



**CITY OF EL PASO DE ROBLES**  
*"The Pass of the Oaks"*

**CITY COUNCIL MINUTES**

**Tuesday, October 2, 2007 7:30 PM**

**MEETING LOCATION: PASO ROBLES LIBRARY/CITY HALL  
CONFERENCE CENTER, 1000 SPRING STREET**

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**PLEASE SUBMIT ALL CORRESPONDENCE FOR CITY COUNCIL PRIOR  
TO THE MEETING WITH A COPY TO THE CITY CLERK**

**7:30 PM – CONVENE REGULAR MEETING**

**CALL TO ORDER** – Downstairs Conference Center

**PLEDGE OF ALLEGIANCE**

**INVOCATION**

**ROLL CALL** Councilmembers John Hamon Gary Nemeth, Duane Picanco, Fred Strong, and Frank Mecham

**PUBLIC COMMENTS**

- Robert Tullock on Pioneer Day – Saturday, October 6, 2007
- Cindy Blake and Carl Hansen announcing Ride Share Week and the Food Bank Promotion
- Emily Reneau on the grand opening of the Paso Robles Children's Museum November, 2007, and introducing the new Executive Director, Natalie Schaeffer.

**AGENDA ITEMS TO BE DEFERRED (IF ANY)**

**PRESENTATIONS**– None

**PUBLIC HEARINGS**

1. **Determination of Historic or Architectural Significance and Request to Process a Pending Demolition Permit Application**  
**1921 Spring Street (Applicant Christensen)**  
R. Whisenand, Community Development Director

The City Council considered an application to authorize a demolition permit for one residence located at 1921 Spring Street. On June 8, 2007 the Development Review Committee approved Site Plan 07-013 to allow construction of a professional office with a residential apartment at this site.

Mayor Mecham opened the public hearing. Speaking from the public was Stephen King, the applicant's architect. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Nemeth, seconded by Councilmember Hamon, moved by separate motions to approve Resolution No. 07-204 adopting a Negative Declaration; and authorized the demolition permit application be processed.

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham  
NOES:  
ABSTAIN:  
ABSENT:

**2. Mitigated Negative Declaration for Templeton Interceptor Upgrade and Reclaimed Water Line in River Road**

R. Whisenand, Community Development Director

The City Council considered approval of a Mitigated Negative Declaration for the Templeton Interceptor Upgrade and Reclaimed Water Line in River Road. The project consists of installing pipeline beneath the pavement of River Road. No undeveloped land will be affected.

Mayor Mecham opened the public hearing. Speaking from the public was Mike Goldstein. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Nemeth, seconded by Councilmember Hamon, moved to adopt Resolution No. 07-205 approving a Mitigated Negative Declaration for the Project.

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham  
NOES:  
ABSTAIN:  
ABSENT:

**CONSENT CALENDAR**

Mayor Mecham called for public comments on Consent Calendar items. At the request of the public, Item 6 was pulled for separate discussion. There were no other comments from the public, either written or oral, and the public discussion was closed.

3. Approve City Council minutes of September 18, 2007
4. Approve Warrant Register: Nos. 72490—72642 (09/14/07) and 72643—72826 (09/21/07)
5. Receive and file Advisory Body Committee minutes as follows:  
Library Board of Trustees meeting of August 9, 2007  
Parks & Recreation Advisory Committee meeting of August 14, 2007  
Streets & Utilities Committee meeting of July 13, 2007

6. **(Pulled for Discussion following Item 12)** Read, by title only, and adopt Ordinance No. 938 N.S., changing the land use designation from Residential Single Family (RSF-2) to Residential Multiple Family, 12 units per acre (RFM-12) at property located at 1450 Golden Hill Road. The project site is a 13.4 acre parcel, and proposes to construct a multi-level, 125-unit senior retirement community for individuals aged 60 and over, which would include residential living units, assisted living units, and special care units. In conjunction with the retirement community is a request to construct a 6,330 s.f. expansion to the existing 4,340 s.f. church/pre-school. (1<sup>st</sup> reading September 18, 2007)
  
7. Adopt Resolution No. 07-206 accepting the recordation of Parcel Map PR 07-0032, a two-lot residential subdivision at 402 9<sup>th</sup> Street. No annexation to the Community Facilities District is required since residential units exist on both parcels being created. (Applicant: Baier).

Consent Calendar Items Nos. 3, 4, 5 and 7 were approved on a single motion by Councilmember Strong, seconded by Councilmember Hamon, with Councilmember Strong abstaining on Warrant Register Items Nos. 072561, 072706, and Councilmember Picanco abstaining on Warrant Register Item Nos. 072545, 072629, and Mayor Mecham abstaining on Warrant Register Item Nos. 072624 and 072772.

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham  
 NOES:  
 ABSTAIN:  
 ABSENT:

## DISCUSSION

8. **Nacimiento Water Project – Reconsideration of Water Rate Options**  
 James L. App, City Manager

The City Council considered alternative water user rate structures.

Mayor Mecham opened the public hearing. Speaking from the public were John Borst, Carolyn Anderson, Clark Rudy, Duane Sanger, Jerry Greene, Bill Sisler, David Hicks, Pasqual Padilla, Ton Rush, Gary Fowler, Dale Gustin, Karl Schuman, Brooke Mayor, Kathy Barnett, Angela Hollander, Bob Nickles, and Jeff Ward. There were no further comments from the public, either written or oral, and the public discussion was closed.

The City Council recessed at 9:35 PM. and reconvened at 9:45 PM. with the Mayor and all City Councilmembers present.

Councilmember Strong, seconded by Councilmember Nemeth, moved by separate motions to Introduce Ordinance No. XXX N.S., repealing Ordinance No. 935, N.S., and authorized staff to initiate preparation of a Consumption Based Water Rate (Option A).

