

1 SETTLEMENT AGREEMENT AND ACKNOWLEDGMENT OF POSSESSORY  
2 INTEREST

3 The City of Capitola ("City") and the Soquel Union School District ("District"), also  
4 known as "Soquel Union Elementary School District" enter into this settlement agreement  
5 and acknowledgment of possessory interest ("Agreement") based on the following recitals:

6 A. The District owns certain real property ("Property", also known as the "Jade  
7 Street" or "Opal Cliffs" site or "Jade Street Park") which the District previously leased to the  
8 City under a 1982 lease which was amended in 1985 and 1986 (as amended the "Lease"),  
9 which among other things provided that the District could terminate the Lease by giving the  
10 City written notice twelve months in advance of termination that it required the site for a  
11 public school building. A copy of the Lease, along with its 1985 and 1986 amendments, is  
12 attached as Exhibit 1.

13 B. On July 26, 2000, the District gave the City twelve months advance written notice  
14 of termination of the Lease, which the City disputed.

15 C. In a Conditional Judgment of Ejectment ("Judgment") filed April 14, 2003 in  
16 *Soquel Union School District v. City of Capitola*, Santa Cruz Superior Court Case No. CV  
17 141712, the Court determined, among other things, "That under all the facts and  
18 circumstances of this case, the July 26, 2000 notice of termination to use the subject property  
19 for a public school building was reasonable, and the lease was terminated effective July 26,  
20 2001, provided that, given the spirit of cooperation and commitment to maximizing the joint  
21 use potential that existed in 1986, the District was and is not entitled to possession during the  
22 original term of the lease, even after the passage of the one year notice of termination, until it  
23 is ready to actually commence use of the property, with all the necessary approvals, whether  
24 that be the movement of portable buildings on the property or the commencement of grading  
25 for a new school", and retained jurisdiction "for the limited purpose of determining when the  
26 District is entitled to possession of the property, including determination of any disputes  
27 about access reasonably necessary to obtain necessary approvals or financing". A copy of the  
28 Judgment is attached as Exhibit 2. As a result of the Judgment the landlord/tenant  
29 relationship created by the Lease was terminated and currently no such relationship exists  
30 between the District and the City despite the City's current and ongoing use and maintenance  
31 of the Property for public recreational purposes under the Judgment and subject to the  
32 consistent terms of the terminated Lease, including but not limited to the provisions thereof  
33 quoted hereinafter. The District acknowledges the City's right to possession ("City's  
34 Possessory Interest") of the Property under the Judgment during the remainder of the original  
35 term of the terminated Lease (expiring March 25, 2032) and subject to the terms of the  
36 Judgment and any consistent terms of the terminated Lease.

37 D. On April 21, 2010, the District's governing Board of Trustees adopted a mitigated  
38 negative declaration ("MND") for a public works plan ("PWP"), copies of which are attached  
39 hereto as Exhibits 3 and 4, respectively, for two phases of construction of certain school  
40 facilities more fully described therein as Phase One and Phase Two.

41 As more fully explained in the MND and PWP, the PWP describes Phase One in part  
42 as follows:

43 At buildout, the Phase One improvements will house a pre-school,

1 kindergarten, first grade, and administrative offices (K-1). The  
2 estimated student population for the Phase One improvements is 40  
3 pre-school students and 40 elementary school students. Operation and  
4 maintenance of the facility would require approximately eight  
5 employees consisting of on-site faculty and staff.

6 The PWP diagram for Phase One is attached as Exhibit 5.

7 As more fully explained in the MND and PWP, the PWP describes Phase Two in part  
8 as follows:

9 As depicted on the Phase Two site plan ..., three additional buildings  
10 would be constructed in the second phase; two classroom buildings  
11 and one multi-purpose building. This phase consists of the  
12 construction of additional classroom wings to expand the facility from  
13 pre-school to K-1 to a full pre-school and kindergarten through fifth  
14 grade (K-5) elementary school if, and when, enrollment warrants. The  
15 estimated student population of the K-5 facility is 80- pre-school  
16 students and 320 elementary students for a total student body of 400  
17 students. Approximately 19-27 faculty members and staff are needed  
18 for a facility of this size... Two additional trees would be removed  
19 from the site to accommodate the Phase Two improvements: one near  
20 the northeast property line and one near the existing public restrooms.  
21 Phase Two improvement include replacing the soccer field with a  
22 fenced playground and eliminating the basketball court to  
23 accommodate reconfiguration of the central parking lot. Phase Two  
24 improvements to on-site parking include enlarging the circulation area  
25 to allow a dedicated loading zone at the southern end of the central lot  
26 and reducing the number of spaces in the central parking lot from 46  
27 spaces to 44 spaces to accommodate the dedicated loading area.

