determined and declared the existence of an emergency condition of water shortage within its service area, it **shall** thereupon adopt such regulations and restrictions on the delivery of water and the consumption within said area of water supplied for public use as will in the sound discretion of such governing body conserve the water supply for the greatest public benefit with particular regard to domestic use, sanitation, and fire protection." (Emphasis added).

The phrase "Conserve The Water Supply" implies that the District is empowered to maintain appropriate reserves of water to maintain future needs and that it need not run out of water before taking conservation measures. (See Swanson v. Marine Municipal Water District, App. First District, 1976) 128 Cal Reporter 485.

Further §354 of the Water Code provides the District with authority to establish priorities for water that is not necessary to supply water for domestic use, sanitation and fire protection. §354 states:

"After allocating and setting aside the amount of water which in the opinion of the governing body will be necessary to supply water needed for domestic use, sanitation, and fire protection, the regulations may establish priorities in the use of water for other purposes and provide for the allocation, distribution, and delivery of water for such other purposes, without discrimination between consumers using water for the same purpose or purposes."

Water Code §355 identifies the duration of the regulations and restrictions:

“The regulations and restrictions shall thereafter be and remain in full force and effect during the period of the emergency and until the supply of water available for distribution within such area has been replenished or augmented.”

Water Code §356 provides for discontinuance of service for violation of the District’s rules and regulations and provides:

“The regulations and restrictions may include the right to deny applications for new or additional service connections, and provision for their enforcement by discontinuing service to consumers willfully violating the regulations and restrictions.”

And lastly, Water Code §358 provides the standard that the Board of Directors must meet when making findings under Government Code §350 (Supra) and provides as follows:

“Nothing in this chapter shall be construed to prohibit or prevent review by any court of competent jurisdiction of any finding or determination by a governing board of the existence of an emergency or of regulations or restrictions adopted by such board, pursuant to this chapter, on the ground that any such action is fraudulent, arbitrary, or capricious.”

END OF MEMO

TO: MICHAEL S. LEBRUN *msl*  
GENERAL MANAGER

FROM: PETER V. SEVCIK, P.E.  
DIRECTOR OF ENGINEERING  
AND OPERATIONS

DATE: SEPTEMBER 18, 2013

**AGENDA ITEM  
D-3  
SEPTEMBER 25, 2013**

**ADOPT RESOLUTION ACCEPTING DEED RESTRICTION AND  
WATER LINE AND SEWER LINE EASEMENT  
FOR 697 WEST TEFFT STREET, APN 092-577-008**

**ITEM**

Consider adoption of resolution accepting deed restriction and water line and sewer line easement for 697 West Tefft Street, APN 092-577-008 [RECOMMEND ADOPT RESOLUTION].

**BACKGROUND**

A water line and sewer line easement is required for 697 West Tefft Street, APN 092-577-008, a single lot commercial development on Tefft Street. In accordance with the District's requirements, the developer is required to provide the easement to the District before a Will-Serve letter can be issued. The property owner has offered the attached easement to the District. The easement needs to be formally accepted by the Board before it can be recorded.

The easement document also incorporates two deed restrictions that were part of the District's Intent-to-Serve letter conditions for the project. The deed restrictions prohibit the use of any wells to provide water service to the project and prohibit the use of self-regenerating water softeners to the project.

**FISCAL IMPACT**

Budgeted staff time was used to prepare this staff report.

**RECOMMENDATION**

Staff recommends that the Board adopt Resolution 2013-XXXX Accepting 697 West Tefft Street Easement.

**ATTACHMENTS**

- A. Resolution 2013-XXXX Accepting 697 West Tefft Street Easement
- B. Easement Deed – Resolution Exhibit A

SEPTEMBER 25, 2013

ITEM D-3

ATTACHMENT A



**NIPOMO COMMUNITY SERVICES DISTRICT  
RESOLUTION NO. 2013-XXXX**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
ACCEPTING A WATER PIPELINE AND SEWER PIPELINE EASEMENT FROM  
AHMAD MASHAYEKAN FOR 697 WEST TEFFT STREET  
APN 092-577-008**

**WHEREAS**, Ahmad Mashayekan (herein the "Owner") is the owner of certain real property identified as Assessor Parcel Number 092-577-008 (herein the "Property"). The Property is situated within the Nipomo Community Services District (the "District") and is located at 697 West Tefft Street at future Blume Street, Nipomo, California; and

**WHEREAS**, Owner has offered to the District water pipeline and sewer pipeline easement ("Easement") for 697 West Tefft Street (EXHIBIT A); and

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

1. The above recitals and findings are true and correct and incorporated herein by reference.
2. That the attached easement dated September 16, 2013 for a waterline easement and sewer easement over and under future Blume Street is hereby accepted and staff is ordered to record the attached easement (Exhibit A).

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

AYES:  
NOES:  
ABSENT:  
CONFLICT:

the foregoing resolution is hereby adopted this 25th day of September 2013.