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham  
 NOES:  
 ABSTAIN:  
 ABSENT:

**9. Request to Remove Oak Tree within Union Road Right-of-Way (City-initiated)**

R. Whisenand, Community Development Director

The City Council considered a City-initiated request to remove one oak tree within the Union Road right-of-way.

Mayor Mecham opened the public hearing. Speaking from the public were Kathy Barnett and Tom Hardwick. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Picanco, seconded by Councilmember Strong, moved to adopt Resolution No. 07-209, to approve removal of the oak tree but postpone the physical removal until such time as the right-of-way road construction occurs, or the tree poses a risk to public safety along the roadside, with the approval of either of the Directors of Community Development or Public Works.

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham

NOES:

ABSTAIN:

ABSENT:

**10. Downtown Parking Management Study**

R. Whisenand, Community Development Director

The City Council considered a contract to examine time-restricted parking in the downtown including implementation strategies. Since the newly formed parking fund (from collection of parking in-lieu fees) does not have a sufficient balance, the funding may be allocated from the General Emergency & Contingency Fund.

Mayor Mecham opened the public hearing. Speaking from the public was John Roush and Tom Hardwick. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Hamon, seconded by Councilmember Strong, moved to adopt Resolution No. 07-207 to award a contract to PDG and appropriate \$35,000.

Motion passed by the following roll call vote:

AYES: Hamon, Nemeth, Strong

NOES: Picanco and Mecham

ABSTAIN:

ABSENT:

**11. Award of Contract – Shade Structures**

A. Robb, Director Library & Recreation Services

The City Council considered awarding a contract to USA Shade & Fabric Structures Inc., for shade structures at Centennial Park Pool and Barney Schwartz Park using REC Foundation funding.

Mayor Mecham opened the public hearing. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Picanco, seconded by Councilmember Strong, moved to adopt Resolution No. 07-208 awarding a contract to USA Shade & Fabric Structures Inc. for the purchase and installation of shade shelters at Centennial Park Pool and Barney Schwartz Park

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham  
NOES:  
ABSTAIN:  
ABSENT:

**12. Pioneer Day Committee – Funding Request**

James L. App, City Manager

The City Council considered a request for \$10,000 to support the Pioneer Day Parade and related activities.

Mayor Mecham opened the public hearing. Speaking from the public was Robert Tullock. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Nemeth, seconded by Councilmember Hamon, moved to appropriate \$5,000 to support the Pioneer Day Parade and related activities.

Motion passed by the following roll call vote:

AYES: Hamon, Nemeth, and Mecham  
NOES: Picanco and Strong  
ABSTAIN:  
ABSENT:

**ITEMS PULLED FOR DISCUSSION**

**6. 1450 Golden Hill Road, 2<sup>nd</sup> Reading of Ordinance No. 938, N.S.**

R. Whisenand, Community Development Director

Mayor Mecham opened the public hearing. Michael R. Jencks, attorney for Steven Lopate (letters attached), requested information concerning the CEQA determination for the project located at 1450 Golden Hill Road. There were no further comments from the public, either written or oral, and the public discussion was closed.

By General Consent, Council continued this item until October 16, 2007.

**CITY MANAGER** - None

**CORRESPONDENCE** - None

**ADVISORY BODY COMMUNICATION** – None

**AD HOC COMMITTEE COMMUNICATION - None**

**COUNCIL COMMENTS (Including oral reports on conferences attended)**

Councilmember Strong reported on CEQA Act Conference he recently attended in Santa Monica, CA.

Mayor Mecham reported on Immigration Conference attended with City Manager and Chief of Police, in Phoenix, AZ.

**ADJOURNMENT:**

- THE OLD TIMERS BARBEQUE 11:30 A.M. THURSDAY, OCTOBER 4, 2007 AT THE PASO ROBLES EVENT CENTER
- THE VIP GRAND OPENING OF THE CHILDREN'S MUSEUM, 5:30 P.M., THURSDAY, OCTOBER 4, 2007 AT THE 13<sup>TH</sup> OLD FIRESTATION
- THE 77<sup>TH</sup> PIONEER DAY PARADE AND FESTIVITIES, 10:00 A.M., SATURDAY, OCTOBER 6, 2007 IN THE DOWNTOWN AND DOWNTOWN PARK
- THE ADJOURNED REGULAR MEETING, INTERVIEWS FOR THE AIRPORT ADVISORY COMMITTEE, 7:00 P.M., THURSDAY, OCTOBER 11, 2007 IN THE LIBRARY/CITY HALL CONFERENCE CENTER 1000 SPRING STREET, PASO ROBLES
- LIBRARY & RECREATION ADVISORY BODY SOCIAL, 5:30 P.M. OCTOBER 15, 2007, SENIOR CENTER, SCOTT STREET
- TO THE REGULAR MEETING AT 7:30 PM ON TUESDAY, OCTOBER 16, 2007, AT THE LIBRARY/CITY HALL CONFERENCE CENTER, 1000 SPRING STREET, PASO ROBLES

Submitted:

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Deborah D. Robinson, Deputy City Clerk

Approved:

**THESE MINUTES ARE NOT OFFICIAL OR A PERMANENT  
PART OF THE RECORDS UNTIL APPROVED BY THE CITY  
COUNCIL AT A FUTURE REGULAR MEETING.**

LAW OFFICES OF  
**MICHAEL R. JENCKS**  
ATTORNEYS AND COUNSELORS AT LAW  
4349 OLD SANTA FE ROAD, BOX 5  
SAN LUIS OBISPO, CALIFORNIA 93401  
TELEPHONE 805.548.0600 FACSIMILE 805.548.0601

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**OCT 02 2007**

CITY OF PASO ROBLES  
Copy Council  
J. App  
R Whisenand

October 1, 2007

By Facsimile

Mr. Dennis Fansler,  
City Clerk  
CITY OF EL PASO DE ROBLES  
1000 Spring Street  
Paso Robles, CA 93446

Re.: 1450 Golden Hill Road (Ordinance 938 N.S.)  
City Council Regular Meeting 10.02.07  
Consent Calendar Item Number Six (6)  
Request for Additional Time

Dear Mr. Fansler:

We respectfully request, on behalf of our client Mr. Steven Lopate and his representatives, additional time at tomorrow's Council Meeting to address issues raised by the proposed spot rezoning of 1450 Golden Hill Road and to address procedural and substantive deficiencies of the environmental determination for the proposed rezoning. Specifically, we request twenty (20) minutes on the agenda.