28 The PWP diagram for Phase Two is attached as Exhibit 6.

29 E. On April 22, 2010, the District filed a notice of determination ("NOD") for the  
30 Phase One and Phase Two projects included in the PWP with the Santa Cruz County Clerk  
31 and the Office of Planning and Research.

32 F. On May 26, 2010, the City filed a Verified Petition for Writ of Mandate and  
33 Complaint for Injunctive Relief in *City of Capitola v. Soquel Union Elementary School*  
34 *District, et al.*, Santa Cruz County Superior Court Case No. CV 167649, challenging the  
35 District's adoption of the MND for the PWP under the California Environmental Quality Act  
36 ("CEQA").

37 G. The City and the District now desire to compromise and settle the City's CEQA  
38 challenge with respect to Phase One and to defer any litigation challenge by the City or other  
39 such proceedings by the City with respect to Phase Two until such time as the District, in its  
40 sole discretion, decides to resolve any such challenge by the City if such resolution appears to  
41 the District to be necessary to obtain Coastal Commission approval, California Department of  
42 Education approval, or any other approval for construction of Phase One, and in any event  
43 before determining whether to implement Phase Two.

1 H. The District acknowledges the City's right to possession ("City's Possessory  
2 Interest") of the Property under the Judgment during the remainder of the original term of the  
3 terminated Lease and subject to the terms of the Judgment and any consistent terms of the  
4 terminated Lease.

5 NOW, THEREFORE, in consideration of the covenants and conditions of this  
6 Agreement, and other good and valuable consideration, the receipt and sufficiency of which  
7 are hereby acknowledged, the City and the District ("Parties") agree as follows, subject to  
8 formal approval by their governing bodies:

9 1. Upon formal approval of this Agreement by the governing bodies of both the City and  
10 the District and execution of the Agreement by the Parties, the City agrees to dismiss  
11 without prejudice its CEQA lawsuit against the District, each party to bear its own  
12 attorney's fees and costs and, subject to paragraph 7, to support any approvals required  
13 for Phase One.

14 2. The City represents and warrants that the City is the sole and lawful owner of the  
15 claims which are the subject of its CEQA lawsuit against the District, and that the City  
16 has not assigned or transferred or purported to assign or transfer any of such claims,  
17 including but not limited to any claim for attorney's fees or costs, to any of its attorneys  
18 or any other person or entity.

19 3. The District agrees that it will not implement Phase Two until it receives approval  
20 ("Subsequent Phase Two Implementation") for Phase Two implementation from the  
21 California Coastal Commission in addition and subsequent to the California Coastal  
22 Commission's approval of the PWP and Phase One implementation.

23 4. The District agrees that it will not apply to the California Coastal Commission for  
24 Subsequent Phase Two Implementation without first fully complying with any and all  
25 environmental laws, rules and/or regulations, including but not limited to the California  
26 Environmental Quality Act ("CEQA"), as well as any other laws, rules and regulations  
27 that might be applicable to the Subsequent Phase Two Implementation process.

28 5. The City shall have the right to legally challenge the District's compliance with the  
29 laws, rules and regulations referenced in paragraph 4 solely with respect to Phase Two in  
30 accordance with any procedures set forth in said laws, rules and regulations for asserting  
31 legal challenges. The City's rights herein delineated include the right of the City to  
32 challenge the MND referenced in Recital D solely as to Phase Two should the District  
33 purport to rely on the MND for CEQA compliance relative to Phase Two implementation  
34 and the District agrees to waive the CEQA statute of limitations for any CEQA challenge  
35 by the City solely as to Phase Two.  
36

37 6. The District acknowledges that it is the City's position and contention that the  
38 implementation of Phase Two will result in significant environmental impacts thereby  
39 legally requiring the maximum level of environmental review, analysis, information and  
40 discussion required by law including the preparation of an environmental impact report  
41 ("EIR"). The City in turn acknowledges that it is the District's position that all reasonably  
42 foreseeable environmental impacts that may ensue from the implementation of Phase  
43 Two can be mitigated to a level of less than significant thereby legally authorizing the  
44 District's use of a mitigated negative declaration rather than an EIR for CEQA  
45 compliance. The Parties jointly acknowledge that this Agreement is not intended to, and

1 does not, resolve the City's and District's dispute in this regard with respect to Phase  
2 Two and their respective rights to assert legal claims and defenses in this regard with  
3 respect to Phase Two are preserved and deferred pursuant to paragraph 5.