\_\_\_\_\_  
JIM HARRISON  
President of the Board

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
MICHAEL S. LEBRUN  
General Manager and Secretary to the Board

\_\_\_\_\_  
MICHAEL W. SEITZ  
District Legal Counsel

SEPTEMBER 25, 2013

ITEM D-3

ATTACHMENT B

RECORDING REQUESTED BY:  
NIPOMO COMMUNITY SERVICES DISTRICT

WHEN RECORDED RETURN TO:  
Nipomo Community Services District  
P.O. Box 326  
Nipomo, CA 93444

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A portion of APN #: 092-577-008

**DEED RESTRICTION, GRANT OF EASEMENT  
AND AGREEMENT AFFECTING REAL PROPERTY**

Exhibits Incorporated by Reference:

Exhibit "A" – Real Property Legal Description  
Exhibit "B" – Legal Description of Easement Granted to District  
Exhibit "C" – Depiction of Easement Granted to District

**THIS DEED RESTRICTION, GRANT OF EASEMENT AND  
AGREEMENT AFFECTING REAL PROPERTY** (herein "Agreement") is entered  
into 9/16/, 2013, by and between Ahmad Mashayekan, (herein  
"Grantors") and the Nipomo Community Services District, a political subdivision  
of the State of California, (herein "Grantee" or "District") with reference to the  
following Recitals:

- A. Grantors own certain real property (herein "Real Property")  
located within the Nipomo Community Services District, County of San Luis  
Obispo, more particularly described in Exhibit "A".
- B. Grantors are improving said Real Property including the  
construction of certain utilities that will be dedicated to the District for operation  
and maintenance ("District Facilities").
- C. Grantors desire to convey a utility easement to Nipomo  
Community Services District over a portion of said Real Property for the  
purposes referenced in this Agreement.

**NOW, THEREFORE**, for valuable consideration, receipt of which is hereby acknowledged the parties hereto agree as follows:

**1. GRANT OF EASEMENT**

Grantors, hereby grant and convey to the Nipomo Community Services District a utility easement (herein "Easement" or "Easement Area"), more particularly described in Exhibit "B" and as depicted in Exhibit "C".

**2. PURPOSE**

The purpose of the Easement is the present and future construction, reconstruction, operation, repair, and maintenance of a District facilities, including water pipelines, sewer pipelines and other utilities operated by the District, from and after said utilities are dedicated and accepted by the District (herein "District Facilities"), in such manner and size and with such accessory parts and structures, as the District or its successors in interests from time to time deem necessary.

**3. MAINTENANCE AND REPAIR**

It is anticipated by the parties that construction, repair, replacement and inspection of District facilities will be performed by District within said Easement Area. Therefore, Grantor(s) covenants, promises and agree as follows:

A. District shall have the right of ingress and egress for personnel, vehicles, and construction equipment to, from, and along the Easement Area at any time, without prior notice, including the right to use lanes, drives, rights-of-way, and roadways within the Real Property which now exist or which hereinafter may be constructed, as shall be convenient and necessary for the purpose of exercising the rights herein, and herein above, set forth.

B. The Grantor(s) shall not construct or permit others to construct utilities or improvements on, over, or under the Easement Area, such as retaining walls, fences, patios, trees and/or shrubs which could obstruct District's access to the Easement Area, or cause damage to District Facilities contained within the Easement Area, without first receiving the written approval of District.

C. Grantor(s) shall remove improvements and or utilities constructed in violation of subparagraph (b), above, immediately at Grantor's expense. If Grantors do not remove the improvements, District is authorized to enter the Easement Area and remove them. District shall charge all costs, including administrative costs, for the removal of said improvements to Grantors, individually and/or collectively.

D. Grantor(s), jointly and severally, agree to indemnify, defend, and hold harmless District and its agents and employees from any claims, suits, or losses of any kind (including attorney's fees and court costs) or any damages occurring to or within the Easement Area and/or any adjacent real or personal property due to District's exercise of its rights to remove improvements, pursuant to subparagraph (d), above and/or the Districts construction, operation, repair and maintenance of District Facilities.

E. District has the right to enforce all reimbursement remedies described in Paragraphs C and D, above, by all means available to the District.

#### **4. DEED RESTRICTIONS**

A. Grantor agrees and acknowledges that the use of well(s) to provide water service to any parcel within the project is prohibited.

B. Grantor agrees and acknowledges that the use of self-regenerating water softeners is not allowed for any real property developed within the project.

#### **5. MISCELLANEOUS**

A. This Agreement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this Agreement shall be of no force and effect excepting a subsequent modification in writing, signed by the party to be charged.

B. In the event of any controversy, claim, or dispute relating to this Agreement or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

C. The obligations of Grantor(s) shall be considered for all purposes to be both covenants and conditions that shall run with the land and be binding on the successors and assigns of the Grantor(s) and shall inure to the benefit of District and its successors and assigns.

D. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

E. This Deed Restriction, Easement and Agreement Affecting Real Property shall be recorded in the Official Records in the County Recorder's Office, San Luis Obispo County.

F. Recitals A through C are incorporated herein by reference as though set forth at length.

G. The Agreement shall be governed by the laws of the State of California. Any litigation regarding the Agreement or its contents shall be filed in the County of San Luis Obispo, if in state court, or in the federal court nearest to San Luis Obispo County, if in federal court.

**6. AUTHORITY TO EXECUTE.**

All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Grantor(s) hereby warrants that Grantor(s) shall not have breached the terms or conditions of any other contract or Agreement to which Grantor(s) is obligated, which breach would have a material effect hereon.

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement to be effective the date the District executes the Certificate of Acceptance.

GRANTOR(S):

ahmad mashayek  
[Signature must be Notarized]

\_\_\_\_\_  
[Signature must be Notarized]

AHMAD MASHAYEK  
[Type or print name]

\_\_\_\_\_  
[Type or print name]

Date: 9/16/2013

**CERTIFICATE OF ACCEPTANCE  
GOVERNMENT CODE §2781**

This is to certify that the Nipomo Community Services District, Grantee, herein, by Board action on \_\_\_\_\_, 2013, accepts for public purposes the real property, or interest described in the foregoing Easement and Agreement, dated \_\_\_\_\_, 2013, from Grantors, and consents to the recordation thereof.

Nipomo Community Services District

By: \_\_\_\_\_  
Name: James Harrison  
Title: President

ATTEST:

\_\_\_\_\_  
Michael S. LeBrun, General Manager and Secretary  
Nipomo Community Services District

**ACKNOWLEDGMENT**

State of California  
County of San Diego

On Sept. 16, 2013 before me, Cynthia Jane Cullins  
(insert name and title of the officer)

personally appeared Ahmad, Mshayken  
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 Cynthia Jane Cullins (Seal)





**Exhibit A**  
**Legal Description**

Real property in the unincorporated area of the County of San Luis Obispo, State of California, described as follows:

The West 1/2 of Lot 5, in the County of San Luis Obispo, State of California, according to a map entitled Map of the Resubdivision of the Westerly Part of Lot 25 of H.C. Ward's Subdivision of the Nipomo Rancho, the property of Eliseo Dana, partly surveyed and map drawn by George Story, County Surveyor, February 1887 and recorded in Book A, Page 19 of Maps, in the office of the county Recorder of said county.

**Exhibit B**  
**Legal Description - "Parcel A"**

A portion of the West 1/2 of Lot 5, in the County of San Luis Obispo, State of California, according to a map entitled Map of the Resubdivision of the Westerly Part of Lot 25 of H.C. Ward's Subdivision of the Nipomo Rancho, the property of Eliseo Dana, partly surveyed and map drawn by George Story, County Surveyor, February 1887 and recorded in Book A, Page 19 of Maps, in the office of the county Recorder of said county; said portion being more particularly described as follows:

Commencing at the most westerly corner of Lot 5 of said Resubdivision; thence along the southwest line of said Lot 5, S 34° 23' 01" E a distance of 20.00 feet to the TRUE POINT OF BEGINNING; thence along the southwest line of said Lot 5,

- 1) S 34° 23' 01" E a distance of 395.80 feet to the most southerly corner of said Lot 5; thence
- 2) Along the southeast line of said Lot 5, N 55° 32' 25" E a distance of 313.94 feet; thence
- 3) N 34° 26' 30" W a distance of 5.00 feet; thence
- 4) S 55° 32' 25" W a distance of 31.65 feet to the beginning of a tangent curve concave northwesterly and having a radius of 110.00 feet; thence
- 5) Westerly along said curve through a central angle of 14° 14' 10" an arc distance of 27.33 feet; thence
- 6) S 69° 46' 35" W a distance of 91.12 feet to the beginning of a tangent curve concave southeasterly and having a radius of 300.00 feet; thence
- 7) Southwesterly along said curve through a central angle of 14° 14' 10" an arc distance of 74.54 feet; thence
- 8) S 55° 32' 25" W a distance of 40.06 feet to the beginning of a tangent curve concave northeasterly and having a radius of 20.00 feet; thence
- 9) Northwesterly along said curve through a central angle of 90° 04' 33" an arc distance of 31.44 feet; thence
- 10) Along a line lying 33.00 feet northeasterly from and parallel to the southwest line of said Lot 5, N 34° 23' 01" W a distance of 315.84 feet to the beginning of a tangent curve concave easterly and having a radius of 20.00 feet; thence
- 11) Northeasterly along said curve through a central angle of 89° 53' 01" an arc distance of 31.38 feet; thence
- 12) Along a line lying 50.00 feet southeasterly from and parallel to the centerline of Tefft Street, S 55° 30' 00" W a distance of 52.96 feet to the TRUE POINT OF BEGINNING.

The said "Parcel A" is graphically depicted in "Exhibit C" attached hereto.