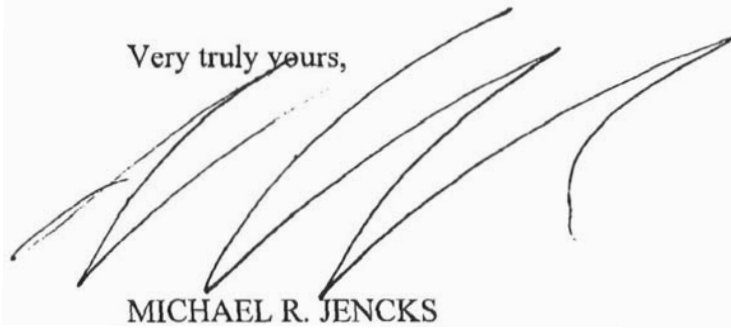
In support of this request, we direct your attention not only to the number of substantive issues raised by the zone change ordinance itself, but to due process and procedural issues, including but not limited to the circulation, public review, and approval of the project's mitigated negative declaration, which is serving as the environmental determination for the zone change as well as for the use permit for the project itself. The MND not only suffers from substantive incompleteness and errors but also has inherent and fatal procedural defects that we believe render it legally deficient to serve as the environmental determination for the proposed zone change. In addition, a review of the Planning Commission and prior Council hearing records disclose that while City staff and the project's developer were provided extensive time to speak in favor of the Project and change to more intensive zoning, the public and dissenters were accorded only three minutes each despite several of those who dissented to aspects of the project, use permit, zone change, and environmental determination, requesting more time to present testimony and evidence. Finally, a zone change is usually considered legislative in nature but here, where the change applies to a single property to accommodate a single

Mr. Dennis Fansler  
City Clerk  
Golden Hills Retirement Project Rezone  
Page 2 of 2

project, we believe the law requires the hearing be conducted in accordance with the prerequisites of procedural due process.

Accordingly, we request item six on the Consent Calendar be removed from the consent calendar and that our office and client's representatives be allocated time not to exceed twenty (20) minutes to address and be heard on the subject of the ordinance and its proposed environmental determination. Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, consisting of several overlapping, sweeping strokes that form the name Michael R. Jencks. The signature is written in a cursive, somewhat stylized manner.

MICHAEL R. JENCKS



LAW OFFICES OF  
**MICHAEL R. JENCKS**  
 ATTORNEYS AND COUNSELORS AT LAW  
 4349 OLD SANTA FE ROAD, BOX 5  
 SAN LUIS OBISPO, CALIFORNIA 93401  
 TELEPHONE 805.548.0600 FACSIMILE 805.548.0601

RECEIVED  
 CITY CLERK'S OFFICE

OCT 02 2007

CITY OF PASO ROBLES

cc Council  
 J App  
 R. Whisenand

October 2, 2007

By Facsimile and Hand Delivery

Hon. Frank Mecham, Mayor  
 Hon. Gary Nemeth, Mayor Pro Tem  
 Hon. John Hamon, Council Member  
 Hon. Duane Picano, Council Member  
 Hon. Fred Strong, Council Member  
 CITY OF EL PASO DE ROBLES  
 1000 Spring Street  
 Paso Robles, CA 93446

Re: 1450 Golden Hill Road (Ordinance 938 N.S.)  
 City Council Regular Meeting 10.02.07  
 Consent Calendar Item Number Six (6)  
 Proposed Zoning Change of 1450 Golden Hill Rd. from RSF-2 to RMF-12

Honorable Mayor and Council Members:

This office represents and is appearing this evening on behalf of Mr. Steven Lopate. Mr. Lopate owns property at 2904 Gilead Lane, immediately adjacent to the Golden Hills Retirement Project and to the parcel proposed to be rezoned from RSF-2 to RMF-12.

We have under separate cover and prior to today submitted requests to the City to be permitted to review the file on tonight's matter (09.28.07) and for additional time (10.01.07), and it our understanding that both those requests are still pending.

*Executive Summary.* The Project, as proposed and conditioned, including the zone change before the Council tonight and the Mitigated Negative Declaration, will, unless modified, have a destructive effect on the quality and quiet enjoyment of the surrounding single family residential neighborhood and impose an unnecessary and disproportionate burden on Mr. Lopate's and his neighbors' similarly situated parcels immediately adjacent to the Project parcel, and on their property rights, privacy, and safety. Oral assurances made to Mr. Lopate and to others by representatives of the developer and owner and which might mitigate some of the burdens have never been incorporated as enforceable conditions to the Project or the zone change and so remain illusory. The Mitigated Negative Declaration, as it pertains to and evaluates the impacts

Mayor Mecham and Council Members  
Golden Hills Retirement Project Rezone  
10/02/07 Consent Calendar #6  
Page 2 of 3

of the zone change, is incomplete and we submit deficient as a matter of law. Finally, the hearing and approval process for the Project's CUP, for the MND, and for the zone change, has been seriously flawed, ranging from procedural errors in public review time and circulation of the environmental document, to denials of due process and even Brown Act violations, which if corroborated could vitiate any approval of the zone change as well as possibly result in setting aside the prior CUP and MND approvals.