4 7. The City agrees that the District may at any time submit the PWP to the California  
5 Coastal Commission and in connection with that submittal apply for the Commission's  
6 approval for Phase One implementation. The PWP will be transmitted to the Commission  
7 along with a copy of this Agreement, excluding exhibits. Provided the PWP in its current  
8 form along with a copy of this Agreement (excluding exhibits) is submitted to the  
9 Commission, the City will support the District's application for Phase One  
10 implementation and cooperate with the District's subsequent implementation of Phase  
11 One at the time the District in its sole discretion decides to proceed with Phase One  
12 implementation.

13 8. In addition to the Phase One mitigation measures identified in the MND, the District  
14 agrees to pay the sum of \$40,000 and ownership of the Soquel Creek Water Credits to the  
15 City. The \$40,000 will be deposited to an escrow account to be used solely for traffic  
16 mitigation and pedestrian safety on the streets adjacent to the Opal Cliffs property, with  
17 quarterly accounting of expenditures provided to the District for five years or until the  
18 funds are expended. If, at the end of five years, funds remain, those funds will be returned  
19 to the District.

20 9. The District agrees to implement Phase One and operate the school facilities it  
21 develops on the Property pursuant to Phase One implementation in accordance with the  
22 MND and PWP. In this regard, the City acknowledges that the 40 elementary school  
23 student reference in the Phase One PWP description cited in Recital D is an estimate  
24 based upon district's class size in effect at the time of PWP. Maximum class sizes are  
25 periodically revised upward or downward and accordingly it was necessary for the  
26 District to estimate the maximum size of the elementary student population that may be  
27 served at the Phase One facilities at any given time. The City agrees that it will not  
28 challenge the District's PWP compliance in this regard so long as the elementary student  
29 population at Phase One facilities does not exceed the maximum authorized at the time  
30 by the Education Code for the two classrooms and preschool facility included in Phase  
31 One.

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33 10. Pursuant to the City's Possessory Interest, the City may only use the Property for the  
34 development and maintenance of a public recreational park. The City shall not change the  
35 Property's current recreational uses, develop new recreational uses on the Property or  
36 physically alter the Property (e.g. plant or remove trees) which may interfere with the  
37 District's use of the Property for school purposes without obtaining the District's prior  
38 written consent. The City shall not allow alcohol or tobacco, smoking or the consumption  
39 of alcoholic beverages on any portion of the Property, outdoors or indoors, including but  
40 not limited to, the Community Center. The District as owner may post signs on the  
41 Property. The City, with the District's prior written permission, may install and maintain  
42 fixtures on the Property in accordance with requirements of Section 6 of the terminated  
43 Lease. The City shall be required to indemnify and defend the District in accordance with  
44 the requirements of Section 7 of the terminated Lease. The City shall procure and  
45 maintain insurance relative to its use of the Property in accordance with the requirements  
46 of Section 8 of the terminated Lease. The District agrees that the City shall have a  
47 contractual right under this Agreement to enforce the terms of the District's PWP.

- 1 11. By June 1, ~~2010~~ preceding each District fiscal year commencing July 1, 2010, the  
2 District may reserve use of the Community Center for any four days of the following  
3 District fiscal year by providing written notice of those dates to the City at least two  
4 months prior to such requested use. Thereafter the District may use the Community  
5 Center on other dates during that calendar year on which the Community Center has not  
6 been reserved for another party's use including, but not limited to, that of the City.
- 7 12. The City agrees to cooperate with the District in allowing the District's use of City  
8 recreational facilities on the Property for school purposes whenever available and in any  
9 event upon reasonable advance notice not to exceed six months, and to continue its  
10 existing practices for scheduling use of the soccer field as the home field for the District  
11 soccer team.
- 12 13. This Agreement effects the settlement of claims which are denied and contested, and  
13 nothing contained herein shall be offered, admitted or construed as an admission by either  
14 Party of any liability of any kind or amount to the other Party or any third party.
- 15 14. Except as expressly provided herein, this Agreement does not affect any right or  
16 obligation of either of the Parties under the Judgment or terminated Lease, but is intended  
17 by the Parties as the final expression of their agreement with respect to such other terms  
18 as are included herein and as the complete and exclusive statement of such other terms,  
19 and such other terms may not be contradicted by evidence of any prior agreement or of a  
20 contemporaneous oral agreement, nor explained nor supplemented by evidence of  
21 consistent additional terms.
- 22  
23 15. Each of the Parties acknowledges and agrees that no one has made any promise,  
24 representation or warranty whatsoever, express or implied, written or oral, not contained  
25 herein to induce them to approve or execute this Agreement, and that this Agreement is  
26 not approved or executed in reliance upon any such promise, representation or warranty.
- 27 16. Each of the Parties acknowledges and agrees that this Agreement may be amended  
28 only by a writing signed by all of the Parties.
- 29 17. Each of the Parties acknowledges and agrees that it has been represented by  
30 independent legal counsel of its own choice throughout the negotiation of this Agreement  
31 and that it has had sufficient opportunity to investigate the facts and obtain the advice of  
32 such counsel before entering into this Agreement.
- 33 18. Each of the Parties acknowledges and agrees that this Agreement is to be construed as  
34 a whole according to its fair meaning and not in favor or against any of the Parties as  
35 draftsman or otherwise.
- 36 19. Each of the Parties agrees to execute and deliver such further documents and to take  
37 such further actions as may be reasonably necessary or appropriate to effectuate the terms  
38 of this Agreement.
- 39 20. Any written notice under this Agreement, including any notice of any change in any  
40 of the following addresses, shall be given by first class mail or by certified mail, return  
41 receipt requested, addressed as follows, except that after receipt of any notice by the City  
42 or the District of any change in their respective addresses such notice shall be given with  
43 any changes in their respective addresses indicated in such notice:  
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If to the City:

Jamie Goldstein, City Manager City of Capitola  
420 Capitola Avenue  
Capitola, CA 95010  
with a copy to:  
John G. Barisone, City Attorney  
Atchison, Barisone, Condotti & Kovacevich  
333 Church Street  
Santa Cruz, CA 95060

If to the District:

Kathleen Howard, Superintendent  
Soquel Union Elementary School District  
620 Monterey Avenue  
Capitola, CA 95010  
with a copy to:  
Judd Jordan, Lozano Smith  
4 Lower Ragsdale Drive, Suite 200  
Monterey, CA 93940-5758

21. 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 Santa Cruz, subject to any motion for change of venue.

22. This Agreement shall be governed by and interpreted under the laws of the State of California applicable to instruments, persons, transactions and subject matter which have legal contacts exclusively within the State of California.

23. In any action or proceeding seeking any relief under or with respect to this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs.

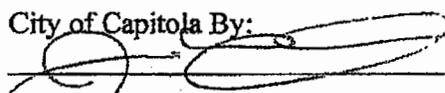
24. To the maximum extent consistent with the Brown Act, the public announcement of this Agreement shall be in the form of the joint statement attached hereto as Exhibit 7.

25. This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement.

26. This Agreement is solely for the benefit of the Parties and may not be enforced by any third party.

27. Each of the persons signing this Agreement represents and warrants that he or she has been duly authorized to sign this Agreement on behalf of the Party indicated, and each of the Parties by signing this Agreement represents and warrants that such Party is legally authorized and entitled to enter into this Agreement, subject to approval by the governing body of the Party.

Dated: 8/12/10

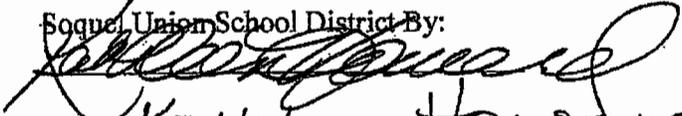
City of Capitola By:   
Name: Jamie Goldstein

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Title: City Manager

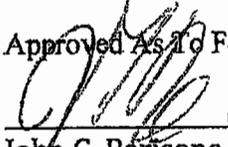
Dated: 8/11/2010

Soquel Union School District By:

  
Name: Kathleen Howard

Title: Superintendent

Approved As To Form

 8-12-10

John G. Barisone  
City Attorney





**RECEIVED**

MAR 14 2011

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

420 CAPITOLA AVENUE  
CAPITOLA, CALIFORNIA 95010  
TELEPHONE (831) 475-7300  
FAX (831) 479-8879

March 9, 2011

C E R T I F I E D M A I L

California Coastal Commission  
Central Coast District Office  
Attention: Susan Craig  
725 Front Street, Suite 300  
Santa Cruz, CA 95060-4508

RE: Soquel Union Elementary School District Public Works Plan

Dear Ms. Craig:

Thank you for the opportunity for the City of Capitola to provide comments on the proposed Soquel Union Elementary School District ("District") Public Works Plan. As you are aware, the City of Capitola and the District reached a settlement agreement in August 2010. This City agreed to support the District's Phase One application and implementation. This letter confirms the City's earlier supportive comments on the scope of public works projects identified in Phase One.

The settlement agreement provides that the City will have the continuing right to legally challenge the District's compliance with CEQA for Phase Two, should the District purport to rely on a Mitigated Negative Declaration prepared for the Public Works Plan. The City anticipates working with the District to ensure CEQA compliance for Phase Two.