*Illustrative Objections.* Specific objections to the zone change as proposed to be implemented and conditioned in the proposed ordinance amendment and MND, include but are not limited to:

Land Use: Spot Zoning. Spot zoning is defined as the "practice that...grants one parcel of land a designation that is incompatible with the rest of the neighborhood. (Fulton, Guide to California Planning). The RMF-12 zone in permitted uses, density, set backs and building height and coverage specifics is a substantially more intense use than the RSF-2 zone. Spot zoning is rarely if ever considered "good planning" but where it occurs it is usually addressed by including some sort of buffering between adjacent zones to reduce any incompatibility. This buffering may take the form of increased set backs along the margin between zones, building height limitations, landscaped visual and auditory barriers, limitations on hours, duration, and amplification of outdoor public congregations and events, and so forth. Here, no such buffering is included and the RMF-12 zone is rammed right up against existing RSF-2 homes and the initial study reports that the proposed new Church building would be less than 12 feet from the Gilead Lane properties and tower over them. The result is that the RSF-2 homes, many of whose backyards will now border the project, are encumbered with loss of visual and auditory privacy, light and view/skyscapes, loss of existing rights to build outbuildings (cabanas, even granny units) because the proximity of construction on the project parcel will effectively prevent the existing homes from having the required minimum setbacks from other construction.

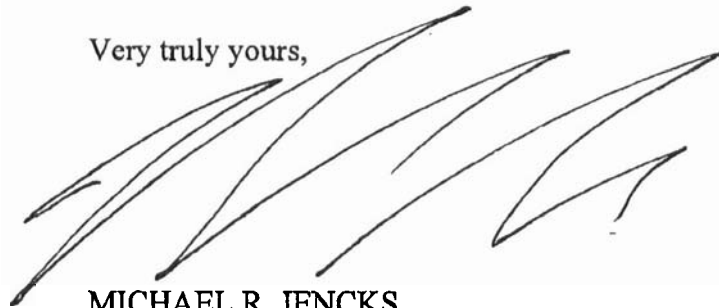
- Constitutional/Takings. The deprivation of existing uses, rights, and privileges of the RSF-2 homes by the rezoning, and the effects of the loss of privacy, will result in a dramatic loss of property value and may well be found to constitute partial or, in the case of some of the most impacted homes, complete takings.
- Land Use, Transportation, Biological, Noise, Water, Aesthetic, AB32/Air Quality, and Hazard Impacts. Mr. Lopate and others (e.g. Ms. Dunham) have previously identified shortcomings in these sections of the initial study during previous proceedings before the Planning Commission and this Council involving the MND and we refer to and incorporate that prior public and written testimony and evidence here.

Mayor Mecham and Council Members  
Golden Hills Retirement Project Rezone  
10/02/07 Consent Calendar #6  
Page 3 of 3

- **Mitigated Negative Declaration/Procedural Issues.** A truncated public review period and incomplete circulation of the MND are examples of prima facie flaws in the processing of the MND, ones in which the City did not proceed as prescribed by law.
- **Other Due Process and Procedural Issues.** There appear to be a number of potential gaffes in complying with the prerequisites of procedural due process, particularly at the planning commission level, but those flaws and at least one Brown Act issue, also at the PC level, may well be found to have tainted the process, including, with respect to tonight's actions, both the rezone and the legal sufficiency of the MND as the environmental determination upon which the rezone is predicated.

We request that the proposed rezoning adoption be denied until such time as the substantive and procedural problems are resolved or, alternatively, that consideration of adoption be continued to an early date certain, prior to the limitation date to appeal this Council's CUP and MND decisions, to permit time for discussions designed to try to resolve these problems. This is not a situation where, at least in Mr. Lopate's case, there is fundamental opposition to the project *if* it can be modified and conditioned to protect the RSF-2 zone. It would be a disappointment for many if reasonable minds and good faith could not combine so as to resolve these problems in a way that would allow the retirement project to proceed while preserving intact the integrity and quality of the surrounding single family residential community.

Very truly yours,

A handwritten signature in black ink, consisting of several overlapping, sweeping lines that form the name 'MICHAEL R. JENCKS'.

MICHAEL R. JENCKS

Cc: Mr. Dennis Fansler,  
City Clerk

To the Paso Robles City Council

Oct 2, 2007

## A MAN'S INTEGRITY BEGINS AND ENDS WITH HIS WORD

### Introduction

On July 20, 2004 the Paso Robles City Council made a "historic decision" to contract for additional water from Nacimiento Lake. At a follow-up meeting on August 3rd Council, Staff and Citizens discussed how they plan to pay for it.

At that follow-up meeting Jim App, City Manager, pledged the following:

"The City's share of the cost of building a pipeline from Nacimiento Lake and taking 4000 acre feet annually of the water flowing through it will be divided 50/50 between current users and new development.<sup>1</sup>"

Mike Compton, City Finance Director, also affirmed,

"We are making a 50/50 application of the fees.<sup>2</sup>"

Did your Notice of a water rate hike delivered in the June 2007 mail honor their words of a 50/50 split? No! Did the City Council consider a 50/50 split on July 17th or August 7th 2007 when they discussed, and then later passed, the \$720 year rate hike Ordinance? No!

So why accept any fee structure proposed by Mr. App or the City Council tonight? **Demand new development pay its fair share for the "1/2 cent gallon of water" delivered to it's tap. In no uncertain terms tell Mr. App and the City Council new development must pay its fair share. Accept nothing less in any new water rate structure they may put before you this evening (or in your mail)!!!**

## Just what is a fair share?

The 50/50 cost split is a good starting point for discussion when considering what is equitable for all stakeholders responsible for servicing/paying any debt incurred by or costs associated with the "Nacimiento Water Project" (NWP). To understand how this 50/50 distribution of costs arose, and in particular what each 50% means, it is helpful to refer to a written statement directed to Mr. App by Mr. Compton as noted in the August 3, 2004 City Council meeting minutes.

In a document entitled, "Public Hearing -- Sewer and Water Development Impact Fees" (see Appendix A), Mr. Compton states how costs have been allocated for NWP water:

*Of the cost for Nacimiento Water 50% [then estimated at \$25,030,000 in 2004] is being allocated to new development. **Given the water quality issue** as it relates to existing wastewater discharges, current and future sewer users are being required to pick up the remaining 50% cost. [emphasis added].*

From Mr. Compton's statement it is apparent the second 50% cost expressed in his statement is related to the "salinity" issue which confronts the city of Paso Robles. That is, excessive amounts of TDS's (Total Dissolved Solids) and the individual constituents chloride, sodium, and sulfate now in City wastewater are dumped into the Salinas River resulting in Sewer Code violations and related fines. To help rectify this situation, the Nacimiento Water Project became the City's Water Strategy, chosen from among other strategies (see Appendix B), whereby the City and its water customers can achieve code compliance (i.e., reduce TDS's to lawful limits *without changing quantity* of sodium or TDS pollutants now discharged into the Salinas River.)

To achieve Mr. Compton's recommended 50% cost imposition for reducing sulfate, sodium, chloride and TDS's in water discharge, what were the City's water customers asked to pay in July 2007? The full 100% of NWP related costs. A stated \$7.1 million annual cost was expressed by City Staff at a July 17th Public Hearing held at Paso Robles City Hall. But this is only half the story. The City has also been lax or negligent in enforcing City Sewer Quality Control Codes to prevent excessive amounts of TDS's in Industrial and Commercial water discharge. Consequently, the citizens of Paso Robles wind up paying 100% of the fines for industry's contribution to excessive TDS's in wastewater discharge.

**In short**, the fee structures proposed by Mr. App this evening - both Option A or B - still require (1) current City water customers, est. at 10,200, to pay

the full 100% of the cost associated with the NWP, as well as (2) continued subsidy of polluted Industrial and Commercial wastewater discharge, all at citizen's expense. ("Why should I pay as much as a 100 room hotel?" is a common refrain of City residents to this kind of excessive, if not illegal, "fee" imposition/subsidy. The ability to collect 2300 referendum signatures from City water customers in 10 days is telling of water customer outrage and felt sense of injustice.) Any new "water rate" structure put before the public mandates that it address, *at a minimum*, these two major issues or rate structure premises. Significantly, both of these issues appear to be ignored or overlooked in what Mr. App writes and proposes to the City Council on Agenda item # 8 in regards his "water rate options."

## **Conclusion**

Indeed, if we take Mr. App and Mr. Compton at their word, as I believe we should, to begin work on any new rate structure -- one much more farsighted, fair, and a just departure from any "\$60 redo" -- it appears necessary (but not sufficient) for the City to **first** require new development, at a minimum, pay its 50% share of the NWP related costs. This was how Mr. App and Mr. Compton represented project costs to the public and City Council in 2004. And **second**, for the other 50% City staff should next determine the relative or proportional contribution of TDS, sodium, chloride and sulfate in each sewer/water user's discharge, and *then* charge the user accordingly. To do so is one's "fair share" or cost rightly attributed to Mr. Compton's NWP rationale -- improved water quality in wastewater discharge.

Accept nothing less than this kind of 50/50 computation in any debt service agreement or rate structure offered for your consideration by Mr. App or the City Council. *For City officials to do otherwise is to compound a deceptive, if not fraudulent (mis)representation of the Nacimiento Water Project to the citizens of Paso Robles.*

**I request the City Council reject Mr. App's Options A and B and initiate preparations for the design and public review of a rate structure expressly consistent with that stated in the Conclusion above, or if it cannot do so, have the City withdraw from its participation in the Nacimiento Water Project.**

*John Borst*

Notes:

1,2: "City discusses how to pay for its share of Nacimiento Water," by Ann Quinn, *Paso Robles Press*, posted online August 23, 2004.

By John Borst, PhD, Paso Robles, CA  
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To: James L. App, City Manager  
From: Mike Compton, Director of Administrative Services  
Subject: Public Hearing - Sewer and Water Development Impact Fees  
DATE: August 3, 2004

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Needs:

Upon close of public hearing, consider adoption of a resolution modifying sewer and water development impact fees.

Facts:

1. In the spring of 2001, the Council adopted its primary goals for the following two years. One of the top goals included a "complete review of development and user fees to cover impact and service costs".
2. Following numerous meetings with interested parties, public workshops and public hearings, the Council adopted new sewer and water impact fees on December 18, 2001.
3. The fees adopted on December 18, 2001 by Resolution No. 01-266 became effective March 1, 2002.
4. The adopting resolution provided for an annual adjustment based upon the percent change in the Engineering New Record, a construction cost index and that the fees be revisited every two years.
5. Given that it has been two years since the last review, the Council approved a budget appropriation and contract with Foresight Consulting to update sewer and water impact fees.
6. The update has been completed and is attached herewith as Attachment "B". Since the update was released by Foresight Consulting on May 24, 2004, the City has received revised cost estimates for Nacimiento Water. The revised cost for Nacimiento Water has been included in the project schedule and resulting fees as Attachment "A" to the resolution attached herewith.
7. The updated project schedule represents staff's best judgment at this time as to the infrastructure needs for sewer and water. It is expected that new master plans for sewer and water facilities will be completed over the next eighteen to twenty-four months at which time the fees will again be revisited. However, the updated fees presented herein do reflect the new build out population of 44,000 as identified in the recently adopted General Plan.