The attached District letter clarifies the noticing and hearing requirements related to Phase Two implementation. Appendix K to the Public Works Plan requires the District to provide a Notice of Impending Development (NOID) to the City at least 30 days prior to proceeding with any portion of Phase Two.

The City of Capitola supports the scope of projects identified in Phase One and anticipates working with the District and Coastal Commission on Phase Two implementation. Please contact me directly should you have any questions.

Respectfully yours,

Derek Johnson  
Community Development Director

CC: Jamie Goldstein, City Manager  
John G. Barisone, City Attorney  
Kathleen Howard, District Superintendent

Enclosures

February 7, 2011 Soquel Union Elementary School District Letter

**CCC Exhibit D**  
**(page 1 of 2 pages)**



# SOQUEL UNION ELEMENTARY SCHOOL DISTRICT

**RECEIVED**

February 7, 2011

MAR 14 2011

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

**RECEIVED**

FEB - 8 2011

CITY OF CAPITOLA

**District Administration**  
620 Monterey Avenue  
Capitola, CA 95010

Derek Johnson  
Community Development Director  
City of Capitola  
420 Capitola Ave.  
Capitola, CA 95010

**Kathleen Howard**  
Superintendent  
KHoward@suesd.org  
(831) 464-5639  
(831) 475-5196 FAX

Dear Mr. Johnson,

**Harley Robertson**  
Assistant Superintendent  
Business Services  
HRobertson@suesd.org  
(831) 464-5632  
(831) 479-7182 FAX

This letter is a follow-up to our telephone call of Tuesday, February 1, 2011.

We understand that written confirmation that the District would issue a Notice of Impending Development before proceeding with implementation of any portion of Phase Two, giving the City of Capitola the opportunity contemplated in the Settlement Agreement to renew its CEQA challenge solely as to Phase Two in Court should the City decide to do so, might satisfy your concern or the concern of the City that the District might attempt to proceed with implementation of Phase Two without providing such notice and opportunity for the City to challenge Phase Two implementation, which certainly is not the District's intent.

**Stacy O'Farrell**  
Special Education Director  
SOFarrell@suesd.org  
(831) 464-5631  
(831) 475-9087 FAX

Indeed, Appendix K to the Public Works Plan regarding Implementation Procedures, and specifically Section 3.1, expressly requires the District to provide a Notice of Impending Development at least 30 days before proceeding with any portion of Phase Two ("any specific development project on the Opal Cliffs Site not included in the Phase One project included in the PWP"). This, together with the waiver of the statute of limitations for such a challenge under paragraph 5 of the Settlement Agreement, guarantees the City of Capitola the opportunity contemplated in the Settlement Agreement timely to renew its CEQA challenge solely as to Phase Two in Court should the City decide to do so if and when the District ever gives such notice. Section 3.1 (d) of Appendix K specifically requires that the Notice of Impending Development be sent to "agencies who have requested in writing to receive such notice" and "[a]ll parties consulted with pursuant to Section 2.4.4 (c) above", which Section 8.2 of the PWP confirms includes representatives of the City of Capitola. (The Settlement Agreement also provides that notices to the City of Capitola under the Settlement Agreement should go both to the City Manager, Jamie Goldstein, and to the City Attorney, John G. Barisone.)

**Board of Trustees**  
Ted Donnelly  
Lynette Hamby  
Judy McGooden  
Cynthia Torres-Ricca  
Sandra Wallace

Accordingly, although the Public Works Plan attached to the Settlement Agreement (which paragraph 7 of the Settlement Agreement expressly allows the District to submit to the Coastal Commission) includes both Phase One and Phase Two, and as stated in the PWP (for example, in the Introduction to Appendix K) the District is seeking a coastal development permit for implementation of Phase One concurrently with approval of the Public Works Plan, the Public Works Plan expressly requires the District to provide a Notice of Impending Development before the District may proceed with implementation of any portion of Phase Two, giving the City of Capitola its contemplated opportunity to renew its CEQA challenge solely as to Phase Two in Court should the City decide to do so, which should satisfy any concern by the City of Capitola that the District might not do so.

We would appreciate any confirmation you could provide that with this clarification the City of Capitola will support implementation of Phase One while reserving its CEQA challenge to Phase Two as contemplated by the Settlement Agreement. Thank you for your courtesy and cooperation in this very important matter for the District.

Respectfully,

Kathleen Howard  
Superintendent

CC: Jamie Goldstein, City Manager  
John G. Barisone, City Attorney

**CCC Exhibit D**  
(page 2 of 2 pages)