8. The "revised" Final Report indicates that fees for a single-family residence sewer connection should be reduced from \$4,436 to \$4,351 and the water connection fee should be increased from \$3,703 to \$7,734.
9. Staff has presented the Report to the Council's ad hoc committee, Councilmen George Finigan and Jim Heggarty, who supported adoption of the revised fees as proposed.
10. Staff met with representatives of the HBA to address their concerns relative to the proposed fees. The development community is mainly concerned with implementation timing. They also raised a concern with a perception that they're paying fees twice for the same project (These issues are addressed below).

Analysis  
and  
Conclusion:

As noted above, it is proposed that the sewer impact fee be reduced from \$4,436 to \$4,351 for a single family residential unit. This reduction is mainly due to the newly adopted General Plan calling for a population increase from 35,000 to 44,000 at build-out and slightly due to a nominal decline in the total share of the project costs allocated to new development, \$25,030,000 versus \$24,760,000.

The City continues to face significant challenges relating to its' treatment of sewage and its ultimate disposal. The project list in the attached revised report does NOT yet reflect these challenges as they have not yet been clearly defined. *It is expected that as these challenges are converted to clearly defined projects, impact fees will increase substantially.*

The revised final report indicates that water impact fees should be increased from \$3,703 to \$7,734 for a single family residential unit. The sharp rise in fees is attributable to the inclusion of Nacimiento Water (including water treatment facility for same) and additional water storage capacity needed to serve new development. All but \$84 of the increase is for Nacimiento Water. Of the cost for Nacimiento Water 50% is being allocated to new development. Given the water quality issue as it relates to existing wastewater discharges, current and future sewer users are being required to pick up the remaining 50% cost.

As previously noted, the Home Builders Association (HBA) is concerned mainly with implementation timing of the new fees but they have a second concern relating to the disposition of fees already collected and their impact upon the proposed fees. First, it is their desire that all projects in the "pipeline" be grandfathered in under the existing fees. This was their request two years ago then the first study was prepared and again when the City's AB1600 development impact fees (non-utility) were adopted a year ago. It has been and will likely always be their desire. However, the Council has never granted "pipeline" projects such relief. To do so would likely result in financial chaos wherein insufficient revenues would be collected to build the infrastructure required to serve new development. This would result in existing utility customers having to carry the burden of paying for said infrastructure through higher user fees. When the current fees were adopted in December 2001, they became effective March 1, 2002 and were payable



when the building permit was pulled and paid for. Similarly with AB 1600 fees, they were adopted March 4, 2003 and became effective May 3, 2003 or June 2, 2003 depending upon receipt of permit application and ability of Building Division to process said applications.

Due to a public noticing deficiency, the proposed September 1, 2004 implementation date must be postponed to October 4, 2004. The Council may, of course, extend the implementation date further if they wish.

With regards to the second issue raised by the HBA regarding a credit for total fees collected since the fees were last updated towards the new project list. If the Council were inclined to provide a credit for fees collected since the update, there should be a corresponding credit (reduction) in the General Plan EDUs. The net effect, *generally*, is no change in the fee because the allocation of remaining costs over the lower number of EDUs increases the impact fee which offsets the reduction resulting from a applying the credit for fees already collected.

Fiscal Impact:

Should the Council adopt the fees as proposed by the Study, the sewer impact fee would decrease from \$4,436 to \$4,351, representing a decrease of \$85 and the water connection fee should be increased from \$3,703 to \$7,734 representing an increase of \$4,031. Of the \$4,031 increase, \$3,303 is attributable to Nacimiento Water and \$644 is attributable to a water treatment facility for Nacimiento Water. This leaves only \$84 of the total increase for other water projects needed to serve new development. As noted above, new development is being required to pay 50% of the cost of Nacimiento Water.

For informational purposes, Atascadero Mutual Water just raised their water impact fee for a 5/8" service from \$3,255 to \$12,500. Templeton Community Services District has not yet adopted new fees but their fee is currently set at \$3,642 and it has been recommended that it go to \$12,294.

Options:

That the Council:

- a. Adopt Resolution No. 04-XX establishing new sewer and water development impact fees; or
- b. Amend, modify, or reject the above option.

From the Paso Robles City's Water Quality Strategy Report. <http://www.prcity.com/government/departments/publicworks/strategy-report.asp>

**Table 3-11. Cost Summary for Alternatives That Address Primary Project Criteria**

Alternative <sup>a</sup>	Total Capital Cost	Total Annual Capital Debt Service <sup>b</sup>	Total Annual O&M for Year 1 <sup>c</sup>	Total Annual Costs (Debt Service + O&M) <sup>c</sup>
3. Participate in Nacimiento Project (Treated Water Option) <sup>d</sup>	\$59.6	\$5.63	\$1.41	\$7.04
4. Participate in Nacimiento Project (Raw Water Option) and Treat Water With City-Owned Plant	\$53.2	\$5.02	\$0.88	\$5.90
5. Import Lake Nacimiento Raw Water (Independent of Nacimiento Project) and Treat Water With City-Owned Plant	\$26.9	\$2.54	\$0.86	\$3.40
7. Desalinate Well Water Supply	\$20.0	\$1.93	\$0.61	\$2.54
9. Desalinate WWTP Effluent to Meet NPDES Discharge Limits	\$8.73	\$0.83	\$0.21	\$1.04
10. Desalinate WWTP Effluent for Irrigation Reuse with Storage <sup>e</sup>	\$54.6	\$5.15	\$3.10	\$8.25
11. Desalinate WWTP Effluent for Irrigation Reuse with River Discharge <sup>e</sup>	\$12.5	\$1.18	\$1.30	\$2.48
12. Desalinate WWTP Effluent for Community-Based Reuse with River Discharge <sup>e</sup>	\$54.6	\$5.15	\$1.40	\$6.55
13. Desalinate WWTP Effluent for Recharge	\$21.7	\$2.05	\$0.53	\$2.58
14. Add East Side WWTP (Upstream Reclamation Plant)	\$34.5	\$3.26	\$0.56	\$3.82

### 3.4.3 Alternatives Comparison Matrix and Cost Summary

The Alternatives Comparison Matrix on the following page summarizes the results of the evaluation described in Section 3.4 above. **Table 3-11**, which follows the matrix, summarizes the cost information for those alternatives that address one or both of the primary project criteria and have significant capital and/or operating costs. Specifically, the only viable alternative not shown in this table is #2 in the matrix ("Achieve Greater Industrial and Commercial Discharge Quality Control"). There would be City staff labor costs and possibly relatively minor equipment costs associated with this alternative, but these were considered negligible in relation to the costs of other alternatives considered, which each call for significant capital improvements. This table is the basis for the relative "Capital Cost Competitiveness" and "Operating Cost Competitiveness" scores in the matrix.

To: Paso Robles City Council

Oct. 2, 2007

## Do Options A and B Meet the Lawful Requirements of California Proposition 218 as stated below?

**(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed or increased by any agency unless it meets all of the following requirements:**

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

**Comment:** First, the funds actually required to pay for Paso Robles' share of Nacimiento Water Project construction costs according to Fitch Ratings is 34.7% of the total cost. Total project cost for all NWP participants is \$175,157,695. Thus, the funds actually required to pay for Paso Robles' portion of the project is  $\$175,157,695 \times 34.7\%$  or \$60,779,720. The net amount financed has been determined to be \$72,294,877, for a total project or debt service cost to Paso Robles of \$131,361,000. As the revenue derived from the fees ( $\$4,378,700 \times 30$  years debt service) amounts to **\$131,361,000**, it **exceeds** the funds actually required (**\$60,779,720**) to pay for the project. Consequently, both **Option A and B are a violation of Proposition 218.**

Second, the average number of units used by a Paso Robles water customer is approximately 27 units per month ( $3,319,000 / 10,200 = 325.39$  units per year.  $325 / 12$  months = 27.11 per month). The fixed cost in 7/10 for the average customer per month is \$55.55 ( $\$6.8$  million / 10,200 customers = \$666.67 per year.  $\$666.67 / 12$  months = \$55.55.) Given that 27 units in 7/10 could be billed at \$1.28 each (plus CPI adjustment), that means the total average customer cost to provide the Nacimiento service is  $\$34.56 + \$55.55$  or \$90.11. By comparison, Option A (Consumption Only) will cost the average rate payer \$108.00 ( $27 \times \$4$ ) in 7/10, and Option B (Fixed + Cons.) will cost the average rate payer \$98.10 ( $27 \times \$2.3 + \$36$ ) in 7/10. As both Option A and B appear to exceed the actual per cost average for the service (\$90.11) **both options, A and B, are a violation of Proposition 218.**

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

**Comment:** The proportional cost of the service (Nacimiento Water and Infrastructure service for each of 10,200 Paso Robles water customers) to improve water quality in wastewater discharge attributable to a particular parcel has not been determined. This condition is true for both Options A and B, and hence, **both options are a violation of Proposition 218.**

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

**Comment:** I do not consider the Nacimiento Water and Infrastructure related fee to be a standby charge. As the service (whether Water Treatment Plant, Pipeline, or Operational and Maintenance) is not actually used by or immediately available to the water customer, **the fee imposed is a violation of Proposition 218.** That is, unlike the Pajaro Valley Water Management Agency (Pajaro Valley Water Mgmt Agency v. Amrhein, 150 Cal. App.4th 1364 [2007]), according to Fitch Ratings (Sept. 7, 2007, "San Luis Obispo County Financing Authority, CA: Nacimiento Water Project") security for the NWP bonds is provided through a lien on the Nacimiento Water Project participant's (i.e., Paso Robles) gross water system revenues (property). I also assume a lien has been placed on water customers' properties to secure payment of the "Nacimiento Water" fee now being collected for the construction of the Water Treatment Plant, as well as its eventual operation and maintenance. Consequently, any present or future Proposition 218 process engaged in by the City, any rate structure, or Paso Robles City Ordinance in support thereof to impose a "Nacimiento Water" or related fee when the associated service is not available for immediate water customer use is null and void.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services where the service is available to the public at large in substantially the same manner as it is to property owners.

**A written response from the City Council to each of the objections/challenges to rate Options A and B noted in this document is requested by myself, John Borst (209 Navajo Ave.), and Pascual Padilla (1155 Maryhill), both of Paso Robles, CA.**

#8

**PASO ROBLES NACIMIENTO WATER RATE INCREASE ANALYSIS**

Initial comments: The current “water crisis” is a result of unlimited, uncontrolled, excessive, and improperly managed growth in the Paso Robles area. Thus, city officials are asking us to pay the entire cost (100%) of this new water cost due to growth as a Flat Fee. The requirement of the Flat Fee is not being fairly applied between residences, group users, businesses, industrial users, and commercial users. In addition, city officials affirmed on 3 August of 2004 that current users would only have to pay 50% of any new growth costs (not 100%). Both of the two proposed options A and B, in lieu of the Flat Fee, are more expensive than the Flat Fee itself (see Page 4 of 4 in this report). The two “Consumption” fee plans Options A and B are not consumption plans but merely sliding scale fee schemes. Nowhere are there any consumption adjustments or conservation incentives. In this report I am assuming the water report data in the 28 September 2007 Paso Robles Press was accurate.

**NACIMIENTO WATER FLAT RATE FEES**

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Jan		6	12	24	36	48	60	60	60
Feb		6	12	24	36	48	60	60	60
Mar		6	12	24	36	48	60	60	60
Apr		6	12	24	36	48	60	60	60
May		6	12	24	36	48	60	60	60
Jun		6	12	24	36	48	60	60	60
Jul		6	12	36	48	60	60	60	60
Aug	\$6	12	12	36	48	60	60	60	60
Sep	6	12	12	36	48	60	60	60	60
Oct	6	12	24	36	48	60	60	60	60
Nov	6	12	24	36	48	60	60	60	60
Dec	6	12	24	36	48	60	60	60	60
Sums:	30	102	180	360	504	648	720*	720	720

Total  
Cost: \$30    \$132    \$312    \$672    \$1176    \$1824    \$2544    \$3264    \$3984

\* Cost per year is fixed starting with 2011

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2 October 2007  
Page 1 of 4

**NACIMIENTO WATER "CONSUMPTION ONLY" (OPTION A)**

	Water Units (1)	Flat Rate Fees (2)	< \$ amt per mo here = no units x unit rate >					
			2008	2009	2010	2011	2012	2013
Jan	8	\$18	24	22	28	32	32	32
Feb	7	18	(3)	16	19	25	28	28
Mar	7	18	16	19	25	28	28	28
Apr	6	18	14	17	21	24	24	24
May	9	18	20	25	32	36	36	36
Jun	14	18	32	39	49	56	56	56
Jul	24	18	(4)	66	84	96	96	96
Aug	26	30	72	91	104	104	104	104
Sep	26	30	72	91	104	104	104	104
Oct	23	42	63	81	92	92	92	92
Nov	18	42	50	63	72	72	72	72
Dec	9	42	25	32	36	36	36	36
Sums:	177	312	470	583	684	708*	708	708
Total Cost:		\$312	\$782	\$1365	\$2049	\$2757	\$3465	\$4173

\* Cost per year is fixed starting with 2011

- (1) Actual water use (ave over last 3 yrs) for 2 people living in a Paso Robles 1450 s.f. 3br/2ba home inside the city limits.
- (2) Total Flat Rate fees paid for the home Aug 05 through Dec 07.
- (3) Rate goes from flat rate fee to \$2.25 per unit on 1 Feb 08.
- (4) Rate goes up to \$2.75 on 1 Jul 08.
- (5) Rate goes up to \$3.50 on 1 Jul 09.
- (6) Rate goes up to \$4.00 on 1 Jul 10.

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Page 2 of 4

**NACIMIENTO WATER "FIXED PLUS CONSUMPTION" (OPTION B)**

	Water Units (1)	Flat Rate Fees (2)	< \$ amt per mo here = no units x unit rate >					
			2008	2009	2010	2011	2012	2013
Jan	8	\$18	24	39	47	55	55	55
Feb	7	18	(3) 29	37	45	52	52	52
Mar	7	18	29	37	45	52	52	52
Apr	6	18	28	35	43	50	50	50
May	9	18	32	41	49	57	57	57
Jun	14	18	40	50	59	69	69	69
Jul	24	18	(4) 68	(5) 80	(6) 92	92	92	92
Aug	26	30	72	85	97	97	97	97
Sep	26	30	72	85	97	97	97	97
Oct	23	42	67	78	90	90	90	90
Nov	18	42	57	68	78	78	78	78
Dec	9	42	41	49	57	57	57	57
Sums:	177	312	559	684	799	846*	846	846

Total  
Cost:                    \$312            \$871    \$1555    \$2354    \$3200    \$4046    \$4892

\* Cost per year is fixed starting with 2011

- (1) Actual water use (ave over last 3 yrs) for 2 people living in a Paso Robles 1450 s.f. 3br/2ba home inside the city limits.
- (2) Total Flat Rate fees paid for the home Aug 05 through Dec 07.
- (3) Rate goes from flat rate fee to \$18 plus \$1.60 per unit on 1 Feb 08.
- (4) Rate goes up to \$24 plus \$1.85 per unit on 1 Jul 08.
- (5) Rate goes up to \$30 plus \$2.10 per unit on 1 Jul 09.
- (6) Rate goes up to \$36 plus \$2.34 per unit on 1 Jul 10.

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2 October 2007  
Page 3 of 4

**NACIMIENTO WATER - COMPARISON OF THE 3 METHODS**

	<u>05/06/07</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	
<b>Flat Fee</b>								
Total Cost:	312	360	504	648	720	720	720	(L1)
<b>Option A</b>								
Total Cost:	312	470	583	684	708	708	708	(L2)
<b>Option A minus</b>								
Flat Rate Cost:	0	+110	+79	+36	-12	-12	-12	(L3)
<b>Option B</b>								
Total Cost:	312	559	684	799	846	846	846	(L4)
<b>Option B minus</b>								
Flat Rate Cost:	0	+199	+180	+151	+126	+126	+126	(L5)
<b>Non-Nacimiento water costs (yearly units total in the example in this report times 1.28):</b>								
	227	227	227	227	227	227	227	(L6)
<b>Sewer costs/year:</b>	<b>288</b>	<b>300</b>	<b>300</b>	<b>300</b>	<b>300</b>	<b>300</b>	<b>300</b>	(L7)
<b>Total costs/year (normal water + sewer + flat fee) or (L1+L6+L7):</b>								
	827	887	1031	1175	\$1247	1247	1247	(L8)
<b>Average cost per month for water + sewer + 100% flat fee cost:</b>								
	69	74	86	98	\$104	104	104	(L9)

**Summary:**

1. Option A costs \$225 more than the Flat Fee during years 08/09/10 but thereafter this plan costs \$12 per year less (see L3). By year 2029 the \$225 is eliminated and less cost is realized but the total effect of Option A is insignificant.
2. Option B is much more expensive than the other approaches. It costs \$530 more for years 08/09/10 than the Flat Fee and \$126 per year more thereafter (see L5). This plan is definitely not recommended.
3. The actual water usage for the home in this analysis is used to calculate the total yearly (\$1247) and monthly (\$104) water bill under the Flat Fee method (see L1, L6, L7, & L9). The \$104 per month cost is 136% more than the current total monthly water and sewer fees for this home due to the added Flat Fees.

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2 October 2007  
 Page 4 of 4